

## ПОНЯТТЯ ТА ОЗНАКИ КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ ОРГАНІВ АДВОКАТСЬКОГО САМОВРЯДУВАННЯ

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### **Liutikov P.S. Concept and Features of Control over the Activities of Bar Self-Governance Bodies.**

The article notes that control over the activities of bar self-governance bodies is critically important for ensuring the proper functioning of justice and the protection of citizens' rights. With the increase in complaints about the improper actions of lawyers and bar self-governance bodies, the issue of their control is becoming increasingly relevant. The lack of proper control can lead to violations of citizens' rights, a decrease in trust in the legal system, and the emergence of legal conflicts.

It is emphasized that recent legislative changes in Ukraine have aimed to improve the mechanisms of control over the activities of lawyers and bar self-governance bodies. This includes the introduction of new ethical standards, increased transparency of various qualification procedures, and enhanced accountability for professional misconduct. These initiatives were intended to ensure a high level of professionalism and responsibility among lawyers, as well as to increase public trust in the legal system.

The importance of researching this topic is highlighted for analyzing the effectiveness of existing control mechanisms and identifying possible ways to improve them, which, in turn, will contribute to strengthening the rule of law in Ukraine.

In conclusion, the features of control over the activities of bar self-governance bodies are established as follows: targeted influence – ensuring compliance with and enforcement of legislation by bar self-governance bodies, avoiding violations, providing organizational and practical support; object of control: activities of bar self-governance bodies; nature of control – both internal and external, carried out by the bar self-governance bodies themselves on a self-regulatory basis and by specially authorized state control entities; specificity of goals, functions, and tasks; peculiarities in the forms and methods of control activities.

**Key words:** advocacy, bar self-governance, activity, features, bodies, control, concept.

### **Лютіков П.С. Поняття та ознаки контролю за діяльністю органів адвокатського самоврядування.**

У статті зауважено, що контроль за діяльністю органів адвокатського самоврядування є критично важливим для забезпечення правильного функціонування правосуддя та захисту прав громадян. У зв'язку з підвищенням кількості скарг на некоректні дії адвокатів та органів адвокатського самоврядування, питання їхнього контролю стає все більш актуальним. Відсутність належного контролю може призвести до порушення прав громадян, зниження довіри до правової системи та виникнення юридичних конфліктів.

Наголошено, що останні законодавчі зміни в Україні були спрямовані на покращення механізмів контролю за діяльністю адвокатів та органів адвокатського самоврядування. Це включає впровадження нових стандартів етики, підвищення прозорості різноманітних кваліфікаційних процедур та посилення відповідальності за професійні порушення. Такі ініціативи мали на меті забезпечити високий рівень професіоналізму та відповідальності серед адвокатів, а також підвищити довіру громадськості до правової системи.

Підкреслено, що дослідження цієї теми є важливим для аналізу ефективності існуючих механізмів контролю та виявлення можливих шляхів їх вдосконалення, що, у свою чергу, сприятиме зміцненню правопорядку в Україні.

У підсумку встановлено, що ознаками контролю за діяльністю органів адвокатського самоврядування є: цілеспрямований вплив – забезпечення дотримання та виконання законодавства органами адвокатського самоврядування, уникнення правопорушень, надання організаційної та практичної підтримки; об'єкт контролю: діяльність органів адвокатського самоврядування; характер контролю – як внутрішній, так і зовнішній, здійснюється самими органами адвокатського самоврядування на основі саморегулювання та спеціально уповноваженими суб'єктами державного контролю; специфіка мети, функцій та задач; особливості у формах та методах контрольної діяльності.

**Ключові слова:** адвокатура, адвокатське самоврядування, діяльність, ознаки, органи, контроль, поняття.

**Problem Statement.** The control over the activities of the bodies of the legal profession's self-governance is critically important to ensure the proper functioning of the justice system and the protection of citizens' rights. The increase in complaints about improper actions by lawyers and the bodies of the legal profession's self-governance has made the issue of their control even more relevant. The lack of adequate control can lead to violations of citizens' rights, reduced trust in the legal system, and the emergence of legal conflicts.

Recent legislative changes in Ukraine have been aimed at improving the mechanisms for controlling the activities of lawyers and the bodies of the legal profession's self-governance. These include the introduction of new ethical standards, increased transparency of various qualification procedures, and enhanced accountability for professional misconduct. These initiatives aim to ensure a high level of professionalism and responsibility among lawyers, as well as to increase public trust in the legal system.

Research on this topic is important for analyzing the effectiveness of existing control mechanisms and identifying possible ways to improve them, which, in turn, will contribute to strengthening the rule of law in Ukraine.

**Analysis of Recent Studies and Publications.** A generalized review of administrative and legal literature, including those dedicated to defining the essence and purpose of control, indicates that the view of some researchers on state control exclusively as a means of ensuring legality in state administration appears somewhat outdated. The multifaceted nature of control allows for the evaluation of its functions not only within state administration. In this context, the theses of the esteemed V. B. Averianov about the purpose of state control being to observe and verify the development of the entire social system and all its elements according to defined directions are pertinent. In this case, it is not about the state's monopoly in all spheres of social life but rather emphasizes the potential of control activities through preventive and auxiliary effects to influence discipline in various spheres of social life, not only those administered by the state.

It is also worth noting that control itself should not be equated with coercive measures in the form of responsibility (including administrative), which may be applied in cases of identified violations. In such cases, control is only the basis for the application of coercive measures, which, in turn, are not forms or types of control but rather manifestations of the state's law enforcement function. However, it is worth emphasizing that the preventive mechanism is undoubtedly embedded in the content of the control function of public administration, and the prevention itself has the character of both general and individual action. This also applies to cessation measures, which can be applied by control bodies with the aim, for example, of stopping illegal construction, use of electricity, extraction of minerals, etc. [1, p. 44-45].

Of course, the approach of those legal scholars who make conscious and unconscious identifications of control and supervision, using such formulations as «control and supervisory activities,» «control and supervisory bodies,» etc., cannot be considered commendable. In our opinion, such an approach does not correspond to the real content of state control and can create certain contradictions in law enforcement activities [1, p. 45]. As P.S. Liutikov rightly points out, in legislative practice and legal scientific literature, control is often identified, replaced, or consciously confused with other related legal concepts, such as supervision, accounting, auditing, inspection, examination, etc. [2, p. 31].

Regarding the legal profession's self-governance, it remains the object of scientific research by such legal scholars as N.M. Bakayanova, N.I. Bochuliak, T.V. Varfolomeeva, V.A. Gvozdiy, V.V. Dolezhan, A.V. Ivantsova, S.O. Ivanitsky, M.S. Kosenko, I.O. Lychenko, A.V. Melanchuk, Yu.E. Polyansky, V.V. Reshota, O.D. Sviatotsky, E.F. Shkrebets, and others.

**The Purpose of the article** – the purpose of this article is to determine the concept and outline the features of control over the activities of the bodies of the legal profession's self-governance based on the analysis of modern doctrinal sources.

**Main Content Presentation.** Moving directly to the subject of the study, it should be noted that an analysis of the current legislation and the statute of the National Association of Advocates of Ukraine (NAAU) provides grounds to conclude that control over the activities of the bodies of the legal profession's self-governance is both internal and external in nature, carried out by various self-regulating and state control subjects. External control essentially represents a system of state control subjects. Internal control is carried out by self-governing bodies of the legal profession on a self-regulatory basis and operates on both a national and regional level.

Internal control has two directions, which can be clearly delineated by analyzing statutory documents and current legislation, namely organizational and financial. Internal Organizational Control. This type of control is exercised over the bodies of the legal profession's self-governance by higher-ranking entities. For example, the Qualification and Disciplinary Commission of the Bar is accountable to the regional bar conference; the regional bar council is accountable to the regional bar conference; the regional bar audit commission is accountable to the regional bar conference; the Higher Qualification and Disciplinary Commission of the Bar is accountable to the Congress of Advocates of Ukraine and the Bar Council of Ukraine; the Higher Audit Commission of the Bar is accountable to the Congress of Advocates of Ukraine; the Bar Council of Ukraine is accountable to the Congress of Advocates of Ukraine, etc.

Internal Financial Control. The principles of financial provision and internal financial control are enshrined in the Law of Ukraine «On the Bar and Advocacy,» which provides that the maintenance of the bodies of the legal profession's self-governance can be carried out at the expense of:

1. Fees for the qualification exam;
2. Annual contributions of lawyers to ensure the implementation of the legal profession's self-governance;
3. Deductions from the Qualification and Disciplinary Commissions of the Bar to ensure the activities of the Higher Qualification and Disciplinary Commission of the Bar;
4. Voluntary contributions from lawyers, law bureaus, and law associations;
5. Voluntary contributions from individuals and legal entities;
6. Other sources not prohibited by law [3].

The size of the fee for taking the qualification exam is determined based on the need to cover the costs of the activities of the Qualification and Disciplinary Commissions of the Bar, the Higher Qualification and Disciplinary Commission of the Bar, and cannot exceed three subsistence minimums for able-bodied persons established by law on the day the individual submits the application for admission to take the qualification exam. The amount of annual contributions of lawyers to ensure the implementation of the legal profession's self-governance is determined based on the need to cover the costs of the activities of regional bar councils, the Bar Council of Ukraine, the Higher Audit Commission of the Bar, and maintaining the Unified Register of Lawyers of Ukraine, and cannot exceed the subsistence minimum for able-bodied persons established as of January 1 of the relevant calendar year. The amount of annual contributions of lawyers for ensuring the implementation of the legal profession's self-governance is the same for all lawyers. Lawyers whose right to practice law has been suspended are exempt from paying annual contributions for the period of suspension of such right. The amount of deductions from the Qualification and Disciplinary Commissions of the Bar to ensure the activities of the Higher Qualification and Disciplinary Commission of the Bar is determined based on the need to cover the costs of the activities of the Higher Qualification and Disciplinary Commission of the Bar [3].

At the same time, the financing of the bodies of the legal profession's self-governance, the disposal of their funds and property is carried out according to the budgets approved by the regional bar conferences and the Congress of Advocates of Ukraine. The financial reporting of the bodies of the legal profession's self-governance is published annually in the manner approved by the Bar Council of Ukraine [3].

This internal control system, represented by organizational and financial directions, can be illustrated as follows:

National level:

1. Congress of Advocates of Ukraine – oversees the activities of the Bar Council of Ukraine, the Higher Qualification and Disciplinary Commission of the Bar, and the Higher Audit Commission of the Bar.

2. Bar Council of Ukraine – controls the activities of regional bar councils and ensures the implementation of decisions made by the Congress of Advocates of Ukraine.

3. Higher Qualification and Disciplinary Commission of the Bar (HQDCB) – oversees regional bar disciplinary commissions and reviews appeals against their decisions.

4. Higher Audit Commission of the Bar (HACB) – monitors the financial and economic activities of the National Association of Advocates of Ukraine (NAAU), its bodies, regional bar councils, and regional bar audit commissions.

Regional Level:

1. Regional Bar Conferences – oversee the activities of regional bar councils and regional bar disciplinary commissions.

2. Regional Bar Councils – control the activities of lawyers in the region and ensure the implementation of decisions made by regional bar conferences.

3. Regional Bar Disciplinary Commissions – ensure lawyers comply with professional standards and handle disciplinary cases.

4. Regional Bar Audit Commissions – monitor the financial activities of regional bar councils [3].

Thus, it can be inferred that such a model of internal control ensures multi-level oversight, promoting transparency and accountability in legal practice and self-governance.

In contrast, state control is characterized by the following features: it is a function of public administration aimed at influencing controlled entities; it exerts targeted influence to ensure compliance and adherence to legal requirements, prevent violations, and provide organizational support; it is conducted exclusively in accordance with the law by specifically authorized entities; it involves both planned and unscheduled interventions applied periodically; it is implemented within a clearly defined legal timeframe; it may involve immediate intervention in the activities of the controlled entity, including the application of administrative warnings or administrative cessation measures [4, p. 5].

It should be noted that state control in the field of the activities of legal profession self-governance bodies is carried out by specially authorized entities responsible for compliance with financial, tax, and labor legislation, provided these bodies engage in entrepreneurial activities, employ hired labor, or involve budgetary funds (for example, within state grant projects). In particular, bodies with legal entity status are controlled by state tax authorities, which, during their control activities, may specifically:

- Verify the correctness and completeness of the determination of the financial result for taxation purposes according to accounting standards in accordance with national accounting regulations (standards) or international financial reporting standards;

- Determine, in cases provided by the Tax Code of Ukraine, the amounts of tax and monetary obligations of taxpayers;

- Receive and provide within the limits prescribed by law documents in electronic form from taxpayers (payers of the unified contribution);

- Require, during inspections, that the heads and other officials of enterprises, institutions, organizations, as well as individual entrepreneurs and individuals engaged in independent professional activities, eliminate identified violations of the law;

- Initiate, in the manner prescribed by law, the issue of bringing to responsibility persons guilty of violating tax, budget legislation, legislation on the unified contribution, and other issues under the control of the State Tax Service (STS);

- Have other rights and obligations [5].

Legal profession self-governance bodies with legal entity status that employ hired labor are subjects of control by the State Service of Ukraine on Labor Issues. For example, the State Service of Ukraine on Labor Issues:

- exercises state control over compliance with labor legislation by legal entities, including their structural and separate subdivisions that are not legal entities, and individuals who use hired labor;

- exercises state supervision over compliance with labor legislation and employment by central executive bodies;

- monitors the correct application of employer lists for preferential pension provision and prepares proposals for the improvement of such lists;

- monitors the quality of workplace attestation based on working conditions;

- monitors compliance with the legislation on advertising in regard to job vacancies (employment);

- and other supervisory powers [6].

The specific features of the control exercised, the peculiarities of the administrative and legal status of the bodies of the legal profession's self-governance, allow us to outline the characteristics of control over their activities, namely:

- has a targeted influence – ensuring the compliance and implementation of existing legislation by the bodies of the legal profession's self-governance, avoiding violations, and providing organizational and practical support, etc.;
- the object of control activities – the activities of the bodies of the legal profession's self-governance;
- has both internal and external character, carried out directly by the bodies of the legal profession's self-governance on a self-regulatory basis and by specially authorized state control entities;
- may involve prompt intervention in the activities of the controlled entity, including by applying measures of administrative warning or administrative cessation;
- has direct goals, functions, and tasks, the list of which is determined by the purpose of the legal profession's self-governance and its bodies;
- specificity in the forms and methods of control activities.

Thus, control over the activities of the bodies of the legal profession's self-governance is a targeted influence of both internal and external nature, carried out by authorized entities in appropriate forms and methods, with the direct goal of ensuring the performance of the tasks of the legal profession's self-governance as provided by law.

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