

DIRECTIONS OF IMPROVEMENT OF LEGAL REGULATION OF PUBLIC HEARINGS AS A FORM OF PUBLIC CONTROL, WHICH CARRIED OUT BY PUBLIC ASSOCIATION

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In the article author determines deficiencies of legal regulation of order of organization of public hearings as a form public control, which carried out by public associations, and outlines the main directions for their removal in order to improve the legal framework of Ukraine in the relevant field of public relations. Given the analysis of the legal regulation of public organizations participating in the preparation and conduct of public hearings as a form of public control and working scientists who have studied this perspective, one could argue that the legal framework regulating the conduct of the public hearing shall take place not at the level of local legal acts as is currently and demonstrates its imperfections but at the level of the new Law of Ukraine "On public hearings in Ukraine".

Key words: public associations, public hearings, public control, form, bodies of public administration.

Вихляев М.Ю. НАПРАВЛЕНИЯ СОВЕРШЕНСТВОВАНИЯ НОРМАТИВНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ ОБЩЕСТВЕННЫХ СЛУШАНИЙ КАК ФОРМЫ ОБЩЕСТВЕННОГО КОНТРОЛЯ, КОТОРЫЙ ОСУЩЕСТВЛЯЕТСЯ ОБЩЕСТВЕННЫМИ ОБЪЕДИНЕНИЯМИ / Запорожский национальный университет, Украина

В статье автор определяет недостатки нормативно-правового регулирования порядка организации и проведения общественных слушаний как формы общественного контроля, осуществляемого общественными объединениями, и определяет основные направления их устранения с целью совершенствования нормативно-правовой базы Украины в соответствующей сфере общественных отношений. На основании проведенного анализа нормативно-правового регулирования участия общественных объединений в подготовке и проведении общественных слушаний как формы осуществления общественного контроля и наработки ученых, которые исследовали данную проблематику, автор утверждает, что нормативно-правовое регулирование порядка проведения общественных слушаний должно происходить не на уровне местных нормативно-правовых актов, как это существует сейчас и демонстрирует свое несовершенство, а на уровне отдельного нового Закона Украины «Об общественных слушаниях в Украине».

Ключевые слова: общественные объединения, общественные слушания, общественный контроль, форма, органы публичной администрации.

Віхляєв М.Ю. НАПРЯМКИ ВДОСКОНАЛЕННЯ НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ГРОМАДСЬКИХ СЛУХАНЬ ЯК ФОРМИ ГРОМАДСЬКОГО КОНТРОЛЮ, ЯКИЙ ЗДІЙСНЮЄТЬСЯ ГРОМАДСЬКИМИ ОБ'ЄДНАННЯМИ / Запорізький національний університет, Україна

У статті автор визначає недоліки нормативно-правового регулювання порядку організації та проведення громадських слухань як форми громадського контролю, що здійснюється громадськими об'єднаннями, та окреслює основні напрями їх усунення з метою вдосконалення нормативно-правової бази України у відповідній сфері суспільних відносин.

Одним із головних інститутів громадянського суспільства є громадські об'єднання України, за допомогою яких громадяни реалізують своє конституційне право на об'єднання. Фізичні особи, долучаючи до діяльності різноманітні громадські об'єднання, отримують реальну можливість більш ефективно впливати на формування та реалізацію державної політики, вирішення важливих питань місцевого значення, забезпечуючи задоволення своїх законних інтересів.

Нормативно-правове регулювання порядку проведення громадських слухань повинно відбуватися не на рівні місцевих нормативно-правових актів, як це існує наразі та демонструє свою недосконалість, а на рівні окремого нового Закону України «Про громадські слухання в Україні», у якому б обов'язково повинні бути визначені положення, які б гарантували можливість активної участі громадських об'єднань у процесі підготовки, проведення та врахування органами публічної адміністрації результатів громадських слухань такого характеру: 1) надання громадським об'єднанням права ініціювати проведення громадських слухань; 2) закріплення можливостей участі громадських об'єднань у процесі підготовки громадських слухань, які ініційовані як громадськими об'єднаннями, так і іншими суб'єктами правовідносин; 3) закріплення права ведення громадських слухань представником громадського об'єднання в разі ініціювання цим об'єднанням громадських слухань; 4) визначення чітких механізмів, які б забезпечували не лише розгляд результатів громадських слухань, які були громадськими об'єднаннями, але і їхнє реальне врахування органами публічної адміністрації, у тому числі і юридичної відповідальності; 5) надання громадським об'єднанням права бути офіційним спостерігачем за сервером, на якому розміщується копія інформаційної системи, яка використовується задля забезпечення проведення електронних громадських слухань.

В окремих нормотворців та науковців може виникнути точка зору, пов'язана з негативною оцінкою пропозиції щодо зміни рівня нормативно-правового регулювання порядку проведення громадських слухань з місцевого на рівень закону, яку вони будуть обґрунтовувати тим, що, у разі прийняття Закону України «Про громадські слухання в Україні», він не повною мірою буде узгоджуватися з природою

місцевого самоврядування, яке має здійснюватися на основі поєднання зовнішнього регулювання у формі законів та саморегулювання, здійснюваного органами місцевого самоврядування шляхом прийняття ними відповідних місцевих нормативно-правових актів. Проте подібні точки зору слід вважати необґрунтованими, оскільки прийняття Закону України «Про громадські слухання в Україні» забезпечить уточнення процедур підготовки та проведення громадських слухань, що виглядає вкрай необхідним, враховуючи сучасне недосконале врегулювання цього питання на рівні місцевих нормативно-правових актів або взагалі його відсутність в окремих населених пунктах України. Відсутність подібного закону ставить під сумнів участь громадськості, у тому числі громадських об'єднань, у громадських слуханнях під умову її затвердження органами публічної адміністрації відповідного населеного пункту, від рішення яких залежить прийняття відповідного локального нормативно-правового акту з питань проведення громадських слухань, так і його скасування.

Ключові слова: громадські об'єднання, громадські слухання, громадський контроль, форма, органи публічної адміністрації.

One of the key institutions of civil society associations are public associations of Ukraine, through which citizens exercise their constitutional right of association. Individuals joining in the activities of various associations receive a real opportunity to more effectively influence the formation and implementation of public policies addressing important local issues, ensuring the satisfaction of their legitimate interests. Over the past five years, the Parliament of Ukraine, President of Ukraine and the Cabinet of Ministers of Ukraine after nearly two decades of “stagnation” of legislation in the field of public associations adopted a number of important legal acts aimed at enhancing the role of public organizations in public administration by increasing the volume of their rights in this area and how to influence the activities and decisions of public administration. However, the practice of implementation mentioned legal acts shows that neither the representatives of the public administration or members of associations are not adequately aware of the need to accelerate the process of the formation and maintenance of conscious and proactive associations to further development of the state and the need for support by public administration of public initiatives to participate in the state-building process. A similar trend is observed in modern jurisprudence, particularly in the science of administrative law, because, despite the presence of a new regulatory framework in the interaction of public organizations with public administration bodies, similar questions in modern scientific papers scientists of administrative law not properly investigated, and the new textbooks on administrative law authors like the late twentieth century, is given only general questions of administrative and legal impact on the establishment, operation and termination of associations, but subject to the provisions of the new law of Ukraine “On the Citizen connectivity”, which came into effect from 01 January 2013. One of fairly efficient mechanisms of influence of public organizations in the activities of public administration, public hearings are a form of social control, which is in accordance with the current legislation of Ukraine, they can perform. It is in the public hearings as a form of social control is a manifestation of the potential of this kind of control, because by using this form of social control, community groups are able to implement its proactive administrative personality helping meet the public interest.

The conduct of public hearings in Ukraine legislatively regulated by the Law of Ukraine “On Local Self-Government in Ukraine” dated 21 May 1997, in accordance with Art. 13 by local community has the right to hold public hearings – to meet with members of the relevant council and local government officials, during which members of the territorial community may hear them raise issues and make proposals on issues of local importance, within the jurisdiction of local governments, proposals, are made on the results of the public hearing, subject to consideration by local governments [1]. It should also emphasize that the specified section of the law provides that a detailed legal framework regulating the conduct of the public hearing takes place at the level of the statute of the local community.

The results of the project “Promotion of the role of public organizations in addressing community problems of Lviv”, organized by public organizations “Institute of Information Law” and “Portal of Lviv’s public organizations” in 2009 in the city of Lviv clearly demonstrate the effectiveness of public hearings as a form of public control public organizations. During the study, “Consideration of local government city offers presented at public hearings during 2007-2009” was processed and analyzed 115 records of public hearings. Experts estimate that over the period from 2007 to 2009 4454 of citizens of Lviv participated in hearings, who submitted 995 proposals of which 639 were processed. In general the executive bodies of the Lviv City Council included 152 offers, an average of 23.8% [2].

R.V. Lysenko on the analysis of the statutes and regulations that define the procedure for calling and holding public hearings in regional centers of Ukraine shows that most of these documents greatly complicate the implementation of the right to a public hearing, and justifies the need for the law on

rights of public organizations to initiate public hearings [3, 318]. V.P. Artemenko, completing a thorough scientific study of local normative acts, says that these acts to the initiators of public hearings are the following: 1) the initiative of members of the territorial community; 2) the BSP; 3) non-governmental organizations; 4) heads of local communities; 5) local councilors [4, 36]. Examples include rules of the Regulation on the procedure for the preparation and conduct of public hearings in the city of Kharkiv, approved by 26 Izyumsky session of the City Council of the 5th convocation on November 27, 2007 № 1439, in accordance with Section 2.1 which subjects of initiating public hearings are public organizations representing the interests of certain groups of the population or the subjects of legal regulation of local regulatory acts [5]. Given the above assertion researchers who engaged in the problems of the law on the procedure for calling and holding public hearings, as well as an example of a local legal regulation of this issue, as evidenced by the inadequacy of the Law of Ukraine “On Local Self-Government in Ukraine” dated 21 May 1997 and local laws and regulations as in some localities associations are not entitled to initiating public hearings, while others are only a few kinds of associations, such vested right is usually only public organizations.

A similar lack of legal regulation of public control public organizations by initiating and conducting public hearings can also be observed at the level of legal acts of the government. For example, in paragraph 7 of the Resolution of the Cabinet of Ministers of Ukraine of 25 May 2011 № 555 “On approval of the public hearings on the consideration of public interest in the drafting of urban planning at the local level” among the entities eligible to submit proposals to project planning documentation procedures during their review and consideration of public proposals not included any kind of associations. Under Section 13 of the same resolution of the Conciliation Commission, created in the case of public offerings, the decision to take account of where the developer and the customer cannot take yourself or there are disputes amongst all public organizations Ukraine may delegate its representatives have only professional association, a legal definition which currently do not appear, and labor unions [6]. The analysis of this rule gives reason to believe on leaving aside associations in this legal act.

The vast majority of local normative legal acts determines the procedure of public hearings and preparing public hearings arranged by local councils as to the place and time of the public hearing, provide facilities and equipment, bring to the attention of people. Domestic researchers of urgent problems of public control over the activities of local governments have repeatedly criticized this provision of local normative acts. For example, the V.P. Artemenko said that it is better to prepare and conduct public hearings to establish a working group of government officials and members of the initiative group of the public, based on the realities of the public administration at the time of the public hearing. This is the mechanism it proposes to consolidate the relevant regulations of local normative acts, since the technology and the organization of public hearings depend on the outcome and success of the event [4, 36-37]. V.V. Latysheva own reasoning approach on the need to consolidate the regulatory mechanism for the preparation and conduct of public hearings which would be composed of three stages, with the first required preparatory phase of the task force citizens to be able to within three days after applying for conducting a public hearing, view of service delivery, to study public opinion, and the sake of objectivity it is advisable to include in the target population of one representative from the local branch of any political parties and public organizations and one representative body which will carry out the work group [6, 277]. Yu.P. Sagittarius supports specified point of V.V. Latysheva and further emphasizes the importance of public hearings which were initiated by civil society groups indicating that the suggestions and recommendations carried out on the initiative of public organizations, political parties, trade union committees shall be published in the local media and discussed at a meeting of the Executive committee or sessional meeting of the Board whichever the exclusive competence of the authority which belongs questions imposed upon hearing [7, 195].

Current local regulations also restrict the rights of public organizations in the immediate public hearings, as in most cases, to conduct public hearings belongs only to the city, town and village head or other officials of local governments. It is necessary to support the position of V.P. Artemenko which indicates that better serve the public hearings in cases where the right to a hearing provided a neutral person who is independent of the local government and which is able to understand ourselves and the audience during the difficult dialogue [4, 37]. To solve this problem it is advisable to consolidate the legislative level, in case of a public hearing of public associations, the right to their driving belongs to representatives of public associations which initiated the relevant hearings and commissioned its own. Due to the rapid development of electronic technology worldwide, including in

Ukraine, the annual increase in the number of citizens of Ukraine who have Internet access, you can indicate both the reality and necessity of introduction in Ukraine of electronic public hearings, which should ensure the involvement to public control over public administration a significant number of citizens that are currently inactive. V.O. Habrinets, S.P. Kandzyuba, O.V. Kravtsov in his scientific writings justify introducing an information system “Electronic public hearings”, through which the procedure of public hearings would include: 1) the possibility of territorial community members to get to a polling station ID and password to access the site, which would have been recorded exclusively for this citizen; 2) information system “Electronic public hearings” shall consist of two identical copies, one of which must be located on a server public administration body, the second must be on a server controlled by independent observers, such as non-governmental organizations or divisions of political parties; 3) a subject and vote on the forum can officials of the public administration or any member of the local community which is registered on the forum for help received a login and password; 4) after a new topic started public hearings and consider an automatic notification of territorial communities that registered on the forum created a new theme for their e-mail addresses; 5) within the period specified public administration, there is a discussion of the topic of public hearings and vote on the issue related projects; 6) transmission of election results on two servers at the same time providing the reliability of the results; 7) public hearing shall be deemed to have occurred only if the vote on similar subject attended a certain number of territorial community [8, 115]. Clearly indicated innovative idea deserves attention from both the drafters and scholars, but its implementation requires further improvement of information system developed to address three main objectives: 1) the exclusion of any opportunities for abuse by persons with an interest in the outcome of the public hearings; 2) creating conditions to attract the maximum number of territorial community members to participate in the public hearing; 3) ensuring the active participation of representatives of the public administration and information support from their side during the time of public hearings on their beginning and the end. Thus associations organized as part of the public must play a leading role in during electronic public hearings, which can be expressed in: 1) the possibility of public organizations to act as official observers for a copy of information system which is located on a server that must be controlled by public unions; 2) the possibility of public organizations to register for the forum which held a public hearing on its own behalf and actively participate in the discussion; 3) the possibility of associations using modern information technology to attract members of the territorial community to discuss the topics raised at the public hearing on the Internet.

Given the analysis of the legal regulation of public organizations participating in the preparation and conduct of public hearings as a form of public control and working scientists who have studied this perspective, one could argue that the legal framework regulating the conduct of the public hearing shall take place not at the level of local legal acts as is currently and demonstrates its imperfections but at the level of the new Law of Ukraine “On public hearings in Ukraine” which would necessarily have to be defined position to guarantee the possibility of active participation of public organizations in the preparation, implementation and consideration of public administration results of public hearings as follows: 1) the provision of public unions the right to initiate public hearings; 2) consolidate the participation of public organizations in the preparation of public hearings initiated as a Citizen associations and other business relationships; 3) securing the right conduct public hearings of representatives of public associations in the case of a union of these public hearings; 4) establish clear mechanisms to ensure not only review the results of the public hearings that were civil society groups but their real consideration public administration, including legal liability; 5) providing public unions the right to be an official observer at the server which contains a copy of the information system that is used to ensure the realization of electronic public hearings.

In some drafters and scholars may view associated with negative evaluation of proposals for changes in legal regulations for carrying out public hearings at the local level of the law, they will justify the fact that in the case of the Law of Ukraine “On Public hearing in Ukraine” he will not fully consistent with the nature of local governments which should be based on a combination of external regulation in the form of legislation and self-regulation implemented by local governments through their adoption of appropriate local normative acts. However, this point of view should be considered unfounded because the Law of Ukraine “On public hearings in Ukraine” will provide clarification of procedures for the preparation and conduct of public hearings, which seems essential, given the current imperfect solution to this issue at the level of local normative acts or even its absence in some areas of Ukraine. The absence of such law casts doubt on the part of the public, including public organizations, in the

public hearing on the terms of its approval by the Public Administration of the settlement, which depends on the decision of the relevant local legal act concerning public hearings and its abolition.

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ПРОГНОЗУВАННЯ ЯК ФУНКЦІЯ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ НАУКИ В УКРАЇНІ

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Стаття присвячена визначенню та удосконаленню прогнозування як функції адміністративно-правового регулювання науки в Україні на сучасному етапі розвитку світового співтовариства.
Ключові слова: функції, наука, сфера, об'єкт пізнання, сутнісний зміст, регулювання.

Mosondz S.A. PROGNOZIROVANIJE KAK FUNKCIJA ADMINISTRATIVNO-PRÁVOVOGO REGULIROVANIJA NAUKI V UKRAINE / Университет современных знаний, Украина

Статья посвящена определению и усовершенствованию прогнозирования как функции административно-правового регулирования науки в Украине на современном этапе развития мирового сообщества.

Ключевые слова: функции, наука, сфера, объект познания, сущностное содержание, регулирование.

Mosondz S.A. PROGNOSTICATION AS FUNCTION OF ADMINISTRATIVNO-PRÁVOVOGO ADJUSTING OF SCIENCE IS IN UKRAINE / University of modern knowledges, Ukraine

The article is devoted determination and improvement of prognostication as to the function of the administrative law adjusting of science in Ukraine on the modern stage of development of world concord.

In conditions of globalization scientific activity becomes a defining trend of economic and social progress. Most countries are in transition from spontaneous development of individual sectors and