

CONTROL AND SUPERVISION OVER THE PROVISION OF FUNERAL SERVICES BY PUBLIC ADMINISTRATION BODIES

Silenko Liudmyla

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Annotation. The article examines the administrative and legal foundations of control and supervision over the provision of funeral services as instruments for ensuring dignified treatment of the deceased, protecting the rights of their relatives, and preventing abuses in the funeral services market. It is argued that, under conditions of armed aggression against Ukraine and a sharp increase in the number of fatalities, the issue of proper organisation of burials, identification of bodies, maintenance of registers of the deceased, and compliance with sanitary, ethical, and legal standards becomes particularly urgent and goes beyond the scope of ordinary municipal services. The article analyses scholarly approaches and legislative definitions of the concepts of “control” and “supervision”, identifies their common features (ensuring legality, preventive nature, continuity, and the exercise of authoritative powers) and differences in terms of purpose, methods, and spheres of application. It is demonstrated that the absence of a clear distinction between these instruments in legislation generates conflicts and contributes to the formalisation of inspections and the tolerance of corrupt practices, including unlawful solicitation of services, the sale of information about a person’s death, monopolisation of local markets, shadow activities of service providers, and improper maintenance of burial sites. The necessity of introducing a coherent, transparent, and accountable model of public control and supervision is substantiated, based on international humanitarian law standards, unified procedures for recording and identifying the deceased, strengthened requirements for market participants, involvement of local self-government bodies and the public, as well as effective sanctions for violations. It is concluded that properly structured mechanisms of control and supervision in the field of funeral services constitute an essential element of the state’s humanitarian policy and a guarantee of adherence to the principles of dignity, legality, and justice.

Key words: public administration, funeral affairs, public management, local self-government bodies, state control, funeral services, legal regulation, quality standards, ethical norms, public interests, regulatory framework, transparency, corruption risks, international experience.

1. Introduction.

Funeral services encompass both the organisation of burials and the moral and cultural dimensions of attitudes toward death. Proper organisation of the mechanism for their provision is not only a matter of moral ethics but also a state obligation, ensured, inter alia, through the planning and implementation of supervisory and control measures by public administration bodies. This issue acquires particular significance during periods of armed conflict.

However, from the very inception of the funeral services sector in Ukraine and to this day, a significant number of problems can be observed in this area, requiring enhanced control over the relevant legal relations in order to prevent violations, including, in particular: – the rights of consumers of funeral services are violated due to imperfect legal regulation of activities in this field, in particular the absence of clear procedures, standards, and adequate requirements for the professional qualifications of personnel; – a widespread practice is the sale of information about a person’s death for the purpose of intercepting clients, which forms part of corrupt schemes in the interaction between consumers and providers, with the financial consequences of such schemes being borne by the service requester; – chronic underfunding of the construction and maintenance of cemeteries,

especially in large cities, creates favourable conditions for corruption and illegal income generation by officials; – local funeral service markets operate unevenly, and the sector as a whole lacks a unified, transparent, and effective management system; – a significant part of the funeral services market operates illegally, provoking intense competition both among private companies and between municipal and private entities; – and others.

In addition, the ongoing hostilities in Ukraine have led to a large-scale humanitarian catastrophe, including a sharp increase in the number of fatalities. As a result, there are numerous instances of chaotically organised burials, lack of proper record-keeping and documentation, which subsequently creates serious legal and moral consequences.

2. Analysis of scientific publications.

Certain issues of the legal regulation of the burial of persons killed as a result of hostilities in Ukraine have been examined in the works of M. Mykhailichenko, O. Aleksandrenko and V. Veselovska, N. Kalkutina, Kh. Mazurenko and Ya. Onyshchuk, A. Naumov and others.

3. The aim of the work.

The purpose of this article is to conduct a comprehensive study of the supervisory and oversight powers of public administration bodies in the field of funeral services, to clarify their legal nature and the correlation between the concepts of “control” and “supervision”, to identify gaps, conflicts and risks of formalistic or corrupt application of existing mechanisms, to assess the compliance of national regulation with international humanitarian standards on the dignified treatment of the bodies of the deceased and those killed as a result of hostilities, and to formulate proposals for improving administrative and legal instruments ensuring transparency, competition, proper quality of funeral services, and effective protection of the rights and legitimate interests of the relatives of the deceased and other consumers.

4. Review and discussion.

Preventing, at least partially, the above-mentioned and numerous other problems or eliminating them is possible, among other things, through control and supervision by public administration bodies, which must necessarily take into account the requirements of international humanitarian law, as well as national standards and procedures providing for the maintenance of registers of the deceased, the creation of DNA databases, and ensuring the identification and dignified burial of persons killed in hostilities or as a result of war crimes, etc.

A large number of definitions of the concepts of “control” and “supervision” can be found in academic sources. V. K. Kolpakov defines control as one of the most widespread and effective means of ensuring legality. He attributes to its features subordination to law, systematic character, timeliness, comprehensiveness, depth, objectivity, and effectiveness. [1, p. 662]. However, such an approach is broad and does not provide a sufficiently clear understanding of its substantive content.

Other scholars propose to understand control as the activity of authorised bodies or officials aimed at verifying the compliance of the activities of entities with established norms, rules and standards in order to ensure proper performance of tasks and functions. It involves regular inspections, monitoring and evaluation of activities and is characterised by: (1) a verification nature (checking compliance with established norms and rules); (2) an enforcement function (ensuring proper performance of tasks and functions); (3) assessment of effectiveness (including evaluation of efficiency and compliance with standards); (4) the application of measures of influence (the power to apply administrative or disciplinary measures in case of violations). [2]. This approach is considered consistent with the nature of control. However, it would be appropriate in the definition to emphasise not only verification of compliance, but also the application of response measures to identified non-compliance or risks of their occurrence.

Experts in public administration suggest understanding control as a process of ensuring an organisation's achievement of its goals, consisting of establishing criteria, determining actual results, and introducing corrective measures if results significantly deviate from the criteria. [3, pp. 291–293; 4, pp. 52–53]. This definition is regarded as imperfect, since it is purely applied, lacks a legal dimension, reduces control to internal goal achievement and correction within a particular organisation, and therefore does not reflect the complex public-law understanding of control.

In encyclopaedic literature, control is defined as identifying the conformity of activities and their results to established benchmarks; providing management actors with information about development processes of an organisation (economic complex) or other objects of administration (based on organised observations, measurements, standards, etc.), which creates grounds for intervening in such processes in order to adjust certain areas of activity. [5]. This definition is also not free from shortcomings, as it focuses on detecting compliance and informing management actors, which rather corresponds to monitoring. Control in public administration is not only the collection and analysis of information, but also active intervention to prevent violations, eliminate deviations, and apply liability measures – elements that are omitted in this definition.

Numerous sectoral definitions of control are also enshrined in legal acts. Their content is noteworthy as it reveals key aspects of the category under study. In particular, Ukrainian and international legislation includes, inter alia, the following definitions of control: – a set of measures carried out to verify and evaluate the implementation of assigned tasks (management decisions) [6]. This focuses only on verification and evaluation – any measure taken to provide reasonable assurance as to the effectiveness, efficiency and economy of operations, reliability of reporting, protection of assets and information, prevention, detection, correction and follow-up of fraud and irregularities, as well as proper risk management regarding the legality and regularity of underlying transactions, taking into account the multiannual nature of programmes and related payments. Control may include various checks, as well as the implementation of policies and procedures to achieve these objectives. [7]. The value of this definition lies in the emphasis on risk management and systematic follow-up; – a general management function consisting in observing processes in management and subordinate systems, comparing controlled parameters with a given programme, detecting deviations, their place, time, causes and nature. [8]. Its advantage is the focus on comparison and identification of deviations and their characteristics; – monitoring and supervision. [9]. This is debatable, as it defines control through supervision; the problem of distinguishing the two categories is discussed further below.

The Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity” defines “state supervision (control)” as the activity of authorised bodies within their powers aimed at detecting and preventing violations of legislation by business entities and ensuring public interests, including appropriate quality of products, works and services and an acceptable level of risk to the population and the environment. [10]. A drawback of this definition is the failure to distinguish between state control and state supervision.

According to academic sources, the purpose of control is to block deviations of the activity of an administrative entity from the established management programme and, when anomalies are detected, to restore stability of the system using available regulatory instruments. [3, pp. 291–293; 4, pp. 52–53].

As for supervision, it is also widely analysed in the literature. R. S. Koz’iakov notes that, etymologically, “supervision” means observation for the purpose of verification. [11]. T.P. Minka defines supervision as a system of managerial actions and measures aimed at monitoring compliance with statutory norms, rules, requirements or conditions. Its purpose is to ensure legality, protect the rights and legitimate interests of citizens, and ensure that the activities of legal subjects conform to established standards and requirements. Supervision is characterised by: ensuring legality; a preventive nature (including measures to prevent violations); systematic implementation; and the power of authorised bodies to apply measures of influence (administrative sanctions, orders, etc.) in case of violations. [2].

Sectoral legal acts also contain definitions of supervision, for example as the process of collecting and recording data on the presence or absence of a regulated harmful organism in a defined area through surveys, monitoring or other procedures. [12]. Legislation also defines off-site supervision as a form of supervision by the National Bank over providers of financial and related services without visiting their premises. [13].

A valuable definition is that of “state supervision over the provision of financial and related services”, understood as a system of control and active, coordinated actions of the regulator to obtain objective and reliable information about the activities and financial condition of supervised entities and to ensure their compliance with legislation governing the financial services market. [14]. Its drawback lies in the lack of emphasis on the specific means of securing compliance in response to detected violations, and again in defining supervision through control, which leads to their conflation. Some scholars indeed treat these concepts as synonymous, but most identify differences in their nature.

In this context, we support I. Pavlyk’s view that neither at the doctrinal nor legislative level is there a clear distinction between “control” and “supervision” [15]. At the same time, we share A. V. Denysova’s position that, despite their close interrelation, there are objective grounds for distinguishing them; such differentiation remains justified even when legislation employs both terms in defining the powers of particular bodies. [16].

It is also important to cite T. P. Minka, who notes that supervision and control as instruments for ensuring discipline and legality share common features: ensuring legality; the endowment of competent entities with powers to intervene; and a continuous, systematic character enabling timely detection and elimination of violations. [ii].

At the same time, the literature identifies the following differences between the concepts: – purpose: supervision is primarily preventive and aimed at averting violations, while control focuses on verifying compliance with established norms; – methods: supervision involves systematic observation and analysis, whereas control provides for regular inspections and monitoring; – scope: supervision is directed at ensuring general legality, while control is aimed at securing proper performance of specific tasks and functions.

5. Conclusions.

Taking the above into account, control over the provision of funeral services should be understood as a planned, professionally justified activity of public administration bodies that is systematic, supervisory, and preventive in nature, and is aimed at verifying the compliance of the activities of entities and objects on the funeral services market with the norms, rules, standards, and procedures established by law, as well as at timely detection of violations, assessment of performance, and application of appropriate measures of influence in order to eliminate identified shortcomings and prevent risks of violating the rights and legitimate interests of consumers of such services.

Supervision over the provision of funeral services, in turn, should be considered as organisational, legal, managerial, and preventive measures carried out by public administration bodies for the purpose of systematic monitoring of compliance by funeral service market actors with legislative requirements, standards, rules, and regulations in the course of their activities, timely detection of violations, ensuring the protection of the rights and legitimate interests of consumers, and applying appropriate measures of influence to prevent potential risks in this sphere.

As shown above, control and supervision over the provision of funeral services are not only administrative procedures, but also important instruments for implementing the humanitarian function of the state. Public administration bodies must bear responsibility for establishing an effective system of supervision and control that is independent, professional, and transparent.

At the same time, the lack of proper control and supervision over the provision of funeral services may lead to abuses by service providers, violations of the rights of the deceased’s relatives, an increase in corrupt practices, as well as inadequate sanitary conditions in cemeteries. Particularly dangerous is the trend toward monopolisation of the funeral services market and a purely formal approach by public authorities to the performance of their duties.

The effectiveness of such control and supervision depends not only on the existence of a regulatory framework, but also on the transparency, professionalism, and independence of the supervisory bodies themselves. In many cases, there is an absence of political will to properly intervene in the funeral services market, which creates favourable conditions for corruption and legal nihilism.

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Liudmyla Silenko,

*Doctoral Student at the Department of Public and International Law of Vadym Hetman
Kyiv National Economic University,*

PhD in Law, Associate Professor, Director of LLC “Law and Justice”

E-mail: Lm87@ukr.net

ORCID: 0009-0007-4753-7074