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## ADMINISTRATIVE AND LEGAL STATUS OF ENTITIES EXERCISING STATE SUPERVISION OVER COMPLIANCE WITH LEGISLATIVE AND OTHER LABOUR REGULATIONS

**Abstract. Purpose.** The purpose of the article is to describe the administrative and legal status of entities exercising state supervision over compliance with legislative and other labour regulations. **Results.** Relying on the analysis of scientific views of scholars and current legislation, the article identifies the range of key actors exercising supervision over compliance with labour legislation. The author describes the administrative and legal status of these entities. The most characteristic features and specifics of the administrative and legal status of the entities under study authorised to supervise compliance with labour legislation are identified. It is emphasised that the State Labour Service is a key entity for supervision and control over compliance with labour legislation. It is found that the Cabinet of Ministers of Ukraine exercises its controlling powers in the process of: implementing programmes of economic, social and cultural development of Ukraine in general and its individual regions; implementing financial, price, monetary, credit and tax policies; creating nationwide and other funds; eliminating the consequences of natural disasters and catastrophes; making policies on education, science, youth and sports, culture, nature protection, environmental safety, and nature management; taking the necessary measures to ensure the security and defence capability of Ukraine; ensuring Ukraine's foreign economic activities and customs affairs; managing the work of ministries, public services, agencies, inspectorates and other state executive bodies. **Conclusions.** It is concluded that each of the entities exercising supervision and control over compliance with labour legislation has its own special administrative and legal status, the specificity of which is due to: first, the competence limiting their control and supervision activities; second, powers (since each actor has a specific set of subjective rights and legal obligations inherent only to it); third, a special entity subject to supervision and control activities, which in turn determines the set of tools and means used by supervisory institutions.

**Key words:** administrative and legal status, entities, state supervision, legislative regulations, bylaws.

### 1. Introduction

One of the most important activities of the entities exercising state supervision over compliance with labour legislation is to examine the state of compliance with the provisions of legislative and other regulations on labour. This approach requires that the relevant state institutions have a special administrative and legal status. These actors can be most appropriately grouped into: 1) supreme state authorities that exercise general supervision and control over compliance with the legislation in force, including in the field of labour (the Verkhovna Rada of Ukraine, the President and the Cabinet of Ministers); 2) specialised entities, among which the State Labour Service plays a key role.

The legal status of the above-mentioned institutions will be the focus of this research.

Certain problematic aspects of the activities of entities of supervision and control over compliance with labour legislation have been considered in the scientific works by: S.I. Dvornyk, V.I. Zahumennyk, I.Yu. Kailo, A.V. Melnyk, Yu.O. Poliakova, Ye.M. Popovych, V.V. Protsenko, M.M. Sirant, H.V. Terela, V.M. Shapoval, and many others. However, despite a considerable number of scientific achievements, the scientific literature lacks comprehensive research on the administrative and legal status of entities exercising state supervision over compliance with labour laws and regulations.

Thus, the purpose of the article is to describe the administrative and legal status of entities exercising state supervision over compliance with legislative and other labour regulations.

## **2. The Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine as entities exercising state supervision over compliance with legislative and other labour regulations**

First of all, we will focus on the Verkhovna Rada of Ukraine (Parliament). The main powers of the Verkhovna Rada of Ukraine, according to Article 85 of the Basic Law, are as follows: adoption of laws; approval of the State Budget of Ukraine and amendments thereto, control over the implementation of the State Budget of Ukraine, and decision-making on the report on its implementation; determination of the principles of domestic and foreign policy, implementation of the strategic course of the state for Ukraine's full membership in the European Union and the North Atlantic Treaty Organisation; etc. (Constitution of Ukraine, 1996). Therefore, it is quite fair to say that one of the key powers of the VRU is to exercise parliamentary control.

V.M. Shapoval believes that parliamentary control is the activity of the parliament, its bodies and officials, as well as other state bodies and officials functionally joint with the parliament for the relevant purpose in exercising control over the executive branch, primarily the government, which implies checking the implementation of laws, decisions, etc. M.M. Utiashev and A.A. Kornilaieva argue that parliamentary control is a set of various means of constant monitoring and verification of the system's activities, as well as of stopping violations detected as a result of such verification and preventing possible inconsistencies, carried out by the supreme legislative authority (Utiashev and Kornilaieva, 2001).

The Ukrainian Parliament Commissioner for Human Rights exercises parliamentary control over the observance of constitutional rights and freedoms of man and the citizen. The Ukrainian Parliament Commissioner for Human Rights is a party to many constitutional and legal relations regarding the protection of human rights and freedoms. The legal status is regulated by the Law "On the Ukrainian Parliament Commissioner for Human Rights". According to Article 3 of this Law, the purpose of the parliamentary control exercised by the Commissioner is: protection of human and civil rights and freedoms proclaimed by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; observance and respect for human and civil rights and freedoms by the entities referred to in Article 2 of this Law; pre-

vention of violations of human and civil rights and freedoms or facilitating their restoration; further harmonisation of Ukrainian legislation on human and civil rights and freedoms with the Constitution of Ukraine and international standards in this field; improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms; prevention of any form of discrimination in the exercise of human rights and freedoms; promotion of legal awareness of the population and protection of confidential information about a person (Law of Ukraine On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, 1997).

With regard to the administrative and legal status of the Verkhovna Rada of Ukraine as an entity exercising supervision and control over compliance with labour legislation, it should be noted that its particularities are due to: first, the fact that parliamentary control is mostly generalised and aimed at checking the state of compliance with the current legislation by the supreme state authorities, including those that implement public policy on labour; second, the list of powers vested in the VRU is inherent exclusively in this legislative body; thirdly, the parliament's control and supervision activities only indirectly affect key parties to labour relations.

The next actor of supervision and control over compliance with labour legislation is the President of Ukraine. According to the Constitution of Ukraine, the President of Ukraine is the guarantor of state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, human and civil rights and freedoms, and the existence of these fundamental responsibilities determines his special place in the state mechanism (Constitution of Ukraine, 1996; Poliakova, 2013). Moreover, Yu.O. Poliakova argues that the wide range of powers of the President, defined by Article 106 of the Constitution, enables to assert that the institution of presidential power in the current constitutional context is a factor in ensuring proper and effective governance of the state, which can be exercised exclusively by the head of state, since, according to the constitutional provisions, the President of Ukraine cannot transfer his powers to other persons or bodies. This means that the President of Ukraine exercises his powers independently in the political field, but, at the same time, in terms of organisation, in order to exercise his powers, the head of state relies on advisory, consultative and other subsidiary bodies and services, the composition and structure of which he determines independently, within the limits of funds provided for in the State Budget

of Ukraine that are directed to the activities of these structures (Constitution of Ukraine, Article 106, clause 28) (Constitution of Ukraine, 1996; Poliakova, 2013).

As the head of state, the President has a wide range of powers in the legislative, executive and judicial fields, including control. The scientific literature review reveals that presidential control is exercised in two main forms: a) direct presidential control; b) presidential control through special structures (Tsependa, 2019). The President of Ukraine exercises control over the activities of the executive branch of government directly, but mainly through his Office. It exercises control over the preparation of issues related to the resignation of the Government, dismissal of individual ministers, heads of central executive bodies, military commanders appointed by it, diplomatic representatives in foreign countries, heads of local state administrations and other officials. The Presidential Office is responsible for ensuring the President's control over the activities of the executive branch (Svyda, 1998). In the field of legislative power, V.M. Tsependa emphasises that the controlling powers of the President of the state are manifested in the following: control over the constitutionality of acts of the Verkhovna Rada of Ukraine; control over the constitutionality of acts of representative authorities of the public actors; participation of the President in the legislative activities of the Verkhovna Rada. According to the Constitution, the President has the right of legislative initiative, enabling him to raise the issue of adopting new laws and amending existing ones, including the Constitution of Ukraine. Presidential control over the executive branch is exercised both directly and through the relevant structures. Direct control is exercised over the selection of personnel and the appointment and dismissal of ministers, heads of state committees, heads of local state administrations, appointment and dismissal of representatives in foreign countries, senior leadership of the Armed Forces of Ukraine, etc. (Tsependa, 2019).

Next, the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) should be considered as an actor of state supervision and control over compliance with legislative and other labour regulations; it is the supreme executive body that exercises executive power directly and through ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea and local state administrations, and directs, coordinates and controls the activities of these bodies. The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and the Verkhovna Rada of Ukraine and is under the con-

trol and accountability of the Verkhovna Rada of Ukraine within the limits provided for by the Constitution of Ukraine (Law of Ukraine on the Cabinet of Ministers of Ukraine, 2014). The principal objectives of the Cabinet of Ministers of Ukraine are: 1) to ensure state sovereignty and economic independence of Ukraine, implement the domestic and foreign policy of the state, implement the Constitution and laws of Ukraine, acts of the President of Ukraine; 2) to take measures with a view to ensure human and civil rights and freedoms, creating conditions favourable for the free and comprehensive development of the personality; 3) to ensure the implementation of budgetary, financial, pricing, investment, including depreciation, tax, structural and sectoral policies; policies on labour and employment, social protection, healthcare, education, science and culture, nature protection, environmental safety and nature management; 4) to develop and execute nationwide programmes of economic, scientific and technical, social, cultural development, environmental protection, as well as develop, approve and implement other state target programmes; 5) to ensure the development and state support of the scientific, technical and innovation potential of the state; 6) to ensure equal conditions for the development of all forms of ownership; manage state-owned objects in accordance with the law; etc. (Law of Ukraine on the Cabinet of Ministers of Ukraine, 2014).

With regard to the issues being studied, it should be noted that the Cabinet of Ministers of Ukraine has a fairly wide range of control and supervisory powers. For example, it develops and ensures the implementation of public policy on labour protection and submits for approval by the Verkhovna Rada of Ukraine a nationwide programme to improve occupational safety, health and the working environment; directs and coordinates the activities of ministries and other central executive authorities to create safe and healthy working conditions and supervise labour protection; establishes unified state statistical reporting on labour protection. The Cabinet of Ministers of Ukraine exercises control over the activities of ministries, state committees and agencies, and over their compliance with the law. It promotes the full use of their powers by these bodies, hears their reports and information on the fulfilment of their tasks and the development of their respective sectors (Law of Ukraine on the Cabinet of Ministers of Ukraine, 2014; Melnyk, 2019). The Cabinet of Ministers of Ukraine (Article 113 of the Constitution) exercises its controlling powers in the process of: implementing financial, price, monetary, credit and tax

policies; creating nationwide and other funds; eliminating the consequences of natural disasters and catastrophes; making policies on education, science, youth and sports, culture, nature protection, environmental safety, and nature management; taking the necessary measures to ensure the security and defence capability of Ukraine; ensuring Ukraine's foreign economic activities and customs affairs; managing the work of ministries, public services, agencies, inspectorates and other state executive bodies (Zahumennyk, 2015).

Therefore, the Verkhovna Rada, the President of Ukraine and the Cabinet of Ministers of Ukraine (as well as its subordinate ministries) exercise general control over compliance with labour legislation. Their activities are mainly aimed at examination of the work of subordinate agencies functions thereof are to ensure the regime of law and order in the labour sector. The content of control and supervision activities is largely determined by the competence of these entities, and consequently by the scope of their administrative influence on the bodies subordinated to them directly or indirectly. In addition, it should be noted that an important element of the administrative and legal status of these entities is the availability of rule-making powers, which consist in the possibility of developing and adopting a regulatory framework for the implementation of control and supervision activities in the field of labour. This, a priori, is important from the perspective of conducting high-quality and effective supervision and control by specialised entities, among which, a special place belongs to the State Labour Service of Ukraine (hereinafter – the DRSU).

### **3. The State Labour Service as an actor of state supervision over compliance with legislative and other labour regulations**

The State Labour Service was established in 2014 by merging the State Labour Inspectorate and the State Service of Mining Supervision and Industrial Safety. In addition, it was entrusted with the functions of implementing public policy on occupational health and the functions of conducting dosimetry monitoring of workplaces and radiation doses of employees (Resolution of the Cabinet of Ministers of Ukraine on optimisation of central executive bodies, 2014). The State Labour Service of Ukraine exercises its powers directly and through the establishment of structural units in accordance with the established procedure: departments, divisions and divisions of the central office of the Service, territorial offices and state enterprises and institutions that belong to the sphere of management of the DRSU (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regula-

tion on the State Service of Ukraine on labour issues, 2015).

The main tasks of the DRSU are to: 1) implement public policy on industrial safety, labour protection, occupational health, handling of explosive materials for industrial purposes, and state mining supervision, as well as supervising and controlling compliance with legislation on labour, employment, and compulsory state social insurance in terms of appointment, accrual and payment of benefits, compensation, provision of social services and other types of financial support in order to ensure that the rights and guarantees of insured persons are respected; 2) implement comprehensive management of labour protection and industrial safety at the state level; 3) regulate at the state level and control labour protection and industrial safety in the field of activities related to high-risk facilities; 4) organise and implement state supervision (control) in the field of natural gas market functioning in terms of maintaining proper technical condition of systems, units and natural gas metering devices at natural gas production facilities and ensuring safe and reliable operation of the Unified Gas Transmission System facilities (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on the State Service of Ukraine on labour issues, 2015).

Therefore, the State Labour Service performs a number of important tasks in terms of ensuring compliance with the current labour legislation. With regard to the direct supervision and control over compliance with labour legislation, the DRSU is responsible for: 1) controlling the performance of functions of state management of labour protection by ministries and other central executive authorities; 2) developing a nationwide programme for improving safety, occupational health and the working environment and monitoring its implementation, participating in the development and implementation of other state and sectoral programmes; 3) exercising state control over compliance with labour legislation by legal entities, including their structural and separate subdivisions that are not legal entities, and individuals using hired labour; 4) exercising state supervision over the observance of labour and employment legislation by central executive authorities; 5) controlling the proper employers' use of lists for privileged pension provision, preparing proposals for improving such lists; 6) controlling the quality of certification of workplaces in terms of working conditions; 7) controlling compliance with the requirements of the advertising legislation regarding advertising of vacancies (recruitment) (Resolution of the Cabinet of Ministers

of Ukraine on approval of the Regulation on the State Service of Ukraine on labour issues, 2015); etc.

Thus, the State Labour Service is the key entity for supervision and control over compliance with labour legislation. This public authority has exclusive competence and special powers in this field, which in turn distinguishes their administrative and legal status from other authorised institutions. In this context, a certain overload of this agency, which sometimes prevents it from properly fulfilling its tasks in the field under study.

#### 4. Conclusions

To sum up, it should be noted that each of the entities exercising supervision and control over compliance with labour legislation has its own special administrative and legal status, the specificity of which is due to: first, the competence limiting their control and supervision activities; second, powers (since each actor has a specific set of subjective rights and legal obligations inherent only to it); third, a special entity subject to supervision and control activities, which in turn determines the set of tools and means used by supervisory institutions.

#### References:

- Konstytutsiia Ukrainy vid 28 chervnia 1996 roku № 254k/96-VR [Constitution of Ukraine dated June 28, 1996 No. 254k/96-BP] (1996). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/254k/96-vr/conv#Text> [in Ukrainian].
- Shapoval, V.M.** (2001). Kontrol parlament-skyi [Parliamentary control]. Kyiv: Ukr. entsykl. [in Ukrainian].
- Utiashov, M.M., Kornilaieva, A.A.** (2001). Kontrolni funktsii rehionalnykh parlamentiv: porivnialnyi analiz [Control functions of regional parliaments: a comparative analysis]. *Pravo y polityka*. № 1. P. 30–35. [in Ukrainian].
- Zakon Ukrainy Pro Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny: vid 23 hrudnia 1997 roku № 776/97-VR [Law of Ukraine on the Commissioner of the Verkhovna Rada of Ukraine for Human Rights: dated December 23, 1997 No. 776/97-BP] (1997). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/776/97-VR/conv#Text> [in Ukrainian].
- Poliakova, Yu.O.** (2013). Orhany zabezpechenia diialnosti Prezydenta Ukrainy ta yikh mistse v mekhanizmi upravlinnia derzhavoiu [Bodies ensuring the activity of the President of Ukraine and their place in the state management mechanism]. *Forum prava*. № 4. P. 311–316 [in Ukrainian].
- Tsependa, V.M.** (2019). Klyasyfikatsiia vydiv derzhavnoho kontroliu [Classification of types of state control]. *Derzhavne upravlinnia: udoskonalennia ta rozvytok*. № 9, 121–124 [in Ukrainian].
- Svyda, T.** (1998). Rezhym zakonnosti v diialnosti vykonavchoi vlady [The regime of legality in the activities of the executive power]. Uzhhorod: UzhDIIEP [in Ukrainian].
- Zakon Ukrainy Pro Kabinet Ministriv Ukrainy: vid 27 liutoho 2014 roku № 794-VII [Law of Ukraine on the Cabinet of Ministers of Ukraine: dated February 27, 2014 No. 794-VII] (2014). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/794-18/conv#Text> [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 labour legislation of Ukraine]. *Candidate's thesis*. Ternopil.
- Zahumennyk, V.I.** (2015). Derzhavne upravlinnia ta vykonavcha vlada v Ukraini [Public administration and executive power in Ukraine]. Kyiv: B.y. [in Ukrainian].
- Postanova Kabinetu Ministriv Ukrainy Pro optymizatsiiu tsentralnykh orhaniv vykonavchoi vlady: vid 10 veresnia 2014 roku № 442 [Resolution of the Cabinet of Ministers of Ukraine on optimization of central executive bodies: dated September 10, 2014 No. 442] (2014). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/96-2015-%D0%BF/conv#Text> [in Ukrainian].
- Postanova Kabinetu Ministriv Ukrainy Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu Ukrainy z pytan pratsi: vid 11 liutoho 2015 roku № 96 [Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on the State Service of Ukraine on labour issues: dated February 11, 2015 No. 96] (2015). *rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/96-2015-%D0%BF/conv#Text> [in Ukrainian].

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### АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС СУБ'ЄКТІВ, ЯКІ ЗДІЙСНЮЮТЬ ДЕРЖАВНИЙ НАГЛЯД ЗА ДОДЕРЖАННЯМ ЗАКОНОДАВЧИХ ТА ІНШИХ НОРМАТИВНИХ АКТІВ ПРО ПРАЦЮ

**Анотація. Мета.** Мета статті – охарактеризувати адміністративно-правовий статус суб'єктів, які здійснюють державний нагляд за додержанням законодавчих та інших нормативних актів про

працю. **Результати.** У статті, спираючись на аналіз наукових поглядів вчених і норм чинного законодавства, автор виокремлює коло ключових суб'єктів, які здійснюють нагляд за дотриманням законодавства про працю. Надано характеристику адміністративно-правовому статусу вказаних суб'єктів. Виокремлено найбільш характерні особливості та специфіку адміністративно-правового статусу досліджуваних у статті суб'єктів, які уповноважені здійснювати нагляд за додержанням законодавства про працю. Наголошено, що Державна служба з питань праці є ключовим суб'єктом здійснення нагляду й контролю за дотриманням законодавства про працю. З'ясовано, що Кабінет Міністрів України реалізує свої контрольні повноваження в процесі: реалізації програм економічного, соціального, культурного розвитку України загалом і окремих її регіонів; втілення в життя фінансової, цінової, грошової, кредитної, податкової політики; створення загальнодержавних та інших фондів; ліквідації наслідків стихійних лих і катастроф; проведення політики в галузі освіти, науки, молоді та спорту, культури, охорони природи, екологічної безпеки, природокористування; вжиття відповідних заходів щодо забезпечення безпеки й обороноздатності України; забезпечення зовнішньоекономічної діяльності України і митної справи; керівництва роботою міністерств, державних служб, агентств, інспекцій та інших органів державної виконавчої влади. **Висновки.** Зроблено висновок, що кожен із суб'єктів здійснення нагляду й контролю за додержанням законодавства про працю володіє своїм особливим адміністративно-правовим статусом, специфіка якого обумовлена: по-перше, компетенцією, якою обмежується їх контрольна-наглядова діяльність; по-друге, повноваженнями (адже кожен суб'єкт володіє специфічним, властивим тільки для нього набором суб'єктивних прав та юридичних обов'язків); по-третє, особливим суб'єктом, на якого спрямовується діяльність із нагляду й контролю, що, зі свого боку, обумовлює набір інструментів і засобів, які використовують контролюючі інституції.

**Ключові слова:** адміністративно-правовий статус, суб'єкти, державний нагляд, законодавчі акти, підзаконні акти.

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