

## **ON SOME OF THE BLANK POINTS IN THE APPLICATION OF ADMINISTRATIVE CONTROL IN BULGARIA**

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### **Abstract**

This article discusses processes in the state related to regulation, organization and control, which essentially form the subject of administrative control. The purpose of the exposition is to define the sources which cause deviations and create problems for the subjects authorized by the state to exert control, based on an analysis of the interaction of the factors: authority, competence and success. As the executive, the local self-government, the prosecutor's office and the justice system stand out among them, the tasks related to the pledged have a specific character. Each source which is identified and reviewed acquires features of the state, interpreted as sovereign and simultaneously subject to a specific area, in properly initiated state control systems. The idea of the exposition is to present the author's point of view, revealing certain characteristics of the subjects in question, so that the system of general and administrative control in particular can seek solutions for the elimination of the identified weaknesses in the functioning of the particular systems and more generally in its work by extending the scope of powers delegated or exercised by it.

**Keywords:** control, authority, sovereign, justice, prosecution.

### **1. INTRODUCTION**

Whether the "sampling - error" principle is sufficiently effective in the development of society is quite controversial to argue, but it is almost certain that it is this way that the representatives of society have begun to seek ways to eliminate almost all the hardships and obstacles. The theoretical elucidation of any problem occurred is related to analysis, identification of alternatives and solution finding. But when the problems become more and the analysis of the causes and the search for principle solutions is multidirectional, the whole process becomes complicated and multi-layered and unfortunately does not

always generate the expected results. All this supports the understanding of philosophers, consultants, and critics that progress has a complex and contradictory nature, cause, and functional meaning. (Kanev M., 2013, p. 20).

Whether as J. Schumpeter defines the main trend, revealed in the analysis of the present article as creative destruction is not so essential, the main and leading point is that progress in modern society is based on the conduct of scientific, technological, information-communication and socio-economic changes. This trend has become a major factor in rethinking social experience and established traditions (Stoyanov E.N., 2014a, p. 8) This is the reason to find that experience and traditions acquire a new, different meaning. This confirms the view that reality adheres to an established canonical form, at the same time revealing the dynamics of its perfection (Terziev V., E. Arabska, 2016, p. 140).

Under these conditions and circumstances, the society as well as its specific elements or entities are subject to change. In the process of communication and interest, the patterns of behaviour used are becoming more and more unpredictable and diverse (Stoyanov E.N., 2016, p. 102) It is for this reason that the challenges to all manifestations of control at all levels of society and among all social strata are becoming more and more difficult and delicate.

## **2. GROUNDS AND FEATURES OF GENERAL CONTROL**

Although control over recent years has been growing steadily, and in terms of its theoretical development and its formal institutional improvement, the expectations and needs of the society towards and from it are becoming more and more important (Terziev V., E. Arabska, 2016a, p. 690) In this context, the place and role of the state as a leading controlling entity and a supreme institutionalizing and institutionally represented organization are becoming even more serious.

In order to present the essence of administrative control, it is appropriate to make a number of clarifications resulting from the retrospective and comparative analysis of common control:

First. In its long history, control proves that it is differentiated on the basis of a critical public attitude towards the person's behaviour or an organized, personal formation that has arisen in the creation of goods.

Second. In the process of its improvement, management asserts the place of control as a compulsory last step in its structure. It is precisely that control as a corrective mechanism, comparing a fixed norm with registered results purposefully, makes the necessary changes.

Third. Different circumstances and situations provoke the emergence of a number of formal manifestations of control wherein different control systems different level control subjects are established. In them, the exercise of control is predetermined by the access to power resources on the basis of which the delegated control-managerial powers are properly and lawfully exercised.

Fourth. The presence of the state in the implementation of the control and governance processes guarantees presence of statehood, institutionalization and application of law. These are factors that imply the purpose differentiation of the different types of power - legislative, judicial and executive.

Fifth. In accordance with its place and role in the development of society and its social hierarchy, the different types of organizational structures, according to their essential characteristic and nature of work, exercise different types of control influence, revealing features both of control and supervision. In this context, although the sovereign is one, there is an opinion that control predominantly is an important power of the executive authority, and supervision according to the same logic - of the judiciary. (Balabanova Hr, 2004, p. 19) Another position opposes this claim by justifying the existence of a huge power resource allocated to the executive. Maybe in principle, the solution that the society expects is not how it will be called the applied corrective mechanism, but what results it generates, how it justifies the expectations and protects its interests.

Against the backdrop of everything that is said in general about control, it should be added that the process of improvement enhances the presence of the society itself and the role of its leading controlling person in the state. (Stoyanov, 2014, p. 6) It is precisely on this occasion that the administrative control, which is perceived as a specific form of control, is an immanent prerogative of the supreme state institution.

## **3. DEVELOPMENT OF ADMINISTRATIVE CONTROL**

The analysis of this convergent control form proves that it has a sufficiently long history dating back to the 5<sup>th</sup> century BC. With the codification of Roman law, it is considered that there is reason to speak of the first manifestations of such control (Stoyanov, 2010, p.7). Whether and how exactly the next steps in its evolution

are implemented is not so important, the essential point is that the state and the established subject in the face of the executive authority are actively involved in its formation. Conceptually, ideas arise related to: the police state, the bureaucratic organization, neoinstitutionalism and others (Worthy, 1950, p. 7).

By its nature, administrative control reveals that it is a government-managerial activity implemented through the performance of functions assigned to a body influencing the actions of different actors in public life. To complement the feature, it cannot be forgotten that administrative control is an essential part of the executive-ordering activity of government.

Since the state administration itself is a legal, administrative, regulatory, organizational and controlling activity in all spheres of public life, in particular, the administrative control is established as the power of the executive authority.

The interesting and essential part of the analysis of the control exercised by the executive authority is the moment when the third reason related to the manifestation of competence is added to the grounds that are well known by the theory of control - as a critical public attitude and as a management function. The disclosure of the role of the third ground is a real opportunity through the theory of competence to clarify the administrative legal personality of the executive authority, in other words to specify the reason why only the structures of the executive power exercise this kind of control.

In Bulgarian legal literature, it is revealed that "competence means the authority the legislator has given to a particular person or place to make willed statements assigned to the state" (Staynov P., A. Angelov, 1947, p. 242).

The administrative-legal science, specifically on the issue of competence, emphasizes on two thematic lines of development. One - "quantitative theory" - explains competence as a distinct set. According to the other, competence is an expression of legal personality of the state body. In fact, the process of conferring authority on a particular body is a process of recognizing its ability to be constituted as a legal entity with a certain authority (Kostov M., 1979, p. 34).

These understandings in recent years have influenced not only the development of administrative control itself, but also the overall presence and behavior of the state, especially in the processes of economic life. What's leading is that the state restricts its intervention in the development of business initiatives by the various actors. Its role is limited only to the administrative regulation in entering into legal relations on the basis of economic activity. Observing its interests, the state regulates the regulatory requirements that must be met by those wishing to enter the market (Terziev V., E. Stoyanov, 2015, p. 29).

The review of the legislative changes made over the last 10-15 years reveals that the supervisory competence of the authorities by the Bulgarian executive authority can be justified either as a manifestation of competence by level or separately and independently on the basis of a specific law. It is precisely the above-mentioned finding that the representatives of the scientific circles, mainly lawyers, consider that on the occasion of the administrative control, the well-known "classical" definitions of control should be used extremely carefully and precisely. The main recommendation for such actions is to emphasize the presence of "control competence" and the development of its essence and role (Terziev V., 2012, p. 234).

The analyses and facts of the report allow us to conclude that competence, interpreted as a set of powers, is becoming a key factor in the development of control exercised by the state. Along with other established control sources or grounds, competence creates conditions for prevention against conditions causing social deviations, and in the implementation of control by the executive power to eliminate certain established weaknesses and registered deficiencies.

The briefly discussed views on the development of the control idea create the conditions to address some specifics in the work of the important controlling entities and to reveal a small part of the concomitant problems. The critical review of the institutions is deliberately presented in a downward direction with the aim, after analysing the inherent problems in their work, to seek a connection between them in terms of inter institutional communication.

#### **4. PARLIAMENTARY OVERSIGHT AND EXECUTIVE POWER**

The highest-ranking entity exercising control in the Bulgarian state is the National Assembly. On the basis of the current Constitution and Rules of Organization of the activity of the National Assembly, the National Assembly, together with its legislative function, exercises its control function (The Constitution of the Republic of Bulgaria, prom. State Gazette No.56/1991 with last amendment, Rules for Organization of the activity of the National Assembly, State Gazette, issue 44/199). It is essential to know that the exercise of parliamentary control has significant legal implications. The main object of its work is the lawfulness and

correctness of the actions of the administration. Disadvantages or problems in the work of the National Assembly in the course of control are developed in a content, formal and administrative aspect.

In principle and content, the first weakness is the measures of effect on the acts and on persons acting as central bodies of the executive authority. In the influence measures taken against individuals, the control efficiency is higher because, based on a vote of no confidence or resignation, individuals can be removed from the central executive authority. On the question of the acts of the central executive authority, the decision is complicated and difficult because, as in accordance with the law on normative acts, an act is subject to annulment only by the same act (Law on the Normative Acts, State Gazette, 65/1995 with the last amendment).

Formally, parliamentary control has a variety of forms, such as: transformation, establishing and closure of ministries, no confidence vote (trust), resignations, etc. Here the problem does not arise from the implementation of the specific, formal event, but from the possible consequences and their relation with the balance between the various politically coloured interests.

Regarding the administrative basic principle set out in the Rules of the National Assembly, the possible control, although it is a permanent presumption, can only be implemented on Friday (the day of parliamentary control). By adding procedures, deadlines and other conditions set out in the same rules on the one hand, and on the other, the need to prepare the interviewed persons becomes difficult. By delaying the time to find an answer and a decision, it is in fact proven that control and its presence are meaningless due to the impossibility of introducing corrections or changes in registered socially significant deviations (Stoyanov E.N., 2016b, p. 99). And interpretations of the facts may be divergent, but always in such situations, any loss of time produces a deleterious effect (Simeonov O., 1997, p. 6).

At a lower level in the social and governance hierarchy, local government authorities are subject to control. The relationship between them and the state authority is implemented by the district governor (Law on Local Elections, State Gazette No. 66/1995 and last amendment). Its powers are to suspend unlawful acts of municipal councils or to repeal illegal acts of mayors of municipalities (Law on Local Self-Government and Local Administration, SG, issue 77/1991). Although control in local self-government is regulated to run on two levels – between the bodies of the local self-government and by the district governor, problems still exist (Law on Administration, SG. No. 130/1998 with the last amendment).

In social and business society, it is believed that the control deficit can be interpreted as a result of the dynamically changing socio-political risk. In other words, the partial "disempowerment" of the district administration is compensated by the increase in the influence of certain persons leading specific "attractive" municipalities. In addition, taking into account the conceptually and politically diverse municipal councils and the difficult achievement of consensual solutions, then interaction becomes an unrealistic goal, and the possibility of a constructive dialogue that embraces the constructive critique - the chimera.

## **5. CONTROL IN THE JUDICIARY AND PROSECUTION**

A significant and important participant in the process of development of the control over the work of the executive authority is also the Bulgarian Public Prosecutor's Office. Among the powers of authority assigned to it in the central position is the supervision of the observance of lawfulness in the acts and actions of the bodies of the executive authority (Law on the Judiciary authority, SG. No. 59/1994). An expression of the authority powers of the prosecution in the exercise of supervision is the filing of a protest. This procedural act is invoked when the breach in government is the result of an unlawful act.

Although the activity of the prosecutor's office is related to the exercise of supervision in many spheres of public life, and it being a higher state institution it can self-summon itself, some authors argue that certain undefined regulative positions pose problems (Lazarov K., 1971, p. 50). Specifically, as such, it may be pointed out that although the prosecution is, in essence, entitled to make suggestions to all public administration bodies regarding violations, illegal actions and their causes, the initiative is not provided for and regulated in the normative framework. This statutory omission at this stage creates an insurmountable barrier to the participation of the prosecution in building real prevention.

The last subject, placed in the focus of attention of the expose, is the Bulgarian court, which only implements justice on the territory of the state. An insignificant part of the work of the judiciary system is related to challenging administrative acts. The connection between the work of the administrative and control system and the judicial system is the opportunity to examine from a different angle the presence of legality in acts and actions of the state administrative apparatus. A number of specialists believe that the so-called „judicial” control over acts and actions of the administration is not effective enough (Balabanova Hr., 2004, p. 110).

The results are improved with the active involvement of internal administrative controls (Stoyanov E.N., 2013, p. 166).

The problems that accompany the work of judicial control derive from some of its peculiarities:

**First.** It only affects the legal aspect of administrative activity, although the deficiency of legality always causes damage and losses (Atanasov A., 1968, p. 29).

**Second.** It begins to function once the illegal action has ended, i.e. when there is a detrimental effect (Dinev M., 1985, p. 7).

**Third.** The court is deprived of initiative, that is, it does not have the opportunity to self-summon.

Analysis on the work of the main entities, which are specifically implementing administrative control, provide evidence to formulate the conclusion that the problems that accompany the Bulgarian administrative control have a very diverse and serious character. Finding solutions to them is a challenge which academics and lawmakers face. However, the possibility of ignoring the impact of these problems should not be postponed in time and thus to cause further damage, but should be thought of as a set of problems of the whole society. If the statesmen begin to think as owners, governors - as managers and the rulers - as part of society itself, maybe there will be found the will to change and to find solutions in both the specific spheres and in the entire society as well.

## 6. SUMMARY AND CONCLUSIONS

The article's stance predetermines the structure of several conclusions:

**First.** The control as a requisite of government and the expression of power resources without diminishing the belief that it is justified by the critical public stance and its mandatory participation in every management process affirms in principle the presence of the organization as a factor for its own improvement and in particular the state as its initiator, and administrator.

**Second.** The presence of the "competence" factor in the development of control at all levels in the social hierarchy predetermines success in seeking optimal efficiency. For society itself, it is an objective possibility, according to its wants and needs, to adapt content wise and functionally all the elements that make up the structure of any socially significant control system.

**Third.** Expansion of the range of problems arising from administrative control is indicative of the increase in the deviations and sources that give rise to them. In this context, only the analysis of registered results would change the content of the critical attitude of society in consolidating the authority-competences-powers factors.

On the basis of the conclusions drawn, the following summary can be drawn:

The presence and development of administrative control reshapes the connection between two key concepts that regulate processes in both the national in the global system - trust and control. Although for many years in the public sphere it has been postulated that control is a high form of trust, it can be rightly argued that recently trust has become a well-recognized and publicly stated need for control. Drawing from this combination of postulates, the exposition is a further attempt to prove the thesis that the maturity of society and the presence of the state can be measured by the degree of development of new and increasingly significant manifestations of control.

It is precisely administrative control that is an example through which the writing is associated with the Latin proverb, „quod erat demontstrandum”, ie. what needs to be proved and realized is the fact that the interests driving social development have the necessity of perfecting an adequate control form in whose essence the leading position is assigned to statehood and the law, and it is namely on that basis that the system of institutions, managing their controlled performance is set up. The possibility of the system of interests being perceived as an eternal motor of social development gives reason to believe that the challenges common to control, and in particular to its administrative form, are becoming more and more. In this sense, it becomes increasingly difficult to determine whether the control of interests or the interest of effective control is the leading one in this interaction. Consolidation of this ambiguity creates the conditions for many rhetoric but also confirms the growing social need of optimally rapidly improving administrative control by achieving sufficient confidence with high transparency in the analysis of the results achieved, interpreted as an expression and value of high moral significance, such as an engine of public interest that targets all familiar and accessible resources to create sustainability in social development.

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