

## **On judicial practice of applying the legislation on administrative supervision**

### *Unofficial translation*

Regulatory Resolution No. 1 of the Supreme Court of the Republic of Kazakhstan dated May 31, 2019.

#### Unofficial translation

In view of the issues that have arisen among the courts when considering cases on application of the legislation of the Republic of Kazakhstan on administrative supervision, for the purpose of judicial practice uniformity in these cases, the plenary session of the Supreme Court of the Republic of Kazakhstan hereby resolves to give the following clarifications.

1. Legislation on administrative supervision is based on the Constitution of the Republic of Kazakhstan and consists of the Penal Code of the Republic of Kazakhstan (hereinafter PC), the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter - CPC), Penal Execution Code of the Republic of Kazakhstan (hereinafter -PEC), the Code of the Republic of Kazakhstan on Administrative Infractions (hereinafter –CAI), the Law of the Republic of Kazakhstan dated July 15, 1996, No. 28-I "On Administrative Supervision of Persons Released from Places of Detention" (hereinafter referred to as the Law) and other regulatory legal acts of the Republic of Kazakhstan.

2. Administrative supervision shall be a measure aimed at preventing the re-commission of crimes by persons released from liberty deprivation places who have a previous conviction for certain types of crimes provided for by the Law, through the establishment by the court of temporary restrictions on their rights and freedoms, imposing duties on them (hereinafter - administrative restriction) and monitoring by the internal affairs bodies of the observance of administrative restrictions by the indicated persons (persons under surveillance). Administrative supervision shall not be a punishment for a committed criminal offense.

3. When deciding on the establishment of administrative supervision, the courts must check whether a person is a subject, liable, in accordance with the Law, to administrative supervision.

The courts shall bear in mind that the Law applies only to persons who have served a sentence of imprisonment, while administrative supervision can be applied to foreign citizens or stateless persons, provided that they reside (stay) in the territory of the Republic of Kazakhstan legitimately.

When deciding whether the actions for the commission of which the person was serving a sentence are related to terrorist or extremist crimes or to crimes against sexual inviolability of minors, the courts shall be guided by paragraphs 30), 39) and 42) of Article 3 of the PC ( subparagraph a) of Article 2 of the Law).

When establishing administrative supervision over persons who have served a sentence for committing grave and (or) especially grave crimes or who have been convicted two or more times to imprisonment for intentional crimes, it has to be borne in mind that administrative supervision shall be established for the named persons only if they are recognized as having the third negative degree of behavior at the sentence expiration time ( subparagraph b) of Article 2 of the Law).

4. Administrative supervision over persons who have served a sentence for grave and (or) especially grave crimes or who have been convicted two or more times to imprisonment for intentional crimes, in accordance with subparagraph c) of Article 2 of the Law, may be established at combination of the following circumstances:

the person has served a sentence for crimes classified as grave and (or) especially grave crimes at the time of establishment of supervision, or was sentenced two or more times to imprisonment for intentional crimes;

after serving the sentence, warnings were issued against him by the internal affairs bodies;

a person systematically breaches public order, the rights and legitimate interests of a person and a citizen, commits other offenses.

A warning to a person who has served a sentence for grave and (or) especially grave crimes or has been convicted two or more times to imprisonment for intentional crimes shall consist in an official warning by his internal affairs body about the inadmissibility of unlawful behavior, violation of public order, human rights and legitimate interests of a person and a citizen, committing other offenses. The warning shall be given in writing.

Persistent breach of public order, the rights and legitimate interests of a person and a citizen shall mean the commission by a person after serving a sentence of two or more administrative offenses that infringe on the rights of an individual, the rights of minors, public safety and health of the population, as well as public order and decency (subparagraph c) of article 2 of the Law, chapters 10, 12, 24, 25 of the CAI), within one year, calculated from the date of the first administrative offence.

By committing other offences we shall understand the conviction of these persons for a criminal offense, for which they were assigned a punitive measure unrelated to imprisonment and without establishing control over their behavior, or proceedings were terminated in relation to them on non-rehabilitating grounds.

5. The list of persons, defined by Article 2 of the Law, over whom administrative supervision may be established, is exhaustive and shall not be subject to extended interpretation.

In this regard, administrative supervision cannot be established over persons with previous conviction for criminal offenses that are:

decriminalized and not entailing criminal conviction in connection with the change of the penal law;

classifies as grave or especially grave crimes, for the commission of which they did not serve a sentence in liberty deprivation places.

Persons who twice stood trial to imprisonment for intentional crimes and who have not served their sentences in liberty deprivation places, as well as having convictions removed or canceled in accordance with the procedure established by the penal law, cannot be subject to administrative supervision.

In accordance with the requirements of Article 6 of the PC on the retroactive force of the criminal law mitigating penalization of an act, administrative supervision cannot be established in relation to a person who has been convicted and served a sentence for a grave crime, which subsequently, in connection with the amendment of the penal law, is classified as a crime of lesser gravity.

If administrative supervision was established, but the act for which the person was serving a sentence was subsequently decriminalized, then the court, at the request of the supervised person himself or his defense attorney, or on the motion of the internal affairs bodies or the prosecutor, shall annul the decision on establishing the administrative supervision, on which it shall issue a resolution.

6. With regard to persons discharged from imprisonment on parole, as well as persons for whom the unserved part of the sentence was replaced by a more lenient type of punishment with established probation control, the administrative supervision shall be inadmissible.

In the event of a systematic breaching by these persons of public order, the rights and legitimate interests of a person and a citizen, committing other offenses after the expiration of the unserved part of the sentence and until the expiration or removal of the conviction in accordance with Article 79 of the PC, administrative supervision may be established against such persons.

7. Administrative supervision shall be established only by the court by issuing a ruling with indication of specific grounds provided for by Article 3 of the Law on which a person is subject to administrative supervision.

In accordance with Articles 3, 4, 5 of the Law, the head of the internal affairs body shall have the right to apply to the court with a motion to establish administrative supervision; on the extension of administrative supervision and on addition of previously established administrative restrictions - the internal affairs body; on early termination or partial cancellation, reduction of administrative restrictions - the internal affairs body and (or) the supervised person, his defense attorney - with a petition.

The prosecutor shall have the right to apply to the court with a petition for early termination of administrative supervision or for a partial reduction of administrative restrictions to protect the rights and freedoms of the supervised person, provided that the supervised person, due to health, age or other valid reasons, cannot apply to the court himself.

The head of the penitentiary institution shall be obliged to motivate the petition on the establishment of administrative supervision in relation to the convict subject to release from

this institution, and attach to it the copies of the verdict, decisions of the appellate, cassation instances in relation to the convicted person, other materials that are important for making a legal decision and testifying to the need for establishing administrative supervision, including detailed data characterizing the behavior of the convicted person during the serving of the sentence, as well as the ruling on determination of the third negative degree of the convict's behavior.

The petition of the head of the internal affairs body on the establishment, extension of administrative supervision in relation to a convicted person released from prison, along with data on the commission of grave and (or) especially grave crimes or convictions two or more times to imprisonment for intentional crimes, must contain information about his behavior (in particular, the characteristics of the person shall be attached), about his systematic breach of public order, the rights and legitimate interests of a person and a citizen, and the commission of other offenses. Enclosed to the petition shall be the copies of judicial acts, documents and materials testifying to the systematic breach by convicts released from imprisonment places, of public order, the rights and legitimate interests of a person and citizen, committing other offenses.

In the event of incompleteness of the collected material, insufficient grounding in the presentation of arguments on the establishment, extension of administrative supervision, as well as on other grounds that prevent consideration of the petition for the establishment, extension of administrative supervision, the court by a resolution shall return the petition on the establishment, extension of administrative supervision for elimination of the shortcomings

If the supervised person applies for early termination of administrative supervision or for partial cancellation of the established administrative restrictions, but the submitted documents and materials are insufficient for adopting a lawful and reasoned decision, the court shall be entitled to demand the necessary evidence on its own initiative, without returning the application.

8. Based on the motivated petition submitted by the head of the penal institution on the establishment of administrative supervision over a person released from prison, the court at the sentence execution place, shall make a decision only on the establishment of administrative supervision without specifying restrictions on the rights and freedoms of the convicted person and without imposing duties on him. Specific restrictions and obligations in relation to the supervised person shall be established by the court on the motion of the internal affairs body at the residence place upon his arrival after the served sentence.

9. Courts shall bear in mind that administrative supervision, being a coercive measure, is established for a certain term provided by law. Under Article 6 of the Law, administrative supervision shall be imposed for a period of six months to three years and, in the case of persons who have served a sentence for criminal offences against the sexual inviolability of minors, for a period of one to five years. Since the calculation of the term in the Law is

determined by a period of time, the establishment of a specific term within Article 6 of the Law must be motivated in a court ruling (a specific period shall be indicated in days, months, years, or the period until the conviction expiry).

Duration of the administrative supervision term shall be calculated from the date of the court ruling enforcement, and in the event of establishing the administrative supervision by the court at the penal institution location - from the moment of release from the penal institution.

When deciding on the administrative supervision period, the court shall take into account the convict's characterization from the imprisonment place, behavior in everyday life, as well as the nature and degree of public danger of the crime (s) committed and other circumstances significant for the case, which shall be reflected in the motivation part of the court ruling. At the same time, the court shall not be bound by the grounds and arguments set forth in the petition of the penal institution or the internal affairs body, and shall be entitled, at its discretion, to determine the term within the limits specified in Article 6 of the Law.

**Footnote. Paragraph 9 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall be enacted from the date of its first official publication).**

10. Duration of the administrative supervision term shall be extended in cases of breaching by the supervised person of the rules of administrative supervision or restrictions declared to him, as well as committing offenses each time for a period of six months, but in the aggregate for a period not exceeding two years. With regard to persons who have committed criminal offenses against sexual inviolability of minors, the administrative supervision term shall be extended each time by one year.

At the same time extension of the administrative supervision term to persons who have served a sentence for grave and (or) especially grave crimes or convicted two or more times to imprisonment for intentional crimes (subparagraph c) of Article 2 of the Law) is possible only within the conviction expiry term.

Enclosed to the internal affairs bodies' petition on extending the administrative supervision term shall be the materials indicating the existence of grounds for this extension.

The list of grounds for extending the administrative supervision validity term is exhaustive and is not subject to broad interpretation.

By an offense, which is a prerequisite for the extension of administrative supervision, we shall understand the commission by the supervised person at least once of an administrative infraction that infringes on the rights of the individual, the rights of minors, public safety and health of the population, as well as on public order and decency (chapters 10, 12, 24, 25 of the CAI), or conviction of the said person for a criminal offense, for which he was sentenced to a punishment unrelated to imprisonment and without establishing control over his behavior , or the proceedings against him were terminated on non-rehabilitating grounds.

The administrative supervision term may be extended no later than the last day of its validity.

Upon occurrence of the conditions for the termination of administrative supervision, the internal affairs bodies' servicemen, exercising administrative supervision shall immediately issue a resolution on the termination of administrative supervision, approved by the head of the internal affairs body. Failure to issue or untimely issuance of a resolution to terminate administrative supervision shall not entail its extension.

Violation of the legislation of the Republic of Kazakhstan on administrative supervision, evasion of administrative supervision after its term expiration, in the absence of a resolution to terminate administrative supervision, shall not be the ground for bringing a person to administrative liability under Article 480 of the CAI and to criminal liability under Article 431 of the PC.

11. When considering materials on the establishment, extension of the administrative supervision term, the court, must ensure the right to defense of the person in respect of whom the above issues are being resolved, and participation of a defense lawyer shall be mandatory in the cases provided for in the first part of Article 67 of the CPC.

The convicted person must also be explained his right and the procedure for appealing against a court decision on the establishment of administrative supervision, extension of the administrative supervision validity term.

When scheduling a court session, the court shall notify the body or institution, the head of which lodged a petition on the establishment, extension of the administrative supervision term, as well as the prosecutor, defense attorney about the place and time of consideration of the case on the establishment, extension of administrative supervision.

12. The preparatory part of the court session on cases of establishing, extending the administrative supervision term shall be carried out in accordance with Chapter 43 of the CPC

After the preparatory part of the court session, the internal affairs body representative shall set out the content of the petition and the materials attached to it, then the court shall examine the received materials and hear the explanations and opinions of the persons who appeared at the court session.

The convicted person shall have the right to familiarize himself with the materials submitted to the court and make copies of them before the start of the court session, and at the court session he has the right to participate in the examination of all materials, speak in court, present petitions, evidence, his opinion on the issue under consideration.

Based on the consideration results, the court shall pass a reasoned judgment.

13. The list of restrictions specified in Article 7 of the Law applied to persons in respect of whom administrative supervision is established shall not be subject to broad interpretation.

Based on this provision of the Law, in a court ruling on the establishment, extension of the administrative supervision term or on the addition of previously established administrative restrictions, one or more administrative restrictions must be determined.

The court shall have the right to establish other administrative restrictions not specified in the internal affairs body's petition, but within the scope of the list provided for in Article 7 of the Law.

The choice of specific administrative restrictions cannot be arbitrary; their application shall seek preventive effect. In particular, the courts shall take into account the nature and degree of public danger of the crime (crimes) committed by the supervised person, his behavior during the entire period of serving the sentence and behavior after his release from prison, the marital status of the said person, the place and schedule of his work and (or) study, health condition, as well as other noteworthy circumstances. If a person was convicted of committing a crime while intoxicated or during the period of serving the sentence was subject to penalties for drinking alcohol in the penal institution, it is advisable to consider the application of administrative restrictions prohibiting his stay in public catering places where alcohol is sold or drunk.

When establishing restrictions, the courts must take into account that the prohibition to leave the home can be imposed on the supervised person only within the night time determined by procedural legislation in the interval from 10 pm to 6 am local time, with the exception of cases of performing labor duties.

The body executing the decision must not go beyond the limits established by the court, and must not allow other restrictions on the rights of citizens (labor, electoral, public and others).

The supervised person, when temporarily leaving for another locality, shall be obliged to obtain a written permission from the internal affairs body exercising supervision.

14. When considering submissions on the administrative supervision term establishment, extension, termination of administrative supervision and a petition to terminate administrative supervision, the minutes of the court session shall be taken. Pursuant to article 347 of the CPC, the minutes shall be made on computer, in electronic (including audio and video recording), typewritten or handwritten form.

The court session shall be audio- and video- recorded in accordance with Article 347-1 of the CPC.

At the request of the parties to the case, the court shall provide a copy of the audio, video recording or the minutes of the court session.

In the record, made on paper, if the audio-video recording of the trial was not used, in addition to the information specified in part three of Article 347 of the CPC, the explanations and opinions of the internal affairs body representative, the convict in respect of whom the issue of establishing administrative supervision is being made, other parties to the proceedings, as well as all the actions of the court, including an explanation of the person's

right to defense and appeal against the court decision, shall be reflected in the minutes made on paper. The procedure for familiarization with the minutes of the court session, making remarks on it and examining comments on audio, video recording, short minutes of the court session and the court session transcript, made on paper, shall be performed by the rules provided for in Articles 348, 348-1, 349 of the CPC.

15. During the administrative supervision, the court, basing on a reasoned submission of the internal affairs body or a petition of the supervised person, on information about the lifestyle and behavior of the supervised, his compliance with administrative restrictions, may partially cancel, reduce administrative restrictions or supplement the previously established administrative restrictions.

At the same time, taking into account the specific circumstances of the case, the court shall have the right to establish administrative restrictions at its discretion that are not specified in the internal affairs body's submission, and also decide on the abolition of administrative restrictions, for the removal of which the applicant does not apply.

16. Explaining to persons under administrative supervision their rights and obligations to comply with the established restrictions, as well as warning about criminal liability for evading administrative supervision established by the court for persons discharged from imprisonment, shall be assigned to the internal affairs bodies.

Administrative supervision shall be performed by the internal affairs bodies, for whose servicemen an exhaustive list of the rights and obligations is established by Articles 12 and 13 of the Law.

17. Administrative supervision shall be terminated on the following grounds:

expired term for which the administrative supervision is established, if it was not prolonged in due time;

cancellation or removal of the criminal record from the supervised;

referral of the supervised for compulsory treatment in specialized medical and preventive institutions;

conviction of the supervised to imprisonment;

death of the supervised.

It shall be borne in mind that the decision on the termination of administrative supervision on the above grounds is beyond the court's jurisdiction. In such cases, the decision to terminate administrative supervision shall be made by the internal affairs body, with which the supervised person is registered.

If the circumstances provided for in subparagraphs a), c), d), e) and f) of Article 14 of the Law are established during the consideration of the case on the administrative supervision extension, the court shall terminate the proceedings.

In the event that the supervised person is convicted to a punishment unrelated to imprisonment, the administrative supervision shall not terminate.



18. By a court ruling, administrative supervision may be terminated early upon a reasoned submission by the head of the internal affairs body or at the request of the supervised, if it is established that the supervised observes administrative restrictions, fulfills the duties imposed on him by the court in good faith, is positively characterized at the place of work and (or) place of residence or stay.

A person in respect of whom administrative supervision was established has the right to file a petition with the court for the abolition of the restrictions imposed on him or her in whole or in part.

19. A person in respect of whom the administrative supervision was terminated early or after the term expiry may be re-taken under administrative supervision in accordance with subparagraph c) of Article 2 of the Law, if from the moment of his release from prison the conviction terms have not expired or the criminal record has not been removed.

Upon the conviction term expiry or clearing of the criminal record by the time the court makes the decision, the petition to establish administrative supervision over him, although it was brought in on time, shall not be subject to satisfaction.

A person who for the first time after the extension of the administrative supervision term breached the established restrictions, shall be subject to prosecution under the first part of Article 480 of the CAI.

20. The judge's ruling on establishing administrative supervision may be reversed or changed by a higher court on the complaint of the person in respect of whom administrative supervision was established, his or her defense attorney, and also on the prosecutor's motion.

The court shall be obliged, no later than five days, to hand over against receipt a copy of the court ruling to the person subject to administrative supervision.

21. When considering cases on administrative infractions related to breach of the legislation of the Republic of Kazakhstan on administrative supervision, and criminal cases of evasion of administrative supervision, the courts, along with other circumstances, shall check the legality of establishing and extending the administrative supervision term.

Only the person who is subject to enforced court ruling on the establishment, extension of administrative supervision and breached the restrictions or rules of administrative supervision established by the court may be held liable under Article 431 of the PC and Article 480 of the CAI

Committing other breaches unrelated to the established restrictions and rules of administrative supervision shall not be the ground for bringing a person to administrative liability under Article 480 of the CAI.

When considering a case on an administrative infraction related to a breach of the legislation on administrative supervision under Article 480 of the CAI, the court shall be obliged to check, along with other circumstances of the case, the arguments of the supervised

person about the reasons and motives of the particular breach (sudden serious illness of the supervised, death or illness of a close relative and other reasons) preventing him from complying with the established restrictions.

A person against whom proceedings were initiated on breaching the legislation of the Republic of Kazakhstan on administrative supervision shall be considered innocent until his guilt has been proven as prescribed by the CAI and established by an enforced court ruling.

22. Criminal liability under Article 431 of the PC for failure of the person under supervision to appear within five days, excluding weekends and holidays, at the chosen place of residence after discharge from prison, also for unauthorized leaving of the residence place by the person under supervision, discharged from prison, shall be imposed only when these acts were committed to evade administrative supervision.

An act shall not be criminally punishable if the supervised, having no intention of avoiding control by the internal affairs bodies, could not arrive on time at the chosen residence place after discharge from prison due to a natural or man-made emergency, temporary lack of transport communication, severe illness of this person and for other valid reasons.

Unauthorized leaving of the residence place by the supervised person without the purpose of evading administrative supervision shall not constitute a criminal offense provided for in Article 431 of the PC either, and only entails administrative responsibility under Article 480 of the CAI.

The purpose of evasion by the supervised from administrative supervision as a mandatory sign of the subjective side of the criminal offense provided for in Article 431 of the PC shall be duly proven in the case. The presence of such a goal of the supervised person may be evidenced by unauthorized abandonment of his residence place for a long time without good reason, deliberate concealment from the supervisory authority of his location outside his residence place, leaving the region and the country, and the like.

23. When imposing penalty for evading administrative supervision established over a person released from prison, the courts shall take into account whether the defendant has a job, his health condition, marital status, and other circumstances characterizing his personality and allowing the application to him of other, in addition to imprisonment, criminal penalties provided for by the sanction of the penal law.

24. Regulatory resolution No. 3 of the Supreme Court of the Republic of Kazakhstan dated June 20, 2005 "On judicial practice in the application of legislation on administrative supervision" shall be deemed invalid.

25. In accordance with Article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution is included in the current law, is generally binding and shall take effect from the date of the first official publication.

*Judge of the Supreme Court of the Republic of Kazakhstan,  
Secretary of the plenary session*

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