

UDC 342.9

DOI <https://doi.org/10.32849/2663-5313/2023.3.05>**Oleksii Kucher,***Candidate of Juridical Science, Head of the State Regulatory Service of Ukraine, 9/11 Arsenalna street, Kyiv, Ukraine, postal code 01011, oleksii\_kucher@ukr.net***ORCID:** [orcid.org/0000-0003-3742-2154](https://orcid.org/0000-0003-3742-2154)

Kucher, Oleksii (2023). Legal nature of the status of entities exercising state supervision over compliance with labour law. *Entrepreneurship, Economy and Law*, 3, 32–37, doi <https://doi.org/10.32849/2663-5313/2023.3.05>

## LEGAL NATURE OF THE STATUS OF ENTITIES EXERCISING STATE SUPERVISION OVER COMPLIANCE WITH LABOUR LAW

**Abstract. Purpose.** The purpose of the article is to describe the legal nature of the status of entities exercising state supervision over compliance with labour law. **Results.** Based on the review of scientific views of scholars, in particular, representatives of labour and administrative law, the article reveals the legal nature of the status of entities exercising state supervision over compliance with labour law. The author summarises that, within the scope of the problematic issue presented, labour and administrative law provisions cannot be separated from each other, since they are inextricably linked and are aimed at ensuring high-quality and efficient control and supervision activities in the relevant field. It is established that the Labour Code of Ukraine as a fundamental legal instrument for regulating the institution of supervision and control over compliance with labour legislation of Ukraine is characterised by a number of negative aspects, including: 1) the outdated nature of the Labour Code of Ukraine, which currently consists of legal provisions adopted under different historical and economic conditions, and therefore this legal instrument cannot adequately regulate modern labour relations; 2) the Labour Code of Ukraine regulates a limited range of issues related to the institution of supervision and control over compliance with labour legislation of Ukraine; 3) the prospects for improving the provisions of the Labour Code of Ukraine are rather doubtful, since the provisions of the Draft Labour Code of Ukraine in the context of regulating supervision and control over compliance with the labour legislation of Ukraine are ambiguous, may lead to a number of further legal conflicts, and do not regulate some issues to which the legislator has paid due attention in the Labour Code of Ukraine. **Conclusions.** The author concludes that the legal status of entities exercising state supervision over compliance with labour law is dual in nature. This is explained by the fact that: firstly, labour law provisions: a) determine the subject matter of supervision and control in the field of labour; b) consolidate the legal status of the main participants in labour relations (employees and employers); c) the activities of certain supervisory and controlling entities are focused exclusively on labour and closely related legal relations; second, the administrative law regulates the activities of the vast majority of state entities exercising supervision and control in the field of labour. In addition, control activities are directly related to management and other administrative activities.

**Key words:** supervision, control, legal nature, status, entity, legislation, labour, labour law, administrative law.

### 1. Introduction

Supervision and control, regardless of its scope, is a complex activity by its nature and content, covering many aspects of the functioning of a particular object. Moreover, supervision and control are not carried out "on their own", it is implemented by specially authorised entities, which in turn have their own special legal status. The legal status of entities exercising state supervision over compliance with labour law is a set of elements defined by the provisions of current legislation which, in their unity, determine the place of the relevant

entity in the system of legal relations under study, and also outline its role and purpose in terms of control activities in the area under study. It should be noted that the legal status of these entities has its own special legal nature. The latter, in turn, is a set of features that reflect the essence of a particular phenomenon and enable it to be distinguished from similar legal phenomena" (Ilanovska, 2015).

Some problematic aspects related to the activities of entities exercising state supervision over compliance with labour law have been considered in their scientific works by:

D.V. Burlachenko, S.I. Dvornyk, I.Yu. Kailo, A.V. Melnyk, Ye.M. Popovych, M.M. Sirant, H.V. Terela and many others. However, despite a considerable number of scientific studies, the legal literature lacks comprehensive scientific research on the legal nature of the status of entities exercising state supervision over compliance with labour law.

That is why the purpose of the article is to describe the legal nature of the status of entities exercising state supervision over compliance with labour law.

## **2. The status of entities exercising state supervision over compliance with labour law**

With regard to the legal nature of the status of entities exercising state supervision over compliance with labour law, it should be noted that there are two polar perspectives in the legal literature on the provisions of which branch of law govern their legal status. For example, the first group of scholars is convinced that the status of these entities is regulated exclusively by labour law, justifying this by the specifics of legal relations arising in the field of labour. Other scholars believe that the existence of relations of a state and administrative nature arising in the course of control and supervision activities necessitates that they be regulated by means of administrative law.

For example, the review of the perspectives of labour law scholars reveals that the opinion of D.V. Burlachenko, who has studied supervision and control over compliance with labour legislation as an institution of labour law, is worth citing. In particular, the author analyses the current legislation of Ukraine on supervision and control over compliance with labour legislation, labour codes of some foreign countries, and the draft Labour Code of Ukraine. The author determines the place of the legal institution of supervision and control over compliance with labour legislation in the labour law system of Ukraine. In addition, the author concludes that supervision and control over compliance with labour legislation as a specific legal institution in the labour law system of Ukraine is defined as a set of legal provisions which consolidate the concept, functions, main tasks, subjects, objects, forms of supervision and control over compliance with labour legislation, and the system and powers of the bodies which exercise them (Burlachenko, 2019).

Another scholar Ye.M. Popovych focuses his dissertation research on supervision and control over compliance with labour legislation of Ukraine. In his scientific work, the scholar paid a lot of attention to the activities of specially authorised entities in the relevant field. The author emphasises that the subject matter of control in the field of compliance with labour

legislation is direct (actual) labour and closely related relations, which are specified in the relevant conduct arising between the objects of control - participants in these legal relations. On the other hand, the entities exercising control over compliance with labour legislation are controlling bodies that are different in nature and character and have the relevant powers (Popovych, 2003). Ye.M. Popovych focuses on describing the legal status of these entities, emphasising that their status is of labour law nature.

H.V. Terela highlights the labour law nature of supervision and control in the field of labour. The author emphasises that supervision and control over compliance with labour legislation is a multidimensional, socially valuable legal phenomenon which occupies a prominent place in the legal system. Firstly, it is based on the idea of social justice and social partnership, which is a characteristic feature of labour law control. Secondly, supervision and control act as a link between rulemaking and law application, which is formally reflected in the availability of a range of legal means, including legal provisions, legal procedures, and procedural forms in which supervision and control measures are implemented. Thirdly, social control in the field of labour, including state supervision and control and public control, acts, on the one hand, as a means of state social policy, a component of the social function of the state, and, on the other hand, is an indicator of "feedback" in the control system, the effectiveness of civil society institutions, and social partnership. Accordingly, the social value of control is to ensure stability, decent work, social security, law and order, and thus to balance public and private interests. The realisation of this social value is the main purpose, the strategic goal of supervision and control (Terela, 2020).

In his scientific study, I.Yu. Kailo reveals the advantages and disadvantages of legal framework for supervision and control over compliance with labour legislation of Ukraine in modern conditions, as well as highlights that this institution is based on labour law in general and defines the legal status of authorised entities in particular. Therefore, the author emphasises that the Labour Code of Ukraine as a fundamental legal instrument for regulating the institution of supervision and control over compliance with labour legislation of Ukraine is characterised by a number of negative aspects, including: 1) the outdated nature of the Labour Code of Ukraine, which currently consists of legal provisions adopted under different historical and economic conditions, and therefore this legal instrument cannot adequately regulate modern labour relations; 2) the Labour

Code of Ukraine regulates a limited range of issues related to the institution of supervision and control over compliance with labour legislation of Ukraine; 3) the prospects for improving the provisions of the Labour Code of Ukraine are rather doubtful, since the provisions of the Draft Labour Code of Ukraine in the context of regulating supervision and control over compliance with the labour legislation of Ukraine are ambiguous, may lead to a number of further legal conflicts, and do not regulate some issues to which the legislator has paid due attention in the Labour Code of Ukraine (Kailo, 2020).

Further considering the legal nature of the status of entities exercising supervision and control over compliance with labour legislation, it should be noted that, contrary to the opinion of scholars representing the labour branch of law, experts in administrative law are convinced that the latter are still an institution of administrative law. For example, M.M. Sirant emphasises that the administrative nature of the status of the entities under study is determined by the specifics of their activities. With regard to this opinion, the author emphasises that the State Labour Service is empowered to authorise certain actions by registering them and issuing the relevant permit. State licensing is the recognition by the authorised body, the State Labour Service, of the right of a business entity to carry out entrepreneurial activities, provides administrative supervision over such activities and, in case of violation of the requirements of law by the licence holder, may suspend and/or terminate its validity. The administrative nature of licensing is reflected in the fact that the Law "On Licensing of Economic Activities" provides for the issuance of a permit to an applicant for a specific type of activities. Thereafter, from the date of obtaining the licence, the licensing authority will ensure constant and systematic administrative supervision of the licensee to ensure compliance with the rules, standards and requirements approved by the law and by-laws (Sirant, 2022). Administrative supervision measures can be implemented by the licensing authority by conducting inspections of the licensee's activities and drawing up acts based on the results of the inspections, which will contain the identified violations of licensing requirements and the terms of mandatory elimination. It is not only the State Labour Service that has the right to exercise supervisory powers over business entities to ensure compliance with licensing requirements. Such supervisory powers may be exercised, in particular, by tax authorities, which, upon detection of a relevant offence, notify the licensing authority (Sirant, 2022).

Another scholar, A.V. Melnyk, in her thesis research comes to some interesting conclusions. First of all, the author emphasises that the issues of supervision and control have been studied by representatives of various sciences, but mainly by specialists in the field of administrative law. This is quite natural, since the legal relations of supervision and control are closely related to the concept of public administration and have a state power character, since the supervisory and control bodies are vested with power by the state over employers. In public administration, control is closely related to other management functions and at the same time is intended to assess the compliance of these functions with the tasks set by the management. Control ensures the specificity of management and its implementation in accordance with the decisions made. Through control, the management entity receives information about the results of its activities, as well as about mistakes and changes in the situation that may lead to failure to achieve the set objectives or to obtain unpredictable results (Melnyk, 2019). In addition, the author identifies the following features of the powers of public authorities exercised in administrative relations. Firstly, these powers are exercised at the discretion of the relevant public authority, so administrative relations arise exclusively at the will of this authority. Secondly, the parties to these relations are the authorised state body and the employer's representatives who are subject to administrative liability. Thirdly, the content of these relations is the right of the state body to bring the employer's representative to administrative liability, as well as the duty of the employer's representative to bear the burden of adverse consequences for an administrative offence. Fourthly, the grounds for termination of these relations are the expiry of the term of administrative liability, as well as the execution of the resolution on administrative penalty. Fifthly, these powers have their own procedural formalisation in the form of a protocol and a resolution on an administrative offence. These acts may establish the fact of an administrative offence (Melnyk, 2019). Accordingly, A.V. Melnyk once again emphasises the administrative and legal nature of the status of entities exercising supervision and control over compliance with labour legislation. In addition, this scholar rather interestingly highlights the fact that it is impossible, for example, not to notice interference in the organisational and economic activities of the employer by the structural units of the State labour protection supervision in the process of exercising their powers, such as: organising and directing the work of commissions for special investigation of fatal and group accidents; taking measures to prevent inju-

ries and accidents at all enterprises, institutions and organisations; developing measures to improve the work on occupational safety and health and to prevent accidents, occupational diseases and accidents, etc. The administrative nature of these measures is obvious and is due to the close connection between the bodies exercising control functions (Melnyk, 2019).

### **3. Subordination of participants in legal relations on supervision and control over compliance with labour legislation**

According to N.B. Bolotina, the state of subordination of the participants in legal relations on supervision and control over compliance with labour legislation is typical for administrative and legal relations. Legal relations on supervision and control over compliance with labour and occupational health and safety legislation do not arise with the consent of the parties (which is typical for labour relations), they may also arise against the will of the other party. The administrative and legal nature of legal relations on supervision and control over compliance with labour legislation is also evidenced by the content of these legal relations, which is that the supervisory authority may give the owner of an enterprise, institution, organisation (its authorised body) on behalf of the State power orders which the latter must unconditionally comply with, and in case of violation of labour and occupational health legislation, this authority may apply any administrative penalties (Bolotina, 2008; Burlachenko, 2021). Therefore, N.B. Bolotina concludes that legal relations on supervision and control over compliance with labour and occupational health and safety legislation are administrative and legal and, in relation to labour relations, are external. The only exception is the legal relations of public control over compliance with labour legislation, since its participants are the owner of the enterprise, institutions, organisations and labour collectives through their elected representatives, as well as trade unions and their associations in the course of public control over compliance with labour legislation (Bolotina, 2008; Burlachenko, 2021).

It should be noted that S.I. Dvornyk's scientific position is of particular interest, as based on the above analysis of legal provisions regulating relations in the field of state supervision and control over compliance with labour legislation, he argues that regulatory provisions of labour law and administrative law in this field are intrinsically linked. Since the object of encroachment of administrative offences in the field of labour protection is labour rights and guarantees established by labour legislation, this connection is quite reasonable, since administrative law is a comprehensive branch of law.

Based on the analysis made, the author believes that legal relations on state supervision and control over compliance with labour legislation are subject to administrative and legal regulation (Dvornyk, 2018). Therefore, according to this scholar, due to the dual nature of legal regulation, state supervision and control over compliance with labour legislation is subject to legal regulation by administrative law in terms of regulating the activities of the State Labour Service of Ukraine - a public state body. With regard to relations arising from labour relations, the issue of control and supervision over compliance with labour legislation is regulated by labour law. On the one hand, this dual nature of legal regulation proves the interdisciplinary relationship between administrative and labour law, and on the other hand, it may create problems in legal regulation, as duplication of norms or conflicts between them, or gaps between them may negatively affect the development of existing legal relations in the field of supervision and control over compliance with labour legislation. Solving the problem of legal framework for state supervision and control over compliance with labour legislation is of great practical importance for ensuring the effective operation of the State Labour Service of Ukraine (Dvornyk, 2018).

### **4. Conclusions**

Thus, this study allows stating that both labour law scholars and administrative law scholars substantiate their position regarding the legal nature of the status of entities exercising state supervision over compliance with labour law in a fairly substantive manner. However, we are convinced that one cannot unequivocally support one particular position. We argue that the legal status of entities exercising state supervision over compliance with labour law is dual in nature. This is explained by the fact that:

- First, labour law provisions: a) determine the subject matter of supervision and control in the field of labour; b) consolidate the legal status of the main participants in labour relations (employees and employers); c) the activities of certain supervisory and controlling entities are focused exclusively on labour and closely related legal relations;

- Second, the administrative law regulates the activities of the vast majority of state entities exercising supervision and control in the field of labour. In addition, control activities are directly related to management and other administrative activities.

Therefore, in this context, labour and administrative law provisions cannot be separated from each other, since they are inextricably linked and are aimed at ensuring high-quality and efficient control and supervision activities in the relevant field.

## References:

- Bolotina, N.B.** (2008). *Trudove pravo Ukrainy* [Labor law of Ukraine]. K.: Znannia (in Ukrainian).
- Burlachenko, D.V.** (2019). Nahliad i kontrol za doderzhanniam zakonodavstva pro pratsiu yak institut trudovoho prava [Supervision and control over compliance with labor legislation as an institution of labor law]. *Prykarpatskyi yurydychnyi visnyk*. no. 1(26). pp. 31–35 (in Ukrainian).
- Burlachenko, D.V.** (2021). Nahliad i kontrol u systemi zakhystu trudovykh prav i svobod [Supervision and control in the system of protection of labor rights and freedoms]. *Candidate's thesis*. Odesa: Natsionalnyi universytet «Odeska yurydychna akademiia» (in Ukrainian).
- Dvornyk, S.I.** (2018). Pravove rehuliuвання derzhavnoho nahliadu i kontroliu za dotrymanniam zakonodavstva pro pratsiu normamy trudovoho ta administratyvnoho prava: porivniálny aspekt [Legal regulation of state supervision and control over compliance with labor legislation by labor and administrative law: a comparative aspect]. *Pryvatne ta publichne pravo*. no. 2, pp. 99–102 (in Ukrainian).
- Ianovska, O.H.** (2015). Pravova ta sotsialna pryroda advokatskoi profesii [Legal and social nature of the legal profession]. *Visnyk kryminalnoho sudochynstva*, no. 2. pp. 108–113 (in Ukrainian).
- Kailo, I.Iu.** (2020). Perevahy ta nedoliky pravovoho rehuliuвання nahliadu i kontroliu za dotrymanniam trudovoho zakonodavstva Ukrainy v suchasnykh umovakh [Advantages and disadvantages of legal regulation of supervision and control over compliance with labor legislation of Ukraine in modern conditions]. *Yurydychna nauka*. no.7(109). pp. 263–271 (in Ukrainian).
- Melnyk, A.V.** (2019). Administratyvno-pravovi zasady zdiisnennia nahliadu i kontroliu za dotrymanniam trudovoho zakonodavstva Ukrainy [Administrative and legal principles of supervision and control over compliance with the labor legislation of Ukraine]. *Candidate's thesis*. Ternopil (in Ukrainian).
- Popovych, Ye.M.** (2003). Nahliad i kontrol za dotrymanniam trudovoho zakonodavstva Ukrainy [Supervision and control over compliance with the labor legislation of Ukraine]. *Candidate's thesis*. Xarkiv (in Ukrainian).
- Sirant, M.M.** (2022). Poniattia nahliadu u sferi promyslovoi bezpeky [The concept of supervision in the field of industrial safety]. *Naukovi zapysky Lvivskoho universytetu biznesu ta prava*. no. 32, pp. 60–67 (in Ukrainian).
- Terela, H.V.** (2020). Sotsialna tsinnist ta pryznachennia nahliadu i kontroliu za doderzhanniam zakonodavstva pro pratsiu [Social value and purpose of supervision and control over compliance with labor legislation]. *Porivniálny-analitychne pravo*. no. 4. pp. 365–374 (in Ukrainian).

**Олексій Кучер,**

кандидат юридичних наук, голова Державної регуляторної служби України, вул. Арсенальна, 9/11, Київ, Україна, індекс 01011, [oleksii\\_kucher@ukr.net](mailto:oleksii_kucher@ukr.net)

**ORCID:** [orcid.org/0000-0003-3742-2154](https://orcid.org/0000-0003-3742-2154)

## ПРАВОВА ПРИРОДА СТАТУСУ СУБ'ЄКТІВ НАГЛЯДУ І КОНТРОЛЮ ЗА ДОДЕРЖАННЯМ ЗАКОНОДАВСТВА ПРО ПРАЦЮ

**Анотація. Мета.** Метою статті є охарактеризувати правову природу статусу суб'єктів нагляду і контролю за додержанням законодавства про працю. **Результати.** У статті, спираючись на аналіз наукових поглядів учених, зокрема представників у галузі трудового та адміністративного права, розкрито правову природу статусу суб'єктів нагляду і контролю за додержанням законодавства про працю. Узагальнено, що в рамках представленого проблемного питання норми трудового та адміністративного права не можна відокремлювати одне від одного, адже вони нерозривно пов'язані між собою та спрямовані на забезпечення якісної та ефективної контрольної-наглядової діяльності за відповідним напрямом. З'ясовано, що Кодекс законів про працю України як фундаментальний нормативно-правовий акт для правового регулювання інституту нагляду і контролю за дотриманням трудового законодавства України характеризується і низкою негативних моментів, серед яких: 1) застарілість Кодексу законів про працю України, який сьогодні складається з правових норм, прийнятих за різних історичних та економічних умов, тому даний нормативно-правовий акт не може адекватно регулювати сучасні трудові відносини; 2) урегулювання нормами Кодексу законів про працю України обмеженого кола питань, пов'язаних з інститутом нагляду і контролю за дотриманням трудового законодавства України; 3) перспективи вдосконалення норм Кодексу законів про працю України є доволі сумнівними, оскільки положення проєкту Трудового кодексу України у контексті врегулювання нагляду і контролю за дотриманням трудового законодавства України є неоднозначними, можуть спричинити виникнення низки правових колізій у майбутньому, а також не врегульовують деякі питання, яким законодавець приділив належну увагу в Кодексі законів про працю України. **Висновки.** Зроблено висновок, що природа правового статусу суб'єктів нагляду і контролю за додержанням законодавства про працю має подвійний характер. Зазначене пояснюється тим, що: по-перше, за допомогою норм трудового права: а) визначається предмет

нагляду і контролю у сфері праці; б) закріплюється правовий статус основних суб'єктів трудового права (працівників та роботодавців); в) діяльність окремих суб'єктів нагляду і контролю орієнтована виключно на сферу трудових та тісно пов'язаних із ними правовідносин; по-друге, за допомогою норм адміністративної галузі права впорядковується діяльність переважної більшості державних суб'єктів здійснення нагляду і контролю у сфері праці. Окрім того, контрольна діяльність безпосередньо пов'язана із здійсненням управлінської та іншої адміністративної діяльності.

**Ключові слова:** нагляд, контроль, правова природа, статус, суб'єкт, законодавство, праця, трудове право, адміністративне право.

*The article was submitted 16.10.2023*

*The article was revised 07.11.2023*

*The article was accepted 27.11.2023*