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THE PROBLEMS OF GOVERNMENT CONTROL REGULATION IN THE SPHERE OF ECONOMIC ACTIVITY

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Introduction

Economic activity as a matter of fact is a combination of property and organizational elements: in order to develop and sell products, perform work or provide a certain economic service, the "owner" (entrepreneur or the other subject) organizes, at his/her own discretion, the use of the necessary property for this. However, the organizational aspect of economic activity has not only its internal, but also the external manifestation [1, 10]. The external manifestation manifests itself in organizational and economic relations with state authorities and local self-government. According to paragraph 1, Article 8 of the Commercial Code of Ukraine the local self-government authorities are not economic entities, but if they are granted economic competence, they may directly or indirectly influence the realization of economic activity with the help of state control instruments.

Typology of knowledge

The implementation of state control in the field of economic activity is realized according to paragraph 4, Article 3 of the Commercial Code of Ukraine through organizational and economic relations. According to paragraph 6, Article 3 of the Commercial Code of Ukraine we understand managerial and economic relations as relations between economic entities and the subjects of organizational and economic powers in the process of managing economic activity. In this case we can talk not only about the organization of economic activity, but also about its management. However, as O. A. Belyanevych points out, the term "organization" is only reduced to management, which is wrong in essence. In the composition of organizational and economic relations should be allocated not only organizational subordinate relations, which are built on the subordination of the subject of economic entity to the subject of organizational and economic powers, but also organizational coordination relations based on the principles of formal equality. [2, 410, 417].

If we apply this position to the implementation of state control in the field of economic activity, we can distinguish the following. Organizational subordinate relations in case of state control arise as a rule when the controlling authority inspects
the activities of the entity, namely, it checks the compliance of its actions with the current legislation. In fact, this kind of state control has a fiscal component. However, if the state control body aims to help a business entity, in other words to provide a favor (service), consultation, in this case we can talk about organizational coordination relations between the entity and the state control body. The example of such control is the state audit that is carried out by the State Audit Service of Ukraine, as well as the operational audit, when the controller verifies the relevant economic transaction according to the number of indicators (observance of the current legislation, expediency, profitability, timeliness, riskiness) and gives consent (or disagreement) at the stage of signing the contract (agreement), etc.

However, in Ukraine, organizational and coordinating state control, which is built on the principle of partnership between the state control bodies and economic entities, is not actually implemented. Practically, state control is carried out by the state control bodies through the administration, inspection, in other words, in the form of verification of the conformity of actions of the controlled object with the requirements of the current legislation.

Administration means managing an institution, an organization, an enterprise and managing bureaucratically by means of administrative and executive orders. In other words, within the limits of the authority we should carry out inspections, find offenses and bring the perpetrators to justice. In fact, this is the extraordinary appeal by the supervisory authorities in the field of economic activity. These actions are necessary. But they are not enough. Achieving the balance of interests during the state control in economic activity requires the establishment of mutual rights, obligations and responsibilities of members of the organizational and economic relations.

It should be borne in mind that, as a function of state power, state control in the field of economic activity is necessary for the modern society to identify the conflict of private and public interests, resolving contradictions and ensuring balanced social development. The peculiarity of the economic-legal approach is that it is based on the application of the balance-of-interest method in solving any problems and adjustment of problem situations in the field of management. This ensures the application of an equal, balanced approach to the regulation of both horizontal and vertical relations, to any variety of organizational and economic relations, including various types of state control, etc. The implementation of such an approach is ensured by the fact that the
bases of economic-legal regulation are taken constitutional rights and responsibilities of economic entities and other participants of economic relations.

In fact, it is a question of implementing the principle "the rule of law", which allows us to build relations between state control bodies and economic entities under the principle "partnership relations", but so far in Ukraine there is no legislative basis for such legal relations. Accordingly, a concept is required for the provision of services by state authorities to economic entities (the concept of public services), where the preconditions for the organization of economic entities to prevent the protection of their rights will be created.

The implementation of the concept of public services is relevant in Ukraine for a number of reasons. In the market economy conditions, the necessary factor for the sustainable development of economic systems is the harmonization of goals between the system as a whole and its separate parts and elements, between the processes of organization and self-organization in society. This implies the formation of bottom up organizational and economic relations, and not vice versa. The concept of public services involves convergence of legal regulation of state control in the field of economic activity with the help of economic and legal means, which are based on the consideration of the functional activity of the state control bodies as services, and the subjects of management as their clients. It is based on the need to expand the organizational and economic responsibilities and guarantees of the responsibility of state control (supervision) on the one hand, and strengthening the legal protection of the interests of economic entities, on the other hand. Entrepreneurs need to be given more guarantees for defending constitutional rights and freedoms. The creation of legal relations between state control bodies and economic entities under the principle of partnership relations will become a guarantee of their preventive protection. Of course, except in cases determined by law.

A significant role in the implementation of the concept of public services is played by public organizations. The organic link between state and public control should be noted. Whereas the state is people themselves, the state can be considered as an organizational-legal form, which is used by people to organize their life. This position is the basis for raising the question of controlling civil society over the state. Descending from people (the public) is in fact the basis for assessing the state as a public entity Article 5 of the Constitution of Ukraine says that people exercise power through the bodies of state power and bodies of local self-government. Whereas
people, represented by public organizations – public control will have an opportunit
to influence the formation of a policy of exercising state control in the field of economic activity.

Based on the concept of public services, any entity has the right to request a suspension of the unlawful conduct of other economic entities and to demand reimbursement of losses incurred by the state by these entities and also by state control bodies as a result of their unlawful actions or inactivity. Thus, the implementation of legal relations between business entities and state control bodies on the basis of the concept of public services will facilitate the transition from the fiscal nature of state control to the provision of public services by state control bodies. The implementation of these legal relationships is through the system of organizational and economic relations. O.P. Vikhrov proposed such characteristics of organizational and economic legal relations: a) they are formed in the process of management (organization, regulation, management) economic activities; b) the parties to these relations are, on the one hand, the bodies that carry out such management (subjects of organizational and economic authority), and on the other hand – economic entities; c) these relations themselves have economic and managerial (organizational and economic) character, are relations "in vertical direction" [3, 61-62].

Let's apply the following characteristics to the legal relationship that arise in the field of state control over economic activity. The relations of the state control bodies with the subjects of management are formed in the process of management (organization, regulation, management) economic activity. We will analyze such relations according to the generally accepted elements of legal relations: the object and content of legal relationships. The parties of such legal relations are economic entities and state control bodies with economic competence. Whereas, the state control in the field of economic activity is carried out within the framework of organizational and economic legal relations, which according to paragraph 6, Article 3 of the Commercial Code of Ukraine is understood as the relations between economic entities and subjects of organizational and economic authority in the process of managing economic activity.

The object of state control in the field of economic management is economic activity, first of all entrepreneurial activity. According to paragraph 2, Article 3 of the Commercial Code of Ukraine, economic activity, which is carried out to achieve
economic and social results and in order to receive profits, is an enterprise, and business entities are entrepreneurs.

As economists write, "the post-industrial stage of the development of society with its characteristic growth of the role of innovation and socialization of production has set other priorities of management. Not rationalization of the use of resources and the rationalization of the very form and mode of management becomes a key element of entrepreneurial activity. And the goal is to ensure long-term sustainable development of an economic organization, rather than a short-term maximum result today. The key role is not the adaptation to changing conditions in the economy, but the ability to transform the very conditions of management according to the trends of the development of public demand and production [4, 30].

The principal feature of economic activity is its commercial character, which means, regardless of the content of activities – the production of goods, provision of services, performance of work, provides repaid nature and implementation, as a rule, indefinite composition and number of consumers [5, 8]. This feature was reflected in the Law of Ukraine "On Foreign Economic Activity" adopted April 16, 1991, № 959-XII, where the economic activity is any activity, including business, connected with the production and exchange of tangible and intangible goods that act in the form of goods. And also in paragraph 1, Article 3 of the Commercial Code of Ukraine, according to which economic activity is the activity of economic entities in the field of social production, aimed at the production and sale of products, the performance of work or the provision of value-added services that have price accuracy.

The economic activity is the subject of state control in all spheres of management. In particular: 1) the preservation and spending of funds and property values by the subjects of economic relations – on the status and reliability of accounting and reporting; 2) financial, credit relations, currency regulation and tax relations – subject observation to compliance by economic entities with credit obligations to the state and accounting discipline, on compliance with the requirements of currency legislation, tax discipline; 3) prices and price formation – on compliance with the subjects of management of state prices for products and services; 4) monopoly and competition – on compliance with antimonopoly – competitive legislation; 5) land relations – for the use and protection of land; water relations and forestry – for the use and protection of water and forests, the reproduction of water resources and forests; 6) production and labor – for the safety
of production and labor, on compliance with labor legislation; for fire, ecological, sanitary-hygienic safety; observing the norms and rules, which established the mandatory requirements for the conditions of economic activity; 7) consumption – about the quality and safety of products and services; 8) foreign economic activity – on technological, economic, environmental and social security issues (paragraph 3, Article 19 of the Commercial Code of Ukraine).

In addition, despite the fact that licensing, patenting and establishment of quotas according to Article 12 of the Commercial Code of Ukraine are the means of state regulation of economic activity, there are some reasons to assert that in practice the latter are means of carrying out preliminary control over observance of the norms of economic legislation. Moreover, the State Fiscal Service, although it is an administrative, fiscal authority, nevertheless, and it has economic competence and is able to carry out economic control over the state of filling the revenue part of the budget. Realizing this, the developers of the Commercial Code of Ukraine provided Article 17 of the Civil Code of Ukraine "Taxes in the Mechanism of State Regulation of Economic Activity", according to which the tax system should be based on the principles of economic feasibility, social justice, a combination of interests of society, state, territorial communities, economic entities and citizens. Accordingly, in fulfilling its economic function, the State Fiscal Service of Ukraine, as a state control body, should combine the optimal combination of fiscal and incentive functions of taxation; stick to stability over several years with respect to the general rules of taxation; eliminate double taxation; promote coherence with tax systems of other countries. The execution of such tasks is extremely necessary for solving the most important economic and social tasks of the state in the implementation of government control in the field of economy management.

The state economic control (organizational-coordinating) can be carried out by state bodies, which at first glance are not at all related to control (in the sense of inspection), for example, the Ministry of Economy of Ukraine. A characteristic feature of control is the presence of feedback. Accordingly, on the basis of such instruments of state control as collection of information, the Ministry may carry out the work of the employment coordinator of entrepreneurs in the economic sphere. For example, this Ministry can conduct an annual survey of large enterprises about their intentions and the types of business they are planning to do. After processing information, the Ministry can recommend the niches to small businesses, that is.
those types of economic activity, where entrepreneurs can show organizational innovations, other initiative activities of entrepreneurs (for the manufacture and sale of products, performance of work or services), which will result in obtaining maximum profits. We are talking about the development of basic elements of the system of information support for small businesses and access to databases about the needs of the economy. Taking into account that effectively organized state economic control fulfils the function of feedback in practice, the information provided by the bodies of state control is the basis for the correction of state measures to support business. Such support can be realized in the following areas: 1) the establishment of public organizations and funds for the support of entrepreneurship, preferably with their regional representatives; 2) the information support for entrepreneurship, access to technical and software tools, especially at the local level; 3) the implementation of measures to prevent the use of bank lending to entrepreneurs in hostile takeover attempts. This is especially true of credit agreements involving state-owned enterprises; 4) the improvement of the legislative and regulatory framework in support of small and medium-sized enterprises (based on information obtained during state control measures).

In view of the above considerations, let's summarize the following. Firstly, the weakened and ineffective model of state control in the field of economic activity entails both real and potential threats to the Ukrainian economy. The state control in the sphere of economic activity needs to be optimized in the part of elimination of groundless grounds for the implementation of state supervision (control) measures by state control bodies; The simplification of the permissive system, the involvement of public organizations in the formation of the basic principles of the state regulatory policy, the improvement of technical support in the organization of state control, the reduction of pressure on entrepreneurs for and on behalf of controlling bodies. Such actions are economic and managerial (organizational and economic) in character and form the meaning of state control in the field of economic activity.

Secondly, ensuring the compliance of state control in the field of economic activity with the requirements of the Constitution of Ukraine at the present stage requires: 1) the transformation of the purely supervisory function of state control structures for adherence the legitimateness into the function of promoting the implementation of constitutional rights and freedoms of economic entities; 2) the implementation of the concept of state control in the field of economic activity, as
public services. Thus, the basis for the organization of preventive protection of the rights and freedoms of the subject of management is formed [6, 11].

Thirdly, the unification of legal regulation of the activities of state control bodies for the provision of public services should take place through the consultations with the management of the civil service with representative groups of clients in order to determine the conditions for the best provision of unified services, the creation in the body of state control some training centers that will help to ensure the quality of public services.

Summary

Our life is dynamic; it is constantly changing and therefore requires revision or even modernization of the function of state control. Modern state control bodies should assist economic entities, for example, through free consultations, training arrangements, etc. Currently, according to statistics, only a third of Ukrainian population is engaged in or wants to do business. Therefore, in today's unstable conditions, state control bodies should be interested in supporting entrepreneurship in Ukraine. Accordingly, the relations of state control in the field of economic activity should be built taking into account the principle of partnership relations between state control bodies and business entities. Of course, except for the cases stipulated by law.

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