



Reforming the State Control (Supervisory) System in the Context of Changing Legislation

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Abstract

Introduction: the article discusses issues of reforming the control and supervisory system in modern Russia. It analyzes stages of formation and development of these bodies, as well as transformation of legislation on control and supervision. *Purpose:* to consider transformation of the state control and supervisory institution in modern Russia; analyze the regulatory framework on the basis of which the “architecture” of the state control and supervisory mechanism is carried out; consider new approaches to the powers of control and supervisory authorities of the Russian Federation, enshrined in the current legislation on control and supervision. *The methodological basis* consists of logical-legal, comparative-legal, descriptive, content analysis, and legal reality cognition methods. *Conclusions:* the analysis of the current legislation in the field of control and supervision suggests that the last stage of reforming the control and supervisory mechanism and its activities, expressed in the development of the Federal Law “On state control (supervision) and municipal control in the Russian Federation”, has a number of advantages: the scope of application of the risk-based approach in the implementation of state control and supervision is expanded; all kinds of control and supervisory measures and tools that can be used by control and supervisory bodies in carrying out their activities are fixed in legislation; the total use of inspections as the main tool in the work of control and supervisory bodies is avoided; a unified system of principles for elaborating a control and supervisory mechanism is created.

Key words: control, supervision; state mechanism; control and supervisory bodies; control and supervisory activities; prevention-oriented (preventive) approach; risk-oriented approach; control and supervisory institute of the state mechanism; selective control; inspection visit.

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Introduction

The relevancy of the study is justified by the appearance of atypical controlled and supervised objects that leads to the need to reform the modern system of control and superviso-

ry bodies and legislate new methods of conducting control and supervisory measures.

The development of the modern state control (supervision) system is determined by the correlation of concepts “control” and “super-

vision”, their reflection in the current legislation and the general theory of law [1].

Special attention should be paid to the last stage of the reform of control and supervisory activities in the Russian Federation. Thus, when conducting a comparative analysis of the Federal Law “On state control (supervision) and municipal control in the Russian Federation” with the Federal Law “On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control”, we identified the following advantages of the first one: detailed regulation of control and supervisory measures carried out by state control (supervisory) bodies; wider use of the risk-oriented approach, new for the state control (supervisory) system; democratization of the mechanism for implementing control and supervisory measures by competent authorities and avoidance of inspections as a bright tool of the control and supervisory system; avoidance of the punitive approach in the implementation of control and supervisory activities and its replacement with a prevention-oriented (preventive) approach, which, according to the law developers, will reduce the administrative pressure of state control (supervision) bodies on controlled and supervised objects when they carry out control and supervisory activities. The law establishes a unified system of principles of state control (supervision), municipal control [2].

It also remains obvious that in modern Russian legislation there is a problem of unification of the conceptual and categorical apparatus of the control and supervisory sphere. It should be emphasized that this problem remains unresolved at the current stage and does not lose its relevance.

The core

Considering the system of control and supervisory bodies and their activities, it is important to note that the system of state bodies and their activities is the link of the entire system of public administration. However, both in the theory of law and the current domestic legislation there is no clear distinction between control and supervision. This question about the relationship of these concepts is still debatable.

There are several explanations for this problem. The legislator does not give a clear distinction between definitions of control and supervision. In a number of regulations, these concepts are treated as synonyms and aggravates the state of the control and supervisory system [3].

There are several approaches to definition of the above concepts in administrative law. According to the first one, control and supervision are identical concepts [4]. For instance, in accordance with Article 2 of the Federal Law “On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control”, control (supervision) is interpreted as follows: “state control (supervision) is activity of authorized state authorities aimed at preventing, detecting and suppressing violations of the requirements of the current legislation of the Russian Federation by legal entities, their managers and other officials, individual entrepreneurs, their authorized representatives”. So, the legislator in this law does not differentiate the terms; similar formulations can be found in a number of articles of the Administrative Code of the Russian Federation, as well as other regulatory legal acts.

Yu.A. Tikhomirov [5] has another point of view that supervision is an inseparable component of control.

Another stance is that supervision is an independent way of exercising state power by competent authorities, aimed at establishing discipline and legality in supervised facilities. At the same time, it is noted that both supervision and control can have elements of the implementation of specific activities that are similar in content. Supporters of this position are F.S. Razarenov, E.V. Shorina, V.F. Lomkina.

We back the point of view of N.M. Konin [2] that control is an organizational and legal way of establishing state discipline and legality in controlled objects, through the implementation of specific state-governmental activities and systematic monitoring of activities of controlled objects in order to establish compliance of their decisions and actions with the regulatory requirements of current legislation. The researcher identifies several mandatory parts of control:

1. Implementation of systematic verification of the real result of the work of controlled objects in comparison with the planned indicators.

2. Implementation of control activities to check the methods and means used to achieve necessary results in terms of their legality, business and official ethics, financial and economic necessity, as well as expediency;

3. After conducting control measures, appropriate necessary measures are taken with respect to controlled objects, which can be both positive and negative.

When considering the term "control" in this way, we note that the purpose of control is not limited solely to establishing law and order, but is also aimed at ensuring expediency and efficiency.

Based on the above, it is possible to deduce the following criteria for distinguishing the terms under consideration: parameters of coverage of the field of activity under consideration; a variety of methods, means and legal forms of implementation of specific activities.

Control is carried out in relation to organizationally subordinate persons (subjects of activity), supervision is the activity of persons (supervised entities) who, when carrying out supervisory activities are not administratively or otherwise subordinate to the supervisory bodies. Considering objects of control and supervisory activities, it is necessary to emphasize that discipline, finance, and other controlled objects are usually included in a wide range of different activities of controlled objects. When compared with a supervision object, this condition changes and some special rules (sanitary, fire-fighting, etc.) are added.

So, the study of terms, such as control and supervision, in their identity, does not seem to be correct. In modern realities, taking into account changes in legislation, special attention should be paid to the proposals on differentiating control, supervision, and their activities, which should be considered as separate, independent functions of state authorities, as well as on consolidating various procedures for their implementation.

When considering the formation and development of the institute of state control and

supervision in the Russian Federation, we will define several conditions under which this institute carries out its activities in the general mechanism of the modern Russian state.

The first condition is that for state power sphere, the activity of the institute of state control and supervision is inseparable from the very nature of the state. In other words, checking the uniform execution and application of laws and other regulations is an essential condition for normal functioning of the state mechanism.

The next condition is a certain development level of the state: presence of written law (laws, resolutions, and orders); division of society into social groups and, as a consequence, clash of their interests (social, political, etc.); fundamental changes in the social and state structure and, as a rule, in the legislation.

Thus, the modern institute of state control and supervision of the Russian Federation has undergone several stages of its development.

The first (transitional) stage is the period from 1991 to 1993. It is characterized by a sharp weakening of state control and complete elimination of the public control institute. These transformations led to the fact that the state control and supervisory mechanism, responsible for the rational use of material and financial resources, was absent in the general mechanism of state bodies.

The second stage covers the time period from 1993 to 2001, characterized by the formation of a unified system of state control bodies and creation of federal districts [6].

Several regulatory legal acts are worth mentioning: 1) the Decree of the President of the Russian Federation No. 730 of June 29, 1998 "On measures to eliminate administrative barriers in the development of entrepreneurship" was the first attempt to systematize legal norms in this sphere. The norms regulating functioning of the state control and supervisory institute were not systematized; 2) the Federal Law No. 134-FZ of August 8, 2001 "On protection of the rights of legal entities and individual entrepreneurs during state control (supervision)", in which, for the first time in the practice of control and super-

visory activities, the legal foundations of the relationship between entrepreneurship and the state were fixed in the process of implementation by control and supervisory bodies of their activities.

As for shortcomings of this law, first, it assigned a fairly wide range of powers to persons exercising state control (for example, the norm regulating that a person exercising state control independently on the basis of his/her own discretion is entitled to make a decision on the suspension of control and supervisory measures in relation to a controlled object, including making a decision on the suspension of the object's activities; all the necessary conditions are created for corruption and unfair competition); second, the legal guarantees of business entities and other controlled entities enshrined in this normative act were not sufficient for systematic development of entrepreneurship.

The third stage (2001–2012) is characterized by the formation of the modern Russian system of state control and supervisory bodies and the mechanism of their work in federal districts.

The Federal Law No. 294-FZ “On protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control” is an important regulatory legal act of that period. In comparison with the previous law, it expanded a list of legal guarantees of business entities, thus increasing the legal protection level. It assigned a number of powers to the Prosecutor's Office: 1) formation of an annual federal plan for implementing control and supervisory measures in relation to controlled and supervised facilities; 2) the need to coordinate unscheduled control and supervisory measures.

The expansion of powers made it possible to reduce a number of control and supervisory measures and systematize the joint work of state control bodies and prosecutor's offices. There appeared a great number of amendments and additions to the Russian legislation on control and supervision.

To give an unambiguous assessment of the legal necessity of frequent amendments and additions to the legislation on control and supervision seems to be a very difficult

task, given the fact that the law under consideration was had been amended and supplemented more than 70 times for 10 years of its operation. The changes were made in several (sometimes opposite) directions: 1) favorable conditions for Russian entrepreneurship development were fixed, 2) an expanded range of powers was assigned to the state control and supervisory bodies, thus influencing development of business entities in the country [7].

The legislative amendments led to the distortion of the legal integrity of the state control and supervisory mechanism, clearly observed in this mechanism functioning. Considering the law enforcement practice of implementing the norms of the above-mentioned law, it is possible to identify a number of violations committed by state control and supervisory bodies in the course of their activities. Examples will be given below in ascending order depending on the number of violations found out:

- limiting powers of economic entities that are not established by law;
- establishing restrictions that infringed upon economic freedom of entrepreneurs when conducting business;
- carrying out inspections in the absence of a regulatory framework (orders, instructions of authorized bodies) for the implementation of verification measures;
- demanding from controlled entities of a larger volume of documentation than required by law and is determined by the subject of verification [8].

The fourth stage of development and formation of the control and supervisory institution is the period from 2012 to the present.

While endless amendments and additions were made to the Law No. 294-FZ “On protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control”, on the basis of the Instruction of the President of the Russian Federation of December 30, 2015 No. Pr-2724 and Paragraph 6 of the Decree of the Government of the Russian Federation of April 1, 2016 No. 559-r, the Government of the Russian Federation and the relevant ministry proceeded to the elaboration of a new draft Federal Law “On state control (supervision)

and municipal control in the Russian Federation”.

Earlier, the legislative initiative adopted certain amendments that concerned the institute of state control and supervision in the Russian Federation. So, the new law established legal and organizational foundations of the system of state control (supervision) and municipal control of the Russian Federation. It is worth noting that the provisions proposed in the draft law concerning changes in the organizational and legal system of control and supervisory bodies at its various levels (federal, municipal) had repeatedly been the subject of scientific discussion both in the scientific community and among representatives of state authorities and business.

For the second time, the draft law was submitted in mid-2019. It determined procedural forms of the control and supervisory mechanism, which was its distinctive feature from the original legislative initiative, focused on changing the system of control and supervisory bodies. At the end of 2019 and the beginning of 2020, the Government of the Russian Federation submitted several draft laws to the State Duma of the Russian Federation for consideration, the first on state control, the second on mandatory requirements.

In mid-2020, the State Duma of the Russian Federation adopted in final reading the draft Federal Law No. 248-FZ of July 31, 2020 “On state control (supervision) and municipal control in the Russian Federation” and the Federal Law No. 247-FZ of July 31, 2020 “On mandatory requirements in the Russian Federation”.

The first law came into force on July 1, 2021 and fixed the updated system of state control and supervision at various levels (federal and municipal). The stages of carrying out specific control and supervisory activities were spelled out in detail, as well as the institutions and tools necessary for implementing this activity and the work of the entire control mechanism.

The novelty of the Law No. 248-FZ “On state control (supervision) and municipal control in the Russian Federation” is the introduction of a risk-based approach into the system of control and supervisory authorities. This approach should be used when control and

supervisory bodies identify objective patterns that could serve as reasons for violation of legislation. Therefore, these structures need to develop risk criteria and indicators, in which the objective reason can be or be determined as negative, and only in this case they will decide whether to carry out the necessary control or supervisory measures [9].

The institute of a risk-based approach for Russia is an innovation in the system of control and supervisory authorities and has been applied in practice quite recently. The Federal Law “On protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control” has a separate chapter devoted to it. Risks of causing damage (harm) is interpreted as a possible occurrence of a fact (event), which may lead to negative consequences, expressed in harm (damage) to the rights of other subjects or their values, protected by law. For this approach to be applied, risks of causing damage (harm) should be estimated by control or supervisory authorities to establish and determine the possibility (probability) of the occurrence of these facts (events), as well as the scale of possible harm (damage) in relation to the values protected by the legislation on control and supervision.

The legislator has laid down another legal concept when developing this regulatory legal act. Its essence lies in the fact that when control and supervisory bodies apply a risk-based approach, its impact extends not to a certain sphere of legal relations, but to all legal relations that arise or may arise in the process of carrying out control and supervisory activities between the body carrying it out and controlled and supervised objects.

Another novelty of the law is the causal relationship between the frequency of activities carried out by control and supervisory bodies and risk categories. Consequently, it can be said that the legislator smoothly moves away from the conduct of scheduled inspections by supervisory authorities without considering characteristics of controlled or supervised entities in favor of the specification of these entities based on characteristics of their activities and risk categories, controlled or supervised entity belong to.

The Federal Law “On state control (super-

vision) and municipal control in the Russian Federation” establishes a new conceptual apparatus, such as “control and supervisory measures”, “control and supervisory actions”. It clearly regulates types of control and supervisory measures, in particular: 1) on-site inspection; 2) control purchase; 3) monitoring purchase; 4) selective control; 5) inspection visit; 6) raid; 7) inspection. So, control and supervisory bodies, when carrying out their activities, move away from the monopoly of inspections.

Besides the law defines the following range of control and supervisory actions: 1) inspection; 2) search; 3) interview; 4) receipt of written explanations; 5) request for documents; 6) sampling; 7) instrumental examination; 8) test; 9) expertise; 10) experiment.

So, it can be concluded that the Law No. 294-FZ contains both norms of a material nature that establish a conceptual and categorical apparatus in the work of the control and supervisory mechanism and regulate the basics of the activities of control and supervisory bodies and procedural norms that establish the procedure for the operation of the entire control mechanism and supervision and ending with the procedure for appealing decisions taken by these bodies.

The legislator focused on operational and less costly measures carried out by control and supervisory bodies in their activities, which positively affected the entire control and supervisory mechanism of the state and made it flexible. In this regard, in scientific literature, the law under consideration is referred to as the control and supervisory procedural code.

Nevertheless, there are shortcomings in the law, one of them is the absence of the term “control and supervisory measure”. So, at the stage of drafting the bill up to the final version of the law under consideration, this term was present in the final version, but, unfortunately, not adopted. At that time, the definition of a control and supervisory measure was defined as a set of interrelated actions, including control and supervisory actions performed by an authorized person(s) and persons involved by him(them) within the framework of control and supervisory proceedings in order to assess compliance by controlled

persons with mandatory requirements. Consequently, the terms “control and supervisory measure” and “control and supervisory action” are correlated as a whole and a part.

One of the main novelties of the regulatory legal act under consideration is an attempt to legislate the principles of state control and supervision. The formation of these principles into a single system, regardless of the level of control and supervision (municipal or federal) [10]. According to the legislator, principles of state control and supervision are a fundamentals and rules that have a general, mandatory and universal character and their effect extends to all participants in the control and supervision system, including such specific areas as organization of control and supervisory activities, work of a unified system of control and supervisory bodies.

Conclusions

After analyzing the development of the state control and supervision institute in Russia and the influence of domestic legislation on it, as well as considering the opinions of a number of legal experts on the essence of control and supervision, we can conclude that the terms are not synonymous. The differentiation of control in the person of control bodies and supervision in the person of supervisory bodies needs legislative consolidation [10].

The study of the current legislation in this field shows that the last stage of reforming the control and supervisory mechanism and its activities, expressed in the development of the Federal Law “On state control (supervision) and municipal control in the Russian Federation”, has a number of advantages: the scope of the risk-based approach application is changed and expanded; control and supervisory measures and instruments are fixed in the law; the total application of inspections as the main tool in the work of control and supervisory bodies is refused; the unified system of principles is created, on the basis of which a control and supervisory mechanism is being worked out and developed [11]. Nevertheless, the problem of systematization and unification of the conceptual and categorical apparatus in the field of control and supervision remains unresolved.

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