

Supervision and control over the activities of research institutions in Ukraine: the concept and essence

Нагляд і контроль за діяльністю науково-дослідних інститутів в Україні: поняття й сутність

Andrew Manzhula

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Formulation of the problem. Any activity is focused. And such activity is extremely effective. Certainly different government entities are endowed with certain powers necessary to carry out their functions. However, for the optimization of their operations and to avoid all sorts of violations of the activities of government control and supervision is carried out. After all, without the controlling factor can't be the normal life of any social organism¹. Is no exception and the activities of research institutions. That is why it is considered urgent study of supervision and control over the activities of research institutions as one of the ways to improve the activities of these bodies.

The importance of considering the issue of control and supervision over the activities of research institutions, including ways to improve them, especially because they are functions of public administration, the possibility of which are used for the rule of law and discipline, public order and security, constitutional rights and freedoms and legal interests of legal entities in the society². Indeed, as noted by V.G. Klotchkov, one of the main reasons for the occurrence of acute socio-economic, environmental, legal, cultural and political issues in Ukraine is inefficient state control and supervision over the quality of management, labor and performance discipline, observance of laws and regulations, as well as law enforcement agencies. It is natural that due to the lack of control there is irresponsibility, so that there is a mess. But control of the state administration an opportunity to compare the actual state of the industry with the demands put before it, to identify the shortcomings and mistakes in work and prevent them to assess the compliance of the other functions of the control tasks assigned to them³.

Analysis of recent studies and publications. Problem supervision and control, including in the public administration, many times investigated a number of scientists. In particular, such as V.B. Averyanov, V.T. Belous, O.M. Bandurka, Y.P. Bityak, I.P. Golosnichenko, T.A. Kolomoets, A.T. Komzyuk, V.V. Konoplev, N.P. Matyukhina, O.N. Muzichuk, V.V. Novikov, V.P. Petkov, E.Yu. Sinyavsky A.F. Racehorse, H.P. Yarmak and others. Usually, their scientific works are weighty and conceptual in this area of scientific research. However, they do not solve the existing problems in full. So, still not firmly established a common position on the definition and the ratio of supervision and control. No scientific research about the peculiarities of the issue of supervision and control over the activities of research institutions in general and in terms of the ways to improve oversight and control in particular. All this is categorically confirms the relevance of the selected studies. Accordingly, articles goal is to formulate the definition of supervision and control over the activities of research institutions and clarification of the nature of such supervision and control.

The presentation of the main material. Yak any scientific research, finding the essence of supervision and control is not possible without reference to their etymology and semantics. Thus, in the Great Dictionary of the modern Ukrainian language states that the word "supervision" is treated as an act of value observed, namely:

¹ Адміністративне право України : [підручник] / [Ю.П. Битяк, В.М. Гаращук, О.В. Дьяченко та ін.] ; за заг. ред. Ю.П. Битяка. – К. : Юрінком Інтер, 2007. – 544 с.

² Воронін Я.Г. Сутність і значення нагляду в сфері функціонування об'єктів нафтогазового комплексу України / Я.Г. Воронін // Науковий вісник Херсонського державного університету. Серія «Юридичні науки». – 2014. – Вип. 1. – Том 2. – С. 83–89.

³ Головкін О.В. Державний контроль і нагляд у сфері охорони довкілля як складова екологічної політики України / О.В. Головкін // Часопис Київського університету права. – 2011. – № 4. – С. 290–293.

- watch, watch out for someone, something to monitor, maintain order, and so on;
- monitor, observe the purpose of supervision;
- fearing for someone to watch his eyes, anything;
- carefully considering to choose, find someone that either;
- looking to pay attention to someone, something, notice, find somebody something;
- in passing, or to come for a short time, to arrive somewhere, to visit someone – anything⁴.

However, the outstanding modern Ukrainian language is the term “government supervision”. This means the activities of special government of systematic monitoring of compliance with the established rules of public enterprises, institutions, organizations, officials and citizens⁵.

The word “control” adopted interpreted as:

- verification of compliance with the established requirements of the controlled object;
- check account activity someone something, than the supervision of someone;
- the establishment or organization oversees anyone, anything, or check it;
- controllers⁶.

V.I. Dahl controlled understand accounting, billing verification, reporting, and under the supervision of action verb: to have supervision, “supervision”; monitor, observe⁷.

That is, you will notice that linguists interpret “control” by the term “surveillance” and vice versa. So dictionaries indicate their similarities, in some cases is synonymy.

In the philosophy of the control (from the French control – counterclaim, the secondary account with the aim) this is a test, monitoring; often used in the English sense of control (dominance, violence, power)⁸. Moreover, philosophers generally operate in such terms as social control. This, in their view, a set of processes in the social system (society, social groups, organizations, etc.), by which is provided following certain “samples” activities as well as compliance with the restrictions in behavior, violation of which adversely affects the functioning of the system. These samples are limited and the system of values, the legal and moral norms, administrative regulations, decisions, customs, habits, and so on. P. Social control ensures a certain organization of social life, the adequacy of the behavior of members of society mutual expectations. With such a control principle of feedback is realized in managing any social processes or systems.

In modern legal encyclopedia control adopted treated as a decisive influence of one or more related legal entities and/or individuals on the activity of the subject or its parts, which is carried out directly or through other persons, in particular by: the right of ownership or enjoyment of all assets or a substantial part thereof; law, which provides a decisive influence on the formation of the composition, voting results and decisions of the management entity; conclusion of agreements and contracts, which allow to determine the conditions of economic activity, to give binding instructions or perform the functions of the management body of the subject; vacancy of the head, deputy head of the supervisory or executive body of the stakeholders who already has one or more of the positions in the other activities of the subjects of occupation, more than half of members of the supervisory or executive bodies of the subject of activity⁹, and oversight – both continuously monitors the activity of state bodies in compliance with the laws, rules and regulations to ensure security in various spheres of public activity (nuclear, ensure safety, and environmental safety, labor protection, protection of property, life and health, safety, the use of radio frequency resources), including accounting, synthesis disorders¹⁰.

⁴ Великий тлумачний словник сучасної української мови (з дод., допов. та CD) / уклад. і голов. ред. В.Т. Бусел. – К. ; Ірпінь : ВТФ «Перун», 2009. – 1736 с.

⁵ Там само.

⁶ Там само.

⁷ Даль В.И. Толковый словарь русского языка / В.И. Даль. – М. : Эксмо, 2011. – 896 с.

⁸ Философский энциклопедический словарь / редкол. : С.С. Аверинцев, Э.А. Араб-Оглы, Л.Ф. Ильичёв и др. – 2-е изд. – М. : Советская энциклопедия, 1989. – 815 с.

⁹ Сучасна правова енциклопедія / [О.В. Зайчук, О.Л. Копиленко, В.С. Ковальський та ін.] ; за заг. ред. О.В. Зайчука ; Ін-т законодавства Верховної Ради України. – 2-ге вид., перероб. і допов. – К. : Юрінком Інтер, 2013. – 408 с.

¹⁰ Там само.

O.M. Muzichuk in a monographic study on the control of law enforcement agencies in Ukraine, indicating the versatility and diversity of this phenomenon as a control. According to him, depending on what level and with respect to which it is considered, the control can be described as a guarantee way to ensure discipline and the rule of law, the principle of activities, administrative function, the condition of effective activity, etc.¹¹

That is, we note that in legal circles as no ambiguity in the definition of control. In particular, some characterized it as a "pulse", which increases the efficiency of the controlled object. Also, under the control of commonly understood set of rules, institutions and relationships to ensure the behavior of people in accordance with the interests of a particular social group, class, or society as a whole¹². There are interpretation as a means of control, the instrument of regulation of administrative activities, which aims to ensure the legality in the field of public administration, efficiency and compliance with socially significant goals¹³.

We share the opinion that control by acting as one of the activities of the state, a means of ensuring the proper functioning of the whole society. Control is one of the channels through which to obtain objective information about the life of society as a whole, regarding the political, economic and social processes that take place in society and state, about the activities of state and local authorities and other public and government institutions. In other words, the control performs security functions of the state. Last seen in the enforcement of the state of the tasks and functions that support the effective functioning of public authorities, which act as organizers of the social activities of people in different areas¹⁴.

Certainly control is a function of government. It is a direct means of exercising power. Therefore, we can't agree with the fact that for most public authorities control a general nature and, at the same time is only part of their activities. That is, as the control function can be performed within a particular system institutes and agencies, and go beyond these limits, while spreading to other systems. In other words, the control can be respectively inner and outer¹⁵.

With this control in public administration is characterized by a number of symptoms that together is its features as a way of ensuring discipline and legality in public administration. In particular, O.M. Muzichuk among these are the following:

- it is a subspecies of social control;
- implemented by the state and non-state actors;
- provides intervention subject to the control of professional activities controlled object;
- inherent in all spheres of government;
- there is an unlawful form of government;
- regulated by the laws and regulations;
- implemented in various forms;
- implemented daily and continuously;
- inherent in all stages of the administrative process;
- perform a cognitive-informational, preventive, methodical and forced function;
- it has both negative and positive aspects of the controlled object;
- designed to assess the quality of implementation of management decisions, planning and adjustment activities controlled object;
- it is a complex activity¹⁶.

We offer a list to complement the following features:

¹¹ Музичук О.М. Контроль за діяльністю правоохоронних органів в Україні : [монографія] / О.М. Музичук. – Х. : Харківський національний університет внутрішніх справ, 2010. – 654 с.

¹² Адміністративне право України : [підручник] / [Ю.П. Битяк, В.М. Гаращук, О.В. Дьяченко та ін.] ; за заг. ред. Ю.П. Битяка. – К. : Юрінком Інтер, 2007. – 544 с.

¹³ Сушинський О.І. Контроль у сфері публічної влади: теоретико-методологічні та організаційно-правові аспекти / О.І. Сушинський ; Львівський регіональний ін-т державного управління Української академії державного управління при Президентові України. – Львів : ЛРІДУ УАДУ, 2002. – 468 с.

¹⁴ Малиновський В.Я. Державне управління : [навчальний посібник] / В.Я. Малиновський. – Луцьк : Ред.-вид. відд. «Вежа» Вол. держ. ун-ту ім. Лесі Українки, 2000. – 558 с.

¹⁵ Шорина Е.В. Контроль за деятельностью органов государственного управления в СССР / Е.В. Шорина. – М. : Наука, 1981. – 301 с.

¹⁶ Музичук О.М. Контроль за діяльністю правоохоронних органів в Україні : [монографія] / О.М. Музичук. – Х. : Харківський національний університет внутрішніх справ, 2010. – 654 с.

- are mandatory and impartial activities of authorized subjects of public administration;
- is a multi-step process;
- it is multi-level activities.

Of course, it is impossible to find out the essence of control over the activities of research institutions not previously addressed in the control structure as a kind of social activity. This issue, too, was not successful in its decision. This means that in the legal literature can be found different approaches to determining the control structure. And some reflect the essence of control over its functions, and some through the stages of its implementation. However, an analysis of existing scientific position in this area indicates that the overwhelming majority of scientists isolated in content similar stage of control, but in many ways they are called. As an example, AF Andrew identifies the following stages of control, as the analysis of information about the situation in a certain area of social life, checking the status of implementation of management decisions, and their compliance with the regulatory requirements, supervision of compliance with rules and standards established by the¹⁷. But AV Shorin identifies three stages of control, which is called as follows:

- stage detection;
- stage analysis;
- stage of development of measures to improve the situation and the adjustment process control to ensure their implementation¹⁸.

Regarding supervision, in the opinion of A.K. Denisova, is primarily a form of state activity, which is a set of continuous action to monitor compliance with the law in the relevant social relations, which are carried out by the competent authority on the application of a law given to him (by-laws act) mandate and focus on prevention, detection and suppression of violations and bringing perpetrators to justice. Supervision is a multifaceted phenomenon. On the one hand it is a means of administrative sanctions, and on the other a means of ensuring the legitimacy of the regime in the state. Accordingly, to the fore – the forecast, prevention, suppression, to prevent the occurrence of damage, and the second – the use of punitive sanctions for the general and individual prevention of offenses in the future¹⁹. Supervision, as well as control, are characterized by a complex structure. The latter consists of separate stages due to the purpose of surveillance activities. Under the supervision and at the same time aims at is:

- to obtain objective and reliable information on the status of the supervised object (in a particular area of public relations);
- the use of measures to prevent crime;
- assist in the resumption of supervised object of law and discipline;
- establish the causes and conditions conducive to a breach of the requirements of law;
- the measures taken to bring the perpetrators to legal liability²⁰.

We have considered the positions of scientists to the interpretation of the concepts of “control” and “supervision”, the analysis of which again points to the failure to resolve this issue because of the lack of consensus between the views of scientists. However, we want to note that there is unanimity and the legislator. The legal acts of Ukraine also lacks a clear and unambiguous Defining these terms. Moreover, the legislator in various legal acts on different interpretations, and even a substitute for the concept of control and supervision to each other. For a clearer perception of the outlined pattern consider it appropriate to bring the provisions of certain laws and regulations.

First of all, it should be noted that a separate law “On the research institutions”, which would be determined by what the research institutions, the basis of their activities, particularly monitoring and supervision of their activities there. The law of Ukraine “On scientific and technical activity”²¹ and there are no provisions on the specifics of supervision and control over the activities of research institutions.

¹⁷ Андрийко О.Ф. Контроль в демократическом государстве: проблемы и тенденции / О.Ф. Андрийко ; НАН Украины, Ин-т государства и права им. В. М. Корецкого. – К. : Наукова думка, 1994. – 115 с.

¹⁸ Шорина Е.В. Контроль за деятельностью органов государственного управления в СССР / Е.В. Шорина. – М. : Наука, 1981. – 301 с.

¹⁹ Денисова А.В. Співвідношення контролю та нагляду / А.В. Денисова // Адміністративне право і процес. – 2013. – № 2(4). – С. 30–37.

²⁰ Там само.

²¹ Про наукову і науково-технічну діяльність : Закон України від 13.12.1991 р. № 1977-XII // Відомості Верховної Ради України. – 1992. – № 12. – Ст. 165.

The law of Ukraine "On main principles of state supervision (control) in the sphere of economic activity" in art. 1 provides a definition of the term "state supervision (control)". In particular, underneath the legislator proposes to understand the activity authorized by the law of central executive bodies, their territorial bodies, government collegial bodies of executive power of the Autonomous Republic of Crimea, local self-government within the powers provided for by law, to detect and prevent violations of the law business entities and the interests of society, in particular the proper quality of products, works and services, the allowable level of danger to the public, the environment²². That is to be noted that the legislator does not share the supervision and control, and takes one time – state supervision (control). And there is very strange position of the legislator: supervision and control are identified, or they are separate activities, which are used in certain specific situations. That is can be seen that at the legislative level, the question of discrimination and a clear definition of control and supervision is missing. This gap in a certain way for a long time, scientists are trying to fill.

Conclusions. Under the supervision of the activities of research institutions offer to realize a continuous activity of authorized bodies to (a) the timely detection of violations of existing standards activities of research institutions in a particular field of science, the provisions of the regulations, administrative decisions, and (b) the adoption of measures to eliminate violations by interfering with the activity of controlled object and use its powers. Supervision is the activities of research institutions is the systematic activities of public authorities over the activities of research institutions, which are not in a relationship of subordination, and which is carried out in order to identify breaches of the rules set out provisions of the law, and the adoption of appropriate administrative measures, non-interference in the professional and operational activities of research institutions.

Summary

The article found out the etymology and semantics of the key terms "supervision" and "control". We sketch the circle character of state control. It is proposed to supplement the specified range of additional features characterizing. The attention to the absence of differences in the legal field of the terms "supervision" and "control". Author formulated the definition of supervision and control over the activities of research institutions in Ukraine.

Анотація

У статті з'ясовано етимологію й семантику таких термінів, як «нагляд» і «контроль». Окреслено характер державного управління. Запропоновано доповнити зазначений діапазон додаткових функцій. Звернено увагу на відсутність розходжень у правовому полі понять «нагляд» і «контроль». Сформульовано визначення нагляду й контролю за діяльністю науково-дослідних інститутів в Україні.

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²² Про основні засади державного нагляду (контролю) у сфері господарської діяльності : Закон України від 05.04.2007 р. № 877-V // Відомості Верховної Ради України. – 2007. – № 29. – Ст. 389.

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Andrew Manzhula,

PhD, Associate Professor,

*Professor of the Department of Constitutional, Administrative and Economic Law
of the Kirovograd Institute of State and Municipal Management*

Classic Private University