



## THE FORMS AND THE INSTRUMENTS OF PUBLIC CONTROL

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### Summary

The article is devoted to the general characteristics of the external exhibitions of public control and ways of their implementation. The forms of public control (public consultation, participation in joint bodies, joint working groups, public hearings, public examination, a public initiative, the general assembly of citizens in the community, etc.) are characterized by the author. The application of these forms of public control to the state and local authorities, appeal acts, actions or inaction of the courts are called the instruments of social control.

**Key words:** public control, government, forms of public control, instruments of public control.

### Аннотация

Статья посвящена общим характеристикам внешних проявлений общественного контроля и способам их имплементации. Охарактеризованы формы общественного контроля (публичные обсуждения, участие в совместных органах, совместных рабочих группах, общественные слушания, общественная экспертиза, общественная инициатива, общие собрания граждан на местном уровне и т. д.). Применимость (этих форм общественного контроля) к государственным и местным органам власти, обжалование решений, действий или бездействия судебных органов называется инструментами социального контроля.

**Ключевые слова:** общественный контроль, управление, формы общественного контроля, инструменты общественного контроля.

**Statement of the problem.** The problem of power control is one of the question, which is general for all forms of power organization, for all political systems which existed in the past and there is nowadays; the matter of concern of any society and the individual, in any country and in any historical epoch. The purpose of this article is the demonstration that the control in a condition of democracy solves the double tasks. They are the protection of the rights and freedoms of human and citizen, and the software (saving) the legitimacy of the government. The achievement of this aim requires the definition of the forms and the institutions of social control, setting the directions of their implementations.

**Status of research.** The general problems of formation, development and organization the public control in Ukraine were investigated by many scientists such as V.B. Aver'yanov, M.I. Anufriev, V.S. Bakirov, O.M. Bandurka, V.T. Bilous, Y.P. Bityak, I.L. Borodin, I.P. Golosnichenko, V.L. Grohol'skiy, S.M. Gusarov, V.S. Guslavskiy, V.S. Zhuravskiy, R.A. Kalyuzhniy, V.V. Kovalenko, V.V. Koval'skaya, A.T. Komzyuk, Y.Y. Kondratiev, V.V. Konoplyov, O.V. Negodchenko, V.I. Olephir, N.M. Onishchenko, O.I. Ostapenko, V.P. Petkov, V.M. Plishkin, T.O. Protsenko, S.T. Stetsenko, V.Y. Tatsiy, V.K. Shkarupa, H.P. Yarmak etc.

However, the question about the forms and the instruments of public

control, including generalized their characteristics didn't become as the subject of the separate scientific research.

**Basic material.** In contrast of the state control, which is clearly defined institutionally and legally, the public control system to be rather amorphous. The Law can offer here only certain types of mediation between the individual dynamics of communication processes and results of monitoring, but otherwise it should act as a framework order and provides for private or government interests which aren't experienced obvious damage [24, p. 273].

The institutions of public society implement such control in different forms and ways. Political parties, civic organizations, independent media in a democratic society diversify the public control over the activities of public power, prompting the deputies and officials at various levels to improve the forms of implementations of the election promises, constantly coordinate their decisions and actions to the legal requirement and also take into account the public opinion, adjust their activities in view of their most expected public response, the possible reaction from the public and loss of voter support in the next elections.

The form of control is the question of basic, large-scale external manifestations which have to comply with the basic principles of public

control. They include principles such as voluntary participation in the implementation of public control; the independence of public control; publicity and transparency; legitimacy; objectivity and reliability; unacceptability of obstacles during the implementation of public control; inclusiveness of public control.

A.A. Goncharov distinguishes the direct, indirect and international forms of control. The direct forms are general meetings with citizens, the Public house, public civil action, media control. Indirect forms are the appeals to the administrative, elections, revocations, dissolutions, suspensions, appeals to the Commissioner, referendums, appeals to the court, the appeals to the Constitutional court. And the international forms are the applications to the European court of Human Rights, an appeal to the Human Rights Council, an appeal to the International Criminal bodies to address UN Human Rights Council, an appeal to the International Criminal Court. In our view, the unity of the classification criterions is violated in this case. In particular, the Public house, having legal personality, acts as an independent subject of public control. Similarly, the separation of media control as the direct form of social control is incorrect as it is the basis of the subject, which can use as general as specific forms of control. The separation of international control



next to the direct and indirect forms of public control also violates the unity of classification. Furthermore, in our view, a number of these forms of control is not external manifestation in their nature and it is an instrument of its implementation, including in case of violations in the activity entities which are endowed with state powers.

The forms and the instruments of social control first of all are determined by the aims that put in its implementation. Thus, the main purpose of public control over the activities of subjects of public power is to ensure the rights, freedoms and legitimate interests of citizens in the exercise of the power authorities, and also to support regulatory mechanism established authority at the level that meets the needs and will of the society, its initial subject – people. The main tasks of public control include: 1) monitoring of compliance with regulatory requirements by state and local governments; 2) the control over compliance with law regulations issued by state agencies and local governments; 3) the control appropriateness of management decisions on the organization and activities of state bodies and local government, prohibitions and restrictions of discipline, timely and safe performance of their duties; 5) the control of the selection, training of personnel of state bodies and local governments; 6) the control of the rational distribution and use the material, financial and other resources, adhering the policy of economy.

These tasks can be solved through such forms of control:

1. *Public Consultations.* For example, the procedure of public consultations on the formulation and the implementation of state policy are approved by the Cabinet of Ministers of Ukraine, 3rd November, 2010 № 996 [19, p. 2945]. According to this document, public consultations are held to citizen participation in public affairs, to enable them for free access to information about the activities of the executive branch and also to ensure the openness and the transparency of these authorities. Public consultations should facilitate a dialogue between the executive power

and the society, improve the quality of important decisions on public life on the basis of public opinion, create the conditions for public participation in the project development of such decisions. The public consultations are held on issues relating to social and economic development, realization and protection of the human rights and freedoms of citizens, to satisfy their political, economic, social, cultural and other interests.

The results of the public consultations are considered by executive power during the final decision or in its further work.

The public consultations are held in the form of the public discussion (direct form) and researching the public opinion (indirect form). It's mandatory to conduct the public consultations in the form of the public discussions such as the draft of normative-legal acts have a great public importance and refer to the Constitutional rights, freedoms, interests and responsibilities of citizens as well as acts that provide benefits or setting limits to the economic and civil society, exercising by local governments delegated to the executive body of power, the drafts regulations, project of national and regional economic, social and cultural development, decisions about the status of their implementation; the reports of the main manager of budget money, about their spending for last year.

The public discussion involves organizing and conducting the conferences, forums, meetings, public hearings, round-table meetings, television or radio debates, Internet – conferences, electronic consultations.

For the public discussion by the way of the electronic consultations with the public, the government website »Civil Society and the government» and the official websites of the executive power are used. For electronic public consultations the executive body places news, reports of public discussion, the text of the draft Act submitted for discussion, an e-mail address for sending suggestions and comments, and the phone number which provided consultations on questions which would be presented for public discussion. All this information is placed on the

government website »The Civil Society and the Government» and on its other official websites.

However, as the order of public consultation is advisory to the local governments, the public consultations didn't gain widespread. In general, the requirements for mandatory public consultation, particularly in the form of public discussion, is an ensuring the representativeness of social groups during the discussions, reporting about the public proposals that aren't implemented properly, and these consultations are the formal one.

2. *The participation in the joint bodies of government* (particularly in the public Councils), *joint working groups* (with the representatives of the executive authorities, legislative power, the local government) and so on. Thus, the Cabinet of Ministers of Ukraine dated 3rd November 2010, № 996 approved the Typical Regulation of the Public Council under the Ministry, for the other central executive body, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol city, state administrations in Kiev and Sevastopol [22, p. 2945]. It also provides that the community Council is a permanent collegial elected advisory body that was established to ensure citizens in the public affairs, the implementations of public control over the activity of the Executive bodies, to establish an effective interaction of these bodies with the public, to take into account the public opinion during the formation and the implementation of the state policy. The Public Council provides the public authority, taking into account proposals and public comments, and also its following the regulatory acts aimed at preventing and combating the corruption and it also necessary informs the public about its activities, decisions and their implementation on the official website of the Authority and in other appropriate ways; collects, summarizes and presents information about the proposals of community organizations, about the decisions that have an important social significance; organizes the public events for discussing actual issues of the development of the industry or the administrative- territory unit; prepares



and publishes an annual report about its activities.

The Public Council may:

1) establish permanent and temporary bodies of the power (government, secretariat, committees, expert groups etc.);

2) involve the employees of the executive bodies and the local government, the representatives of national and international experts and scientific organizations, companies, institutions and organizations (with consent of their leaders) as well as individual professionals;

3) organize and conduct seminars, conferences, round-table meetings and other events;

4) receive in the prescribe manner some necessary information to support the activities of the Council from the executive authorities and the local self-government;

5) receive the projects of normative-legal acts on issues require public consultations. The members of the Public Council have the right of access to the premises where the authority is in the established order.

The representatives of public, religious and charitable organizations, trade unions and their associations, creative unions, associations, employer's organizations, non-governmental media and other non-production companies and institutions that are legalized in accordance to the laws of Ukraine can be elected to the composition of the Public Council.

Most of the bodies of the executive power have complied the requirement of the resolutions of the Cabinet of Ministers of Ukraine № 996 on the formation (update) the public Councils. By the 1st October, 2011 it was formed 566 public councils of 608 which were necessary, that is 93%, namely: 9, that is 56% of public councils at the Ministerial level; 28, that is 45% of public councils at the level of the Central Executive Bodies; 27, that is 100% of public councils at the level of regional administrations, the Council of Ministers of the Autonomous Republic of Crimea, Kiev and Sevastopol state administration; 487, that is 99,6% of public councils at the level of state administrations; 14, that is 100% of the public councils on the level of

regional state administrations in Kiev and Sevastopol [4, p. 4].

The most common activities of the public sector councils under the local government became the environmental issues, the regulatory policy and company, education and science, health, the strategic development and urban planning and the anti-corruption.

Indeed, in the order to establish the cooperation between the Government of Ukraine and the community councils which are formed by the ministries and other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, regional, the state administrations of Kiev and Sevastopol, the Cabinet Ministers of Ukraine formed the Council of the heads of public councils in the Executive [17, p. 2237].

3. *Public hearings.* There is no normative-legal act which would establish uniform requirements for conducting public hearings in the system of current legislation of Ukraine. However, the legislator recognizes the existence of the specified forms of public control. For example, the Law of Ukraine »On housing and Communal Services» on June 24, 2004 № 1875-IV [6, p. 514] suggests that the proposals submitted by the results of the public hearings, are the subject to mandatory review by the local governments.

The article 21 of the Law of Ukraine «On regulation of urban development» of 17th February, 2011 № 3038-VI [11, p. 343] provides that public hearings can be developed in the accordance with established procedure the projects of urban planning at the local level: the general plans of localities, zoning plans, detailed plans of the territories. The possibility of conducting public hearings are also provided for discussing project and schemes of ecological network, and the status of their implementation in the prescribed manner [5, p. 502].

It provides for the necessity to consider the examining forms of social control and the Law of Ukraine «On Local Self-Government in Ukraine» dated 21st May, 1997 № 280/97-VR. According to the article 13 of the Law, the territorial community has the right to conduct public hearings – to meet with the members of the Council and

officials of the local government, so the members of the territorial community can hear them, to raise questions and make suggestions relating to the competence of local government. Public hearings are held at least once a year. The proposals that are made by the results of the public hearings are the subject to the mandatory review by the local governments. The procedure organization of the public hearings determined by the statute of the territorial community.

Besides, the local executive authorities of the state power and the local self-government in the field of radioactive waste management, organize public hearings, within its competence, on defense projects of the location, construction, removing objects from the operation for radioactive waste management and the closure of repositories for the disposal (art. 8 of the Law of Ukraine »On Radioactive waste management» on the 30th June, 1995 № 255/95 VR [10, p. 198]). The necessity of public hearings is provided in case of the privatization of the group G objects (the united complexes of the state enterprises and the shares of joint stock companies which by the time of the decision on privatization (sale) have strategic importance for the economy and security of the state or signs of the dominance in the national market of goods (works, services), enterprises of the military – industrial complex, as well as objects that are defined by the authorized management bodies as those that require an individual approach of privatization (those that have unique production, use the rare resources(intangible assets, know-how, including research and design organization and institutions which meet these requirements)) [18, p. 1391].

4. *The public examinations.* The procedure for encouraging the public assessment of the executive bodies of the power approved by the Cabinet of Ministers of Ukraine dated 5th November, 2008 № 976 [20, p. 2889]. As provided in the Order, the public examination of the government is a part of the democratic governance which provides by the institutes of civil society, the assessment of activity of the bodies of the state power, the



efficiency of acceptance and execution solutions by such bodies of the power, prepares proposals for the resolving the important issues for other consideration by public authorities in their work.

Thus, according to part 3, art. 15 of the Law of Ukraine »On Principles of Prevention and Combating Corruption» dated on 7th April, 2011 № 3206-VI [7, p. 404] the public anti-corruption expertise of the drafts of the normative-legal acts may be held on the initiative of individuals associations of citizens and legal persons. The conducting of a public anti-corruption expertise of the drafts of the legal acts and the publications of the results are carried out by relevant individuals, associations of citizens, legal persons or other sources which aren't prohibited by the legislation.

The current legislation also provides that the independent groups of experts on the initiative of associations by their own funds or on a voluntary basis can make public examination of decisions and the drafts of decisions in the sphere of culture and art.

The conclusions of these examinations can be considered by public authorities and the bodies of the local government in the implementation of the state policy in the sphere of culture [14, p. 264]. The public organizations, individuals and legal entities may initiate the examination of production and the entertainment events of a sexual and erotic nature is a preparing of recommendations about the suitability of such products to the current legislation on protection of public morality and the possibility of their circulation on the territory of Ukraine [8, p. 192].

5. *The public initiative.* Thus, the Law of Ukraine »On Local Self-Government in Ukraine» (art. 90) provides for members of the territory communities the rights for initiating the procedure for local initiatives for consideration in the local Council any matter which is falling within the jurisdiction of local authorities. Citizens have the right to submit issues or a draft decision for consideration of the local Council. The law doesn't specify the procedure for conducting the local initiative to the Council by delegating this authority of the local

governments. So the local councils should adopt a statute of the territorial community or the separate provision »On the order of the right of local initiative», which provides a clear procedure for the initiation and the consideration of the local initiatives. The local initiative is the fastest and the most convenient way to make a draft decision for consideration at sessions of the local Council.

6. *The general meetings of citizens in their communities.* The procedure of conducting the general meetings of citizens at their places of residence governed by the article 8 of the Law of Ukraine »On the local self-government in Ukraine» and the regulations »On General Meetings of citizens at the place of residence in Ukraine». Approved by the Verkhovna Rada of Ukraine dated 17<sup>th</sup> December 1993, № 374-XII [16, p. 30]. The majority of the residence (or their delegates) of the community must attend in the meeting.

The individual experts also call the systematic monitoring of the activities of the authorities as a form of public control, by these results the representatives of elected bodies of the state power can or cannot receive the support in the election [1, p. 8] so as «in any civilized society, the election is the most important instrument of the legalization of power and the functioning of democracy in general» [2, p. 19].

The subjects of public control can use equally the legal and the social control instruments as means of responding to violations. At first, in the case of the violations of the law, the subject of public control use legal instruments implementing the constitutional right of access to various public authorities for appropriate action. Otherwise, when the detection of defects in the activity of civil servants controlling influence is exercised through the Institute of public opinion (the referendum, elections, the public participation in discussion of the public issues, surveys, questionnaires etc.). Using this institution based on moral and ethical norms, the social control subjects give wide publicity of violations, form the negative attitude of the population masses to them and to the people who committed them, create

a situation of the political objectivity [23, p. 807].

The instruments of control include the information request, appeals, complaints and suggestions submitted in accordance to the Law of Ukraine »On citizens appeals» dated on 2<sup>nd</sup> October 1996, № 393/96 VR [9, p. 256], the appeal of illegal actions (inactions) and/or acts of the public and citizens' interests in according to the Code of Administrative legal proceeding of Ukraine [12, p. 1918], the transmission of information and documents to the prosecutor's office for an appropriate response. So, for example, in our opinion, the referring of sociological and statistical research, publications, video reports, familiarization of citizens with the documents of public authorities [15, p. 195] etc, which are the instruments of control.

**Conclusions.** Summing up, it should be noted that the main forms of public control are the public consultations, the participation in joint bodies and working groups, public hearings, public examination, public initiative, general meetings of citizens in the communities. The most effective legal instruments of public control are the appeals to the state and local self-government, the appeal of illegal actions or inactions in the judicial institutions (so the public control can initiate the state control) and so on.

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