

NININS 2020**International Scientific Forum «National Interest, National Identity and National Security»****LABOUR CONTROL AND SUPERVISION**

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Abstract

Control and supervision activities need reforms in order to transform old methods and forms of labour inspections into new ones that meet current social and economic conditions aimed at developing the economy, small and medium-sized businesses, reducing the level of government intervention and eliminating administrative restrictions on business activities. The authors analyze the concepts "supervision" and "control," comparing the nature and the field of application of these phenomena and identifying features of supervisory control activities in labour relations. Public supervision and control over the observance of labour legislation are one of the varieties of control over the observance of human rights, including labour ones. This type of control is crucial for ensuring legality in labour relations. Currently, it should play a significant role in the system of supervisory and control bodies of the Russian Federation. The federal labour inspectorate should be central in the system of bodies supervising and controlling compliance with labour legislation. An analysis of the legislation reveals problems of the legal Regulation by the federal labour inspectorate: the inconsistency of the legislator in determining powers of the federal labour inspectorate, the low effectiveness of its activities due to the contradictions and gaps in the labour legislation. The authors suggest that the differentiated approach improves the activities of the supervisory and control bodies.

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1. Introduction

The problems of control and supervision are relevant for all countries. In Russia, special attention is also paid to these problems. Since 2004 till present, during the administrative reform, the task of improving public control functions has been solved. Attention is paid to the changes in principles of the controlling bodies, new approaches to supervision, control and law enforcement functions, and ways to optimize the control and supervision activities. The primary purpose of the reform is to systematize the regulation functions aimed at making this sphere more transparent and effective and reducing the administrative burden on entrepreneurs and other objects of inspections. These procedures are costly for businesses and control and supervisory bodies. Failures to comply with the requirements of control and supervisory bodies cause significant damage to the Russian economy. According to experts, annual losses are 2.4-2.6% of the national GDP, i.e., about 3 billion rubles, and the growth rate of economic damage is 5-7% per year (Maslov, 2018).

According to the data provided by the Ministry of Economic Development for 2019, in Russia, there are 220 federal public control (supervision) activities, about 50 regional supervision and control activities and 16 municipal supervision and control activities. There are more than 600 (624) permitting activities carried out daily. However, their effectiveness is the protection of rights, and legitimate interests of citizens are one of the areas of the legal system of the Russian Federation. According to Article 45 of the Constitution of Russia, the state protects human and civil rights and freedoms.

The isostasy of society influences the legal Regulation of labour relations. The employee becomes a party to the employment contract and dependent on the employer.

This correlation does not allow him defending his rights and legitimate interests effectively. For this reason, the current legislation provides for the protection of workers. Specific supervisory and control bodies protect labour rights.

In order to identify areas of public supervision to be improved, it is necessary to analyze its nature and history. The need for public supervision arose at the beginning of the 20th century. In 1882, the Law on factory labour inspections was adopted. Its implementation showed that factory supervision became a milestone in the development of labour laws. At the same time, it was necessary to create bodies that would control labour rights (Glazunov, 2009).

Due to the economic and industrial development of Russia and the emergence of new technologies and industries, the role of public supervision and monitoring of compliance with labour laws is increasing. At the same time, there are violations of the labour legislation by employers. This problem is international. In 1947, the International Labour Organization adopted Convention No. 81 On Labour Inspection in Industry and Trade.

Currently, a significant number of issues of the public supervision and control over compliance with labour laws are regulated by the Labour Code of the Russian Federation. According to Chapter 57 of the Labour Code of the Russian Federation (2001), the federal labour inspectorate is a controlling body. As for the public control (supervision) over the compliance with safety requirements, it is exercised following the Russian legislation by authorized federal executive bodies (Gibatov & Kolpakova, 2018). It should be noted that the low level of control and supervision activities affects the internal component of

national security, the constitutional rights and freedoms of citizens, and public safety of the Russian Federation.

2. Problem Statement

Protection of rights and legitimate interests of citizens is one of the areas of the legal system of the Russian Federation. According to Article 45 of the Constitution of Russia, the state protects human and civil rights and freedoms.

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3. Research Questions

3.1. Supervision vs control

Legal rules should be interpreted correctly and uniformly. It is crucial to define the terms "supervision" and "control". The terms "supervision" and "control" are studied by the sciences of administrative Law, prosecutorial supervision and financial Law.

In the scientific, legal literature, supervision and control as legal categories are considered in various semantic aspects. There are many definitions. Some authors distinguish between their subjects and limits; others believe that they differ by the nature of powers of the supervisory and control bodies; some researchers give generalized definitions.

The concepts of "supervision" and "control" have similar meanings: reviewing of activities for compliance with specific rules (Barbashova & Mironov, 2007). In the legislation, the terms "supervision" and "control" are used together, emphasizing the unity of tasks of the public bodies. Some scientists, who identify "control" with "supervision", believe that the use of similar concepts helps avoid repetition (Dergachev & Komissarova, 2018; Golovina, 1997).

The Federal Law "On Protection of the rights of legal entities and individual entrepreneurs when exercising public control (supervision) and municipal control" identifies these concepts (2008). Public control (supervision) involves activities of the authorized bodies (the federal and regional executive bodies) aimed at preventing, detecting and eliminating violations of requirements provided for by this Law, other federal and regional laws and legal acts (mandatory requirements). The violations can be committed by companies, their managers and other officials, individual entrepreneurs, their authorized representatives (legal entities, individual entrepreneurs). These activities include inspections, measures aimed at preventing violations of mandatory requirements, control measures, measures stipulated by the legislation of the Russian Federation to suppress and (or) eliminate consequences of the violations, as well as the regular monitoring of compliance with mandatory requirements, the analysis and forecasting of compliance with mandatory requirements.

According to Article 2 of the Federal Law "On the Prosecutor's Office of the Russian Federation" (1992), in order to ensure the unity of labour laws, protect human and civil rights and freedoms, interests of society and the government, the Prosecutor's Office of the Russian Federation supervises the process of implementation of the labour laws by federal executive authorities, the Investigative Committee of the Russian Federation, the representative (legislative) and executive bodies of the regions of the Russian Federation, the municipal bodies, the military bodies, the control bodies and their officials, the law enforcement agencies, and managers of commercial and non-commercial organizations. The Prosecutor's Office supervises compliance with laws and other legal acts issued by these bodies. It is quite evident that the legislator defines the term "control" as the intercession into administrative and other activities of public bodies and officials (Osipyanyan, 2006). Osipyanyan (2006) argues that "...many chronic shortcomings of general supervision functions" (p. 53) are caused by the non-differentiation between the concepts of control and supervision. It is necessary to emphasize that the supervision exercised by the prosecutor's office is aimed at checking the compliance with the Constitution of the Russian Federation and federal laws.

Starossyayk (1965) believes that public control involves the monitoring of the actual state of affairs, and supervision involves management and instruction. Thus, the control functions are official functions which should comply with the supervision ones.

Some researchers argue that these concepts are different. Lazarev (1972) argues that one should not use the term "control" instead of other terms (supervision, inspection, verification). According to Belyaev (2006), the concept of control means that competent authorities collect and verify information on the implementation of regulatory requirements and take direct measures to prevent and suppress violations. The concept of supervision involves that the public body has to ensure the Rule of Law and order by identifying, preventing and eliminating violations (Belyaev, 2006).

Thus, control is a function of management which helps to review activities of subordinate bodies for statutory compliance.

Supervision is exercised over organizations and individuals. Its subjects are unique public bodies which review laws for compliance with the Constitution. As a result, administrative measures (fines) may be taken against officials who represent an object of supervision (Sapfirova, 2013).

Some authors argue that control performs a social function. In terms of sociology, social control is a method of self-regulation of the social system. It includes coercive rules, values and sanctions imposed in order to implement these rules and values. In the labour legislation, public supervision and control involve the protection of labour rights. This feature of public supervision and control (Table 01) is essential when they are considered in theoretical and practical terms, as elements of the social and labour relations (Barbashova & Mironov, 2007).

Table 1. Common and distinctive features of control and supervisory bodies

Control bodies	Supervisory bodies
Methods: inspecting, requesting explanations, analyzing documents, using expert assessments	
No organizational subordination	
Publicity	
Special object: legal acts containing requirements, standards	
Goal: protection of human and civil rights and freedoms	
Controlling functions; review of activities of those objects that are not subordinate to them	Supervision functions; review of activities of subordinate and non-subordinate objects
Disciplinary measures	Administrative measures, political responsibility
Review of various aspects of activities of the objects	Review of activities for compliance with special rules

The table presents the results of the study of views on the relationship between the concepts of control and supervision (Algazina, 2017; Lushnikov, 2013; Maslov, 2018).

The risk management systems can improve the efficiency of public inspections and make business operations more comfortable (Chaplinsky & Plaksin, 2016).

3.2. Bodies supervising labour legislation

Describing the supervisory bodies activities based on various views on the concepts of supervision and control. The risk-oriented approach was used.

Public supervision and control are exercised by various bodies that operate independently and interact with each other. Let us analyze the activities of the Federal Labour Inspectorate (the inspectorate).

Analysis of the legal acts on the activities of the inspectorate leads to the conclusion that some amendments are required. Article 12 of the ILO Convention (1947) enables the labour inspector to inspect enterprises at any time without warning. According to Article 12 of Federal Law No. 294-FZ "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs when exercising public and local control" of December 26, 2008, the labour inspector has to familiarize individual entrepreneurs with orders. Federal Law No. 294 (2008); contradicts the ILO Convention No. 81 (1947); (Vlasenko, 2019). Meanwhile, the generally recognized principles of the International Law and international treaties of

Russia are an integral part of its legal system. If the international treaty establishes rules which contradict the Law, the rules of the international treaty are applied (part 4 of Article 15 of the Constitution of the Russian Federation, 1993).

In some cases, having received a notice of inspection, employers eliminate violations. According to Article 16 of the ILO Convention (1947), inspections ensure the useful application of laws. According to Federal Law No. 294 (2008), the frequency of inspections is twice a year. In July 2020, the State Duma is going to discuss a bill specifying the frequency of company inspections. The authors suggest amending Part 4 of Article 13 of Federal Law No. 294 by adding the rule on the duration of scheduled inspections which should not exceed 60 working days within three years. In 2011, a similar rule was added in the article on certain types of public and municipal control activities. Due to its vagueness, companies with several branches in different regions are reviewed for statutory compliance several times. The duration is 60 days.

In February 2017, the amendments to the Law on Federal Supervision over Compliance with the Labour Legislation were made (2004). Supervision is exercised using the risk-oriented approach (Table 02). Its purpose is to encourage the stable employers' behaviour in order to ensure compliance with mandatory requirements of the labour legislation and other legal acts containing labour law rules, implement measures to develop a social partnership system, assess working conditions and create an internal control system. The Rules define its criteria for classifying employers and production facilities used as a specific risk category and a specific hazard class. There are five categories depending on potential damage to the legally protected values (life, health and labour rights). The main risk criteria are accidents and violations of labour rights, primarily the right to the timely payment of wages.

Table 2. The main provisions of the risk-oriented approach in the labour sphere

Types of risks	Classes (categories) of danger	The official categorizing risks	Frequency of scheduled inspections
High	Class 2	A decision of the chief federal labour inspector (deputy chief inspector)	Once every 2 years
Significant	Class 3	A decision of the chief regional labour inspector (deputy chief inspector)	Once every 3 years
Average	Class 4		Not more than once every 5 years
Moderate	Class 5		Not more than once every 6 years
Low	Class 6	No decision on the risk category	

According to the Ministry of Labour, in 2017, the share of objects, for which the frequency of scheduled inspections increased, was 99.9%.

According to the Labour Code of the Russian Federation, departmental control over compliance with the labour laws and other legal acts containing labour law rules is exercised per article 353.1. It is exercised by the federal and regional executive bodies and local bodies in compliance with the federal and regional laws. According to Sheptulina (2007), local governments are not included in the system of

public bodies; they exercise control over subordinate organizations within their powers. This view seems justified since they have to perform their activities in compliance with Federal Law No. 131-FZ "On General Principles of Local Self-Government in the Russian Federation" of October 6, 2003, as well as the regional laws. In order for local self-government to implement labour protection measures, relevant legal acts should be adopted (e.g., in the labour protection law defining powers and funding sources for relevant bodies).

For a long time, the Labour Code of the Russian Federation assigned a special role in implementing labour laws and other legal acts containing labour law norms to the Prosecutor General of the Russian Federation and subordinate prosecutors (Shabanova, 2015). However, the Labour Code of the Russian Federation lacks this part of Article 353.

The following conclusion can be drawn. Following the current legislation of the Russian Federation, each body is endowed with specific powers. However, there are many contradictions. It is important to identify features of supervisory and control activities of the labour inspectorate in order to ensure compliance with labour laws and other acts containing labour law rules.

First of all, it is necessary to determine the role of the labour inspectorate and its relation with other supervisory and control bodies listed in Articles 353 and 353.1 of the Labour Code of the Russian Federation. An analysis of the activities of all the supervisory and control bodies mentioned is time-consuming.

The activities of the labour inspectorate are universal: supervision and monitoring of compliance with labour laws and other acts containing labour law rule in all public areas, including facilities supervised and controlled by other bodies. The subjects of labour relations are employees. The Labour Inspectorate does not support license activities. It aims to protect labour rights. Unlike other bodies of public supervision and control, the labour inspectorate is entitled to annul local acts issued by employers (Sapfirova, 2013).

In order to improve the efficiency of labour inspections in the conditions of limited budgetary sources, it is necessary to expand the scope of activities of the State Supervision Office and change priority activities of the labour inspections by vesting them with power to take preventive measures. This can prevent conflict situations and improve the process of enforcing the laws, contracts and labour agreements (Bocharova & Rymanov, 2019).

4. Purpose of the Study

The research aims at studying theoretical and practical problems of supervision and control over compliance with labour laws and developing recommendations for improving the legislation on supervision and control over compliance with labour laws.

For achieving this purpose, the research solves the following tasks:

1. to study the concepts of supervision and control and identify features of supervisory and control activities in the field of labour relations;
2. to identify problems the Federal Labour Inspectorate deals with and develop proposals on improving the effectiveness of supervision and control activities.

5. Research Methods

The general scientific methods (the dialectic and systemic approaches) allowed analyzing developing phenomena and processes and identify dialectic contradictions between their essential features and forms. Special methods (abstracting, legal analysis, and synthesis) were used as well.

6. Findings

The following conclusions can be drawn:

1. To date, there are no legislative definitions of the concepts of supervision and control; their relationship has not been determined, which gives rise to both theoretical disputes and law enforcement conflicts. These contradictions can be resolved by formulating legal definitions of the concepts of control and supervision.

2. The legislator defined supervision as a method of protection of labour rights. It is necessary to identify violations and assess the penalty.

3. Public bodies exercise supervision and control as ways to protect labour rights. The list of bodies enshrined in Articles 366-369 of the Labour Code of the Russian Federation is not exhaustive. The central supervisory bodies are federal labour inspectorates. An analysis of the legislation revealed problems of the legal protection of labour rights by federal labour inspectorates: inconsistency of the legislator in determining powers of the federal labour inspectorate, inefficiency due to contradictions and gaps in labour legislation, vague division of labour protection powers between the federal labour inspectorate and the courts. The limited number of employees is a severe problem that has a significant impact on the results and quality of work of the federal labour inspectorate.

4. A significant problem is the legal nihilism of some employers who do not comply with instructions of federal labour inspectors even after they have been punished for violations of legal orders.

7. Conclusion

Public protection of labour rights is an urgent task of the government. During social and economic reforms, it is of particular importance. It seems necessary to develop legal rules and improve activities of the supervisory bodies reviewing labour for statutory compliance in order to protect participants in labour relations.

Supervisory and control bodies need to implement the risk-oriented approach when performing control and supervisory functions. Particular attention should be paid to enterprises and organizations which are likely to cause damage. Companies working in hazardous conditions should be inspected more often. Administrative measures should be stricter. Low-risk objects should be supervised less frequently. Thus, the differentiated approach to inspections improves supervision and control activities.

References

Algazina, A. F. (2017). Self-regulation as a type of managerial activity. *Pravoprimerenie = Law Enforcement Review*, 2017, 2, 101–114. [https://doi.org/10.24147/2542-1514.2017.1\(2\).101-114](https://doi.org/10.24147/2542-1514.2017.1(2).101-114)

- Barbashova, T. P., & Mironov, V. I. (2007). The concept of public supervision and control over the observance of labour rights of workers. *Labour Law*, 7, 8-25.
- Belyaev, V. P. (2006). Supervision as a form of legal activity. *Proceedings of higher educational institutions*, 3, 68-84.
- Bocharova, I., & Rymanov, A. (2019). Preventive resolution of labour disputes. *International journal of contemporary economics and administrative sciences*, 1, 79-93.
<https://doi.org/10.5281/zenodo.3262243>
- Chaplinsky, A. V., & Plaksin, S. M. (2016). Risk management in the state of state control in Russia. *Issues of state and municipal administration-issues of public administration*, 2, 7-29.
- Constitution of the Russian Federation. (adopted on December 12, 1993). *Collection of laws of the Russian Federation*, 31, 4398.
- Dergachev, S. V., & Komissarova, V. S. (2018). Control and supervision in the law enforcement of the state: essence, legal regulation, current problems. *Mari Journal of Law*, 2(25), 11-14.
- Gibatov, U. I., & Kolpakova, E. A. (2018). Ways to protect labour rights. *Young Scientist*, 46, 117-119.
- Glazunov, S. R. (2009). The role of factory inspection in the implementation of the labour legislation of Russia at the end of the 19th century. *Scientific reports of Belgorod State University*, 15(70), 121-128.
- Golovina, S. Y. (1997). *The conceptual apparatus of labour law*. UrGUA.
- Labour Code of the Russian Federation of December 30, 2001 No. 197-FZ (as amended on December 16, 2019). *Parliamentary newspaper*. 2002, 2-5.
- Lazarev, B. M. (1972). *Competence of governing bodies*. Legal literature.
- Lushnikov, A. M. (2013). Public control (supervision) and departmental control over compliance with labour laws and other regulatory legal acts containing labour law norms. *Bulletin of Labour Law and Social Security Law*, 7, 59-78.
- Maslov, K. V. (2018) On the correlation of the concepts of control and supervision. *Pravoprimerenie = Law Enforcement Review*, 1, 85-90. [https://doi.org/10.24147/2542-1514.2018.2\(1\).85-90](https://doi.org/10.24147/2542-1514.2018.2(1).85-90)
- On labour inspection in industry and commerce: Convention No. 81 of the International Labour Organization (adopted in Geneva on July 11, 1947 at the 30th session of the ILO General Conference). *Bulletin of international treaties*. 2002, 2, 22-31.
- On the prosecutor's office of the Russian Federation: Federal Law of 17.01.1992 No. 2202-1 (as amended on 02/06/2020). *Russian newspaper*, 1992, 39.
- On the protection of the rights of legal entities and individual entrepreneurs when exercising public control (supervision) and municipal control: Federal Law of 26.12.2008 No. 294-FZ (as amended on 02.08.2019). *Russian newspaper*, 2008, 266.
- Osipyan, S. A. (2006). Russian federalism and the constitutional and legal status of the prosecutor's office: conceptual problems: abstract of the diss. ... Dr. Sci. (Law), 58.
- Sapfirova, A. A. (2013). Legal regulation of activities of the federal labour inspectorate. *Psychology, Economics, Law*, 2, 65-72.
- Shabanova, D. E. (2015). Constitutional and legal guarantees for the protection of labour rights of citizens in the Russian Federation. *Legal Bulletin of Samara State University*, 2, 49-53.
- Sheptulina, N. N. (2007). *New legislation. On labour protection*. Justicinform.
- Starossyak, E. (1965). *Elements of management science*. Progress.
- Vlasenko, A. A. (2019). Issues of public control over compliance with labour laws. *Young Scientist*, 24, 183-185.