

A MODERN PERSPECTIVE ON UNDERSTANDING THE FORMS AND METHODS OF STATE CONTROL IN ECONOMIC ACTIVITIES

Vitalii Svitlychnyi

Postgraduate Student, Yaroslav Mudryi National Law University, Ukraine

e-mail: svitlychnyivitalii@gmail.com, orcid.org/0009-0004-8721-3742

Summary

This article explores the complexities surrounding the modern understanding of the forms and methods of state control in economic activities. It sheds light on the diversity of viewpoints within the scholarly community concerning the interpretation of "form" and "method" in legal terminology, which leads to varied definitions and understandings of how control is implemented through these concepts. The paper notes the presence of two traditional frameworks for distinguishing between forms and methods in scientific discourse, arguing that compiling a comprehensive catalog of forms or methods of control is unfeasible for large-scale systems, such as state oversight in economic matters. It underscores the challenge of delineating the variety of forms and methods of state control and calls for a focused examination of the interplay between these concepts in economic regulation by detailing their key attributes, interactions, and by highlighting the fundamental forms and methods necessary for effective control. The author introduces a novel perspective on the "form" and "method" categories of state control in economic activities, suggesting a fresh approach to organizing these methods.

Key words: state control, economic activities, forms, methods, approaches, the relationship between forms and methods in law, classification of state control methods.

DOI <https://doi.org/10.23856/6228>

1. Introduction

The execution of control by the state, as a purposeful administrative action, takes place through specific forms and by employing particular methods. State control materializes in the real world through the application of methods, means, approaches, and techniques, encapsulated in forms, thereby embedding itself into the structure of societal relations. The selection's effectiveness, suitability, and logicity of forms and methods of state control are pivotal in fulfilling the goals and objectives established by the state, or society, especially within the economic realm.

The significance of investigating the forms and methods of state control has perennially garnered academic interest. Esteemed legal scholars, including A.F. Andrienko, A.M. Bandurka, D.N. Bakhray, Y.P. Bytyak, V.M. Garashchuk, S.V. Kivalov, V.K. Kolpakov, I.M. Korostashova, A.M. Muzychuk, V.V. Murza, A.A. Mukhataev, V.V. Novikov, T.A. Pozhar, M.K. Yakimchuk, and others have devoted extensive research to this topic. Despite thorough scholarly scrutiny, a consensus on the core nature and the interaction between supervisory forms and methods in state governance remains elusive within the realm of domestic legal scholarship, as does a unified classification of forms and methods for state supervisory activities in the economic domain, among other unresolved issues. This highlights the ongoing importance of addressing these concerns.

2. Exploring forms and methods in contemporary legal science

Delving into the nuances of forms and methods within the realm of legal reality prompts an immediate engagement with an animated debate across academic circles upon unveiling their definitions. The concept of "form" in legal studies is often interpreted as the outward expression of actions by a governmental entity or official, executed within their authorized capacity. This interpretation is exemplified by V.K. Kolpakov, who describes the form of state administration as "the outwardly expressed action – the intent of the executive-administrative body (official), enacted within the bounds of legality and its jurisdiction to fulfill a managerial objective" (*Kolpakov, 1999: 212*). Similarly, M.K. Yakimchuk echoes this definition, whereas A.M. Bandurka and K.L. Bugaychuk view the form of administrative-legal regulation as the outward manifestation of administrative activity under particular circumstances (*Bandurka et al., 2004: 185*).

A.F. Andriyko offers a more detailed perspective on legal forms, noting them as the external, consistent, and standardized expressions of the operational activities of state entities in establishing and executing management objectives and in sustaining their functionality (*Andriyko, 2004: 43*). Highlighting the aspects of consistency and standardization in legal forms seems particularly pertinent. However, the stance of V.V. Murza, which equates forms with methods by defining the forms of state control as approaches to executing control activities within the scope of the powers of state control bodies for achieving objectives efficiently (*Murza, 2013: 111*), is a point of contention.

The interpretation of the term "method" in legal studies varies widely among scholars. K.V. Andrievsky defines a "legal method" broadly as the legal means and ways through which the state influences social relations and the behavior of entities to shape desired forms, directions, and developmental trends (*Andrievskiy, 2013: 26*). V.K. Kolpakov addresses methods as techniques or approaches utilized in an activity. He argues that "methods of any activity are the approaches, techniques, and tools employed to accomplish the intended objective and constitute the essence of this activity. Therefore, the methods of state administration involve various techniques and tools for directed influence by administrative bodies and their officials on the awareness, will, and actions of the governed, embodying the substance of the administrative impact" (*Kolpakov, 1999: 180*). Diverging from this view, V.V. Hulko offers a unique perspective in his study on state financial control, proposing methods as a collection of prevailing theories, doctrines, concepts, techniques, methodologies, and understandings of social relations applied in assessing the legality, justification, and suitability of financial decisions and operations during the management and utilization of state and local financial resources (*Hulko, 2012: 57*), thus highlighting the intricate process of method formation in law.

In examining the scholarly discourse on the category "form," it becomes evident that there is a prevalent focus on its outward manifestation or expression, whereas "method" often refers to the means and procedures of such activities. This distinction aligns well with the etymological roots of the terms in question. The term "method" originates from the Greek "methodos", signifying a path of inquiry – a means to achieve an objective, resolve an issue, or a compilation of techniques and operations for the practical or theoretical understanding of reality. Conversely, "form" pertains to the external limits of an entity, shaping its appearance, mode of content existence, its internal configuration, organization, and outward manifestation" (*Busel, 2005: 1543*). Hence, it is understandable that within scientific discussions, methods are frequently linked to the intrinsic aspects of a phenomenon, while forms are associated with its outward characteristics.

However, this clear delineation between forms and methods, while logical and fitting, encounters several complexities when applied to the realm of state control. This often results in confusion, with the same actions and strategies being classified by some experts as a form and by others as a method. For example, audits can be identified as a method by certain scholars (Pryimak, 2016), and as a form by others (Usach, 2007).

The challenge in differentiating between "method of state control" and "form of state control" among administrative law experts is attributed to several factors. These include the evolving nature of control bodies' work, the objectives, tasks, and substance of control activities (Pozhar, 2007), the subjective perspectives of researchers who lean towards specific features in characterizing control activities as forms or methods (Shashenok, 2017), and the inherent inter-connection and inseparability of forms and methods as legal phenomena (Korostashova, 2006), among others. It is our view that these issues collectively contribute to the complexity surrounding the discussion of forms and methods within the context of state control.

The distinction between forms and methods of control transcends theoretical debate, extending into legislative frameworks. While direct and overt discrepancies within legislation have been addressed in recent years, the challenge remains unresolved to date. The Law of Ukraine "On the Basic Principles of State Financial Control in Ukraine," specifically Article 3, delineates that an "inspection is conducted by the state financial control body in the form of an audit. This involves both documentary and actual scrutiny of specific or individual aspects of the financial and economic operations of the entity being monitored. The objective is to uncover instances of legislative non-compliance, identify responsible officials and those with financial accountability. The findings from the audit are documented in a report" (*Pro osnovni zasady zdiisnennia derzhavnoho finansovoho kontroliu v Ukraini, 1993*). This understanding of an audit as a form, with inspection functioning as a method, is echoed in Section 2 of the Cabinet Ministers of Ukraine Resolution "On the Approval of the Procedure for Inspection by the State Audit Service, its Interregional Territorial Bodies" dated April 20, 2006, № 550: "An inspection entails the documentary and actual review of specific or individual facets of the financial and economic activities of the entity under control, performed through an audit aimed at detecting legal infractions and identifying culpable parties" (*Pro zatverdzhennia Poriadku provedennia inspektuvannia..., 2006*).

Furthermore, the Commission for the Regulation of Gambling and Lotteries has set forth the "Procedure for the Inspection of Gambling Equipment," which portrays inspection as a distinct "direction" or "type" of control activity, embodying both a method and a form of state oversight (*Pro zatverdzhennia Poriadku provedennia inspektuvannia hralnoho obladdannia, 2022*). In this vein, it is prudent to concur with V.M. Harashchuk's perspective: "every method must outwardly materialize in a certain form, and a form, conversely, can only take shape when imbued with relevant methods. A method cannot inherently stand alone, devoid of a specific form. Thus, these two concepts effectively represent two facets of the 'same coin'" (*Harashchuk, 2003: 163*). This articulation underscores the intertwined nature of forms and methods within the domain of state control, illustrating the ongoing complexity of categorizing control activities within legislative and practical contexts.

3. Exploring the dynamics between forms and methods of state control in economic activities

The examination of scholarly texts reveals a bifurcation among researchers studying the interplay between forms and methods of control, with opinions largely falling into two distinct groups. The first group emphasizes the importance of differentiating between forms and methods in state governance, often advocating for a comprehensive or inclusive catalog of control forms. For instance, V.V. Murza identifies several control forms, including inspection, auditing, revision, expertise, and monitoring (*Murza, 2013: 111*). Similarly, A.F. Andriyko enumerates inspections, audits, analysis of informational materials, and review of reports and messages as primary control forms (*Andriyko, 2004: 223*). I.K. Zalyubovskaya expands on these categories by adding expertise, coordination of controlled entities' activities, and handling complaints and applications as forms of executing state control (*Zaliubovska, 2003: 13*).

The primary critique of this perspective concerns the practicality of its application. Efforts to neatly segregate control forms within "extensive control systems" often result in certain forms being omitted or the list encompassing elements more closely related to control methods (techniques, approaches) rather than forms. Additionally, there is variation in how broadly scholars define forms. The category "inspection," for instance, is substantially more comprehensive than "auditing," "revision," and similar categories, as many control activities are executed in the guise of inspections. G.M. Osipovch's suggestion to consider inspection as the fundamental legal form of control, with other actions representing different levels of social-legal reality, is particularly noteworthy (*Ostapovych, 2006: 92*). However, we believe this assertion does not fully capture the essence. While inspection undoubtedly plays a pivotal role in the control framework, relegating a range of preventive or punitive measures, which fall within the purview of control entities, outside of its domain unduly limits the breadth of the state control toolkit.

An intriguing approach to the issue of defining forms and methods of state control is offered in the dissertation research by A.A. Mukhataev. The scholar delineates that the State Control and Revision Service's (SCRS) control activities are exclusively conducted through audits and inspections. Mukhataev also clarifies that other actions, such as "guaranteeing unobstructed entry to warehouses, storage spaces, production areas, and other premises for examination and inquiries pertinent to the audit or inspection; halting financial transactions in bank accounts and other financial institutions when the management of the entity under audit or inspection hinders the duties of the state control and audit service worker; among others, are considered methods of control." Due to legislative amendments at the time of the researcher's publication, a complete citation is not provided here, but can be found in (*Mukhataiev, 2005: 76–77*).

Furthermore, Mukhataev astutely differentiates between the forms of the SCRS's control actions (as the establishment of any fact concerning the situation at the entity being controlled) and the SCRS's operations per se (in terms of preparing and enacting regulatory acts, executing organizational and material-technical preparations prior to the direct control activities). This distinction effectively separates the "external" and "internal" aspects of the SCRS's operations as an institution (*Mukhataiev, 2005: 76*). We find Mukhataev's approach to be logical and reflective of the state control realities as practiced by the SCRS, even with the legislative modifications post-2005. This example highlights the practicality of adopting a "clear distinction approach between forms and methods" of state control within smaller systems. Given the SCRS's operations are well-defined and address a relatively narrow segment of the state's control functions, such a strategy is deemed wholly appropriate. Yet, when attempting to define control forms within broader systems, such as general state oversight or economic activity control, which encompass a vast array of state control interactions, numerous challenges arise.

Firstly, the extensive typological categorization of state control within the economic sector by its varieties implies a diversity of entities endowed with legislative powers. Within the governmental framework, these entities often operate independently, a factor that hinders the establishment of a cohesive understanding of what precisely defines a form and what constitutes a method of control across various domains of social relations. Secondly, the inherent dynamism within the realm of economic activities necessitates that state and legislative bodies seek out adaptable, targeted forms and methods of control that are optimally effective within specific sectors of economic regulation. Coupled with the previously mentioned challenges in academia regarding the differentiation between methods and forms of state control, these issues underscore the impracticality of aiming to compile a comprehensive catalog of control forms in large-scale systems. From our perspective, a more feasible approach to understanding the relationship between forms and methods involves focusing on identifying their key attributes and interactions, as well as elucidating the primary, indispensable forms and methods necessary for effective control activities.

The second, now-classic approach within the academic realm aligns closely with the objectives at hand. This perspective emphasizes the crucial distinctions between forms and methods without insisting on a rigid framework for separating state control activities. This approach offers several benefits, especially in the context of economic activities' oversight. A leading proponent of this view is the esteemed administrative law expert V.M. Harashchuk. Harashchuk points out that terms such as "audit," "inspection," "examination," and "search" might be categorized either as a form or a method of a controlling entity's operations, noting that they are not entirely synonymous. Additionally, he highlights the importance of distinguishing between actions of controlling bodies that are purely methodological. These methods include classic state management techniques, such as coercion and persuasion, both administrative and economic, as well as specialized control methods which are broader in scope (for instance, administrative fines or penalties; administrative cautions and orders to cease; suspension of technical equipment, specific items, etc.) (*Harashchuk, 2003: 164*).

V.M. Harashchuk further advises making a clear distinction between control methods as a series of actions for gathering and analyzing information about the state of the entity under scrutiny, and the methodological techniques employed in each particular instance of control. He clarifies that while there is no "abstract method" devoid of specific techniques, these methods are applied differently by various control bodies, across different fields, for diverse objectives, and occasionally utilizing different technical and other control tools (such as laboratory analysis, customs inspections using technical devices like scanners, service dogs, radar speed checks by the State Traffic Safety Inspectorate, undercover surveillance, test purchases of goods, etc.) (*Harashchuk, 2003: 165*). This nuanced approach acknowledges the complexity of state control activities and underscores the adaptability required to effectively navigate the diverse landscape of regulatory enforcement.

Echoing the insights of V.M. Harashchuk among others, some scholars suggest simplifying the terminological and conceptual complexity surrounding forms and methods of control by adopting the unified term "control methods." This term would encompass the entire spectrum of ways, forms, means, and techniques of control, solidifying this concept within legislative frameworks (refer to (*Korostashova, 2006*), (*Kohutych, 2018*), among others). We concur that, from a legislative drafting standpoint, this consolidation would be beneficial. The nuanced differentiation among forms, methods, ways, and means of control could then be explored within academic debates, enriching our understanding of control mechanisms without complicating legal application.

4. Conclusions

Drawing from the discussion, we propose defining the forms of state control in the economic sector as actions by authorized bodies that are outwardly manifested, organized, categorized, standardized, and enshrined in normative legal documents. These actions are designed to carry out methods, measures, approaches, and techniques of control and supervision as legally mandated. Methods, then, are a collection of measures, ways, and techniques for executing control and supervision activities within the economic sphere, each manifesting through specific forms of state control. Accordingly, we identify the primary methods in executing control and supervision activities as follows: 1) Methods for gathering and analyzing information to identify violations within the economic sector (such as inspections and monitoring); 2) Methods for halting violations, reinstating legal compliance, and preventing future infractions (including various impact measures like halting dividend payments or other capital distributions, restricting, suspending, or halting certain banking operations; removing non-compliant and hazardous products from circulation, among others); 3) Methods focused on holding the responsible parties accountable (determining the illegality of actions, enforcing sanctions as prescribed by law).

References

1. Andriievskiy K.V. (2013). *Deiaki osoblyvosti metodu pravovoho rehuliuвання u podatkovomu pravi Ukrainy* [Some peculiarities of the method of legal regulation in the tax law of Ukraine]. *Pravovyi visnyk Ukrainiskoi akademii bankivskoi spravy*. № 1 (8). [in Ukrainian]
2. Andriiko O. F. (2004). *Derzhavnyi kontrol v Ukraini: orhanizatsiino-pravovi zasady* [State control in Ukraine: organizational and legal foundations]. Kyiv. Nauk. Dumka. [in Ukrainian]
3. Bandurka O.M., Buhaichuk K.L., Humeniuk A.A. (2004). *Administratyvne pravo Ukrainy* [Administrative law of Ukraine]. Kharkiv: Vydavnytstvo Natsionalnoho universytetu vnutrishnikh sprav. [in Ukrainian]
4. Busel. V. (2005). *Velykyi tlumachnyi slovnyk suchasnoi ukrainiskoi movy* [A large explanatory dictionary of the modern Ukrainian language]. Kyiv; Irpin: Perun. [in Ukrainian]
5. Harashchuk V. M. (2003). *Teoretyko-pravovi problemy kontroliu ta nahliadu u derzhavnomu upravlinni* [Theoretical and legal problems of control and supervision in public administration]. *Dys. ... d-ra yuryd. nauk: 12.00.07*. Kharkiv, Natsionalna yurydychna akademiia Ukrainy im. Yaroslava Mudroho. [in Ukrainian]
6. Hulko V. V. (2012). *Reformuvannya systemy derzhavnogo finansovoho kontroliu v Ukraini v konteksti yevrointehratsiinykh protsesiv* [Reforming the system of state financial control in Ukraine in the context of European integration processes]. *Dys. ... kand. ekon. nauk: 08.00.08*. Kyiv. [in Ukrainian]
7. Kohutych Ye. D. (2018). *Spivvidnoshennia katehorii «formy» ta «metody» derzhavnogo kontroliu za diialnistiu pryvatnykh vykonavtsiv* [The ratio of the categories of "forms" and "methods" of state control over the activities of private performers]. *Prykarpatskyi yurydychnyi visnyk Vypusk 4(25) tom 3*. [in Ukrainian]
8. Kolpakov, V. K. (1999). *Administratyvne pravo Ukrainy* [Administrative law of Ukraine]. Kyiv: Yurinkom Inter. [in Ukrainian]
9. Korostashova I. M (2006). *Orhanizatsiino-pravovi zasady kontroliu v mytnii sluzhbi Ukrainy* [Organizational and legal principles of control in the customs service of Ukraine]. *Dys. ...kand. yuryd. nauk: 12.00.07*. Kyiv: Instytut zakonodavstva Verkhovnoi Rady Ukrainy. [in Ukrainian]

10. Mukhataiev, A. O. (2005). *Pravovyi status ta zakonodavchi zasady kontrolnykh povnovazhen orhaniv derzhavnoi kontrolno-reviziinoi sluzhby v Ukraini* [Legal status and legislative principles of the control powers of the bodies of the state control and audit service in Ukraine]. *Dys. ... kand. yuryd. nauk: 12.00.07*. Kharkiv: Natsionalna yurydychna akademiia Ukrainy im. Yaroslava Mudroho. [in Ukrainian]
11. Murza, V. V. (2013). *Formy ta metody derzhavnoi kontrolno-nahliadovoi diialnosti* [Forms and methods of state control and supervision activities]. *Publichne pravo*. № 2. Retrieved from: http://nbuv.gov.ua/UJRN/pp_2013_2_16 [in Ukrainian]
12. Ostapovych H.M. (2006). *Derzhavnyi kontrol na rynku tsinnykh paperiv Ukrainy* [State control of the securities market of Ukraine]. *Dys. ... kand. yuryd. nauk: 12.00.07*. Kyiv: Instytut zakonodavstva Verkhovnoi Rady Ukrainy. [in Ukrainian]
13. Pozhar T.O. (2011). *Rol finansovo-ekonomichnykh metodiv derzhavnoho finansovoho kontroliu u zabezpechenni biudzhetnoi dysypliny* [The role of financial and economic methods of state financial control in ensuring budgetary discipline]. *Aktualni problemy ekonomiky* №8 (122). [in Ukrainian]
14. *Pro osnovni zasady zdiisnennia derzhavnoho finansovoho kontroliu v Ukraini: Zakon Ukrainy vid 26.01.1993 № 2939-XII* [On the basic principles of state financial control in Ukraine: Law of Ukraine dated January 26, 1993 No. 2939-XII]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/550-2006-n#Text>. [in Ukrainian]
15. *Pro zatverdzhennia Poriadku provedennia inspektuvannia hralnogo obladnannia* [On approval of the Procedure for inspection of gaming equipment]. *Rishennia KRAIL vid 19.12.2022 № 453*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0233-23#Text>. [in Ukrainian]
16. *Pro zatverdzhennia Poriadku provedennia inspektuvannia Derzhavnoiu audytorskoiu sluzhboiu, yii mizhrehionalnymy terytorialnymy orhanamy* [On the approval of the Procedure for conducting inspections by the State Audit Service, its interregional territorial bodies]. *Postanova Kabinetu Ministriv Ukrainy; Poriadok vid 20.04.2006 № 550*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/550-2006-p#Text>. [in Ukrainian]
17. Pryimak S.V., Romaniv Ye. M. (2016). *Kontrol i reviziia diialnosti subiektiv pidpriemnytstva* [Control and audit of business entities]. Lviv: Liha-Pres, 2016. [in Ukrainian]
18. Shashenok Ya. V. (2017). *Do pytannia shchodo metodiv derzhavnoho finansovoho kontroliu* [Regarding the question of methods of state financial control]. *Pravova derzhava. Vyp № 28*. [in Ukrainian]
19. Usach B. F. (2007). *Kontrol i reviziia* [Control and revision]. Kyiv.: Znannia. [in Ukrainian]
20. Zaliubovska I. K. (2003). *Orhanizatsiino-pravovi zasady derzhavnoho kontroliu v Ukraini* [Organizational and legal principles of state control in Ukraine]. *Navch.-metod. posibn. Yuryd. l-ra*. [in Ukrainian]