

On the correlation of the concepts of control and supervision

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The subject. The article is devoted to analysis of control and supervision as interrelated concepts.

The purpose of the study is to identify the correlation of the concepts of control and supervision.

The methodology includes methods of complex analysis, synthesis, as well as formal-logical and formal-legal methods.

The main results and scope of application. There are no clear criteria in the theory of law for distinguishing control and supervisory activities. Three approaches to the ratio of these categories in the science of administrative law may be emphasized. There are obvious contradictions in the interpretation of control and supervision in federal legislation of the Russian Federation. The author identifies the grounds for differentiation of "control" and "supervision".

Conclusions. The terms of "control" and "supervision" are the key concepts that determine the forms and directions of administrative activities. The legislator has not formulated till nowadays the definitions of the concepts of "control" and "supervision", has not defined their relationship. Such situation generates both theoretical disputes and law enforcement conflicts.

Key words: legislation, administrative legislation, control, supervision, maintenance control and supervision, delimitation, executive bodies, control and supervisory activities, officials, administration.

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1. The importance of control and supervisory activities.

In his annual address to the Federal Assembly, the President of the Russian Federation V.V. Putin drew attention to the importance of the preventive role of the application of legislation governing the implementation of state control and supervision, particularly in the field of entrepreneurial activities, the need to remove

all administrative, legal and any other barriers that prevent the free development of business, because as a result of pressure on the business of some members to controlling and supervisory authorities successful companies are often broke up. He stressed that it is important to improve the control and supervision of state authorities which should deal not only with the identification of offences, but also with prevention of these offences¹.

2. Scientific views on the ratio of concepts of "control" and "supervision".

The correlation of concepts of control and supervision is currently a popular subject of discussions between many scholars of administrative law, as it has important theoretical and practical significance. In the theory of law there is no clear demarcation criteria between controlling and supervisory activities.

There are three approaches to correlation of these concepts in the science of administrative law. A number of scientists believe that supervision is part of the control [1, p. 234-236; 2, p. 18; 3], others equalize these categories [4, p. 22; 5, p. 17; 6, p. 13-21]. According to L.A. Galanina, in some cases it is difficult to distinguish the controlling and the supervisory authorities [4, p. 22].

Representatives of the third approach point out the independent meanings of terms "supervision" and "control" [7 - 9]. As S.G. Nistratov, "supervision deals only with legality, and control deals also with reasonableness" [10, p. 8].

Jurists developed two approaches to understanding the essence of control: how government functions [11, p. 138] and as a figure of authorities [12, p. 24]. These points of view do not contradict each other, because they reflect different aspects such a complex phenomenon, as control.

There is an understanding of supervision as of a "limited control" [7, p. 72-74], which consists of implementation of functions of governmental in relation to the subjects which are not organizationally subordinate them to it in order to establish the performance of the latest special rules and regulations. Thus, Yu.M. Kozlov allocated following criteria of delineation of "control" and "supervision" [13, p. 209-211].

According to Yu.A. Andreeva, supervision is a system of actions and activities stated by laws and other normative legal acts that are carried out by authorized bodies and their officials and are intended to provide law enforcement and the rule of law by public authorities and local government bodies, as well as legal entities and natural persons [14].

¹ Ежегодное Послание Президента Российской Федерации В. В. Путина Федеральному Собранию 1 декабря 2016 года. URL: <http://www.kremlin.ru/events/president/news/53379>.

3. Legislative Approaches to correlation of concepts of "control" and "supervision".

So far, the level of federal legislation of the Russian Federation contains contradictions in the interpretation of the control and supervision.

The concepts of "control" and "supervision" are identified in the Federal Law of December 26, 2008 № 294-FZ "On protection of rights of legal persons and individual entrepreneurs during procedures of state and municipal control (supervision)". According to the Presidential Decree of March 9, 2004 Nr. 314 "On the System and Structure of Federal executive bodies", as well as a number of articles of the Code of Administrative Offenses of the Russian Federation (hereinafter - Administrative Code of the Russian Federation) the terms "control" and "supervision" are also equivalent. This approach to the use of the terms "supervision" and "control" can be seen in virtually every legal act [15 -17].

In addition, it should be noted that when considering the draft Federal Law "On State and Municipal Control (Supervision) in the Russian Federation" introduced by the Ministry of Economic Development for consideration in the Government of the Russian Federation, the normative delineation of the content of the terms "control" and "supervision" was also not done. Here, however, we should note that by Decree Of the Government of the Russian Federation No. 476 of 05.06.2013 "On State Control (Supervision) Issues and the Recognition of Certain Acts of the Government of the Russian Federation as Expired", provisions were adopted on federal state fire control in forests, on federal state sanitary and epidemiological supervision, on state veterinary supervision. In connection with this, similar acts on state control in relevant areas have lost force. The above-mentioned Resolution of the Government of the Russian Federation also amended numerous government acts, eliminating the terminological confusion of the concepts of control and supervision in favor of the latter. For example, the Decree of the Government of the Russian Federation Nr. 987 of 21.12.2000 "On State Supervision and Control in the Field of Food Quality and Safety" was named "On State Supervision in the Field of Quality Assurance and Food Safety", and the Decree of the Government of the Russian Federation of 12.05. 2005 Nr. 293 "On approval of the state control over geological study, rational use and protection of mineral resources" became known as "on approval of the sovereigns Twain supervision of geological study, rational use and protection of mineral resources".

Analyzing the presented points of view, it is possible to agree with some scholars [7; 18, p. 20; 19, p. 22] and identify the following reasons of differentiation of control and supervision.

1. Supervising authorities exercise their functions and powers in relation of third parties that are not subordinate to them; control authorities exercise their functions mostly in relation to subordinates, but in some cases both in respect of insubordinated objects, for example, self-regulatory organizations [20, p. 106-108].

2. Administrative measures can be implemented in respect of the perpetrators while supervising (administrative fine, deprivation of a special law, the sus-

pension of work, and others.), and in the case of control both disciplinary measures and sometimes measures of criminal legal character can be implemented.

3. The object of supervision are special rules (for example, veterinary, sanitary), while the object of control is a wide range of different aspects of activities of controlled objects (discipline, finance, etc.)

4. Supervision is limited to verifying compliance of Legislative requirements, while control includes evaluation of efficiency and expediency and the audited entity and acts, were accompanied with Giving intervention in its current business activities.

4. Conclusions.

Categories of control and supervision are key concepts, which determine the forms and directions of administrative activity. The legislator has not formulated definitions of control and supervision and has not defined their correlation. These facts generate disputes and collisions.

These contradictions can be resolved by the normative definition of control and supervision. Considering the points of view presented in the literature by examining the various pieces of legislation on designated issues, we shall agree with E.S. Izyumova that it is necessary to include the concepts of control" and "supervision" in the Federal Law № 294-FZ [21, p. 16].

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