

Received: December 2023 Accepted: January 2024

DOI: <https://doi.org/10.58262/ks.v12i2.357>

Functions and Principles of Supervision and Control over Compliance with Labor Legislation

Oleksii Kucher¹, Leonid Mohilevskiy²

Abstract

This study aims to comprehensively investigate the functions and principles of supervision and control over labor legislation compliance within the context of labor law. Based on the analysis of scientific views of scholars, the article offers the author's own definition of the concept of "functions" in the context of supervision and control over compliance with labor legislation. The following functions of supervision and control are distinguished: law enforcement; regulatory; informational; educational and managerial. Theoretical approaches to the interpretation of the concept of principle from a legal point of view are generalized. Two groups of principles of supervision and control over compliance with labor legislation are distinguished: general and special. A meaningful description of each group of principles is given.

Keywords: *labor relations, employee, employer, working conditions, labor legislation.*

Introduction

In the present conditions, ensuring the rights, freedoms and interests of employees is one of the top priorities of any modern, democratic and socially oriented European country. It is worth noting that the state (represented by authorized state authorities and their officials), as well as employers and employees themselves, use a number of tools to ensure and protect the rights of the subjects of labor relations. One of these tools is, of course, supervision and control over compliance with labor legislation. The purpose of the latter is to ensure that the work of enterprises, institutions and organizations that use hired labor complies with the requirements of labor law, as well as its efficiency and appropriateness in terms of technical, economic, social and other features. In the field of labor law, the problem of control and supervision over compliance with labor legislation is studied superficially, within the scope of studies of other legal institutes or mechanisms. For this reason, virtually none of the works provides an answer to the question of what are the functions and principles of these labor law institutions. Disclosure of the latter is important, since while the functions reflect the practical purpose of supervision and control, the principles indicate the ideological basis for the relevant activities and also affect the further development of the institutions under study.

¹ Candidate of Law, Head of the State Regulatory Service of Ukraine, Kyiv, Ukraine, Email: olexiy@kucher.com.ua
Orcid: <https://orcid.org/0000-0003-3742-2154>

² Doctor of Law, Honored Lawyer of Ukraine, Professor, Vice-Rector of Kharkiv National University of Internal Affairs, Kharkiv, Ukraine
Email: mogilewskiu@gmail.com, Orcid: <http://orcid.org/0000-0002-6994-6086>

Theoretical Framework

Separate problematic issues related to supervision and control over compliance with labor legislation were considered in their scientific works by: O.A. Balitska, L.Yu. Velychko, N.M. Hrabar, R.Ya. Demkiv, I.M. Yevhutysh, T.V. Kurylo, V.O. Kucher, V.V. Kuznichenko, O.Ye. Lutsenko, O.V. Moskalenko, V.M. Parasiuk, A.Yu. Podorozhnyi, I.I. Tataryn, O.M. Yaroshenko and many others. However, despite a large number of theoretical achievements, there is no unified approach in the legal literature regarding the essence and content of the functions and principles of supervision and control over compliance with labor legislation.

Research Method

In the course of preparation of the article, a number of general and special methods of scientific knowledge were used. Thus, with the help of the logical and semantic method, the conceptual basis of the scientific work was revealed, in particular, the essence of such terms as: "function", "principles", "principles of law", etc. was determined. The structural and logical and system and functional methods were used to classify the principles of supervision and control over compliance with labor legislation. The regulatory framework consists of the Labor Code of Ukraine, as well as a number of other legal acts, the provisions of which are aimed at regulating social relations arising in the course of the relevant control and supervision activities. The theoretical basis consists of the works of specialists in the field of labor law, as well as other industry disciplines, who in their scientific works paid attention to the problem of supervision and control over compliance with labor legislation.

Results and Discussions

When starting scientific research, it is worth noting that the concept of "function" carries the meaning of a vector of purposeful action, which defines a set of methods and means of implementing some activity. Using the legal sphere as an example, a function is the direction of law's impact on social and legal relations, which is characterized by its own methodology of legal regulation. Despite the quite clear essence and content of the category "function", the functions of certain legal phenomena, such as control and supervision, are not sufficiently covered in the scientific literature and legislative sources. For example, if we abstract from the field of labor law and pay attention to such regulatory documents as the Law of Ukraine On the Basic Principles of State Supervision (Control) in the Field of Economic Activity of 05.04.2007 No. 877-V and the Law of Ukraine On State Control over Compliance with Legislation on Food, Feed, Animal By-Products, Animal Health and Welfare of 18.05.2017 No. 2042-VIII, we will not find any legal provision that would establish functional vectors of control and supervision activities.

As for the scientific field, for example, B.V. Novikov, H.F. Siniok and P.V. Krush, in the process of analyzing the basics of administrative management, determined that the function of control (supervision) is a characteristic of management that allows identifying problems and adjusting the organization's activities accordingly before the time when these problems become a crisis. One of the important aspects of control is to determine which area of activity of the organization most effectively contributes to the achievement of its overall goal. Control should be comprehensive. Every manager, regardless of his or her position, will exercise control, even if no one personally instructs him or her to do so. Control is the main element of management.

Neither planning, nor the creation of organizational structures, nor motivation can be considered completely separate from control. Therefore, control performs an important educational function, as well as preventive and protective functions, contributes to the preservation of property, proper use of resources, and compliance with planning, financial, executive and labor discipline (Novikov et al., 2004: 225). S.S. Palchevskiy, analyzing the content of control in pedagogy, emphasizes only the types of functions, not their meaning. The scientist proves that control is characterized by: controlling, educational, diagnostic-corrective, developmental, educational functions (Palchevskiy, 2007). Instead, I.Yu. Kailo, within the scope of research devoted to the supervision and control of compliance with the labor legislation of Ukraine, followed a similar path, singling out only the types of functions, and not their content, describing: protective, providing, informational, communicative, reformative, managerial functions (Kailo, 2020: 324).

As for the functions of supervision and control over compliance with labor legislation, they reflect the vectors of practical implementation of control and supervision activities in the relevant area based on the norms of labor legislation of Ukraine. Therefore, in our opinion, the relevant functions include the following:

1) law enforcement function. In general, law enforcement activity has a complex meaning and is based on the principles, first of all, of a democratic state and civil society, and therefore may be aimed at detecting violations of the law. Within the framework of the presented issues, the law enforcement function of supervision and control involves taking measures and applying procedures aimed at ensuring compliance with the rules and regulations governing labor relations between employees and employers, in order to verify their compliance with labor legislation;

2) regulatory function. In the framework of the specified direction of supervision and control over compliance with labor legislation, regulatory and legal acts are developed and adopted. As V.H. Honcharenko points out, the latter is a written document adopted by an authorized body, which establishes, changes or cancels the rules of law (Horshenova et al., 2006:168). The lawmaking process is a sequence of stages of preparation, discussion, approval and publication of individual legal acts. Each new act is an independent element of the legal system. The lawmaking process is a sequence of operations that result in the introduction of a new element (normative act) into the legal system. The lawmaking process begins with the adoption of an official decision to draft a normative act. Whatever form such a decision takes, it is a specific, legally significant act that creates rights and obligations" (Iushchyk, 2005: 96).

3) information function. The essence of this function in the context of the presented issues is the formation by the authorized bodies of a high-quality information field on the proper and legal behavior of subjects of labor relations. In addition, it involves conducting educational work among employees and employers regarding the changes that have been made to the current legislation;

1) educational function. In general, education is a system of intellectual and emotional influence on a person in order to form new values, ideas, awareness, moral guidelines, etc. (Nesynova, 2005: 53-54). Therefore, the educational function of supervision and control over compliance with labor legislation is aimed at forming a conscious and responsible attitude to the rules and regulations governing labor relations, both among employees and employers, as well as other subjects of labor law;

2) management function. Management is traditionally understood as the influence on a process, object or system to maintain their stability or transfer from one state to another in accordance with certain goals. State administration is considered to be one of the most important and complex types of management, since it is considered as a social phenomenon and a component of political management (Shkuratova, 2009). Within the framework of the presented issues, this function means streamlining and managing the processes that ensure the implementation of established norms, standards and rules in the field of labor.

The next issue that we will pay attention to within the framework of the presented scientific study is the principles of supervision and control over compliance with labor legislation. In general, principles are a rather specific concept, the content of which is not so much the regularity itself, relations, interconnection, but our knowledge about them. They are a logical result of scientific knowledge, while it should be taken into account that not all laws, relations and interrelationships of state administration have been researched and formulated in the form of principles today (Malynovskyi, 2000). In a general sense, the principles represent starting points, original ideas, which are the basis of the implementation of a certain activity. The essence of this category acquires its specificity depending on the sphere of social life in which it is used.

Thus, in law, principles are such basic ideas of the existence of law that express the most important laws and foundations of the State and law, are of the same order as the essence of law and constitute its main features, are characterized by universality, higher imperative and general significance, meet the objective need to build and strengthen a certain social order; direct and give synchronization to the entire mechanism of legal regulation of social relations, reveal the place of law in public life and its development more perfectly than others; are a criterion of legality and legitimacy of actions of citizens and officials, administrative apparatus and justice authorities (Kolodii, 1998: 26-27). Within the framework of labor law, M.I. Inshyna, V.L. Kostiuk and V.P. Melnyk interpret principles as the basic guidelines expressed in law that determine the essence and purpose of labor law, as well as the content of its legal provisions. The principles of labor law are objectively determined by the nature of the relevant social relations, are historical in nature and reflect the results of rational, scientific comprehension of the laws of development of objective reality. They cement the labor law system, determine ways to improve legal norms, and serve as guiding ideas for the national legislator. They are the basis for law enforcement activities, legal thinking and legal culture. The principles of labor law are either directly formulated in the articles of labor legislation or derived from the general content of labor law provisions (Labor law of Ukraine, 2014: 33).

As for the principles of supervision and control over compliance with labor legislation, scientists consider the content of this category rather superficially in the context of the labor field of law. Thus, Ye.V. Shorina writes that in general, the principles of control are the organizational and legal foundations of organization and exercise of control developed with due regard for the achievements of science and implemented in practice, which ensure its effectiveness (Iakovets et al., 2007: 61). D. V. Luchenko rightly emphasizes that when defining the concept of "control principles" it is necessary: firstly, to take into account the most important, objectively necessary manifestations of control, reflecting its nature and focus, specificity as an independent legal entity; secondly, to reproduce the following methodological requirements that are constantly identified and used in the process of control, contribute in practice to improving its effectiveness (Luchenko, 2003: 97).

Therefore, in view of the above, it is most appropriate to understand the principles of supervision and control over compliance with labor legislation as starting points, original ideas

that underlie the implementation of the relevant activity, and compliance with which is mandatory for all participants of the legal relationship under study. In addition, the principles themselves reflect promising directions for the further development of this institute of labor law. It is also worth noting that in the scientific literature there is no comprehensive approach to defining the scope of the principles of supervision and control over compliance with labor legislation, and therefore, based on the analysis of the scientific views of scholars, we are convinced that it is most appropriate to divide them into two large groups: general and special.

Thus, among the general principles, first of all, it is worth highlighting the principles of the rule of law and legality. O.V. Petryshyn, who points out that in legal science the principle of the rule of law is usually considered in two aspects: firstly, in a broad sense - as a model of legal organization of state power in society, i.e. as "the rule of law over the state", according to which it practically covers all the principles of legal statehood. For example, the maintenance of the rule of law in the American legal tradition includes addressing a wide range of issues related to constitutionalism, federalism, separation of powers, civil rights, judicial protection, judicial system, criminal justice, administrative law, etc.; secondly, in a narrow sense, as a model of the relationship between law and order in the regulation of social relations. It is this approach that Art. 8 of the Constitution of Ukraine, which declares the recognition and operation of the principle of the rule of law, explaining its meaning in particular as: 1) the highest legal force of the Constitution, which embodies the highest legal values and provides that laws and other normative legal acts are adopted on the basis of the Constitution and must comply with it; 2) the direct effect of the norms of the Constitution, which provides for guaranteeing an appeal to the court for the protection of constitutional rights directly on its basis (Petryshyn et al., 2014). In turn, the principle of legality is a universal principle, the effect of which extends to all spheres of legal regulation of social relations. Legality as a principle of administrative activity of state bodies directly follows from the sub-legal and administrative nature of this activity and consists in the fact that state bodies perform their tasks and functions in accordance with the current legislation of Ukraine (Kaliuta, 2007: 86-87).

Thus, the principles of the rule of law and legality are the key principles of supervision and control over compliance with labor legislation. Their essence is that in the process of implementing the relevant activity, authorized entities, as well as controlled entities, must strictly comply not only with the norms of current legislation, but also with other social regulators, such as moral norms, legal customs, etc. In addition, it is the principles of the rule of law and legality that form the basis for the development of all other general and special principles of supervision and control over compliance with labor legislation.

The next principle to which we will pay attention in the context of the presented issues is the principle of equality. As V.O. Riiaka, M.S. Horshnova and K.O. Zakomorna point out, the principle of equality in its correct understanding does not allow for a contradiction with freedom and, together with it, enables each person to realize his or her right to individuality. Freedom gives equality, which allows people to be different without denying their differences. Equality is, first and foremost, equality of opportunity, including the possibility of unequal choices, the possibility of unequal success in education and thus in professional activities, the possibility of adhering to certain religious and political views (Honcharenko et al., 2004: 76). Quite meaningfully, the essence of the principle of equality is revealed in Art. 24 of the Constitution of Ukraine, according to which there can be no privileges or restrictions based on race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics. The equality of the rights of women

and men is ensured by giving women equal opportunities with men in socio-political and cultural activities, in obtaining education and professional training, in work and remuneration for it; special measures regarding labor protection and women's health, establishment of pension benefits; creating conditions that give women the opportunity to combine work with motherhood; legal protection, material and moral support for motherhood and childhood, including the provision of paid vacations and other benefits to pregnant women and mothers (Constitution of Ukraine № 254к/96-ВР, 1996).

It is impossible not to mention the principle of expediency within the framework of our study. In general, expediency is always something optimal that corresponds to some specific conditions, circumstances, without taking into account which the norm will not achieve the goal originally inherent in it. Its application should be based on expediency as one of the main requirements proposed directly to the regulatory document itself. The application of the law without its interpretation, based solely on its letter, is impossible due, first of all, to the imperfection of the law itself, as well as the lack of a real opportunity for the legislator to foresee all the variety of life conditions that will accompany its practical implementation. Compliance with expediency means compliance with the general spirit, the idea of the law (Balobanova, 2007: 167). The content of this principle is that control and supervision activities should be carried out with a certain purpose, and the implementation of costs for its implementation should correspond to the obtained result.

The principles of efficiency and effectiveness are closely related to the above principle. Thus, efficiency is a phenomenon that characterizes the optimality of a purposeful action, method, mechanism of implementation or state of an entity in the presence of alternatives. It is manifested through the difference between the goal and the results obtained, taking into account the resources expended, the goals set, the circumstances of the environment and the time frame (Podolchak, 2007: 205). In turn, effectiveness is a measure of the accuracy of any activity, which is characterized by the achievement of the expected state of a particular object. The scientist notes that effectiveness, on the one hand, depends on the creation of conditions and results of work at a particular facility, and on the other - on the external environment and situations that determine market conditions and the amount of share capital and the amount of situational income from the goods sold. L.I. Fedulova also emphasizes that the factors that influence the effectiveness of an organization are: the potential of the organization's system; balance of the organization's components; processes at all stages of the funds' circulation; level of development of all subsystems; rationality of the relationship between the effectiveness of economic and financial activities; optimal dependence between active and passive adaptive reactions of the system; potential of the competitive status of organizational units, etc. (Fedulova, 2004). Therefore, efficiency, in the context of supervision and control over compliance with labor legislation, means achieving the goals and objectives with maximum productivity and rational use of resources. Effectiveness, in turn, indicates the achievement of specific positive results, such as reducing the number of labor law violations, improving working conditions, and ensuring compliance with labor norms and standards. The use of these principles helps to create a more effective and efficient system of supervision and control aimed at improving the quality of labor relations and safety at work. In addition, the content of the above principle is the rational and reasonable use of resources and measures to ensure the effectiveness and efficiency of control measures, focusing on the most important aspects of labor legislation and safety requirements and ensuring compliance with labor norms and standards.

Thus, the above principles are general and can be applied to all spheres of public life. Therefore, within the framework of the presented issues, it is most appropriate to distinguish special principles. The following are considered to be the most expedient among the relevant principles:

- **The Principle of Systematicity.** Within the framework of the presented scientific study, the content of this principle is that control and supervision over compliance with labor legislation should be carried out on a regular basis, consistently, with a view to achieving the most effective result. In addition, this principle provides for the planning of control measures to ensure the effectiveness and reliability of supervision over working conditions and observance of employees' rights on a permanent and regular basis;
- **The Principle of Transparency and Objectivity.** According to this principle, all procedures and stages of control should be conducted in an open and honest manner, as well as taking into account objective criteria and rules. In addition, this principle provides for the availability of information about the control to all stakeholders, including employees and employers. The control should be based on clear and objective criteria to avoid subjectivity and ensure equal conditions for all parties to labor relations;
- **The Principle of Prevention.** The content of this principle in the context of the presented issues is to anticipate and prevent possible violations of the law before they occur. This means that the supervisory authorities should focus their efforts on prevention and providing recommendations to avoid violations of labor rights and standards. The main goal is to ensure safety and legality in the workplace, reduce the risk of injuries and violations of labor standards by anticipating and responding to possible problems in a timely manner;
- **The Principle of Mutual Responsibility of the Parties of Control and Supervision Activities.** According to this principle, in the case of detection of violations, supervision and control should provide for the possibility of applying appropriate sanctions and liability for those who violated labor legislation. In addition, the content of this principle is that both control subjects and controlled objects in the process of implementing the relevant activity must clearly follow the legal prescriptions, and deviation from them entails the onset of legal liability measures;
- **The Principle of Effectiveness.** In terms of the issues presented, the essence of this principle lies in the ability of the supervision (control) system to achieve positive results and effective influence on working conditions and compliance with labor rights. This principle determines the extent to which the control system is able to respond to violations in a timely manner, detect them and take the necessary measures to eliminate them. Effectiveness means that the control should be effective, contribute to the improvement of working conditions and ensure compliance with labor legislation, as well as respond to changes in the labor sphere and new challenges;
- **The Principle of Flexibility.** This principle implies that the control system should be able to adapt to various conditions and needs in the labor sphere. Control methods and approaches should be flexible and adapted to different labor sectors, types of enterprises and specific features of working conditions. Flexibility also implies the ability of the control system to respond to changes that may occur in the labor sphere, such as changes in legislation, technological innovations or new types of risks;
- **The Principle of Reality and Objectivity.** The principle of reality and objectivity in the supervision and control of compliance with labor legislation emphasizes the need to conduct an objective assessment of the implementation of labor norms and standards based on objective, factual data and evidence. It emphasizes the importance and necessity of avoiding subjective assessments and the influence of personal interests or biases on the monitoring process. In addition, this principle stipulates that control measures should be based on a well-prepared, objective analysis, facts and objective criteria determined in accordance with the law. Using this approach contributes to a fair and realistic assessment of working conditions and compliance with the rights of

employees and employers.

Conclusions

Thus, the conducted scientific research makes it possible to come to the conclusion that the functions and principles of supervision and control over compliance with labor legislation singled out in the article quite meaningfully and fully reveal the internal content and purpose of the corresponding institute from both theoretical and practical points of view. However, as a common shortcoming, it is worth noting the fact that the essence of these categories is not meaningfully disclosed not only at the theoretical, but also at the legislative level, which is a significant gap that not only prevents the normal development of the institution of supervision and control over compliance with labor legislation, but and creates favorable conditions for violation of legal rights, freedoms and interests of labor law subjects.

References

- Balobanova, D. O. (2007). *Theory of criminalization*. Odesa: Odesa Law Academy.
- Constitution of Ukraine* № 254к/96-ВР. (1996).
<http://zakon3.rada.gov.ua/laws/show/254к/96-ВР/conv>
- Fedulova, L. I. (Ed.). (2004). *Management of organizations*. Kyiv: Lybid.
- Honcharenko, V. H., Andrushko, P. P., Bazova, T. P. et al. (2004). *Legal terms*. Dictionary. Kyiv: Lybid.
- Horshenova, M. S., Zakomorna, K. O., Riiaka, V. O. et al. (2006). *Constitutional law of foreign countries*. Kyiv: Yurinkom Inter.
- Iakovets, I., Shymovolos, S., Marianovskyi, A. et al. (2007). *Guide for observation commissions of Ukraine*. Kyiv: PRI.
- Iushchuk, O. I. (2005). *Theoretical problems of the legislative process*. Kyiv: Institute of State and Law named after V. M. Koretskyi.
- Kailo, I. Yu. (2020). Types of functions of supervision and control over compliance with the labor legislation of Ukraine. *Legal science*, 6, 222–239.
- Kaliuta, A. B. (2007). *Administrative and jurisdictional activity of the customs authorities of Ukraine*. Kharkiv.
- Kolodii, A. M. (1998). *Principles of Ukrainian law*. Kyiv: Yurinkom Inter.
- Labor law of Ukraine (2014). Kharkiv: Disa plius.
- Luchenko, D. V. (2003). *Control proceedings*. Kharkiv: National Law. Acad. named after Yaroslav Mudryi.
- Malynovskyi, V. Ya. (2000). *Governance*. Lutsk: Editorial and publishing department «Vezha» of Volyn State University named after Lesya Ukrainka.
- Nesynova, S. V. (2005). *The state-legal mechanism for the protection of the rights of minors in the Ukrainian SSR (60s – early 80s of the 20th century)*. Kyiv: National Academy of Internal Affairs of Ukraine.
- Novikov, B. V., Siniok, H. F., Krush, P. V. (2004). *Basics of administrative management*. Kyiv: Tsentr navchalnoi literatury.
- Palchevskiy, S. S. (2007). *Pedagogy*. Kyiv: Karavela.
- Petryshyn, O. V., Pohrebniak, S. P., Smorodynskyi, V. S. et al. (2014). *Theory of the state and law*. Kharkiv: Pravo.
- Podolchak, N. (2007). Concepts and types of efficiency of management systems of machine-building enterprises. *Bulletin of the Lviv Polytechnic National University*, 23(606), 203–210.

Shkuratova, I. I. (2009). *State management of the development of the agrarian sector of the region in conditions of uncertainty and risk*. Kyiv: Council for the Study of Productive Forces of Ukraine.