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ORGANIZATIONAL FORMS OF PUBLIC CONTROL: ESSENCE AND CONTENT

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An attempt to conduct a complex and systematical analysis of existing organizational forms of public control is made. The essence and peculiarities of public control as a type of social control is found out in the article. The author's definition of public control is formed. The author proposes his own classification of organizational forms of public control; special organizational forms of public control; indirect organizational forms of public control. The content of each mentioned group of organizational forms of public control is analyzed briefly.

Key words: control, public control, forms of public control, organizational forms of public control, subjects of public administration.

Сквирский И.О. ОРГАНИЗАЦИОННЫЕ ФОРМЫ ОБЩЕСТВЕННОГО КОНТРОЛЯ: СУЩНОСТЬ И СОДЕРЖАНИЕ / Запорожский национальный университет, Украина

В статье сделана попытка проведения комплексного и системного анализа существующих организационных форм общественного контроля. В рамках статьи выясняется сущность и особенности общественного контроля как вида социального контроля, формулируется его авторское определение. Автор предлагает собственную классификацию организационных форм общественного контроля, выделяя: общие организационные формы общественного контроля; специальные организационные формы общественного контроля; опосредованные организационные формы общественного контроля. Кратко анализируется содержание каждой из названных групп организационных форм общественного контроля.

Ключевые слова: контроль, общественный контроль, формы общественного контроля, организационные формы общественного контроля, субъекты публичного управления.

Сквiрський І.О. ОРГАНІЗАЦІЙНІ ФОРМИ СУСПІЛЬНОГО КОНТРОЛЮ: СУТНІСТЬ ТА ЗМІСТ / Запорiзький національний університет, Україна

У статті зроблена спроба проведення комплексного та системного аналізу існуючих організаційних форм громадського контролю. У межах статті з'ясується сутність та особливості громадського контролю як виду соціального контролю, формулюється його авторське визначення. Автор пропонує

власну класифікацію організаційних форм громадського контролю, виділяючи: загальні організаційні форми громадського контролю; спеціальні організаційні форми громадського контролю; опосередковані організаційні форми громадського контролю. Стисло аналізується зміст кожної з названих груп організаційних форм громадського контролю так, до загальних форм громадського контролю можуть бути віднесені ті, які є доступними будь-якій приватній особі на безумовній основі. Така загальнодоступність забезпечується за рахунок того, що останні знаходять своє закріплення у нормах Конституції України, які, будучи нормами прямої дії, як наслідок, можуть бути використані будь-ким за будь-яких умов.

На протипагу загальним формам громадського контролю, реалізація спеціальних форм передбачає дотримання певних умов або виконання певних передумов з боку приватних осіб. Останніми можна назвати, наприклад, набуття членства у громадській організації або включення приватної особи до складу громадської ради чи спостережної комісії.

Що ж до опосередкованих форм громадського контролю, то такі «включаються» в дію за ініціативою не приватних осіб, а суб'єктів публічного управління.

Ключові слова: контроль, громадський контроль, форми громадського контролю, організаційні форми громадського контролю, суб'єкти публічного управління.

The problems of public control have been one of the most pressing topics for scientific discussions of representatives of legal science for quite a long time. This is understandable, since the public control is not only necessary element of civil society, but also the prerequisite for the implementation of individuals enshrined in the Constitution of Ukraine the right to participate in public affairs. It cannot be mentioned also about the importance of public control for democratic reforms in the country, because it is the last in the most fully manifested constitutional thesis that all state power emanates from the people. This point, in fact, is confirmed by constant scientific interest of the mentioned institute by scholars such as N.L. Boiko, S.H. Bratel, S.F. Denisiuk O.V. Jafarova, O.M. Muzychuk, V.S. Shestakov and others. At the same time we note that the named scientists in their works did not pay due attention to the question about the organizational forms of public control in Ukraine that is indicating the relevance of this area of scientific research.

Thus, the purpose of this article is to determine the essence and content the organizational forms of public control. To achieve the named objective is seen necessary: to formulate a definition of public control, to show the features of public control in comparison with other types of public control, in the light of the analysis of regulations governing the organization and public control in Ukraine, to identify the organizational forms of the latter.

The concept of control is widely used in a variety of acts that, in fact, resulted in a high level of attention on the part of scientists. The analysis of the works of the above authors shows that although they are slightly different in understandings of the category of control, but in their academic positions there is a lot to do on the basis of which it can be concluded that the control is a special type of activity aimed at checking or surveillance to check to counter, prevent or stop illegal actions, decisions or omissions on the part of anyone.

Transferring formulated definition of control on the concept of public control in the first approximation to the latter when it is possible to understand the activities of the public (some private persons and (or) non-governmental organizations), which aims at checking or monitoring to check for combating, prevention or termination unlawful acts, decisions or omissions of subjects of public administration.

At the same time we note that in the scientific literature public control is frequently characterized by the initial position of the other which, in our view, requires some comments aimed at the unification of approaches to its understanding. Thus, S.H. Stetsenko under public control proposes to understand the kind of control in which the latter is carried out by public organizations or individuals. At the same time the author calls also local governments as agents of public control [1, 206].

O.B. Zelentsov believes that public control is the control exercised by the parliament and local elected officials, control the people, control by the political parties (ruling and opposition) and associations of citizens, control by the media and control of public opinion [2, 8-64].

Other authors exploring the nature of public control note that the subjects of its implementation may be collective (political parties, public organizations, trade unions, non-governmental and supervisory board, supervisory committee, audit companies, labor groups, etc.) and individual (citizens of Ukraine, foreign citizens, stateless persons, public officers, advocates for pre-trial investigation, journalists, law enforcement, etc.) subjects [3, 329].

Analyzing the above definitions of public control, we note that all of them cause us for certain critical comments. They are the following.

First, we cannot share the view that the subject of public control is the parliament. This is due to the fact that when people delegate appropriate powers to deputies that form the parliament, the latter is transformed into a subject of public authority, and therefore no longer be regarded as an element of civil society. And if it is so, the parliament is not the subject but the object of public control.

Secondly, we cannot support the position and those authors who believe that local governments are the subjects of public control, as they are the element of public authorities as well as the parliament.

Thirdly, some comments require also thought about the possibility of referring to the subjects of public control of political parties, coalitions, movements and so on. According to Art. 1 of the Law of Ukraine "On Political Parties in Ukraine" [4] the citizens of Ukraine join with political parties to exercise and protect their rights and meet the political, economic, social, cultural and other interests. Political parties have the right to participate actively in social and public life of the country which, in theory, allows us to treat them as subjects of public control. But here we cannot pay attention to the fact that political parties are fundamentally different in their legal status from other types of associations, because of their participation in the formation of public authorities. Because it not shape and control the functioning of the political parties involved in public administration is being politicized which quite often takes them outside the legal field, due to the peculiarities of political activity which is known cannot be objects united with the public administration. In other words we can conclude that the control exercised by political parties is a separate, specific form of social control.

Fourth, public inspectors are also called as subjects of public control. Expressing our own attitude to such proposals we note the following. The authors of this opinion, in our view, do not differentiate between the two closely related, but partially different categories, which are "public control" and "citizens' engagement in the implementation of public administration". Public inspector is the entity involved with the government, therefore he provides a public authority. In other words, he is a subject of delegated authority. Given this, he is also impossible to be attributed to the agents of social control, because the latter not vested by any public authority.

So, as an interim conclusion, we note that the characteristic features of social control is that it is carried out as separate individuals so civil society groups that are organizationally and functionally independent of the control objects, which are mainly the subjects of public authorities. In other words, the subjects of public control are ordinary citizens who can operate in these areas, either alone or collectively. This conclusion is fundamental to progress to clarify the question of the forms of social control, because the past is, in our view, derived from the legal status of the subjects of its implementation. Let us examine this aspect in more detail.

So, as citizens are the subjects of public control, all their possible actions or decisions on subjects of public administration may only be made within the formula "allowed everything that is not explicitly prohibited by law". However, the effect of the said formula sometimes can be limited. This applies primarily to the sphere of relations between individuals with the subjects of public administration. In this case it is the fact that the actions (decisions) of individuals involved in public administration can respond only within their assigned jurisdiction, which, in fact, limits the effect of the formula "allowed everything that is not explicitly prohibited by law". Thus, individuals can enter into a relationship with the subjects of public administration only within the limits specified by the relevant regulations. In other words, there can be a relationship between an individual and a subject of public administration outside the defined regulatory competence of the latter.

The foregoing, of course, also applies to the sphere of public control which, therefore, may be made only in those forms which have found their statutory.

Analysis of regulations relating to the organization and implementation of public control, leads to the conclusion about the presence of general, special or indirect forms of public control. In our view, to the general forms of public control can be attributed those that are available to any private person to unconditional basis. This accessibility is ensured by the fact that the latter find their consolidation in the norms of the Constitution of Ukraine [5], which, being directly applicable, as a result, can be used by anyone under any circumstances.

Contrary to common forms of public control implementation involves specific forms of certain conditions or performing certain preconditions on the part of individuals. As the latter we can name, for example, membership in a social organization or incorporation of an individual into the community board or the supervisory committee.

As for the indirect forms of public control, they “include” in action at the initiative not individuals but subjects of public administration.

Let’s consider each of these groups of organizational forms of public control in more detail.

General organizational forms of public control

The Constitution of Ukraine provides individuals, regardless of their social status, age, articles, nationality, etc., exercise public control over the entities of public administration, particularly in the form: appeals, requests for public information and mass gatherings.

According to Art.40 of the Constitution of Ukraine all have the right to file individual or collective petitions, or to personally appeal to the state government, local government and officials and employees of such bodies are obliged to consider the appeal and give a reasoned reply within the prescribed statutory period. Concretization of obtaining of these rights has found reflection in the Law of Ukraine “On Citizens’ Appeals” [6], which provides that private persons may apply to subjects of public administration with suggestions, comments, requests, demands and complaints. Within any of these types of appeals individuals may require involved in public administration from the relevant explanations or comments about committed (not committed) actions or decisions at that regardless of whether the applicant directly related to the past or not.

This form of public control is quite effective, but its effectiveness would be higher, as if the national legislation would be assigned legal liability of official (service) of organs of public authority for breach of terms to respond to individuals or for its absence. It also seems necessary to expand the types of appeals of citizens. Thus, it looks appropriate, in our view, inclusion in the existing list of appeals and petitions as that would have legalized mass appeals to the subjects of public administration with the same issue.

An important element of the administrative and legal status of individuals is their right of access to public information, within the implementation of which can also be public control over the subjects of public administration.

The right of access to public information, being guaranteed at the constitutional level (Part 2 of Art.34, Part 2 of Art.50) found a further specification of the Law of Ukraine “On access to public information” [7], where, in particular, is pointed out that individuals have a right of access to public information, which includes the reflected and documented by any means and in any media information that was obtained or created in the course of public authorities of their duties under applicable law or that is in the possession of government agencies and other public information.

Thus, individuals submitting to the subject the information request authority from the requirement to provide public information can control any aspects of functioning of the latter.

As the next general organizational form of public control it is necessary to recognize the massive gatherings, which is the most democratic way of public assessment of the actions (decisions) of the subjects of public administration.

Freedom of peaceful assembly, as it is noted in the Guidelines on freedom of peaceful assembly, is one of fundamental human rights, which can use and which can be realized by individuals and groups, unregistered associations, legal entities and other types of organizations.

Assembly can serve a large number of purposes – including showing the difference, to express unpopular views or position of the minority [8]. It is with this in mind, peaceful assembly, in fact, should be considered as a form of public control.

The right of individuals to participate in peaceful gatherings is enshrined in Art. 39 of the Constitution of Ukraine, which states that citizens have the right to assemble peacefully without arms and to hold meetings, rallies, and demonstrations in advance of notifying the executive power or bodies of local self-government.

At the same time, we note that the implementation of the named law in Ukraine now is at not too high level that is mainly due to the lack of relevant law. So, in order to strengthen the effectiveness of this form of public control is seen necessary preparation and adoption of the Law of Ukraine “On the mass meetings”.

To a category of general organizational forms of public control, in our opinion, should be attributed also public debate, which is referred to, for example in the Law of Ukraine “On democratic civil control over the military and law enforcement agencies” [9]. However, this form of public control now exists, in fact, only at the theoretical level, because, again, there is no normative act, which would have established the organization and conduct of public debate. The stated fully applies also to the public hearings.

Special organizational forms of public control

Special organizational forms of public control, as it has been highlighted above, require some preparatory work on the part of individuals and communities. During this training takes place, so to speak, the authorization public control on the subjects of public administration, which is carried out on behalf of the latter. So from this we can conclude that these forms of public control are to some extent dependent on the decisions (actions) of the subjects of public administration, which causes some doubts as to their effectiveness and efficiency.

To these forms of social control can be attributed primarily community councils that operate under the Cabinet of Ministers of Ukraine “On public participation in the formulation and implementation of public policy” [10], which approved the Model Regulations of the Public Council under the Ministry, other central executive authorities Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city, regional, Kyiv and Sevastopol state administrations. The above provisions are typical of a further specification at the level of orders and directives named entities of public administration.

The main tasks of community councils are: creating the conditions for the realization of the constitutional right to participate in public affairs, public control over the activities of executive authorities, in promoting executive body of public opinion in the formulation and implementation of public policy.

It should be mentioned also about the institute of public observers through which to date is made public control over a considerable number of areas (areas) functioning of public administration. As example we could call organized under the Ministry of Education and Science, Youth and Sports of Ukraine from 25.11.2011, № 1354 [11] public observation of external evaluation of educational achievements of graduates of secondary schools.

Special attention should be paid to the institute of public examination of the Authorities of the Cabinet of Ministers of Ukraine dated November 5, 2008 № 976 “On approval of encouraging public assessment of executive bodies” [12]. Within the framework of this examination the institutes of civil society can provide an assessment of executive power, efficiency and performance of such decision-making bodies, preparation of proposals to resolve the last significant social problems.

Indirect organizational forms of public control

These forms of public control can only conditionally be called such because they are not initiated by the public but, in fact, by the subjects of public administration. However, despite this, at their expense quite important task is realized – informing the public on the status and prospects of functioning of public administration. The information obtained in this way can be used later for the public, so to speak, a full-scale civil control over a particular subject of public administration.

Speaking of indirect forms of public control, we mean primarily the duty of public administration subjects to inform the public about their activities. So today marked subjects of public administrations inform the public about:

- the results of the measures to prevent and combat corruption [13];
- European integration of Ukraine [14];
- the environment [15] and so on.

So, making a general conclusion from the above, we note that today in Ukraine a considerable amount of organizational forms of public control is accumulated over the subjects of public management,

which differ from each other by a considerable number of characteristics. This diversity of control activities is definitely a must welcome as this is achieved through the mobility and flexibility of the institutions of civil society in ensuring relevance, effectiveness and legitimacy of functioning of public administration. However, along with this we note that a considerable number of forms of public control now exist mainly on a theoretical level, as regulations are not defined order of their implementation in practice. Correcting this situation should be one of the priorities of our country.

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