

Research article

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Efficiency and Functionality of Public Control over Penal Enforcement System Activities: Discussing the Essence and Identifying Evaluation Criteria

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Abstract

Introduction: studying issues of qualitative public control over activities of places of forced detention is very relevant for the modern state, since it contributes to ensuring the rights and freedoms of an individual as the highest value, effective functioning of the penal enforcement system, reducing corruption, developing an open state and increasing the level of trust in the law enforcement system. *Method:* dogmatic analysis of scientific categories, formal legal analysis of existing regulations. Results: traditional approaches to assessing performance of certain subjects are not quite suitable for public control, including over activities of the penal enforcement system. It is proposed to evaluate functionality of public supervisory commissions, that is, assess indicators of their activities in the performance of their functions. Attention is also drawn to the fact that the functions of public supervisory commissions stem from the purpose of their existence and tasks of their activities. The formulations of the goals and objectives contained in the current law “On public control over ensuring human rights in places of forced detention and on assistance to persons in places of forced detention” do not correspond to the social purpose of public supervisory commissions and require improvement. *Conclusions:* the author proposes to evaluate performance of public supervisory commissions through the prism of their functionality, assessing not only quantitative characteristics of their activities, but also qualitative performance indicators, including characteristics of their composition, complexity and systematic work, involvement of members of public supervisory commissions in the activities carried out, flexibility of the public control system and availability of information about it. The choice of criteria and specific evaluation indicators requires further discussion. It is also suggested to improve regulation of the goal-setting activities of public supervisory commissions as subjects of public control.

Key words: public control, public control over activities of the penal enforcement system, public supervisory commissions, penal enforcement system, efficiency of public control

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Introduction

Public control over activities of state bodies and institutions is the most important factor in the development of civil society and the rule of law in modern Russia. According to researchers, public control is required to reduce the corruption level, develop principles of openness and transparency in the activities of state bodies and officials, save state resources for the organization of full-fledged control in some areas, increase performance of public authorities, in general, and develop standards for legitimate activities of both the state apparatus and society as a whole.

Public control ensures a balance of interests of various social groups and coordination of efforts to develop managerial decisions, as well as guarantees law and order [13, pp. 105–106]. In addition, the existence of the institution of public control over activities of state bodies and local self-government bodies is also considered as one of the main features of the government legitimacy [1]. However, the opposite point of view is expressed in modern foreign literature, which excludes civil institutions' influence on the implementation of state policy, as well as control over it, in order to eliminate the need for a "war for public and state sovereignty", which has a destructive effect on development of the state and society [16]. Nevertheless, there prevails the stance about a high role of public control over authorities' activities, while researchers conclude that the importance of institutional control is higher than that executed by individual actors [17, pp. 804–805].

Public control over activities of law enforcement agencies, in particular the penitentiary system, is of the utmost importance, given its historical past in our state. Public control in this area is to provide additional guarantees for ensuring the rights and freedoms of persons held in institutions of the penal enforcement system, and promoting law and order. Expediency of public control over penal system activities is beyond doubt. Nowadays, the status

of public control subjects and the procedures for their activities are regulated; public supervisory commissions are established in all subjects of the Russian Federation. However, the goals of public control are achieved not only by institutionalizing these public relations, but also by ensuring quality of its functioning. The question of efficiency of public control over activities of the penal system is a natural one. In legal science, sufficient attention is paid to the issues of legal regulation of public control over penal enforcement system activities, features of the subjects and object of public control, forms of activity of public supervisory commissions (A.P. Skiba, N.S. Maloletkina, Ya.Yu. Reent, Yu.V. Perron, etc.). Besides, certain issues of public control performance are addressed, and gaps in legal regulation and problems of practical activity of public supervisory commissions as the main subjects of public control over penal system activities are identified. The problems of developing criteria indicating efficiency of public control over penitentiary system activities have practically not been the subject of independent scientific research.

Research methodology

In the research we used a dogmatic analysis of research vocabulary, studied key approaches to defining the concept and essence of the efficiency of activities of public bodies and public organizations, developed our own stance on the validity of using a term "efficiency of activity" in relation to public supervisory commissions. The formal legal method was also applied to identify and analyze methods and criteria proposed by law-makers to assess performance of certain subjects. Having analyzed data of legal science and materials of public supervisory commissions' practice set out in the reports of the Public Chamber of the Russian Federation, public chambers of RF subjects and considered ideas of a social purpose of public supervisory commissions, we formulated criteria for their functionality.

Problem statement and research results

The ideas of identifying performance criteria in various spheres of state and society (effective public administration, financial control, performance of civil society institutions) are actively discussed in legal science and implemented in political practice. For instance, the indicators of performance of senior officials and executive authorities of RF subjects, local self-government bodies, public councils under federal executive authorities, etc. have been developed (for example: RF President Decree No. 68 of February 4, 2021 “On evaluating performance of senior officials (heads of supreme executive bodies of state power) of the subjects of the Russian Federation and executive authorities of the subjects of the Russian Federation”; RF President’s Decree No. 607 of April 28, 2008 “On evaluating performance of local self-government bodies of municipal, municipal, urban districts and municipal districts”; Methodology for assessing and criteria of performance of public councils under federal executive authorities: approved by the protocol of absentee voting of the Government Commission for the Coordination of Open Government Activities No. 3 of April 19, 2018). Evaluating efficiency of anything becomes a kind of trend in state and public administration. Public control follows the trend: in some publications, for example, questions are raised about efficiency of public control in the consumer market [7], control over activities of the penitentiary system during the pandemic [10]. And here a natural question arises, whether we can identify indicators of public control efficiency. Is it reasonable to use the approaches established in science to the concept and criteria of efficiency in relation to public control over activities of the penitentiary system?

Key approaches to the concept and content of the efficiency of various entities’ activities

In the management theory, according to GOST R ISO 9000–2015 “Quality management systems. Fundamentals and vocabulary”, efficiency is understood as the ratio between the result achieved and the resources used. So, in economic sense, an efficiency ratio is calculated using a formula in which gross profit is divided by costs and multiplied by one hundred percent. If we are not talking about subjects of economic activity, but about the sphere of state and public administration, then efficiency is also, as a rule, considered as a ratio between the results expected and

the resources involved. Efficiency, for example, of public administration is considered as a concept that includes economic and social aspects, as a quantitative and qualitative assessment of activities of public authorities, the ratio of the goals achieved to the resources used and the efforts expended and the goals of public administration to the needs of citizens [3, pp. 420–421]. At the same time, management efficiency is often confused with effectiveness, which means a degree of implementation of planned activities and achievement of planned results. Effectiveness of an activity acts as one of efficiency indicators, but does not replace it.

Measuring efficiency of public organizations activities, whether they are non-profit organizations, state and public bodies (for example, public chambers), public councils, public supervisory commissions, is a more complex task, which cannot be considered purely in terms of management, using only quantitative indicators.

For example, to assess efficiency of regional public chambers’ activities, the following indicators are proposed: public chamber’s involvement in economic, social and political life of the region, its presence in the information field, its recognition among the population, relations with authorities and local self-government, concrete results of activities, an active expert community, a variety of forms of activity of public chambers [4, pp. 119–120]. Researchers point out, however, that some of the listed criteria are secondary, formal, and suggest using two qualitative indicators as the basic ones: a method of forming a public chamber that characterizes representation of various social groups’ interests, including the degree of authorities’ influence on the process of forming the chamber; conditions, forms and results of its public control [4, pp. 131–132].

When characterizing efficiency of regional non-profit organizations, it is proposed to use the following evaluation criteria: interaction of the non-profit sector and non-profit organizations in the region (awareness of activities, recognition, participation in solving citizens’ problems), interaction of non-profit organizations and government authorities, including assessment of the level of administrative barriers to activities of non-profit organizations, interaction of non-profit organizations and the media, business, etc.[8, p. 83].

An attempt is made to develop criteria for evaluating activities of public councils under

federal executive authorities [11]. Though some of them are of a formal nature (for example, election of the Public Council Chairman and Deputy Chairman from among the candidates recommended jointly by the Public Chamber and the Expert Council, holding face-to-face meetings of the Public Council at least once a quarter and discussing certain issues at them, existence of a work plan of the Public Council, etc.). There are also qualitative indicators, such as compliance of the public council activities with openness and publicity requirements, involvement of public council members in the work of federal executive authorities and related sectoral public councils.

With regard to activities of public supervisory commissions carried out in regions, there is no independent document recommending criteria for their assessment. Nevertheless, analysis of their reports to the public chambers of the subjects and subsequent reports of the public chambers of the subjects and the Public Chamber of the Russian Federation on the state of civil society helps identify the following quantitative indicators: number of members of public supervisory commissions, number of planned and implemented visits, received appeals and responses to them, etc. For example, the Public Chamber of the Russian Federation reports that in 2019, for instance, the maximum composition of public supervisory commissions was formed in 4 regions, the number of commission members increased in 17 more regions, 42 grants were supported, etc. [5] Similarly, annual reports of regional public chambers provide information on the number of commission members conducted in places of forced detention inspections, number of appeals, prepared conclusions, proposals, complaints [12]. Hence, indicators for evaluating activities of public supervisory commissions are mainly quantitative, indicating their effectiveness, but not efficiency (Effectiveness of activities of the public supervisory commission is considered as a criterion that characterizes quantitative indicators of the commission's activities: number of planned and implemented activities, number of appeals received and responses given to them).

Functionality of public supervisory commissions: on problem formulation

It is obvious that evaluation of any public formation efficiency goes far beyond the traditional formula indicating the ratio of the efforts

expended to the results obtained. Moreover, in some cases it is almost impossible to measure the resources expended, because they include not only material resources, but also intangible ones, such as time, knowledge, work of activists. Therefore, it is necessary to choose a fundamentally different approach to evaluating efficiency of public supervisory commissions, primarily based on qualitative criteria, that is, to consider their efficiency through the prism of their functionality.

The task of any public formation is to perform the functions for which they were created and realize the set goal and objectives. Necessity of public organization existence depends on the extent to which it meets proposed requirements. If a public formation, especially a human rights one, is created for the sake of appearance, does not implement the tasks, then it is not functional (in established terminology, it is efficient), that is, it does not fulfill the function (functions) assigned to it. We believe that when evaluating activities of organizations exercising public control, the emphasis should be shifted from the issue "how effective the organization is" to the one "whether the organization performs functions assigned to it". Hence, it is not efficiency of activities that should be evaluated, but functionality of the organization. Thus, functionality (efficiency) of public control over activities of the penal enforcement system is considered as a state of public relations in which public supervisory commissions and other subjects of public control over activities of the penal enforcement system fully perform their function (functions), realizing the goals and objectives set for them. We will focus on identifying indicators (criteria) of functionality of public supervisory commissions as the main subjects of public control over activities of the penitentiary system.

Purpose, tasks and functions of public supervisory commissions

The study of functionality of public supervisory commissions should begin with identifying key goals and objectives of their creation, which determine the main areas of activity (functions).

In accordance with Article 14 of the Federal Law of July 21, 2014 "On the basics of public control in the Russian Federation", the main purpose of public supervisory commissions is public control over ensuring human rights in places of forced detention. Can the proposed wording be considered the main function of

public supervisory commissions? It is unlikely, since public control is not carried out by itself, not for the sake of an end in itself, but rather acts here as a means to achieve the goal. The Federal Law of June 10, 2008 “On public control over ensuring human rights in places of forced detention and on assistance to persons in places of forced detention” defines the purpose of public supervisory commissions’ activities as follows: “assistance to the implementation of state policy in the field of ensuring human rights in places of forced detention”. The wording of the law can hardly be considered successful, since it follows from the meaning of the quoted part 1 of Article 6 that control over activities of the state is carried out in order to assist the state. Obviously, the emphasis should be shifted to an individual, whose rights and freedoms are the highest value, that is, control should be carried out in order to ensure the rights and freedoms of man and citizen in places of forced detention in the first place.

The tasks of public supervisory commissions’ activities in this law are also formulated rather inappropriately: implementation of public control, preparation of decisions on its results, and promotion of cooperation of public associations, socially oriented NGOs, administration of places of forced detention, state authorities and local self-governments to ensure legitimate rights and freedoms, as well as adequate conditions in places of forced detention. Of the listed above, only the latter is formulated as an activity task that consistently reveals the purpose of public supervisory commissions, while public control and preparation of decisions are a form of implementation of this task.

Summing up the above, we note that the wording of the goals and objectives of the activities of public supervisory commissions in the Federal Law “On public control over ensuring human rights in places of forced detention and on assistance to persons in places of forced detention” needs to be improved. The purpose of the activities of public supervisory commissions is to promote the rights, freedoms and legitimate rights of man and citizen through the exercise of public control over the activities of places of forced detention. In this sense, a public supervisory commission acts as a public guarantor of individual rights and freedoms.

The tasks of activities of public supervisory commissions proceed from the main goal and

detail it. In legal science, for example, the following formulations are proposed: increasing effectiveness of the execution of criminal penalties associated with isolation from society, activating and coordinating civil society’s efforts not only to ensure the rights of convicts, but also their successful rehabilitation [15, p. 29], monitoring insurance of the law and order in institutions, and promoting implementation of socially significant projects in places of forced detention [9, p. 404, 406]. It is also possible to supplement this list with law-stipulated assistance to interaction between socially oriented NGOs and administration of places of forced detention, as well as elaboration of proposals to improve provision of individual rights and freedoms in places of forced detention.

The set goal and tasks make it possible to determine that the main function of the public supervisory commission will be law-enforcement, expressed in monitoring the observance of individual rights in places of forced detention and facilitating their implementation.

What features should the subject implementing this function have? The following epithets immediately arise: independent, active, competent, person-oriented, not system-oriented, etc. Traditional assessment of the number of planned and implemented visits, complaints considered, and activities carried out should be conducted, though it does not reveal whether the public supervisory commission implements its main function. At the same time, quantitative indicators of public supervisory commissions’ activities should be considered not in statics and short-term dynamics in relation to the same period of the previous year, but in comparison by subjects, while not in absolute numbers, but in terms of the number of institutions and convicts.

Functionality indicators of public supervisory commissions

Activities of public supervisory commissions should be evaluated not by quantitative performance indicators (number of visits, number of complaints, etc.), but by certain qualitative results indicating that the rights and freedoms of a person in places of forced detention are being properly implemented. It indicates that the public supervisory commission performs its main function, that is, its functionality (efficiency). These qualitative results can be, for example, expressed in situations where, with the assistance of the public supervisory com-

mission (on a complaint received by the commission, for example) the violated rights of the person were restored, his/her legitimate interests were protected. Functionality of the public supervisory commission can also be reflected in situations where the commission attracted attention of the public and supervisory authorities to systematic and/or massive violation of individual rights in certain places of forced detention; when after the public monitoring commission's visit certain recommendations were made to the facility administration and they were further realized in its activities, etc. In our opinion, the qualitative indicators of functionality of the public supervisory commission are specific cases of assistance to ensuring the rights of persons held in places of forced detention, and not quantitative indicators of visits and events.

A qualitative composition of the commission is, in our opinion, the most important criterion to determine its functionality. Not all subjects have managed to immediately form the composition of public supervisory commissions. According to the report of the Public Chamber, when forming a commission in the Nenets and Chukotka Autonomous okrugs, the initiative was backed only by one public organization, a regional branch of the Russian Red Cross. However, 4 of the selected 5 candidates to commission members refused to participate in its activities for various reasons, as a result, the creation of the public supervisory commission was delayed [6, p. 36]. It is required to assess whether the number of commission members corresponds to a number of places of forced detention and geography of their placement, as well as a number of persons held in them.

It is permissible to evaluate the composition of the public supervisory commission in terms of their independence from the penal enforcement system, professional diversity, quality of experience in the field of protection of individual rights and freedoms, compliance with the code of ethics of public supervisory commission members. Let us draw attention to the fact that the practice of including former employees of the penal enforcement system in its composition is very doubtful in terms of independence of the public supervisory commission, since they are aware of the activities of penitentiary institutions and also might somehow interact with current employees whose activities are subject to public control. It is permissible, in our opinion, to consider the issue of establishing a period after which an employee who has

retired from service in the penal enforcement system can be a member of the public supervisory commission. As for persons who have previously served a sentence of imprisonment, we believe that the period under which the criminal record is removed is sufficient to exclude the possibility of influence on a commission member on the part of the facility administration and convicts. In any case, persons connected with the penal enforcement system in the past cannot constitute the majority of commission members.

Functional, in our opinion, will be a gender-diverse composition of the commission, whose members are representatives of different ages, social groups and professions, nominated by different public associations. Practice of some subjects shows that 1–2 public organizations take an active part in the formation of the public supervisory commission. The issues of improving requirements for probation members and the procedure for its formation have repeatedly become the subject of criticism in scientific literature [14, p. 56].

As criteria of functionality of public supervisory commissions, we can also suggest complex and systematic nature of the commission's work. This criterion, in our opinion, should be based on indicators, such as regularity and continuity of the work of the public supervisory commission, implementation of its activities in various areas, all commission members' involvement in its activities, interaction with state bodies and public organizations, constant interaction with territorial divisions of the Federal Penitentiary Service of Russia and administration of institutions.

For example, the Vologda Oblast Public Supervisory Commission is quite actively interacting with the Commissioner for Human Rights in the subject of the Russian Federation, conducting joint visits, the Vologda Oblast Prosecutor's Office, the Vologda Branch of the Russian Red Cross, etc. There is close cooperation between the Vologda Oblast Public Supervisory Commission and the regional Federal Penitentiary Service, in particular, participation in board meetings, organization of various working meetings, etc.

Commission members' involvement in its activities is an important indicator: everyone should be aware of social significance of their activities and regularly participate in events. Unfortunately, nationwide there is such a situation when 5–6 concerned people take active part in the commission work, the rest joined

the organization to make their CV more attractive.

The epidemiological situation in 2020–2021, caused by the spread of a new coronavirus infection, requires flexibility of the public control system as a significant criterion revealing functionality of the public supervisory commission. We consider flexibility of public control as such a state of public relations and legal regulation in the field under study, which gives an opportunity to quickly change conditions and procedure for holding events that make up the content of commission activities without prejudice to the purpose of their activities. Research in effectiveness of public control during the COVID-19 pandemic showed the need to improve the penal enforcement legislation and digital transformation of the system [10, pp. 53–55]. It is reasonable to analyze not only measures implemented within the penitentiary system during the pandemic, but also relevant practice of the Public Chamber of the Russian Federation, public chambers of the subjects to draw further conclusions about flexibility of public control over activities of places of forced detention.

Availability of information about activities of the public supervisory commission and its results also discloses its functionality. The right to access to information in modern science is considered one of the key constitutional rights of the individual. In modern conditions of the information society, digital economy and open electronic government, availability of information becomes not only the right, but also a condition and guarantee for realization of other human and civil rights. According to researchers, the right to information "... acts as a connecting element of the entire system of fundamental rights and freedoms. Only if it is observed, we can talk about actual realization of personal, political, social, economic, environmental and cultural rights and freedoms" [2, pp. 14–15].

Availability of information on public control over activities of places of forced detention is crucial, since it generates public interest in problems of ensuring human rights in these institutions, stimulates human rights public associations, boosts interest of citizens, including young people, promotes openness of the system of places of forced detention, etc. In modern society, Internet resources, such as official websites, pages in social networks, chat rooms in messengers, Internet media, etc., are key channels for providing access to informa-

tion. Unfortunately, availability of information about activities of public supervisory commissions leaves room for improvement: in some subjects there are commission websites that post information about the composition and procedure of activities, the news feed is actively upgraded, in others – information is posted on websites of regional public chambers, social media pages are maintained, and in the rest – only brief information about the composition of the commission and the regulatory basis of its activities is available. It is obvious that active maintenance of websites, pages, work with the media requires both time and financial costs from commission members, while the issues of financial assistance to commissions have not yet received proper legal regulation. It is necessary to conduct further research in the problems of information support for activities of public supervisory commissions, considering not only official websites/pages on the Internet, but also conducting content analysis of sources in which commissions and their members became newsworthy.

Conclusions

Summing up the above, we note that the approaches developed in humanitarian (political, sociological and legal) studies to assess efficiency of certain institutions are not fully applicable to assessment of subjects of public control over ensuring human rights in places of forced detention, since they are mostly of a formal nature. Various reports on public supervisory commissions' activities mainly contain quantitative data on their efficiency and do not reflect quality of implemented tasks. It is proposed to consider efficiency of public control over activities of the penal enforcement system from the standpoint of its functionality, that is, to evaluate activities of public control subjects in terms of performance of their main function (functions). Functions of public supervisory commissions depend on the purpose of their creation and tasks of their activities. We believe that the goals and objectives of commissions' activities formulated in the Federal Law of June 10, 2008 "On public control over ensuring human rights in places of forced detention and on assistance to persons in places of forced detention" are not entirely appropriate. The following wording of Article 6 of the said law is proposed: "Article 6. Goals and objectives of public supervisory commissions.

1. Public supervisory commissions shall operate on a permanent basis in accordance with

the procedure established by this Federal Law and other regulatory legal acts of the Russian Federation in order to ensure the rights, freedoms and legitimate interests of a person and a citizen by exercising public control over activities of places of forced detention.

2. One public supervisory commission shall be formed in the subject of the Russian Federation, which carries out its activities within the territory of the relevant subject of the Russian Federation.

3. The main objectives of the public supervisory commission are the following:

1) assistance to cooperation of public associations, socially oriented non-profit organizations, administrations of places of forced detention, state authorities of RF subjects, local self-government bodies, other authorities within the territory of the RF subject to ensure the legitimate rights and freedoms, as well as conditions of detention of persons in places of forced detention;

2) assistance to ensuring law and order, as well as proper conditions of detention of persons in places of forced detention;

3) assistance to successful rehabilitation of persons sentenced to imprisonment and held in penitentiary institutions of the Russian Federation;

4) assistance to implementation of socially significant projects in places of forced detention;

5) development of proposals to improve provision of individual rights and freedoms in places of forced detention.

4. Public supervisory commissions are not legal entities”.

The stated formulation of goals and objectives of activities, in our opinion, is more in line with the social purpose of public control in a modern democratic state, and makes it possible to emphasize law enforcement as the main function of public supervisory commissions.

We believe that when evaluating functionality of public supervisory commissions, it is critical to consider not only effectiveness of their activities (quantitative indicators), but also qualitative indicators of the work: significant cases, complexity, systematic nature, qualitative composition of commissions, its members' involvement in its activities, flexibility of the public control system, and availability of information. In our opinion, these indicators should be taken into account by the public chambers of the constituent entities of the Russian Federation when drawing up reporting forms for public supervisory commissions and assessing their functionality (efficiency). However, the issues of the choice and content of criteria for evaluating functionality of public supervisory commissions require further research.

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