

STATE CONTROL OVER THE PROVISION OF EDUCATIONAL SERVICES IN THE SPHERE OF HIGHER EDUCATION

L.V. GOLOVIY, PhD (Law),
National University of Life and Environmental Sciences of Ukraine

The essence of the notion of «control» and «state control» are revealed, the notion of state control over the provision of educational services in the sphere of higher education is defined, the system of principles of state control over the provision of educational services in the field of higher education is considered.

Control, state control, state control in the field of higher education.

The purpose of the article is analyzing approaches to general concepts of control and state control and definition the concept of state control over the provision of educational services in the field of higher education.

Research the nature of state control over the provision of educational services in the field of higher education should be started with clarification of the theoretical concept of control.

The term «control» comes from the Latin «contra rotulus» (which was formed from the French word «contrôle», which means comparing or contrasting [1, p. 42].

In the references the following definition of control are fixed:

- accounting, checking accounts, reports [2, p. 153];
- inspection and supervision in order to check [3, p. 23];
- review of enforcement of laws, decisions,, etc. [4, p 323];
- one of the forms of exercising power, which ensures compliance with established regulations [5, c. 68].

In the modern Ukrainian language, the word «control» is used in the following ways:

1) check, the account of activity of anyone, anything, supervision of someone with something;

2) the institution or organization that supervises someone, something or someone, checks something.

From the etymological point of view control is a comparison (comparison or contrast) of several statements [6, p. 258–260].

In the scientific literature there are different definitions of the concept of control. In accordance to generalized approach, control is considered to be the set of processes in the social system (society, social group or organization) through which adherence to certain «standards» activities is ensured, and compliance with restrictions in behavior, violation of which adversely affects the operation of the system. Meanwhile other authors believe that control is mechanism by which society and its affiliated companies (groups, organizations) ensure compliance with certain restrictions, conditions, breach of which cause damage to the system. According to third-party authors, social control is a holistic system of all social regulators (state and public institutions, law, morals, customs, traditions, and attitudes). In addition, experts in the field of social management believe that the control is a system of monitoring and verifying process of functioning of the object in order to remove its deviation from the specified parameters [7, p. 7–8].

V. Averyanov defines control as inspection and surveillance in order to check something and to counteract undesirable, to detect prevent and repress illegal behavior [8, p. 342]. O.Andriyko notes that control is the objective reality of development of social systems [9, p. 49]. According Y. Bytyak, control is a part (element) of management, which provides a systematic verification of implementation of the Constitution and laws of Ukraine and other normative acts, the observance of discipline and order and it lies in the intervention of controlling bodies in the operational activities of controlled bodies, giving them binding instructions, termination, amendment or cancellation of acts of administration, measures of compulsion to controlled bodies [10, p. 223–224]. O.Bandurka considers that control is the process of ensure achievement by the managerial object goals which have been set [11, p. 21]. V. Garashchuk interprets control as supervising and monitoring in order to check and counter something undesirable, detection, prevention and suppression of illegal behavior by anyone [12, p. 8]; as «collection of actions of different form which are performed by the subjects of control over human behavior (their own behavior) relations that arise in society or in order to establish any scientific or other purposes at research of cognitive objects of the material world» [13, p. 89].

According to several scholars the term «control» should be understood as inspection and the observance and enforcement of

regulatory prescribed tasks, responsibilities, plans and solutions that is assess of the actual state controlled object [14, p. 39; 15, p. 40].

In the theory of administrative law control is regarded as one of the most common and effective ways (means) of ensuring the legality and discipline in the state administration [16, 17, 18].

V. Kolpakov, A. Kuz'menko note that the essence of control lies in the fact that the subject of control exercises accounting and verification on fulfillment by controlled object tasks and functions which have been set for it [19, p. 524].

Control is one of the most important means of preventing violations of legislation since it defines the rights and freedoms of citizens in particular. It opens and indicates the unlawful actions and errors during the process of application of laws by bodies, institutions, organizations and their officials [20, p. 135].

Concerning legislative consolidation of the term «control», in the scientific and practical Dictionary «Terms and concepts in the law of Ukraine» together with reference to the provisions of current legislation two normative definition of control are fixed: 1) direct or indirect participation in the legal entity individually or together with other persons, which represents the equivalent of 50 or more percent of the share capital or votes of a legal entity or the ability to exert a decisive influence over the management or activities of a legal entity on the basis of an agreement or any other manner; 2) the decisive influence of one or more related legal entities and \ or natural persons on the economic activity of the entity or its part which is carried out directly or through other parties, including through the right to own or use all their assets or a significant part, right, providing a decisive influence on the composition, voting and decision of the management of the entity, the conclusion of agreements and contracts which allow to define conditions of economic activity, to give binding instructions or perform the functions of a management entity, etc. [21 , p. 169].

State control is a form of realization of state power that enforces laws and state discipline in various fields of industrial, economic, financial, commercial, social and cultural activities in the field of public order, security and defense, human rights and freedoms of citizens performing their duties to the state [22, p. 37].

The essence and appointment of state control consist in:

- monitoring the functioning of the controlled object;
- obtaining objective and reliable information about the state of law and discipline therein;

- application of measures on prevention and elimination of violations of law;
- identifying causes and conditions that contributed to the violation of law;
- application of measures to bring to responsibility of persons guilty of violating the law [23, p. 216].

State control is always based on the law and has legal consequences [24, p. 11].

The legal nature of state control appears in the fact that it is carried out by the state bodies and their officials within the limits determined legal provisions on the basis of the law and in accordance with them. Therefore we can say that state control is carried out in clear legal framework, guides in its activities by the law in force and always causes some legal implications. This indicates that at the heart of its origin and during the process of its realization are legal principles. They appear and are characterized by certain features. First of all, this feature is that the control is carried out by authorized state bodies and enshrined in the rules governing the activities and powers of the controlling subjects. State gives adequate powers to above mentioned authorities on the implementation of specific actions and fixes them in the norms of law [24, p. 11].

The analysis of legal literature makes it possible to provide a general overview of different points of view on the nature and purpose of control and state control. Each of them contains one or the other the predominant factor or position, which the authors attempt to reveal during the process of research the problem of control. This indicates the diversity and versatility of state control which should be regarded as the ability to analyze monitor and review the common events and situation and the opportunity to focus on specific issues with their deep analysis in various fields of social relations [25, p. 113].

Control is carried out by the authorized state bodies. Among subjects that are entitled to exercise control are public inspections.

State inspections are specific state authorities. This specificity is caused by a number of features that distinguish public inspection from the entire set management bodies. First, they usually do not form an independent system of bodies of executive power; they are members of other bodies as structural units. Secondly, their activity is highly specialized in nature. Thirdly, the powers of state inspections extend to organizations and officials irrespective of their departmental subordination, as well as citizens. Fourth, the activity of state inspections, where appropriate,

includes the use of administrative enforcement measures, including administrative penalties [26, pp. 47-52].

In the field of higher education control is carried out by the specially authorized central body of executive power, that is the Ministry of Education and Science of Ukraine, along with other central executive authorities which have in its subordination higher education institutions, authorities of the Autonomous Republic of Crimea, local authorities and local governments which have in its subordination institutions of higher education of communal form of ownership, as well as special controlling body of departmental orientation, such as the State Inspection of Educational Institution.

The purpose of state control over the provision of educational services in the field of higher education is to ensure the implementation of state policy in the field of higher education, to meet standards in the field of higher education normative legal acts on higher education in all institutions of higher education, regardless of ownership and subordination.

For the purpose of state control over the provision of educational services in the field of higher education the following tasks can be identified:

- ensuring the legality in the activities of higher education institutions;
- rendering assistance higher education institutions in the elimination of violations and deficiencies;
- evaluation of quality of the implementation of management decisions, increasing discipline.

According to Resolution «on the State Inspection of Educational Institutions» approved by the President of Ukraine dated April 8, 2011 № 438, the State Inspection of Educational Institutions is the central body of executive power whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Education and Science of Ukraine [29].

The main task of the State Inspection of Educational Institutions is participation in the implementation of state policy in the field of education by exercising state control over the activities of educational institutions, regardless of their subordination and forms of ownership.

The State Inspection of Educational Institutions in accordance with its tasks:

- 1) exercises control over implementation of the Constitution and laws of Ukraine and other normative legal acts in the field of education by educational institutions;

2) examines the work of education management bodies on implementation their policy in education, efficiency of management educational institutions;

3) conducts complex checks of primary, secondary, non-school and vocational educational institutions, exercises control over the certifying examination and coordinates the work related to software support of the certification of educational institutions;

4) performs planned activities of state supervision (control) in the secondary, vocational and higher education at a frequency depending on the degree of risk from carrying out activities on providing educational services;

5) carries out inspections of educational institutions of educational, scientific and technical work, the use of scientific and pedagogical potential and material resources, the development material and technical base and social services;

6) exercises training-methodical management, monitoring compliance with the standards of higher education, government inspections;

7) analyzes the work of educational institutions regarding their compliance with the normative legal acts in the field of education, assesses the activity their compliance with state standards and requirements, suggests eliminating the negative trends and spreading the positive trends in the process of development of education;

8) promptly informs education authorities about the terms and consequences of audits of their subordinate educational institutions, takes the necessary measures to eliminate violations and deficiencies;

9) summarizes the practice of law concerning the state control that is within its competence, develops proposals for improving legislation, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, normative legal acts of ministries and in accordance with the established procedure submits them to the Minister;

10) participates in the preparation and review of draft decisions on reforming education, forecasting the development of the education system and its organizational and legal support;

11) provides methodological guidance and coordination of education management bodies on organizing and conducting audits and attestation of their subordinate educational institutions;

12) exercises control and participates in monitoring of the quality of training of pupils and students;

13) examines the state of organization of industrial practice of students, employment of graduates of higher and vocational educational institutions;

14) exercises other powers established by the law of Ukraine and placed upon it by the President of Ukraine [29].

Based on the general principles of state control, it is possible to highlight the principles of state control over the provision of educational services in the field of higher education as the following: legality, objectivity, openness, regularity, completeness, effectiveness, efficiency.

The principle of legality is a fundamental principle of state control and it lies in the implementation by regulatory bodies in higher education of activities within the limits and according to procedure established by laws and other legal acts.

The principle of objectivity suggests that state control over the provision of educational services in higher education should be based on objective facts.

The principle of openness lies in openness of bodies that exercise control over the provision of educational services in the field of higher education and regular informing the public about compliance with standards set by educational institutions in the provision of educational services.

The principle of regularity is being implemented in the fact that state control over the provision of educational services in higher education should be carried out continuously. Only then can we talk about the positive results in the educational institutions, including the provision of quality of education services.

The principle of comprehensiveness helps identify and disseminate good experience, prevent errors and omissions.

The principle of effectiveness lies in ensuring that state control helps educational institutions to achieve maximum effectiveness in their activities.

Thus there is reason to conclude that the state control over the provision of educational services in the field of higher education is a means of ensuring the legality of such services is carried out by central and local management bodies of higher education and by The State Inspection of Educational Institutions which belongs to the Ministry of Education and Science of Ukraine lies in verifying implementation of requirements established by the state in the field of higher education; ensuring compliance with normative and legal acts governing the activities of educational services; identifying gaps in the higher education and

rendering them assistance in eliminating committed violations; increasing the efficiency of higher education institutions and educational services.

References:

1. Философская энциклопедия. Т. 2. / под ред. Константинова. – М. : Сов. энциклопедия, 1967. — С. 124.
2. Даль В. Словарь живого великорусского языка / Даль В. – М. , 1995. – Т. 2. – С. 153.
3. Ожегов С.И. Словарь русского языка / Ожегов С.И. — М., 1973.— С. 286.
4. Юридична енциклопедія : у 6 т. / голова редкол. Ю.С. Шемчушенко. – К. : Вид-во «Укр. енциклопедія» ім. М.П. Бажана. – 2001. – Т. 3. – 789 с.
5. Юридический энциклопедический словарь / гл. ред. А. Сухарев ; редкол. М.М. Богуславский, М.И. Козырь, Г.И. Миньковский [и др.]. – М. : Сов. энциклопедия, 1984. – 415 с.
6. Цветков В.В. Ефективність державного управління / Цветков В.В. // Державно-правова реформа в Україні. – К. : Ін-т законодавства Верхов. Ради, 1997. – С. 258–260.
7. Гетьман А.П. Регіональний екологічний контроль: теорія правового регулювання : [монографія] / Гетьман А.П., Здоровко Л.М. – К. : УСП МСБ, . – 216 с.
8. Виконавча влада і адміністративне право / за заг. ред. В.Б. Авер'янова. – К. : Вид. дім «Ін-Юре», 2002. – 668 с.
9. Андрійко О.Ф. Державний контроль і тенденції його розвитку в умовах ринкових відносин / О.Ф. Андрійко // Правова держава. – 1993. – Вип. 4. – С. 49–53.
10. Адміністративне право України : підруч. [для юрид. вузів і факультетів] / за ред. Ю.П. Битяка. – Х. : Право, 2000. – С. 223–224.
11. Бандурка О.М. Управління в органах внутрішніх справ України : підруч. / Бандурка О.М. – Х. : Ун-т внутр. справ, 1998. – 480 с.
12. Гаращук В.М. Контроль та нагляд у державному управлінні : навч. посіб. / Гаращук В.М. – Х. : Фоліо, 2002. – 176 с.
13. Гаращук В.М. Іще раз про сутність контролю та його загальне розуміння / Гаращук В.М. // Проблеми законності : Респ. міжвідом. наук. зб. / відп. ред. В.Я. Тацій. – Х. : Нац. юрид. академії України, 2002. – Вип. 54. – С. 83–89.
14. Новіков В.В. Внутрішній контроль як засіб забезпечення законності і дисципліни в органах внутрішніх справ : дис. ... канд. юрид. наук : 12.00.07 / Новіков Віталій Володимирович. – Х., 2006. – 201 с.
15. Пахомов В.В. Організаційно-правові засади здійснення державного контролю за правозастосовчою діяльністю податкових

органів : дис. ... канд. юрид. наук : 12.00.07 / Пахомов Володимир Васильович. – Х., 2007. – 187 с.

16. Юридический справочник предпринимателя / рук. авт. кол. Ю.С. Шемшученко. – К. : Прлитпродакшн, ЛТД, 1992. – 636 с.

17. Административное право России. – М. : БЭК, 1997. – 330 с.

18. Алехин А.П. Административное право Российской Федерации : учеб. / Алехин А.П., Кармолицкий А.А., Козлов Ю.М. – М. : Зерцало : ТЕИС, 1996. – 640 с.

19. Колпаков В.К. Адміністративне право України : підруч. / В.К. Колпаков, О.В. Кузьменко. – К. : ЮрінкомІнтер, 2003. – 544 с.

20. Бородин І.Л. Адміністративно-правові способи захисту прав та свобод людини і громадянина : дис. ... д-ра юрид. наук : 12.00.07 / Бородин Іван Лук'янович. – Х., 2004. – 405 с.

21. Терміни і поняття в законодавстві України : наук.-практ. словник-довідник. – Харків : Еспада, 2003. – 512 с.

22. Залюбовський І.К. Організаційно-правові засади державного контролю в Україні / Залюбовський І.К. – Одеса : Юрид. література, 2003. – 102 с.

23. Бандурка О.М. Адміністративний процес : підруч. для вищ. навч. закл. / О.М. Бандурка, М.М. Тищенко. – К. : Літера ЛТД, 2001. – 336 с.

24. Леліков Г. Державна служба : конституційні засади, задачі та принципи / Г. Леліков, О. Оболенський // Парламентар. – 1998. – № 3. С. 10–12.

25. Насырова Т.Я. Конституционный контроль / Насырова Т.Я. – Казань, 1992. – 113 с.

26. Петров Ю.Я. Государственные инспекции в свете нового административного законодательства / Ю.Я. Петров // Изв. вузов. Правоведение. – 1985. – № 6. – С. 47–52.

27. Кармолицкий А.А. Административно-правовое регулирование надведомственных полномочий государственных инспекций / Кармолицкий А.А. – М. : Изд-во Моск. ун-та. – 1985. – 82 с.

28. Шершеневич Г.Ф. Общая теория права / Шершеневич Г.Ф. – М. : 1911. – Вып. 2. – 698 с.

29. Положенням про Державну інспекцію навчальних закладів, затверджене Указом Президента України від 8 квітня 2011 р. № 438 [Електронний ресурс]. – Режим доступу : www.rada.gov.ua.