

DOI: <https://doi.org/10.34069/AI/2022.56.08.13>

How to Cite:

Sidorova, E., Dniprov, O., Yunina, M., Bobrishova, L., Mkrtchian, K. (2022). Administrative and legal principles of public control over the implementation of state policy in the humanitarian sphere. *Amazonia Investiga*, 11(56), 124-131. <https://doi.org/10.34069/AI/2022.56.08.13>

Administrative and legal principles of public control over the implementation of state policy in the humanitarian sphere

Адміністративно-правові засади публічного контролю за реалізацією державної політики в гуманітарній сфері

Received: September 28, 2022

Accepted: October 31, 2022

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Abstract

The aim of the article is to study the functioning and legal regulation of public control over the implementation of State policy in the humanitarian sphere. The subject matter of the article is public control. Methodology. The following methods were used during the research: institutional, interpretation, legal and dogmatic, monographic, system, scientific abstraction, summarizing. Results. Various approaches to the concepts of "control", "supervision", "public control", proposed in the scientific domestic and foreign literature are considered. It is stressed that such control has the following forms: State, international, municipal and public; the priority of the investigated phenomenon in Ukraine in the context of European integration processes is emphasized. The lack of a unified approach in the legislation regarding the definition of this term is considered, which is the reason for its heterogeneous interpretation. Practical implementation. It is proposed to develop and adopt a single unified Law "On Public Control",

Анотація

Метою статті є дослідження питання функціонування та нормативно-правового регулювання публічного контролю за реалізацією державної політики в гуманітарній сфері. Предметом статті є публічний контроль. Методологія. Під час проведення дослідження використані наступні методи: інституційний, інтерпретаційний, юридико-догматичний, монографічний, системний, наукової абстракції, узагальнюючий. Результати. Вивчаються різні підходи в науковій вітчизняній і зарубіжній літературі щодо змісту поняття «контроль», «нагляд», «публічний контроль». Акцентується увага на тому, що такий контроль має наступні форми: державний, міжнародний контроль, муніципальний, громадський; наголошується на пріоритетності розвитку інституту громадського контролю в Україні в контексті євроінтеграційних процесів. Розглядається питання відсутності уніфікованого підходу в законодавстві щодо визначення поняття громадського контролю, що є причиною його

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which will regulate in detail all the issues related to the implementation of this institution. Value/originality. Based on the analysis of scientific work and legal instruments, the authors' determination of the concept of "public control over the implementation of state policy in the humanitarian sphere" is provided.

Keywords: control, municipal control, public control, State control, supervision.

Introduction

The effectiveness of State policy in the humanitarian sphere depends on control, which in turn contributes to the development of the so-called human resource and human capital, which are one of the main indicators of the country's success. In turn, education and science, for example, are key conditions for the development of human capital. By the way, we note that in successful countries, priority is given to the development of the so-called human resource and human capital, high technologies, but there is little internal demand for intelligence and new knowledge in Ukraine, although intelligence and knowledge are the main resources of the State (Yunin, Sevruk & Pavlenko, 2018, p. 362).

In order to consider the issue of administrative and legal foundations of public control over the implementation of State policy in the humanitarian sphere, it is worth paying attention first to the conceptual and categorical apparatus of the problem.

The Ukrainian legislator does not solve the discussion about the identity or difference between the concepts of «supervision» and «control» in the scientific literature, since there is no single legal instrument, where the concepts of control or State supervision would be clearly defined. "Control" and "supervision" are often used as synonyms in Ukrainian legislation (for example, the legislator emphasizes the preventive, prophylactic nature of State supervision, which is aimed at ensuring legality and law and order in a specific sphere of social relations; control and supervision are closely linked as a means of ensuring the rule of law. Besides, some researchers (for example, Shemelynets and Pozniak) (2016) stress on the use of the combined expression "supervision

різнорідного трактування. Практичне застосування. Запропоновано розробити та прийняти єдиний уніфікований Закон «Про громадський контроль», де детально врегулювати всі питання, пов'язані з реалізацією цього інституту. Цінність/оригінальність. На основі аналізу наукового доробку і нормативно-правових актів надається авторське визначення поняття «публічний контроль за реалізацією державної політики в гуманітарній сфері».

Ключові слова: контроль, муніципальний контроль, громадський контроль, державний контроль, нагляд.

(control)" in the corresponding regulations by the legislator.

That is why the aim of the Article is to reveal some issues of functioning and legal regulation of public control over the implementation of State policy in the humanitarian sphere.

Methodology

The research is based on the application of general and special legal methods. In particular, institutional method was used to investigate public control as an institution, which ensures citizens' political activity in the implementation of State policy in the humanitarian sphere, their co-operation with the representatives of public authorities and local self-government.

The method of interpretation was applied to reveal the concepts of "control" and "supervision".

Legal and dogmatic method helped to examine the rules of legal instruments, enshrining the notions of public, State, government, municipal and other types of control in Ukraine.

Monographic method was useful in investigating the works of scholars, who conducted the research on the category under consideration.

With the help of system method the types of control were identified.

The method of scientific abstraction made it possible to develop the authors' definition of the term "public control".

Summarizing method was applied to make adequate inferences and propose amendments to the current legislation.

Literature Review

For example, Musaev et al., (2020) prove that public control in the system of public administration should be implemented on a regular basis, but the lack of people's legal and political awareness impedes this process. Besides, there is certain influence and even pressure by the State and NGOs, what doesn't contribute to the development of this institution.

Dzhumabaev and Raymbaev (2019) share the opinion that fundamentally important point is the issue of participation of citizens and the public in monitoring the activities of the State apparatus and the provision of public services, therefore it is crucial to find new channels of influence of civil society on State agencies, develop accessible and understandable mechanisms for citizens to control the government activities.

Belokrylova (2017) stresses on the importance of strengthening the integration and interconnection of the still fragmented, information-driven projects for the implementation of the functions of public control by civil society over various areas of State activity. Besides, popularization of public control mechanisms is possible through advanced training of its actors, including potential ones.

According to Nironka (2019), public control is not only an integral component of public administration and local self-government, but also the most important factor in the development of civil society. It is needed, first of all, by the public authorities themselves in order to increase the efficiency of their activities and provide additional measures to protect them from being taken over by influential political and economic groups. In addition, for its successful functioning and development, the government urgently needs to constantly coordinate its actions with public needs and interests, which are expressed by the population both directly and through the institutions of civil society. Public control is one of the main means of such coordination.

Mykhailov (2020) states that public control is an important form of democracy, because it gives the people an opportunity to participate in State management, in solving state and society matters, actively influence on the public authorities' and local governments' activities.

Muzychuk (2010) emphasizes that such control is a type of social control, which is implemented by the association of citizens and by citizens themselves, is a form of democracy realization and inclusion of population to the State and society management.

Results and Discussion

Indeed, Ukrainian legislator enshrines the concept of "State supervision (control)" in some legislative acts, namely, in the Law "On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity" (Law of Ukraine No. 877-V, 2007). Thus, Par. 2, Art. 1 of this act indicates that "State supervision (oversight) shall be defined as activities of central executive authorities empowered by law, their territorial bodies, state collegial bodies, executive authorities of the Autonomous Republic of Crimea, local state administrations, local authorities (hereinafter referred to as state supervision (oversight) bodies) within the powers provided by law, to identify and prevent violations of the law by business entities and ensure the interests of society, in particular, by the proper quality of products, works and services, the permissible level of danger to the population and the environment".

From the point of view of law and legal sciences, control and supervision can also be divided into public and private. The public one is implemented in the public administrative and legal sphere, and the private one is carried out in public relations that are of private legal nature (Kravchuk, 2015, p. 211). Some researchers generally reduce public control to an arbitrary form of public participation in the supervision of the activities of management institutions. Bukhanevych (2009, pp. 29–30) follows a similar approach, relying on the scientific positions of some Western European, namely German and French researchers. On the other hand, Kravchuk (2015) states that public control in the State refers to the system of organizational and legal forms of ensuring compliance with legality in the activities of public administration, human rights and freedoms, effective performance of powers and tasks by State authorities, local governments and their officials.

There are different approaches not only to the perception of the concepts of control, supervision, public control, but also to the classification of types of control. For example, depending on the place of the subject of control in the State administration system, some researchers distinguish 8 types of control:

legislative control; by the President of Ukraine; by the Cabinet of Ministers; control by the central public authorities; by local State authorities; judiciary control; by local self-government bodies; public control. This approach does not single out such control as governmental (judicial, presidential, etc.) and public, municipal, etc.

Other researchers consider only the types of public control and, depending on the entities that have the right to exercise it, divide them into two large, relatively independent groups: the first includes presidential control, parliamentary control, control by executive bodies, control by courts of general jurisdiction (what unites them is that control is not the only function of these bodies). The second control group consists of the authorities, which have a single control function (for example, constitutional control, prosecutorial supervision, control by the Commissioner for Human Rights, control and audit bodies of the executive power) (Tsependa, 2019).

If we consider State policy in the humanitarian sphere as the formation of public and legal fundamentals of activity of subjects of authority and various institutions of civil society involved in this process in such areas as education and science, culture and information, health care, sports and tourism, development of civil society, humanitarian security, in which State authorities, local governments, civil society institutions participate, then it can be stated that public control over the implementation of State policy in the humanitarian sphere is a system of organizational and legal forms of respect for the rule of law in the activities of public authorities and local self-government, their officials, who are entrusted with the tasks of implementing State policy in the sphere of health care, education and science, cultural and informational sphere, sports and tourism, development of civil society and human capital, humanitarian security, which takes place in the form of State control, international control, municipal control and public control (which in today's conditions is highlighted as a key and priority in the context of Ukraine's European integration aspirations, as well as because of the proximity of the humanitarian sphere directly for the citizens of Ukraine).

In turn, the following can be distinguished in the State control over the implementation of State policy in the humanitarian sphere. The key, clearly, is presidential control, based on the strategically important role of the President of

Ukraine in the system of checks and balances of the branches of power in Ukraine and in the context of the overall implementation Ukraine's policy implementation in all areas of interest and benefit of the people of Ukraine. Such control can be implemented directly or through some institutions under the President of Ukraine (Office of the President or, for example, in the field of child protection and until recently through the Presidential Commissioner for the Rights of the Child).

Note that in accordance with Art. 85 of the Constitution of Ukraine (Law of Ukraine No. 254k/96-VR, 1996), the Verkhovna Rada of Ukraine, as the only body of legislative power in Ukraine, in fact, determines the foundations of both foreign and domestic policy; it approves national programs on economic, scientific and technical, social, national of cultural development, environmental protection. The Verkhovna Rada also supervises the activities of the Cabinet of Ministers of Ukraine (which is entrusted with the important task of implementing State policy, including in the humanitarian sphere).

At the same time, the Verkhovna Rada of Ukraine can exercise parliamentary control over adopting public policy in the named area through its structural subdivisions or bodies created by the legislative authority of Ukraine. The key role here belongs to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine. According to the rules of the Law "On the Ukrainian Parliament Commissioner for Human Rights" (Law of Ukraine No. 776/97-VR, 1997), the Commissioner implements parliamentary control in the sphere of social relations that arise in the exercise of the liberties and freedoms of an individual and a citizen between a citizen of Ukraine regardless of his (her) place of residence, a foreigner or a stateless person, who are on the territory of Ukraine, and state authorities, local self-government bodies and their officials and employees. That is, control is performed over the observance of citizens' rights in the exercise of their non-material rights and benefits such as health care, education, etc. Specialized committees (on the issues of health care, education and science, etc.) may operate under the Council. The Law "On Committees of the Verkhovna Rada of Ukraine" (Law of Ukraine No. 116/95-VR, 1995) clearly states that committees carry out control functions, including in the form of analysis of the practice of applying legislative acts in the activities of state bodies, their officials on issues related to the committees' tasks, preparation and submission of relevant

conclusions and recommendations for consideration by the Verkhovna Rada of Ukraine.

In exceptional cases, temporary investigative measures may be taken under the Verkhovna Rada. The temporary investigative commission is formed from among People's Deputies of Ukraine; it exercises parliamentary control by conducting an investigation on the issues of public interest, including issues related to the implementation of State policy in the humanitarian sphere (Law of Ukraine No. 400-IX, 2019).

Judicial control is carried out by courts as a result of their direct activity in protecting the rights and freedoms of Ukrainian citizens, ensuring legality in Ukraine. Such control is manifested in the activity of the trial, when acts of government and local government, engaged in the implementation of State policy in the humanitarian sphere, resolution of conflicts between citizens and public agencies (including those arising as a result of the professional operation by their officials) are checked (Denysova, 2016, p. 5).

In our opinion, the administrative courts of Ukraine play a key role here, since the main task of administrative courts is the fair, impartial and timely resolution of disputes in the field of public and legal relations in order to effectively protect the rights, freedoms and interests of natural persons, legal entities from violations by subjects of authority (Law of Ukraine No. 2747-IV, 2005), which arise as a result of the actions of those actors that implement public policy in the humanitarian sphere.

If we talk about prosecutorial supervision, as a result of the 2016 reform (constitutional changes concerning the Prosecutor's Office) and on the basis of the relevant Law of Ukraine No. 1697-VI (2014), the powers of the agency in this matter were significantly narrowed, and now the it performs the function of monitoring the observance of human and civil rights and freedoms, compliance with the law on these issues by executive authorities, local self-government, their officials and employees exclusively in the form of representation of the interests of the citizen or the State in court.

The most complex and extensive in terms of the number of control bodies and relevant powers in the State control system is government control, or control by the executive branch. Such control has several levels. The Cabinet of Ministers of

Ukraine is actually at the highest level, then control is carried out at the level of central executive bodies, and the lowest is the level of local state administrations, local executive bodies. Besides, control may be over-agency or outside one, when there is lack of subordination of the controlling entity and the controlled object; departmental or internal control exists in the executive branch, local self-government, whose task is the implementation of public policy in humanitarian sphere, and it is implemented by them for subordinate units (Isakov, 2012, p. 388).

In addition, there are also specific instances in the system of executive power that exercise control over a certain specific sphere of humanitarian policy implementation, such as the Commissioner of the Verkhovna Rada of Ukraine for Human Rights. As we know, in recent years the Ukrainian authorities have paid considerable attention to ensuring the functioning of the public space of the Ukrainian language as the State language, and respectively, the post of Commissioner for the Protection of the State Language was introduced. The authorized representative ensures monitoring the implementation of the legislation on the State language, State targeted programmes to ensure comprehensive development and functioning Ukrainian language as the State one (clause 2, part 4, article 49 of the Law); carries out state control over the use of the state language by state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, enterprises, institutions and organizations of state and communal forms of ownership, their officials and employees, as well as public associations, political parties and other legal entities persons, their officials (Law of Ukraine No. 2704-VII, 2019).

International control is quite specific one, as it can be carried out not through Ukrainian national State institutions or the State directly, but in compliance with international obligations, - through international governmental and non-governmental organizations. For example, OSCE monitoring missions, ICRC mission to Ukraine operate in our country (or have been operated, but suspended their activity as a result of full-scale aggression by the Russian Federation).

It is worth focusing on public control, which we consider to be a priority in modern conditions and trends in the development of the Ukrainian state and law, civil society. Currently, the general definition of the concept of "public control" is not unified and standardized; there is no special law determining the unified principles of the

institution of public control, public control over the implementation of State policy in the humanitarian sphere. We agree with Yunin (2021, p. 203), who, in the context of research on the issue of public control over the activities of the National Police of Ukraine, correctly notes that the absence of such a legal instrument leads to a broad interpretation of the concept of public control. The scientist presents the author's vision of public control over the activities of the National Police of Ukraine: "it is a complex of measures carried out in accordance with the Constitution and laws of Ukraine by the representatives of the public (individual citizens and/or public associations) aimed at checking (observation, supervision) compliance with the law by the National Police units or some of its officials during the performance of the tasks and duties of the National Police and its officers, as well as at the interaction of the police with the public for the preparation and implementation of joint projects, programs and measures to meet the needs of the population and improve the effectiveness of the police in meeting the stated objectives». Although this concept refers to the control of police activities, the definition is comprehensive one and can be used in our study to better understanding the concept of public control.

At the same time, this definition is also contained in Ukrainian legislation. For example, according to the Law of Ukraine No. 1556-VII (2014), public control in the area of higher education is the right of society and individual citizens, employees, students, public self-government bodies, professional unions, employers' organizations and their associations, public organizations to receive access to information at all stages of decision-making in the field of higher education and science, to make proposals and comments on them, to agree on the adoption of decisions defined by law; the actors of such control are individual citizens or public associations.

At the same time, legal instruments regulate not only of public control issues over certain sphere of policy implementation in the humanitarian sphere, such as higher education; for example, the Resolution of the Cabinet of Ministers of Ukraine No. 996 (2010) defines general principles of participation of citizens in matters of influence on decision-making regarding the establishment by the State of basic foundations for its own activities in a wide range of spheres of public life. This Resolution enshrines the main tasks of public councils at central authorities, Ministries or local administrations, and the

concept of monitoring, not control or supervision, is used. Thus, among the tasks of these councils is the involvement of representatives of interested parties in holding consultations with the public and monitoring the results of establishing and implementing the State and regional policies; conducting, in accordance with the legislation, public monitoring of the executive authority activities. In addition to public organizations, individual citizens, public councils under executive authorities at all levels, the entities are also trade unions, labor collectives, etc.

We consider it necessary to emphasize the so-called municipal or local government control. Local councils as representative bodies of local self-government, are entitled to monitor the implementation of socio-economic or cultural development programs by local executive bodies, which are part of adopting the State policy in the humanitarian sphere, they also may establish temporary supervisory commissions on certain local issues (Kravchuk, 2015, p. 213). Thus, according to the Law of Ukraine No. 280/97-VR (1997), regional and district councils can form temporary control commissions of the council to carry out control over the issues specifically determined by the council, which belong to the powers of local self-government. Besides, the objects of pre-school, school and out-of-school facilities, boarding schools; objects of health care and social security; objects of culture, physical culture and sports, etc. (which are directly engaged in the provision of services in relation to implementation by citizens of their intangible rights in the humanitarian sphere, namely the right education, health care, etc.) are among the objects of communal ownership. The relations of local self-government bodies with these institutions and organizations, which are communal property of the respective territorial communities, are established on the basis of their subordination, accountability and control to the named agencies.

Conclusion

Thus, as a result of the research, we came to the following conclusions:

- 1) There are various approaches to such definitions as "control", "supervision", "public control" in the scientific literature. The scholars often equate the concepts of control and supervision; some of them believe that supervision is a derivative of control, the others believe that control and supervision are different concepts in their

content. This situation is caused by the fact that the legislator did not unify these categories in a single legal act. We, in turn, propose the definition of public control over the implementation of State policy in the humanitarian sphere as the system of organizational and legal forms of observance of the law in the activities of State authorities and local self-government bodies, their officials that have been entrusted with the implementation of the State policy in the area of health care, education and science, cultural and information sphere, sports and tourism, development of civil society and human capital, humanitarian security, which takes place in the form of State control, international control, municipal control and public control;

- 2) public monitoring of the implementation of State humanitarian policy takes place in the form of State control, international, judicial, municipal and public control (we consider the development of the institution of public control a priority). The most complex and extensive is government control, or control by executive authorities. It is multi-level in terms of the administrative and legal status of the body exercising it in the system of executive authorities. The highest agency is the Cabinet of Ministers of Ukraine as an institution, the next level are ministries and central executive authorities, and the lowest one is the level of local State administrations and executive bodies.

There is no unified interpretation of the definition of public control in scientific literature and legislation. We believe that the Resolution No. 996 (2010) is not is not a full-fledged instrument to regulate such an important institution as public control. So, we propose to develop and adopt a unified Law On Public Control, which will govern in detail the issue of such control by State authorities (especially the executive ones and not only those bodies involved in the implementation of public policy in the humanitarian sphere, but also law enforcement ones), and local government.

At the legislative level, we propose to unify and establish a single interpretation at the conceptual categorical level of such concepts as "control" and "supervision", "public supervision".

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