

THE LEGAL FORMS OF PUBLIC CONTROL

ПРАВОВІ ФОРМИ ГРОМАДСЬКОГО КОНТРОЛЮ

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The article deals with highlighting on one of the relevant theoretical and methodological problems of administrative law regarding legal forms of public control. In the article, the author focuses on the fact that subjects of public control are supposedly to cooperate with subjects of public authorities in various legal forms, which being different from the legal forms of public administration. Legal forms of public control as a separate direction of civil society activity have their own content and characteristic features. At the same time, it is substantiated that there is a close connection between legal and non-legal (organizational) forms of public control. This connection, according to the author, is manifested in the fact that any organizational form can become legal in condition that it is carried out on the basis, within the limits and in the manner determined by legislation. Its results always lead to certain legally significant consequences or being associated with their occurrence implemented within the competence of the subject of public authority. The author of the article separately attempts to determine the signs of legal forms of public control. The following definitions, the author determines as those signs: external expression of the activity (exercise of powers) of public control subjects; combination of procedural and material components; provisions for the mandatory participation of the subject within public authority; essential representation of legally significant actions related to the supervision, verification and assessment of the exercise of powers by subjects of public authority; the basis is grounded on legal procedures; the result of exercising the powers of public control subjects within the framework of these forms is mostly the adjustment of the activities of subjects of public authority; establishment by the norms of administrative law and implementation within the limits and in the manner determined by these norms; limitations to the competence of the public authority subject. At the same time, the legal form of public control is the system of legally significant manifestations of the activity of public control subjects, which is fixed by the norms of administrative law and, regardless of the method of fixation, objectifies the control activity of the public. Instead, the issue of types of legal forms of public control, as well as criteria for their demarcation, requires further scientific research.

Key words: legal form, public control, civil society, public administration, subjects of public authority.

Стаття присвячена висвітленню однієї із актуальних теоретико-методологічних проблем адміністративного права щодо правових форм громадського контролю. У статті автором акцентується увага на тому, що суб'єкти громадського контролю можуть взаємодіяти із суб'єктами публічної влади у різних правових формах, які є відмінними від правових форм публічного адміністрування. Правовим формам громадського контролю як окремого напрямку діяльності громадянського суспільства притаманні свої власні зміст та ознаки. Водночас, обґрунтовується, що існує тісний зв'язок між правовими та неправовими (організаційними) формами громадського контролю. Цей зв'язок, на думку автора, проявляється в тому, що будь-яка організаційна форма може стати правовою за умови, що вона здійснюється на підставі, у межах та у спосіб, визначений законодавством; її результати завжди зумовлюють певні юридично значущі наслідки або пов'язані з їх настанням; реалізується у межах компетенції суб'єкта публічної влади. У статті окремо здійснено спробу визначити ознаки правових форм громадського контролю. До таких ознак автором віднесено: являють собою зовнішнє вираження діяльності (реалізації повноважень) суб'єктів громадського контролю; поєднують процедурну та матеріальну складову; передбачають обов'язкову участь суб'єкта публічної влади; сутнісно являють собою юридично значущі дії, що пов'язані із наглядом, перевіркою та оцінкою здійснення повноважень суб'єктами публічної влади; в їх основі – юридичні процедури; результатом здійснення повноважень суб'єктів громадського контролю у рамках цих форм здебільшого виступає коригування діяльності суб'єктів публічної влади; закріплюються нормами адміністративного права та реалізуються у межах та спосіб, визначені цими нормами; обмежуються компетенцією суб'єкта публічної влади. Водночас правова форма громадського контролю являє собою систему юридично значимих проявів активності суб'єктів громадського контролю, яка закріплюється нормами адміністративного права та незалежно від способу фіксації об'єктивує контрольну діяльність громадськості. Натомість подальшого наукового дослідження потребує питання видів правових форм громадського контролю, а також критеріїв їх розмежування.

Ключові слова: правова форма, громадський контроль, громадянське суспільство, публічне адміністрування, суб'єкти публічної влади.

Public control, as one of the important mechanisms of influencing the public authorities, contributes to the improvement of the efficiency on the functioning of state authorities, local self-government bodies, and officials. At the same time, the significant shortcomings of legal regulation of the development and the implementation of the control process may cause significant difficulties through the activities of the subjects of public control and, above all, the achievement of the main goal of this control, i. e. the proper verification of the activity of the subjects of public authority, its evaluation from the standpoint of compliance of such an activity with the legally established requirements and public interests, as well as its actual correction.

Considerable attention is drawn to systemic flaws in the legal regulation of a significant number of legal forms of public control, in particular, legal procedures within the framework of these forms. Today, the implementation of public control within the framework of a large part of legal forms does not give the desired result: public proposals are not always taken into account; the activities of public authorities are not adjusted based on the results of public expertise, etc. In addition, the problem is not even that the legislator only indirectly normalizes a significant number of legal forms

of public control or leaves some of them completely outside the legal field. A misunderstanding of the very essence and content of legal forms of such control, their main features and classification primarily cause the most negative impact on the further development and improvement of legal regulation of the mechanism of public control. After all, it depends on this, how consciously and coherently the legislators are to approach the issue of regulation of the relevant sphere of social relations. And this, in its turn, will contribute to the quality of legal regulation of public control and, accordingly, the effectiveness of law enforcement of its mechanisms.

This state of affairs in the field of legal provision of public control leads to the fact that today the public does not actually exert effective influence on state authorities, local self-government bodies, their officials and executives. As a result, the sphere of making powerful management decisions, development and implementation of state policy is literally "closed" to civil society.

Currently, subjects of public authority not just take public participation into consideration through the adoption of authoritative management decisions that have been developed and implemented by state policy exclusively as a necessity

for fulfilling the requirements of the European Union on the way to Ukraine's accession to the ranks of the EU member states, but also try to retain the full power into their hands. First, significant violations of the key subjective public rights of the public (rights of access to public information, rights of appeal, etc.) caused by the outbreak of the COVID-19 pandemic, and later the complete restriction of a significant number of rights of public control subjects in connection with the war of the Russian Federation against Ukraine. Also, it would seem that such steps are fully justified, if not for one "but": the secrecy of information about the functioning of many subjects of public power, in particular law enforcement, causes significant violations of the rights of the public, and often goes beyond the limits of administrative powers by representatives of state authorities, local self-government bodies, their officials and employees, which negatively affects national security and the ability of our state to ensure adequate protection of its citizens.

On the one hand, the need to adapt national legislation to EU legislation, including issues of cooperation between public authorities and the public, as a necessary prerequisite for Ukraine's joining into the ranks of the European community, and on the other hand, to increase the effectiveness of the public authorities functioning determines the urgency of the issue improvement of the legal regulation of public control, in particular, regarding the activities of subjects of this control within the framework of existing legal forms.

Legal scholars in their research of state-legal phenomena quite often use the concept of legal form. At the same time, in the majority of the mentioned studies, such as legislative activity being the legal form of the implementation of state functions [1], administrative contract being the legal form of public administration [2] and the legal form of state activity being the criterion for the classification of the legal process [3], the authors are limited exclusively to fixing the concept of legal form in the titles of the works, which rather indicates the intuitive use of the category "legal form" within the branch of legal sciences. Today, there can be found only a few scientific studies in which scientists tried to reveal the essence and meaning of the concept of legal form. Among them are investigations related to the legal form of state activity as a means of functioning of the mechanism of legal regulation [4], the legal form of public authority activity as a source of municipal law [5], legal forms of public administration [6], as well as legal form being a category of the science of administrative rights [7]. Instead, the issue of legal forms of public control as an activity is completely different from the activity of subjects of public authority remained outside the attention of scientists.

Having paid attention upon the consideration of modern scientific assets on the issues of legal forms, it should be noted that nowadays scientists are practically unanimous in defining the essence of the above-mentioned concept. For example, K. E. Soliannik attributes the legal form to one of the sides of the concept "the source of law", in particular its dynamic component. According to the scientist, in municipal law, the legal form is the activity of forming the source base, but it is not excluded only by it. At the same time, K. E. Soliannik notes that the legal form is inextricably linked with the organizational form, which is literally being a system of organizational actions and procedures. Exclusively within the unity of legal and organizational forms the normative-legal act is "born": its legitimacy and formal certainty are ensured. In conclusion, the scientist emphasizes on that the state authority uses legal form of activity as the only possible and necessary means of regulating social relations through legal regulations. Meanwhile, the local self-government body, being an organizational structure of social entity (civil society institute), similarly to state authorities, is endowed with the possibility of using legal form. The formation of unique own sources for municipal law through the adoption of acts by bodies and officials in certain territorial communities does not exclude the pos-

sibility of the existence of other regulators, such as decisions of self-organization bodies of the population and voluntary unification (associations) of local self-government bodies, which is the feature of the source base for municipal law in general [5, c. 93, 96-97].

In her turn, V. R. Bila, alike K.E. Soliannik also claims that the legal form in administrative law legitimizes the activity of public administration entities through specific public relations and expresses it externally. At the same time, the scientist negatively distinguishes legal and organizational forms of activity of public administration bodies. In her opinion, the criterion for such a distinction is the presence (absence) of legal consequences as a result of the use of one or another form. However, as the researcher emphasizes, this criterion is not enough to establish grounds for applying a legal or organizational form. An important conclusion of V. R. Bila is that the legal form of activity of public administration bodies contains internal component (legal procedure) and external one (substantive and legal form of activity of the specified subjects), that is the state-authority actions and decisions [7, p. 100-102].

Drawing conclusions from the conducted research, V. R. Bila emphasizes on that the legal form of public administration is the only one among options for objectifying the will of public administration and it is included into the scope of the concept "form of activity of public administration", which in its turn, includes the categories of legal and organizational, private law and public forms of activity of public administration. The legal form of public administration objectifies the activity of a specific entity authorized to perform the functions of public administration, which makes it possible for other participants in administrative legal relations to recognize it and evaluate it for compliance with standards and European principles of public administration [6, p. 25-27].

Thus, in general, legal forms should be understood as the external expression of the activity of certain legal subjects, which is carried out based on and in accordance with the current legislation that also provides for the occurrence of clearly defined legal consequences or being associated with their occurrence.

Public control, being one of the activities of civil society institutions as participants in administrative legal relations, has its own forms. At the same time, regardless of the fact that forms of public control, in particular legal, have all the same characteristics as legal forms of activity of any subjects of administrative legal relations, legal forms of public control have their own specific characteristics. The existence of these features being due to the fact that public control is different from public administration, and is characterized by its own legal nature.

Despite the fact that today there is still no unity among scientists on the issue of the public control essence and content, we are inclined to think that public control is the system of actions and measures carried out by citizens, public associations or other institutions of civil society, with in order to detect, prevent and eliminate violations by public authorities [8, p. 308].

Among the most important features of public control that are singled out by some scientists, the following should be mentioned: it is a special direction of civil society activity; it is carried out by subjects of civil society, which are completely independent from subjects of public authority; it aimed at obtaining information that is of public interest, which affects the problems of violations of human and citizen rights, and abuses from the side of public authorities; it affects the sphere of responsibility of state authorities, local self-government bodies, their executives or officials; the ultimate goal of this type of control is practical solution to a social problem, adjusting the activities of public authorities, establishing partnership relations with them, etc. [9, p. 16].

The above-mentioned content and signs of public control determine the specifics of the legal forms of this area of civil society activity. Therefore, first of all, it should be noted that

the forms of public control are important element of the organizational and legal mechanism for public control, which allow finding out more deeply the methods and practical aspects of its implementation. Similar to the forms of activity of subjects of public administration, it is also appropriate to divide the forms of public control into legal and non-legal (organizational) forms. The first of them are related to legally significant actions, which are directly reflected in legislation, and entail the occurrence of certain legal consequences; the others are mostly not provided for by legislation and not related to legally significant actions [10]. At the same time, we consider it necessary to emphasize that any organizational form can become legal under the conditions, if it acquires such defining characteristics like those that it is carried out based on the fulfillment of the requirements of the law and other regulatory legal acts. Its results always lead to certain legally significant consequences or are related to their occurrence.

Moving gradually to the definition of public control forms, in particular legal ones, we have to note that since the subjects of public control are citizens, all their possible actions or decisions regarding subjects of public authority can be carried out according to the principle like "everything that is not expressly prohibited by law is permitted". However, the applicability of this principle is not absolute. This primarily concerns legal relations between the public and state authorities, local self-government bodies, and their executives or officials. In this case, it goes about the fact that subjects of public authority are likely supposed to cooperate with subjects of public control only within the limits of established competence, which in fact limits the possibility of applying the principle "everything that is not expressly prohibited by law is permitted".

Therefore, the public is possibly to enter into relations with state authorities, local self-government bodies, their officials or executives only within the limits defined by the relevant competent legal acts. In other words, there can be no relations between the relevant subjects outside the normatively defined competence of the subject of public authority. The above-mentioned, of course, also applies to the sphere of public control, which, therefore, can be carried out only in those forms that have found their normative consolidation. Meanwhile, the exercise of public control within the framework of organizational forms does not lead to any legal consequences and, as a result, it does not affect the effectiveness of the activities of public authorities in any way. In view of this, only the forms of public control regulated by the current legislation are able to ensure the achievement of the goal on this control, as well as the transition of the public from the status of "consultative body" to the ranks of "intellectual" partner of public authorities. The mentioned issues allow us to determine another defining feature of legal forms of public control: public control within these forms is implemented through the competence of the subject of public authority.

Taking into account the specifics of public control, we believe that the following characteristics are the special features of legal forms of public control: they are an external expression of the activity (exercise of powers) of the public control subjects, which are citizens, public associations or other institutions of civil society; they represent the unity of two principles: juridical procedure, and material and legal form; an important participant in legal relations that arise as a result of the activities of public control subjects is the subject of public authority; they are essentially presented in the form of legally significant actions related to the supervision, verification and evaluation of the exercise of powers by subjects of public authority; juridical procedures are the grounds, different from administrative procedures inherent in legal forms of public administration, which determine the order, formation, changes and termination of such elements like norms of administrative law and administrative legal relations; the result of exercising the powers of the public within

these forms is mostly the adjustment of the activities of public authorities; they are fixed by the norms of administrative law; they are implemented on the basis, within the limits and in the manner determined by the norms of administrative law; they are limited to the competence of the subject of public authority; they are aimed at achieving the goal of public control.

At the same time, the legal form of public control is the system of legally significant manifestations of the activity of public control subjects, regardless to the method of their fixation, which is regulated by the norms of administrative law. In other words, legal forms of public control is objectify the public activity control.

Equally important is the issue within the framework of the study of the legal forms of public control problems over the activities of public administration is the definition of specific legal forms of public control and their classification.

The analysis of scientific developments on relevant issues shows that the scientific community still has not determined a single concept regarding the essence of legal forms of public control, their types and classification. The great number of studies on the relevant subjects are not comprehensive and systematic in their nature. When developing the relevant question, practically no legal scientist discloses the essence and content of legal forms of public control, as well as their purpose. Moreover, some studies do not take into account legal nature of public control, which leads to the "automatic" inclusion of legal forms of participation within public administration among the legal forms of public control.

However, some recent studies on forms of public control still deserve attention. Thus, A. O. Neugodnikov, researching the issue of public control over the activities of the public administration, notes that public control is to be implemented in the following forms: holding public hearings by public authorities on legal acts drafts during their development; establishment and functioning of public (expert) councils for the activities of public administration subjects; conducting public examination of the activities of government bodies, anti-corruption public examination of the activities of public administration entities; ensuring the possibility of citizens' applying to public administration entities in electronic form, etc. In addition, the scientist emphasizes upon that forms of public control not supported by specific measures of responsibility (for example, conducting consultations with the public, does not mediate the obligation to take into account the opinion of the public *de facto*) are not effective [11, p. 72-74].

In turn, V. M. Vasylenko in his dissertation study "Administrative and legal support of public control over the activities of the national police" classifies the legal forms of public control, based on their specifics and the legal grounds for their implementation into two main blocks: general forms of public control over police activities, i. e. appeals from citizens, public associations and legal entities, request for information, public examination, consultations with the public, public monitoring (audit), and special forms of public control over police activity. Interdependence of reporting on police activity and its evaluation; adoption of a resolution of no confidence in the heads of police bodies; public participation in the consideration of complaints about the actions or inaction of police officers; participation of public representatives in the work of police commissions for the selection (competition) and promotion of police officers [12, p. 9-10].

Thus, when defining legal forms of public control, researchers mostly use the approach according to which any legally regulated forms of public interaction with subjects of public authority are forms of public control, in particular legal ones. This approach, in our opinion, completely nullifies the importance of public control as an important mechanism of influence on public power, adjusting the activities of its subjects, when taking into account the best international practices in accordance with the public interest.

Therefore, on the basis of the above-mentioned issues, it can be concluded that public control being one of the directions of cooperation between civil society and subjects of public authority has its own legal forms of implementation. Legal forms of public control are closely related to its organizational forms alike that of organizational form of public control can become legally provided, that it is carried out on the basis and within the limits, as well as in the manner determined by legislation. Its results determine the occurrence of legal consequences or are related to their occurrence. It is implemented within the competence of the subject of public authority. Among the signs of legal forms of public control are an external expression of the activity (exercise of powers) of public control subjects, combination of procedural and material components, and provision for the mandatory participation of the subject of public authority. They are expressed in the form of legally significant actions related to the supervision, verification

and assessment of the exercise of powers by subjects of public authority being legal procedures, different from administrative procedures. The result of exercising the powers of the public within these forms is mostly the adjustment of the activities on public authorities; the implementation of public control within the framework of these forms is limited to the competence of the subject of public authority, etc. The legal form of public control is the system of legally significant manifestations of the activity of public control subjects, regardless of the method of their fixation, which is regulated by the norms of administrative law, and essentially objectifies the control activity of the public. As for the classification of legal forms of public control, a unified conceptual approach to this issue has not yet been developed. At the same time, it goes precisely with the definition of the types of legal forms of public control and the criteria for their demarcation connected to the prospects for further scientific research.

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