

UDC 342.9.35

DOI <https://doi.org/10.32782/tnv-pub.2024.2.6>

THE PARADIGM OF CONTROL AND SUPERVISION IN PUBLIC ADMINISTRATION

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In the article, the author has carried out a comprehensive and thorough study of theoretical and practical aspects, developed proposals and recommendations for improving the state policy in the field of control and supervision in public administration, and reflected on the correlation of these key concepts and their place in modern administrative law.

Based on the opinions of scientists in the field of administrative law and modern theoretical provisions of administrative legislation, the author has analyzed the current paradigm of control and supervision in public administration.

The essence of public control is to monitor the functioning of the respective controlled object; to obtain objective and reliable information; to take measures to prevent and eliminate violations; to identify the causes and conditions that contribute to the offence; to take measures to bring to justice those responsible for the violation.

The features of control as an instrument of public administration are as follows: the purpose is to inspect by public administration entities the implementation by public administration objects of the provisions of administrative and legal regimes defined by law; public control bodies carry out measures exclusively on the basis and in cases provided for by the laws of Ukraine; during the inspection, public administration identifies shortcomings in the administrative and legal regulation of public relations, requires public administration objects to eliminate

Administrative supervision, as compared to control, is a narrower type of public administration. The peculiarity of supervision is that it aims not only to prevent offences, but also to apply administrative coercion measures, including administrative liability, in case of detection of violations of administrative and legal rules in a certain area by the relevant inspectorates or services.

Administrative supervision is a special type of public activity carried out by special executive authorities in relation to organisationally independent enterprises, institutions, organisations, officials and citizens in connection with their compliance with special cross-sectoral norms, rules and requirements, using a set of administrative means of influence to prevent, detect and stop offences, restore established legal relations and bring perpetrators to justice.

The author also emphasises that control and supervision in public administration have a direct proportional impact on the effectiveness of administrative and legal protection – this is the ability of public administration to restore violated rights, freedoms and legitimate interests of non-governmental individuals and legal entities, as well as the public interest of the State and society, in a timely and efficient manner.

Key words: *paradigm, efficiency, law, objects of public administration, instrument of public administration, administrative and legal protection, administrative supervision, administrative control, legislation, public relations, signs, public administration, administrative and legal relations, public administration.*

Правоторова О. М. Парадигма контролю і нагляду в публічному управлінні

У статті автор здійснив комплексне та ґрунтовне дослідження теоретичних і практичних аспектів, вироблення пропозицій і рекомендацій щодо вдосконалення державної політики в сфері контролю і нагляду у публічному управлінні, розмірковував над співвідношенням цих ключових понять та їх місцем в сучасному адміністративному праві.

Автор на основі думок вчених в галузі адміністративного права та сучасних теоретичних положень адміністративного законодавства проаналізував актуальну парадигму контролю і нагляду в публічному управлінні.

Сутність публічного контролю полягає у спостереженні за функціонуванням відповідного підконтрольного об'єкта; в одержанні об'єктивної та достовірної інформації; у вживанні заходів із запобігання й усунення порушень; у виявленні причин і умов, що сприяють правопорушенню; у вживанні заходів щодо залучення до відповідальності осіб, винних у порушенні.

Ознаками контролю як інструмента публічного адміністрування є такі: мета полягає у здійсненні перевірки суб'єктами публічного адміністрування щодо виконання об'єктами публічного адміністрування визначених законодавством положень адміністративно-правових режимів; органи публічного контролю здійснюють заходи виключно на основі та у випадках, передбачених законами України; у ході перевірки публічна адміністрація виявляє недоліки в адміністративно-правовому регулюванні суспільних відносин, вимагає від об'єктів публічного управління усунення виявлених порушень, надає їм приписи; виявляє осіб та усуває обставини, які можуть негативно вплинути на забезпечення прав і законних інтересів фізичних і юридичних осіб.

Адміністративний нагляд порівняно з контролем є більш вузьким видом публічного адміністрування. Особливість нагляду полягає в тому, що він має за мету не тільки попередити правопорушення, а й застосувати заходи адміністративного примусу, зокрема адміністративної відповідальності, у разі виявлення порушень адміністративно-правових правил у визначеній сфері відповідними інспекціями чи службами.

Адміністративний нагляд – це особливий вид публічної діяльності, здійснюваної спеціальними органами виконавчої влади щодо організаційно не підпорядкованих підприємств, установ, організацій, посадових осіб і громадян у зв'язку з виконанням ними спеціальних міжгалузевих норм, правил, вимог, з використанням комплексу адміністративних засобів впливу для попередження, виявлення і припинення правопорушень, відновлення встановлених правовідносин і притягнення винних до відповідальності.

Також автор акцентує увагу, що як контроль і нагляд у публічному управлінні прямо пропорційно впливають на ефективність адміністративно-правової охорони – це уміння публічної адміністрації на основі норм адміністративного права якісно та своєчасно відновлювати порушені права, свободи й законні інтереси невіддільних фізичних і юридичних осіб, публічний інтерес держави та суспільства.

***Ключові слова:** парадигма, ефективність, закон, об'єкти публічного адміністрування, інструмент публічного адміністрування, адміністративно-правова охорона, адміністративний нагляд, адміністративний контроль, законодавство, суспільні відносини, ознаки, публічна адміністрація, адміністративно-правові відносини, публічне управління.*

Problem statement. The paradigm of control and supervision in public administration is very important, as well as the ratio, the co-dependence of these concepts, where does control begin and supervision end? Or these are two commensurate concepts that "go hand in hand"?

It will be quite interesting and fruitful to analyze the current paradigm of control and supervision in public administration based on the opinions of scholars in the field of administrative law and modern theoretical provisions of administrative law. Many researchers in the field of administrative law and legal theory in general have been interested in this issue.

Accordingly, a clear definition of these concepts will allow for their detailed delineation, although it is still difficult to reach a unanimous opinion in this area and scientific discussions on this issue are ongoing.

Analysis of recent research and publications. In their scientific works, such scholars as: V. B. Averyanov, O. P. Alyokhin, L. S. Anokhin, O. M. Bandurka, D. M. Bakhrahk, V. M. Bevzenko, O. I. Bezpalo, Y. P. Bytyak, I. L. Borodin, I. A. Galagan, V. V. Galunko, V.M. Garashchuk, I. P. Golosnichenko, S. T. Goncharuk, E. V. Dodin, V. V. Zui, R. A. Kalyuzhny, L. V. Koval, Y. M. Kozlov, T. O. Kolomoyets, V. K. Kolpakov, A. T. Komziuk, O.V. Kuzmenko, S.O. Kuznichenko, M.V. Loshytskyi, D.M. Lukianets, R.S. Melnyk, T.P. Minka, R.V. Myroniuk, S.O. Mosyondz, O.M. Muzychuk, V.Y. Nastiuik, V.I. Olefir, O.I. Ostapenko, V.P. Petkov, S.V. Petkov, D.V. Pryimachenko, R.A. Serbyn, A.O. Sobakar, M.M. Tyshchenko, O.I. Kharytonova, O.S. Yunin, and many others. Of course, we can continue this list, but even when reviewing the works of all these scholars, it becomes clear that there is no single exhaustive and complete point of view on the terms "control" and "supervision", some highlight the following key features, others – completely different, and therefore this research topic is still relevant.

These studies and conclusions contribute to the improvement of the modern terminological system and the development of scientific approaches to solving current problems regarding the distinction between the terms "control" and "supervision". However, we would like to emphasize once again that the science of administrative law has not yet developed a single and generally accepted, sustainable approach to these terms.

The purpose of the article. Based on the foregoing, the purpose of the article is to study the definitions (concepts) of control and supervision in public administration and to outline their boundaries, as far as possible.

Presentation of the main material. A complex independent instrument of public administration is control – a type of activity which consists in the fact that the subject of public administration checks and records how the controlled object performs its tasks and realizes its functions [1; 2, p. 53].

In his works, O.F. Andriyko rightly notes that control is an objective reality of the development of a social system. It is characteristic of any social system to some extent. The democratic processes taking place in all spheres of our society, starting with a rethinking of the role of the state, fundamental changes in the structure of state power, in the economy, also make changes in the understanding of the need for control as an objective phenomenon of their further development" [3, p. 49-53].

The main purpose of control is to identify the inconsistency of its object with certain legitimate evaluation criteria for further application of adequate response measures [4, p. 95 -96].

According to the Law of Ukraine of April 5, 2007, No. 877-U "On Basic Principles of State Supervision (Control) in the Field of Economic Activity", state control means the activities of the central executive authorities authorized by law, their territorial bodies, local self-government bodies, and other bodies within the powers provided by law to prevent and detect violations of the law by business entities and to ensure the interests of society, in particular the quality of products, works and services, and an acceptable level of safety.

The purpose of control is to determine the results of the activities of certain entities, deviations from the accepted requirements, principles of organization, identify the causes of these deviations from the accepted requirements, and identify ways to overcome obstacles to the effective functioning of the entire system. In the modern sense, control is seen not only as a means of punishment, but also as an information and analytical tool.

The essence of public control is to monitor the functioning of the relevant controlled object; to obtain objective and reliable information; to take measures to prevent and eliminate violations; to identify the causes and conditions contributing to the offense; to take measures to bring to justice those responsible for the violation [4, p. 339].

The features of control as an instrument of public administration are as follows: the purpose is to carry out an inspection by public administration entities of compliance by public administration objects with the provisions of administrative and legal regimes defined by law; public control bodies carry out activities exclusively on the basis and in cases provided for by the laws of Ukraine; during the inspection, public administration identifies shortcomings in the administrative and legal regulation of public relations, requires public administration objects to eliminate

According to A.O. Sobakar, who studied a somewhat related issue, in modern conditions, state control reflects primarily the managerial and organizational aspect of the functioning of public administration and is essentially an integrating, universal organizational and legal category that combines various types and forms of inspection

activities, as well as various forms of response to identified violations. For this reason, control covers both verification of the legality of certain actions and decisions of officials and their expediency [5, p. 89].

The essence of public control is most clearly revealed in the activities of specialized state inspectorates and services and representative bodies of local self-government, whose main tasks are to exercise state control and supervision in a certain rather narrow but important area of activity.

The most important of these are inspectorates – fire, labor, tax, price control, and plant protection. The services include sanitary, customs, control and audit, etc. – public administration bodies or their independent structural units with jurisdictional powers. Being public control bodies of other departmental affiliation in relation to the structures under their control, they exercise independent control.

Thus, control as an instrument of public administration is a type of public administration activity that consists of active actions to verify and account for how the controlled public administration object performs its tasks and exercises its functions as defined by administrative law.

We will now turn to the analysis of the concept of administrative supervision, which is no less multifaceted than the concept of control.

Administrative supervision, as compared to control, is a narrower type of public administration. The peculiarity of supervision is that it aims not only to prevent offenses, but also to apply administrative coercion measures, including administrative liability, in case of violations of administrative and legal rules in a certain area by the relevant inspections or services.

Administrative supervision is a special type of public activity carried out by special executive authorities in relation to organizationally independent enterprises, institutions, organizations, officials and citizens in connection with their compliance with special cross-sectoral norms, rules, requirements, using a set of administrative means of influence to prevent, detect and suppress offenses, restore established legal relations and bring perpetrators to justice. For example, administrative supervision of persons released from prison is a system of temporary compulsory preventive measures to monitor and control the behavior of such persons carried out by the National Police [6].

Thus, administrative supervision is the exercise by special state bodies of targeted supervision exclusively in areas of significant public danger over compliance by enterprises, institutions, organizations and citizens with the rules provided for by regulatory legal acts.

In the right opinion of L.M. Soroka, who studied the somewhat related issue of state supervision and control as the basis of administrative and legal support and implementation of state guarantees, and appropriately believes that supervision and control as elements of the system of state guarantees are a set of legal, organizational, information and inspection measures carried out by authorized authorities to identify, stop and prevent violations of the rules of conduct by business entities in order to ensure quality and safe activities, according to the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity". The above is carried out in accordance with the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity", i.e. on the general principles and conditions of state supervision and control in the field of economic activity in Ukraine [7, p. 176].

V. Garashchuk also points out that supervision is an integral part of control with specific features, which include: collecting the necessary knowledge about the activities

of the supervised object, evaluating it, checking compliance with the law, special rules established at the objects under supervision; organizational non-subordination of the object to the supervisory authority; application of appropriate forms provided by law, but without direct interference with the operational and other activities of the object [8].

Also studying the doctrine of control and supervision in management, V. Garashchuk rightly noted that supervision is a legal analysis of the state of affairs regarding the observance of law and discipline in society, which is carried out by the prosecutor's office using the appropriate forms provided by law, but without direct interference with the operational and other activities of a legal entity, official or citizen. To summarize, organizational and managerial relations in any state cannot develop properly (improve, update, adjust in the course of managerial actions, etc.) without a properly organized and efficiently functioning system of control and supervision, which is an important factor in the gradual development of social relations.

In his writings, A. Sobakar appropriately notes that the term "control" is undoubtedly interpreted more broadly and fully than "supervision", since it includes the ability not only to supervise, i.e. to observe the law and raise questions about the elimination of violations, but also to eliminate them by its own power (reversal of a decision). As an organic element of ongoing activities, control is carried out by all public administration entities, regardless of the sector in which they operate. Its content (as opposed to supervision) is broader and includes monitoring legality, finding out what has been done, as well as interfering with the operational (current) activities of the audited entity, canceling illegal acts, reviewing complaints, imposing disciplinary sanctions and rewarding employees. Since control and supervision are similar in terms of their functional purpose, the organizational forms of their implementation may also coincide (e.g., targeted inspections, inspections), while the legal forms of supervision are broader and more diverse (e.g., issuance of permits, licenses, etc.) [5, p. 88-89].

Conclusions. There is no very precise and complete definition of the difference between supervision and control in public administration, and different scholars in the field of administrative law have their own points of view on this issue.

Supervision is the constant and systematic monitoring of the activities of organizations or individuals in order to detect violations of the law, but not to interfere with their ongoing activities. The assessment is made only in terms of legality, not expediency.

Supervision in public administration does not involve interference in the current activities of the supervised object. The main purpose of supervision is to continuously monitor the activities of organizations or individuals in order to identify violations of the law and improve management. Supervision is aimed at ensuring compliance with the established rules and regulations, but does not provide for immediate measures or sanctions in relation to identified violations. Thus, the absence of interference in ongoing activities distinguishes supervision from control, where it is possible to do so.

In the process of control, which is one of the means of public administration, various disciplinary measures may be applied to the perpetrators, such as disciplinary sanctions, fines, dismissal, etc. Control is aimed at detecting violations and punishing the perpetrators for these violations.

On the other hand, administrative supervision applies administrative measures to individuals and legal entities, which may include measures to prevent, punish or correct violations.

So, at the end of our scientific article, we will explain these two terms: control as a public administration tool is a type of public administration activity that consists

of active actions to check and record how the controlled public administration object performs its tasks and realizes its functions defined by administrative law.

Administrative supervision is the exercise by special state bodies of targeted surveillance exclusively in areas of significant public danger over compliance by enterprises, institutions, organizations and citizens with the rules provided for by regulatory legal acts.

The main functions of administrative supervision should be reiterated and emphasized. Its purpose is to detect and prevent violations, eliminate their consequences and bring the perpetrators to justice. The main purpose of supervision is to ensure compliance with legislation and regulations in the field of activities of supervised entities.

It is important to note that administrative supervision does not involve interference with the operational and business activities of supervised entities, as well as the amendment or cancellation of management acts.

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