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CONTROL AND SUPERVISION IN PUBLIC ADMINISTRATION AND THEIR FEATURES

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Based on the opinions of scholars in the field of administrative law, modern theoretical provisions of administrative legislation and law, the article examines control and supervision in public administration and their features.

The author has carried out a comprehensive and integrated 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.

The author notes that control as a tool of public administration is a type of activity of public administration, which consists in active actions to check and record how the controlled object of public administration performs the tasks assigned to it and implements its functions, defined by the norms of administrative law.

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 coercive 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 organizationally independent enterprises, institutions, organizations, 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 offenses, restore established legal relations and bring perpetrators to justice.

The author also emphasizes 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 manner and on the basis of administrative law.

Key words: instrument of public administration, administrative and legal protection, administrative supervision, administrative control, legislation, public relations, administrative and legal protection, public administration, administrative and legal relations, public administration.

Правоторова О. М. Контроль і нагляд у публічному управлінні та їх особливості

В статті на основі думок вчених в галузі адміністративного права, сучасних теоретичних положень адміністративного законодавства та права досліджено контроль і нагляд у публічному управлінні та їх особливості.

Автор здійснив усебічне комплексне дослідження теоретичних і практичних аспектів, вироблення пропозицій і рекомендацій щодо вдосконалення державної політики в сфері контролю і нагляду у публічному управлінні.

Автор зазначає, що контроль як інструмент публічного адміністрування – це вид діяльності публічної адміністрації, що полягає в активних діях щодо перевірки й обліку того, як контрольований об'єкт публічного управління виконує покладені на нього завдання та реалізує свої функції, визначені нормами адміністративного права.

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: *інструмент публічного адміністрування адміністративно-правова охорона, адміністративний нагляд, адміністративний контроль, законодавство, суспільні відносини, адміністративно-правовий захист, публічна адміністрація, адміністративно-правові відносини, публічне управління.*

Statement of the problem. Control and supervision in public administration and their features are very important, and therefore, a clear definition of these concepts will allow for their detailed delineation, although it is still difficult to reach a single correct opinion in this area of scholarship and scientific discussions on this issue continue. In this scientific work, based on the opinions of scholars in the field of administrative law and modern theoretical provisions of administrative law, we will analyze these extremely multifaceted concepts of control and supervision in public administration, since many researchers in the field of administrative law, public administration and legal theory in general have been interested in this issue, etc.

Analysis of recent research and publications. In their scientific works, such scholars as V.B. Averyanov, P.P. Anokhina, S.S. Anokhina, and V.M. Bevzenko also took an interest in the issues of distinguishing between control and supervision and their definitions: V.B. Averyanov, O.P. Alyokhina, L.S. Anokhina, D.M. Bakhrakh, V.M. Bevzenko, 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. Zuy, R.A. Kalyuzhny, L.V. Koval, T.O. Kolomoyets, V. Kolpakov, A. Komziuk, O. Kuzmenko, S. Kuznichenko, M. Loshytskyi, D. Lukianets, R. Melnyk, S. Mosyondz, O. Muzychuk, V. Nastiuk, V. Olefir, D. Prymachenko, R. Serbina, O. Kharytonov, and many, many others. Of course, this list can be continued, but even a brief review of the works of all these scholars makes it clear that there is no single exhaustive and complete point of view, let's say, on the terms "control" and "supervision", some highlight the following key features, others – completely different, and therefore this research topic is quite urgent.

These studies and conclusions contribute to the improvement of the modern terminological system and the development of scientific approaches to solving current problems of distinguishing 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 unified and generally accepted, sustainable approach to these terms.

The purpose of the article. Therefore, based on the above, the purpose of our article is to study the definitions (concepts) of control and supervision in public administration and to outline their features, as far as possible.

Summary of the main material. Science deals with a special set of objects of reality that cannot be reduced to objects of everyday experience. To describe these objects, which are unusual from the point of view of common sense, science has developed a special language and conceptual apparatus, and to directly influence them, science has created a system of special tools (measuring instruments, various devices, etc.) that allow to identify their possible state under conditions that are under the control of the subject. Science forms specific ways to substantiate the truth of knowledge:

experimental control over the knowledge obtained, derivation of some knowledge from other knowledge, the correctness of which has already been proven [1, p. 217]. And it is from the scientific point of view that we will try to characterize the definitions of control and supervision in public administration, and that is why this quote at the beginning of the article seems to us quite appropriate.

When studying control and supervision in public administration and their peculiarities, we should start with analyzing the opinions of scholars on these multifaceted concepts.

In the right opinion of V.M. Garashchuk, and we fully agree with him, that 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 operating system of control and supervision – an important factor in the gradual development of social relations [2, p. 206–207].

A complex independent instrument of public administration is control, which is a type of activity in which a public administration entity checks and records how the controlled object performs its tasks and realizes its functions [3, p. 53].

According to V.A. Bortnyak and K.V. Bortnyak, the national scientific literature continues to debate the content of the concepts of “control” and “supervision”. The opinions of researchers generally reflect two approaches: the first is that these are identical concepts; the second is that they are not identical concepts, control and supervision are independent forms of legal activity. At the legislative level, there is also no clear distinction between the concepts of “control” and “supervision”. However, it is important for the practice of governance that these concepts should be distinguished even when the legislator uses both terms to define the name and regulate the powers of certain bodies. It can be argued that the only thing these terms have in common is the goal of ensuring law and order in state (public) administration. The existence of such a goal gives grounds to consider these terms in functional unity as “control and supervision activities”.

The view of I.M. Shopina, who considered somewhat related issues and more general issues regarding the object and subject of public control, is appropriate. The object of public control (supervision) is a complex of public goods of a non-patronage nature that arise due to the activity of civil society members and consist in the protection of the rights, freedoms and interests of individuals and legal entities, reduction of corruption risks and effective rational use of budget funds in the security and defense sector. The non-patronage nature of public control (oversight) means that the source of benefits is not the state, but civil society. We believe that public control (supervision) extends to the protection of the rights, freedoms and interests of not only civilians but also the military – for example, when monitoring changes in the system of food supply for military personnel [4, p. 292–294].

According to L.M. Soroka, supervision and control as elements of the system of state guarantees are a set of legal, organizational, information and inspection measures carried out by the authorized bodies of power to identify, stop and prevent violations of the rules of business entities in order to ensure quality and safe activities, protect the interests of individuals, society and the state, and environmental safety. 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 [5, p. 173–177].

Understanding the difference between the categories of “management” and “administration”, we consider it necessary to add to the list of formative special principles

of administrative and legal protection the following: priority of state policy (direction of the state's activities, determination of principles, its goals, objectives, basic forms and methods of management); principle of entropy saving (conditions for ordering the uncertainty of the situation); principle of least action (to select from the possible arsenal of managerial influences those which result in the minimum measurement of entropy).

The analysis of the current legislation shows that the concepts of “control” and “supervision” are not synonymous, since the legislation gives grounds in certain cases to distinguish between controlling and supervisory bodies by such a criterion as the way their activities are initiated. The tendency to replace the term “supervision” with the term “control” without any reservations in the regulations, and not vice versa, supports the judgment that supervision is also control. Control and supervision are not identical concepts.

Control is a permanent function of management, a condition for ensuring the success of its activities, and it is always professional, regardless of whether it is departmental or national. That is, supervision has a narrower scope. Control should be considered a broader concept, and supervision should be viewed as an element of control, as “narrowed control”, but narrowed only in relation to its scope. Supervision is exercised over entities that are not subordinate to the supervisory authority, while control can be exercised over both subordinate entities and those that are not directly subordinate. The existence of opposing points of view indicates that it is a mistake to equate control and supervision institutions, while the statement that these are two independent forms of exercising control power in a state governed by the rule of law deserves attention.

Thus, the practice of public administration shows that there are differences in the concepts of “state control” and “state supervision”. These differences are due to the subject, purpose, forms and limits of supervision and control activities. Today, in the context of the formation of the public administration system in Ukraine, there is an urgent need, first of all, for a clear regulatory and legal consolidation of the place and role of both state control and state supervision in accordance with the tasks required by the implementation of the European integration policy. The introduction of European standards of public administration and the formation of a state governed by the rule of law with a market economy require a reduction of state interference in the activities of enterprises, institutions, organizations, and citizens. Therefore, as a first step, the system of modern public administration in Ukraine needs to create conditions that would facilitate the gradual narrowing of the scope of control and optimization of the scope of supervision to improve the efficiency of management activities.

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 [7, p. 95–96].

In his works V.M. Garashchuk, who studied a somewhat related issue, rightly notes that control can be defined as one of the forms of organizational and managerial relations – a set of actions to monitor the functioning of the relevant control object with the aim of: obtaining objective and reliable information about the state of affairs there; correcting the behavior of such an object (its officials); applying measures to prevent offenses (with the right to directly interfere with the operational activities of the control object).

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 establish 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, as well as identify ways to overcome obstacles to the effective functioning of the entire system. In the modern sense, control is considered not only as a means of punishment, but also as an information and analytical tool [9, p. 339].

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 offense; 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 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

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.

In the opinion of L.V. Soroka, and we fully agree with her, state control and supervision can only be exercised by a public authority authorized by law, within its competence, whose powers are detailed in specialized laws, which indicate the central executive body that ensures the implementation of these institutions, i.e. performs the control and supervisory functions of the state [5, p. 173–177].

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.

Conclusions. Thus, there is no single exhaustive and complete point of view, let's say, on the terms “control” and “supervision” and their features, some scholars identify the following key features, others – completely different ones, and we focused on them in our research, trying to emphasize the views of a particular scholar.

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

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 [10].

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.

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 notice 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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