



## Control, Supervisory and Jurisdictional Powers of the Federal Penitentiary Service as a Direction of Administrative and Legal Protection of Russian Penitentiary Institutions

**YURII I. MIGACHEV**

Kutafin Moscow State Law University (MSAL), Moscow, Russia, juri.migachev@yandex.ru

**NADEZHDA V. ANISKINA**

Vologda Institute of Law and Economics of the Federal Penitentiary Service, Vologda, Russia, AniskinaN555@yandex.ru, <https://orcid.org/0000-0002-7185-5730>

### Abstract

*Introduction:* the article considers legal regulation of the jurisdictional powers of special structural units of the Federal Penitentiary Service in the process of implementing control and supervisory activities in the territories and facilities of the Russian penal system. *Purpose:* to present theoretical and legal understanding of the implementation of control and supervisory activities in territories and objects of the Russian penal system. *Methods:* general scientific methods of cognition (analysis, synthesis, induction and deduction), special methods of legal science (comparative legal and normative-logical), individual private methods of social sciences. *Results:* the issues of combining of control and supervisory functions in the activities of special structural units of the Federal Penitentiary Service are studied, and their role as one of the main directions of administrative and legal protection of objects of the Russian penal system is indicated. The problems of legal regulation and practice of implementation of jurisdictional powers by the subjects of control and supervisory activity applicable to the sphere of execution of criminal penalties are analyzed. *Conclusion:* proposals regarding regulation of administrative and jurisdictional powers of special structural units of the Federal Penitentiary Service are formulated. The following characteristics of control and supervisory activities of the penal system are identified: it is carried out taking into account the specifics of the sphere of public relations in which it is implemented; it combines elements of control and supervision; it has a complex nature of action; it is carried out by specially authorized structural units of the Federal Penitentiary Service; supervisory activity is implemented within the framework of the external activities of authorized subjects of the Federal Penitentiary Service, while the control is of an intra-system (intra-departmental) nature; it is the most important form of the implementation of administrative and jurisdictional activities in the sphere of public relations under consideration.

**Key words:** control and supervisory activities; administrative jurisdiction; administrative coercion; penal system; Federal Penitentiary Service; administrative liability.

5.1.2. Public law (state law) sciences

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### *Introduction*

Nowadays, ensuring penitentiary security is one of the key areas for the development of the Russian penal system. Security of the penal system in its essential and substantive relation implies the existence of a certain level of protection of both territories, institutions and bodies of the penal system, and persons directly located at these facilities, from internal and external threats that pose a danger to them. The problem of security in the penal system is closely related to such categories as public and state security, since only an integrated approach to their compliance ensures the necessary level of security, legality and law and order not only in the field of execution of criminal penalties, but also in the state as a whole.

Our review of the legal literature indicates that there is interest in this issue in the scientific community. Researchers consider issues of maintaining external security of penitentiary facilities [1, 2] and internal, within which they, as a rule, consider various aspects of ensuring safety of convicts and personnel of the penitentiary system [3, 4]. At the same time, the issues of ensuring security of the penal system at the required level through the implementation of control and supervisory activities by authorized subjects of the Federal Penitentiary Service.

The control and supervisory powers of the Federal Penitentiary Service, as a rule, are evaluated in terms of their analysis as a body authorized to exercise control and supervision functions exclusively in relation to convicted, suspected and accused of committing crimes. Indeed, it is difficult to argue with this view, since these powers are normatively fixed in the Decree of the President of the Russian Federation No. 1,314 “Issues of the Federal Penitentiary Service” of October 13, 2004. Meanwhile, a more detailed study of the powers of the Federal Penitentiary Service shows that in many respects the state of penal system security from various kinds of external and internal threats is ensured only by endowing the latter as an execu-

utive authority with special control and supervisory powers, thanks to which the necessary level of security is achieved in the established sphere of public relations.

Nowadays, one of the priority issues of providing security and organizing activities of the penitentiary system is to ensure sanitary-epidemiological, fire, veterinary and industrial safety at the facilities and territories of institutions and bodies of the penitentiary system. It is an important component of the functioning of institutions and bodies of the penal system, as it is aimed at forming a general state of protection of the life and health of the personnel, convicts and persons at the facilities and territories of penitentiary institutions, as well as their belongings and property of organizations operating in the regime territories, from fires, epidemics, epizootics, accidents at hazardous production facilities and consequences of these accidents, other hazards, as well as risks, which may arise in the field of execution of criminal penalties.

### *The core*

The main powers for the organization of work related to the provision of sanitary-epidemiological, fire, veterinary and industrial safety in the territories and facilities of penitentiary institutions and bodies are assigned to special structural units of the Federal Penitentiary Service, such as the department for the organization of medical and sanitary support of the Federal Penitentiary Service; the veterinary service of the Federal Penitentiary Service; the inspection of technical supervision of the management of the organization of production activity and labor adaptation of convicts of the Federal Penitentiary Service; the departmental fire service of the penal system (VPO). At the local level, these activities are carried out by federal state institutions and unitary enterprises subordinate to these structural divisions [5, p. 56].

These entities exercise federal state sanitary-epidemiological, veterinary and fire supervision, as well as monitor industrial safety in relation to hazardous production facilities of

the penal system (industrial supervision). A.V. Martynov in his monograph "Administrative supervision in Russia: theoretical foundations of construction" suggests considering these activities as separate types of administrative supervision, each of which represents a special form of state management activity [6].

We have identified that in the sphere of public relations under consideration, special structural units of the Federal Penitentiary Service are empowered to exercise both departmental control and administrative supervision.

When considering this issue, it is necessary to pay attention to the existence of a discussion in the administrative law doctrine regarding the content of control and supervisory activities [7]. Sharing S.M. Zubarev's point of view regarding the nature of control and supervision in the activities of public authorities and their officers, we agree with the statement that the choice of a specific form of activity should be determined primarily by the legal status of the subject of coercion with regard to the nature of the tasks and functions performed by him [8, p. 10].

As noted above, in relation to the sphere of legal realization, authorized penal system officers perform the functions of departmental control and administrative supervision. At the same time, it should be pointed out that the control function is reflected in the performance of tasks and functions by penal system employees within the framework of official relations, while supervision is exercised in relation to entities that are organizationally insubordinate to them (in this case, we are primarily talking about organizations operating in regime territories and facilities of the penal system, and individuals (officers)). It is noteworthy that these forms of activity can be combined with each other in the process of implementing certain powers, at the same time, it is the object of coercive influence (the object of coercion) that should be considered as the basis for their differentiation.

So, in terms of the established sphere of public relations, we can talk about a combination of control and supervision as special forms of state administrative activity, therefore, about control and supervisory activities carried out by penal system employees.

At the same time, singling out two independent, but closely related areas of activity (departmental control and administrative supervi-

sion) in the structure of the powers of officers of the Russian penal system, it is necessary to point out the specifics of their normative consolidation. The powers of specially created structural divisions of the Federal Penitentiary Service regarding the implementation of departmental (intradepartmental) control in most cases are regulated by subordinate and departmental regulations. We can mainly talk about the orders of the Ministry of Justice of Russia and the Federal Penitentiary Service, establishing the competence of structural units of the Federal Penitentiary Service (for example, the Order of the Ministry of Justice of Russia No. 177 "On approval of the Instructions on the organization of activities of fire brigades, individual posts, groups of fire prevention of departmental fire protection of institutions executing punishments, and pre-trial detention facilities of the penal system" of September 3, 2007 and the Order No. 999 "On approval of the Regulations on the veterinary service of the Federal Penitentiary Service" of the Federal Penitentiary Service of November 1, 2018). While supervisory powers are regulated, as a rule, by the norms of federal legislation (for example, the Code of Administrative Offences of the Russian Federation (KoAP RF), the Federal Law of the Russian Federation No. 52-FZ "On sanitary and epidemiological welfare of the population" of March 30, 1999, etc.).

As noted by Herwig H. H. Hofmann, Gerard K. Rowe, and Alexander H. Turk, the implementation of control and supervisory powers by subjects of state administrative activity cannot be effective without their endowment with a certain amount of authority, providing for the possibility of applying state coercion measures, in particular, administrative coercion measures (administrative liability) [9]. V.D. Ardashkin also emphasizes that the right to use administrative coercion "is an important element of state control and supervision, without the implementation of which the functions of public administration under consideration would be incomplete" [10, p. 11].

S.M. Zubarev considers the possibility of applying administrative coercion measures as one of the main criteria by which control and supervisory activities in any sphere of state administrative activities should be distinguished among themselves. At the same time, admin-

Administrative coercion is considered exclusively as an element of supervisory activity, while the implementation of control activities by authorized subjects does not provide for the application of administrative and coercive measures to control objects. At the same time, since control and supervision are legislatively identified, the scientist admits that in case of detection of elements of an administrative offense, the possibility of applying certain measures of administrative coercion and bodies that exercise control over subordinate issues, thereby referring to this type of activity as “quasi-control” [11, p. 30].

Administrative coercion in the penal system of the Russian Federation acts as one of the legal instruments through which the control and supervisory structural units of the Federal Penitentiary Service carry out their functions. I.O. Vasyukhno believes that at the present stage of development of the science of administrative law, the relationship of administrative coercion, law enforcement and supervisory activities is beyond doubt [12, p. 53], since they all involve the direct implementation of jurisdictional powers. Special structural divisions of the Federal Penitentiary Service are no exception, since their control and supervisory activities are closely related to the realization of jurisdictional powers in the framework of the implementation of proceedings on administrative offenses.

Control and supervisory powers of structural divisions of the Federal Penitentiary Service are exercised within the framework of their external activities in relation to the management objects that are organizationally subordinated to them – legal entities and individuals. At the same time, if the subjects of control and supervision of the Federal Penitentiary Service detect any violations of the current legislation norms on the part of the management objects, they are authorized to apply to the latter all necessary measures of administrative influence (coercion), up to measures of administrative liability. Dennis Daley also points out the effectiveness of the impact of administrative liability measures as a tool that stimulates law-abiding behavior of organizations and individuals (officers) [13].

When analyzing powers of the penal system employees implementing control and supervisory functions within the established compe-

tence in the sphere of public relations under consideration, it should be pointed out that not all of them are entitled to initiate cases of administrative offenses. This right is granted only to individual employees who, if there are legally established reasons and grounds, are authorized to draw up protocols on administrative offenses (Part 1 of Article 28.1 of the KoAP RF). The list of these subjects is fixed in the Order of the Federal Penitentiary Service No. 780 of December 19, 2013. The Order contains key elements of administrative offenses, after commission of which the penal system officers exercising state federal administrative supervision in the territories and objects of the penal system are authorized to draw up protocols on administrative offenses for the compositions that do not directly reflect the specifics of the penal system functioning and can be committed in other spheres of life. However, their commission can cause harm to public relations developed in the sphere of execution of criminal penalties. That is why officers of a specially created structural subdivision of the Federal Penitentiary Service were empowered to carry out proceedings on cases of administrative offenses within the established competence.

For instance, the state sanitary and epidemiological supervision at penitentiary facilities is carried out by penal system employees, in particular, the Chief State Sanitary Doctor of the Federal Penitentiary Service and the chief state sanitary doctors of territorial bodies of the Federal Penitentiary Service. The state sanitary and epidemiological supervision at penitentiary facilities, as the main goal of its activity, conducts all necessary measures aimed at preventing the occurrence and spread of epidemic (infectious) diseases at places of deprivation of liberty.

Sanitary and epidemiological supervision acquired particular importance during the spread of coronavirus infection (COVID-19) among the suspected, accused, convicted, as well as employees of the penitentiary system. Thus, restrictive measures dictated by the sanitary and epidemiological situation were introduced at penitentiary facilities. For instance, in 2020, the Chief State Sanitary Doctor of the Federal Penitentiary Service introduced a temporary ban on the provision of long and short-term visits with convicts (Resolution of the Chief State Sanitary

Doctor of the Federal Penitentiary Service No. 15 “On the introduction of additional sanitary and anti-epidemic preventive measures” of March 16, 2020) to prevent the emergence and spread of COVID-19 [14, p. 113].

In case of detection of violations, officials carrying out sanitary and epidemiological supervision at penitentiary facilities are authorized to make reasoned decisions on the imposition of administrative penalties against organizations and officials provided for by articles of the Administrative Code of the Russian Federation establishing administrative liability for violation of sanitary and epidemiological legislation (for example, provided for by articles 6.1, 6.3 (Part 2, 3), 6.33, (parts 1, 3), 14.26, 14.34 (Part 1), 14.43 (Part 3), 14.46.1, 14.46.2 of the Code, etc.) in the form of a warning or an administrative fine.

For other types of the state federal administrative supervision implemented in the penal system, the elements of offenses are listed in articles 23.14 (veterinary supervision) and 23.31 (industrial supervision) of the Administrative Code of the Russian Federation. For example, the state veterinary supervision in the territories and facilities of the penitentiary service allows timely detection and prevention of the spread of particularly dangerous diseases, food toxic infections among consumers of animal products, since it is aimed at ensuring the safety and quality of animal products manufactured in the penal system. In case of detection of veterinary legislation violations at penitentiary facilities, employees of the veterinary service are authorized to initiate cases of administrative offenses provided for in articles 10.6–10.8 of the Administrative Code of the Russian Federation.

Safe and serviceable maintenance of hazardous production facilities in the penal system is ensured through ongoing industrial supervision measures. The inspection of technical supervision of the management of the organization of production activity and labor adaptation of convicts of the Federal Penitentiary Service is authorized to carry out industrial supervision at penitentiary facilities. It is focused on ensuring industrial safety in the established sphere of public relations.

Thus, administrative coercion in the penal system acts as a kind of law enforcement activity, within the framework of which the control and supervisory powers of the Federal Peniten-

tiary Service are implemented by authorized structural units and their officials. In addition, the use of administrative coercion measures is necessary for the effective implementation by these entities of the tasks assigned to them to prevent, detect and suppress offenses in the established field of activity.

We believe that granting jurisdictional powers to the penal system employees in the established sphere of public relations suggests the formation of a legal mechanism for administrative and legal protection of penitentiary facilities.

What is more, all subjects of control and supervisory activities in the penal system are endowed with different amounts of jurisdictional powers. So, for example, officials of the departmental fire service of the penal system (VPO) are not authorized to draw up protocols on administrative offenses. When detecting violations of fire safety requirements at penitentiary facilities and for drawing up appropriate protocols, penal system employees send all materials during control and supervisory activities to the state fire supervision authorities (Article 23.34 of the Administrative Code of the Russian Federation, Paragraph 71 of Section V of the Order of the Ministry of Justice of the Russian Federation No. 177 of September 3, 2007 “On approval of the Instructions on the organization of activities of fire brigades, individual posts, groups of fire prevention of departmental fire protection of institutions executing punishments and pre-trial detention centers of the penal system”).

For example, in 2021, on the initiative of VPO officials exercising control and supervision in the field of fire safety in the territories and facilities of the Russian penal system, 60 penal system employees and 187 convicts were brought to administrative liability; 38 employees, 101 convicts; and 50 legal entities were imposed an administrative fine. The amount of fines imposed was 232.6 thousand rubles for officials and 79,322 thousand rubles for legal entities [15, p. 402].

So, officials of the departmental fire service of the penal system can only act as initiators of bringing officials and organizations to administrative liability in case they violate fire safety requirements at penitentiary facilities. The departmental fire service of the penal system is entitled to apply disciplinary coercion measures

to offenders within the framework of departmental control (Paragraph 94 of Section V of the Order of the Ministry of Justice of the Russian Federation No. 177 of September 3, 2007). At the same time, the discussed above does not mean that VPO officials are not endowed with any amount of authority to apply administrative coercion measures at all.

VPO officials are authorized to make prescriptions for the elimination of identified violations of fire safety standards, mandatory for execution, thereby realizing administrative and coercive capacities in practice. As G.A. Ozhegova emphasizes, the instruction to eliminate the identified violations in theoretical jurisprudence and administrative law science is traditionally considered as a form of state coercion [16, p. 25].

So, for example, in 2021, VPO officials submitted 644 instructions on the elimination of identified violations of fire safety standards and prohibition of functioning of fire-hazardous facilities, including 298 industrial buildings and premises, 26 warehouses, bases and retail premises, 33 administrative and public buildings and structures, 71 residential buildings and premises, 49 structures and applications, 26 agricultural facilities, 24 garages, and 117 other fire-hazardous objects [15, p. 402].

Thus, the instruction to eliminate identified violations, issued by an VPO official, can be considered as an act of an administrative nature, which contains mandatory directions and entails, in case of non-compliance, legally significant consequences for the offender.

The conducted analysis of legal acts regulating jurisdictional powers of subjects of control and supervisory activities in the penal system shows that the level of systematization of regulatory legal material is quite low. For instance, the Administrative Code of the Russian Federation defines the procedure and limits of the powers of officials of the Criminal Code when conducting proceedings on administrative offenses in the sphere of public relations under their jurisdiction. At the same time, attention should be paid to the following circumstance: the normative regulation of the powers of subjects of administrative jurisdiction in the penal system is unsystematic and dispersed according to individual articles of the Code. The powers of the subjects exercising administrative su-

per vision at penitentiary facilities are fixed not only in the Administrative Code of the Russian Federation (articles 23.13, 23.14 and 23.31 of the Administrative Code of the Russian Federation), but also in certain norms of federal legislation (for example, Article 9 of the Law of the Russian Federation No. 4979-1 of May 14, 1993 "On veterinary medicine") and departmental legal acts (for example, Paragraph 4.9 of the Order of the Federal Penitentiary Service No. 999 of November 1, 2018), which regulate activities of officials of specially authorized structural divisions of the Federal Penitentiary Service for the implementation of proceedings on administrative offenses in the field of execution of criminal penalties. So, in practice both subjects of law enforcement and objects of coercive influence (legal entities and officials) find it rather difficult to navigate a large array of regulatory legal acts and norms, which cannot but affect the final result of activities of those carrying out control and supervisory activities in the penal system.

In view of the above, it should be emphasized that the need for a critical understanding of the powers of subjects of administrative jurisdiction in the panel system in the framework of the implementation of proceedings on cases of administrative offenses is caused by the ongoing administrative reform of control and supervisory activities implemented in all areas of public administration. The ongoing reform is aimed, on the one hand, at systematization of administrative and legal norms and, on the other hand, deeper elaboration of issues related to the legal regulation of administrative and jurisdictional powers of participants in control and supervisory proceedings in subordinate areas.

Indeed, effective implementation of control and supervisory powers largely depends on the quality of the regulatory framework. Meanwhile, despite the active use of control and supervision functions in the activities of the Federal Penitentiary Service, the content of these functions remains undisclosed to date. For example, the federal service has no administrative regulations that establish and disclose the procedure for the implementation of these functions in the law enforcement activities of authorized entities. The only exception is the Administrative regulations of interaction between the Federal Service for Environmental, Technological, and

Nuclear Supervision and the Federal Penitentiary Service in the implementation of state control (supervision) in the field of industrial safety at hazardous production facilities of the penal system adopted back in 2014 (Order of Federal Service for Environmental, Technological, and Nuclear Supervision No. 96, Federal Penitentiary Service No. 123 of March 11, 2014).

As practice shows, any imperfections in the legal regulation of any type of activity, including control and supervisory, reduce not only the quality and effectiveness of the functions performed, but can also lead to violations of the rights and legitimate interests of objects of coercive influence (organizations and individuals).

We propose to draw attention to the need to legally consolidate the administrative and jurisdictional powers of officials of the Federal Penitentiary Service who carry out relevant types of administrative supervision within the framework of one article: administrative and jurisdictional powers related to the implementation of federal state veterinary supervision at penitentiary facilities; administrative and jurisdictional powers related to the implementation of federal sanitary and epidemiological supervision at subordinate and serviced facilities and serviced territories of the penal system; administrative and jurisdictional powers related to the implementation of federal state supervision in the field of industrial safety in relation to hazardous production facilities of the penal system; administrative and jurisdictional powers related to the implementation of departmental fire supervision at facilities of institutions and bodies of the penal system.

The introduction of amendments to the Administrative Code of the Russian Federation is one of the ways to solve the discussed problem. In particular, we propose to supplement Article 23.4 "Bodies and institutions of the penal system" with separate parts establishing the administrative and jurisdictional powers of officials of the Federal Penitentiary Service performing control and supervisory functions in the penal system within the established competence [14, pp. 240–241].

In this case, the approach that was applied in the draft Code of the Russian Federation on Administrative Offenses (Article 44.22) seems to be the most priority direction in terms of regu-

latory regulation and consolidation of the powers of subjects of administrative jurisdiction in the penal system, which was applied in the draft Code on Administrative Offenses of the Russian Federation (Article 44.22). Consolidation within one article of the powers of subjects of administrative jurisdiction to draw up protocols on administrative offenses and consider administrative cases greatly facilitates the law enforcer's perception of the legal norm and minimizes the number of mistakes.

Thus, the integrated approach to the consideration of the issue of legal regulation of the jurisdictional powers of special structural units of the Federal Penitentiary Service, implemented in the course of control and supervisory activities, allowed us to formulate proposals to improve the legal regulation of their activities in the framework of proceedings on administrative offenses.

#### *Conclusion*

Control and supervisory activities of specially authorized structural units of the Federal Penitentiary Service are one of the most effective areas of administrative and legal protection of penitentiary facilities, which implementation makes it possible to ensure the necessary level of penitentiary security. The provision of penitentiary security is largely ensured by the possibility of the control and supervision subjects applying measures of administrative coercion, up to administrative liability, to the objects of influence. These powers are of a law enforcement character.

Our research has shown that control and supervisory activities in the penal system are characterized by the following:

- they are carried out with regard to the specifics of the sphere of public relations in which they are implemented;
- they combine elements of control and supervision;
- they have a complex nature of action, that is, they provide for the possibility of implementing several types of sectoral administrative supervision within one system;
- they are carried out by specially authorized structural divisions of the Federal Penitentiary Service;
- supervisory activities are carried out within the framework of external activities of the authorized subjects of the Federal Penitentiary

Service in relation to the objects of management that are organizationally in subordinate to them – legal entities and individuals, while control activities are of an intra-system (intra-departmental) nature;

– control and supervisory activities in the penal system is the most important form of administrative and jurisdictional activity, within the framework of which the powers to apply administrative coercion measures are implemented.

Administrative coercion is an obligatory element of supervisory activity, a criterion that helps distinguish this activity from control, along with the ratio of the subject and the object of coercive influence. When exercising control, coercion, as a rule, has a pronounced disciplinary character. While in modern conditions of legislative identification of control and supervision, there is a widespread penetration of coercive measures into the exercise of control, which turns it into a so-called “quasi-control”. As a consequence, there is a process of replacing the managerial essence of control with law enforcement content.

There are several grounds for normative regulation of the powers of special structural units of the Federal Penitentiary Service in the imple-

mentation of control and supervision measures in the penal system.

First, the normative regulation of supervisory activities is carried out, as a rule, at the federal level, while the legal regulation of control activities in the system of executive authorities is largely at the subordinate level. Such a state of affairs leads to a lack of system and consistency in terms of the normative consolidation of the powers of subjects of control and supervision within even one sphere of public relations we consider.

Second, we believe that our proposals to supplement Article 23.4 of the Administrative Code of the Russian Federation with separate parts establishing administrative and jurisdictional powers of officials of the Federal Penitentiary Service exercising control and supervisory functions in the penal system within the established competence, will improve the law enforcement component in matters of implementation of the established norms.

Thus, the state federal administrative supervision in the Russian penitentiary system, despite its great role in ensuring security at penitentiary facilities, requires critical reflection and improvement in terms of view of legal consolidation.

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#### INFORMATION ABOUT THE AUTHORS

**YURII I. MIGACHEV** – Doctor of Sciences (Law), Professor, professor at the Department of Administrative Law and Procedure of the Kutafin Moscow State Law University (MSAL), Moscow, Russia, juri.migachev@yandex.ru

**NADEZHDA V. ANISKINA** – Candidate of Sciences (Law), associate professor at the Department of Administrative and Legal Disciplines of the Law Faculty of the Vologda Institute of Law and Economics of the Federal Penitentiary Service, Vologda, Russia, AniskinaN555@yandex.ru, <https://orcid.org/0000-0002-7185-5730>,

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