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Some Aspects of the Implementation of the Main Functions of Public Councils

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ABSTRACT

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The article is devoted to the study of the main functions of public councils. The author analyzes various approaches to the separation of functions and proves that the main functions of public councils are control, consultation and expert. The article draws attention to the fact that the concept of “public monitoring” proposed at the regulatory level does not reflect the essence of the relevant activities of public councils, since it is focused on systematic and continuous observation, collection and assessment of information, but does not cover inspections, detection of violations, and active intervention in correcting the situation. The position is argued according to which public monitoring should be defined as the first stage of public control. Attention is drawn to the fact that public councils, by their essential purpose, perform the function of public control and a proposal is made to harmonize the relevant legal norms. The author also studies the consultative function of public councils and emphasizes that public councils are and should remain important subjects of public-state dialogue. This approach is based on the thesis that the institution of public consultations allows citizens to directly express their opinion in the public and legal sphere. The article emphasizes that the development of information and communication technologies significantly activates the exchange of opinions, information, and constructive debates. The author also draws attention to the threat of excluding public councils from the process of conducting public consultations on the basis of prospective legislation and suggests ways to overcome it. Special attention is paid to the role of public councils in conducting public expertise, which is a form of implementing the constitutional rights of citizens to participate in the management of state affairs. It is argued that public expertise should be based on professional knowledge and a clear methodology. In order to optimize the rules for conducting public expertise, it is worth determining the indicators of the effectiveness of its procedures. Based on the research conducted, the paper substantiates the conclusion that the development of specific forms of implementing the function of public control, advisory and expert functions requires further scientific research and the implementation of the experience of best European practices.



KEYWORDS

public councils, functions, public control, public monitoring, consultations, public expertise.



Деякі аспекти реалізації основних функцій громадських рад

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СТАТТЯ

АНОТАЦІЯ

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Статтю присвячено дослідженню основних функцій громадських рад. Авторкою аналізуються різноманітні підходи до виокремлення функцій та доводиться, що основними функціями громадських рад є контрольна, консультативна та експертна. В статті звертається увага на те, що запропоноване на нормативному рівні поняття «громадський моніторинг» не відображає сутності відповідної діяльності громадських рад, оскільки зорієнтоване на систематичне та безперервне спостереження, збір та оцінку інформації, але не охоплює перевірки, виявлення порушень, активного втручання у виправлення ситуації. Аргументовано позицію, за якою громадський моніторинг варто визначити як перший етап громадського контролю. Звертається увага на те, що громадські ради за своїм сутнісним призначенням здійснюють саме функцію громадського контролю, і виноситься пропозиція узгодження відповідних правових норм. Також авторкою досліджується консультативна функція громадських рад і підкреслюється, що громадські ради є та мають залишатися важливими суб'єктами суспільно-державного діалогу. Такий підхід базується на тезі про те, що інститут консультацій з громадськістю дозволяє громадянам безпосередньо висловлювати свою думку у публічно-правовій сфері. В статті підкреслюється, що розвиток інформаційно-комунікаційних технологій істотно активізує обмін думками, інформацією, конструктивні дебати. Також авторкою звертається увага на загрозу виключення громадських рад із процесу проведення консультацій з громадськістю на підставі перспективного законодавства та пропонуються шляхи її подолання. Окрема увага приділяється ролі громадських рад у проведенні громадської експертизи, яка є формою реалізації конституційних прав громадян на участь в управлінні справами держави. Аргументується, що громадська експертиза має спиратися на професійне знання, зрозумілу методологію. Для оптимізації правил проведення громадської експертизи варто визначити показники ефективності проведення її процедур. На підставі проведеного дослідження в роботі обґрунтовується висновок про те, що розвиток конкретних форм здійснення функції громадського контролю, консультативної та експертної функції потребує подальших наукових досліджень та впровадження досвіду кращих європейських практик.



КЛЮЧОВІ СЛОВА

громадські ради, функції, громадський контроль, громадський моніторинг, консультації, громадська експертиза.

1. Introduction

At the present stage, Ukraine is going through difficult times that require mobilization of the entire potential of the state and society. The challenges associated with resistance to the full-scale invasion of the aggressor cannot be overcome without the involvement of non-state institutions, communities, and each citizen. However, the protection of statehood gave an impetus to the development and strengthening of the national idea, national consciousness, and united society. Therefore, the activities of civil society institutions received an additional impetus, the potential of which should be fully used.

However, the activity of public councils is a multifaceted phenomenon, when analyzing the purpose of which it is necessary to take into account not only the global goals facing the state and society, but also individual goals of representatives of society. The general goal of the activities of public councils is in the plane of building a democratic, legal state, in which the broad masses of citizens are involved in the processes of management, and the bodies of the state power structure carry out their activities qualitatively due to the need for mandatory prescriptions. The goals of the activities of public councils include imperatives related to ensuring the implementation and protection of human and civil rights, freedoms, and interests, taking into account public opinion, proposals and recommendations of society when making decisions by bodies and organizations exercising public powers. The essential purpose of civil society institutions is manifested primarily in their functions, i.e., the main directions of influence on the state and society. Accordingly, the activities of public councils are reflected in a number of important areas of their work.

2. Literature Review

The topic of public councils in general and, among other things, their main functions is covered in science. In particular, the study of this problem is devoted to the work of such scientists as T. Andriychuk, O. Vinnytskyi, M. Vikhlyaev, V. Kravchuk, P. Krainiy, O. Kuznetsov, S. Rudovska, A. Simonyan, M. Sitsynska, S. Tsits, Y. Shaigorodsky, V. Yurakh and many others.

3. Problem Statement

However, not all problematic aspects of this topic are fully clarified in the theory of public administration, and many points remain debatable. Accordingly, the purpose of this article is to study the main functions of public councils.

4. Methods and Materials

The research is based on a complex of philosophical, general legal and specific scientific research methods, the use of which is determined by the purpose and objectives, features of the object and subject of research, as well as a systematic approach to the analysis of the institutionalization of public councils at public authorities in the system of public administration of Ukraine.

The study is based on the application of a system-functional approach, according to which the functions of public councils are defined as the main directions for the implementation of the essential purpose of this civil society institution in the public administration system. The actual functional purpose of public councils as an institution of civil society distinguishes it from others and determines a specific role and significance.

5. Results and Discussion

Scholars talk about the functions of public councils, naming among them representative, consultative, controlling, rule-making, communicative, organizational, informational and protective [1, p. 21]. Other authors distinguish a slightly different list of functions of public councils: expert, communicative, controlling and advisory [2, p. 83-84]. There is an approach that distinguishes the consulting function; the function of monitoring and control; information and intermediary functions [3]. The position on the existence of a separate function of initiating consideration (decision) is also expressed [4, p. 608].

However, public councils carry out their activities systematically, in interconnection and combination of individual powers. Therefore, in any case, the allocation of individual functions is

somewhat conditional. In our opinion, the issue of the list of functions of public councils is rather relative and depends on the understanding of the scope of a particular area of activity. Accordingly, we consider the main functions of public councils to be controlling, consulting, and expert. Other functions proposed in science, of course, are present in the activities of public councils, but are implemented within the framework of the specified main areas of their work.

The function of public control is decisive for the implementation of the essential purpose of public councils as an institution of civil society. In science, public control is proposed to be understood as public observation of the activities of state authorities and local self-government bodies, their officials, as well as non-governmental organizations and other subjects in the exercise of their power management functions, including in the case of the exercise of delegated powers, which is aimed at ensuring legality and discipline in the field of public administration [5, p. 24].

Other scholars argue that public control is a certain supervisory activity on the part of public representatives over the activities of public authorities and their officials with an assessment of the extent to which they perform the tasks assigned to them in the interests of society [6, p. 20].

In addition, public control as a mechanism of influence on state institutions allows timely identification and elimination of factors that hinder the effective implementation of human and civil rights and freedoms, especially during martial law in the country, when several rights and freedoms may be restricted [7, p. 198].

In foreign countries, civil control is considered as interaction and mutual influence of the public and its institutions with the state authorities and their officials; the positive nature of such cooperation is emphasized. The implementation of public control is mandatory for the formation and development of a democratic state and civil society [8, p. 97].

Thus, the traditions of public control in the European Union give grounds to conditionally outline the following areas: public opinion polls, signing petitions and proposals from public associations, unions, etc.; public consultations on the discussion, commenting and evaluation of government or municipal projects; collaborations (situational joint actions) on the Internet; discussion platforms and forums (conferences, civil juries, etc.) designed for joint decision-making on various political issues by members of the public, experts and officials; interactive dialogue through social networks between public organizations and authorities of various kinds [9].

However, in the new version of the Model Regulations on the Public Council under the Ministry, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city, district, district in mm. Kyiv and Sevastopol State Administration, approved by the Resolution of the Cabinet of Ministers of Ukraine dated November 3, 2010 No. 996 "On Ensuring Public Participation in the Formation and Implementation of State Policy" [10] (hereinafter referred to as the Model Provision), instead of the authority of public councils to exercise control over the activities of the authority, the authority to carry out public monitoring of these activities has appeared. This substitution can be regarded by the authorities as a weakening of this important function of public councils. After all, monitoring is often interpreted as "observation", and then this control function of public councils acquires only an auxiliary significance [6, p. 21].

Public monitoring is defined in the literature as a special type of activity, the subject of which is civil society institutions (public organizations, individual citizens, representatives of foreign states – in cases determined by law), and the object is processes (and their participants) and phenomena of the socio-political sphere that are significant for the subject of monitoring [11, p. 84]. Some researchers combine monitoring and control into one function [3]. On the other hand, I. Almashi believes that the main task of public councils is to carry out effective monitoring; therefore, he assesses it as groundless empowerment to exercise public control. However, the contradiction of this position is also proved by the conclusion of the same author that public councils are an effective institution of public control [12, p. 7]. Other authors believe that the main forms of public control are public monitoring and public assessment [13, p. 171].

Issues of public control are raised in prospective legislation. Thus, the legislator proposes in the Draft Law of Ukraine "On Legal and Organizational Principles of Public Control and Public Dialogue in Ukraine" to define public control as a form of exercising the constitutional powers of the people, which consists in direct, free control by citizens of Ukraine, in particular members of political parties, public associations, other institutions of civil society (hereinafter referred to as subjects of civil control), over the activities of authorities, their officials and officials (hereinafter referred to as the objects of civil control) for supervision, verification and assessment of the activities of objects of public control for compliance with acts of legislation, and public interests in control over the compliance of the activities of objects of public control and their compliance with state discipline [14].

Such a definition is fully consistent with the nature of the activities of public councils. Therefore, we consider the replacement of the term “public control” with “public monitoring” not a sufficiently successful solution both in view of the constancy and traditions of terminology, and in view of the observance of the actual content of legal concepts. Accordingly, in our opinion, it is expedient to designate the relevant activities of the public council as the exercise of public control over the activities of the state authority.

While public monitoring is focused on systematic and continuous observation, collection and evaluation of information, the essence of public control is to check, identify violations, and actively intervene to correct the situation. In addition, the purpose of monitoring is primarily in the information plane, and control is aimed at eliminating the detected violations. Taking into account the established differences between these two categories, we consider it correct to define public monitoring as a component, as the first stage of public control, since monitoring covers the initial, important and even basic stages of control related to systematic observation of public administration processes, identification of their characteristic features, analysis of information, formation of trends, etc. However, the reaction to the response to the identified state of management, shortcomings, or problems in the activities of the public authority is not covered by the concept of monitoring. However, this activity, in our opinion, is an extremely important function of public councils. Therefore, we believe that public councils, by their essential purpose, carry out the function of public control, and any legal norms should be brought in line with this.

The next important area of work of public councils is their participation in consultations with the public, which is currently regulated by the Procedure for conducting consultations with the public on the formation and implementation of state policy, approved by the Resolution of the Cabinet of Ministers of Ukraine dated November 3, 2010, No. 996 with relevant amendments and additions [10].

The study of this Procedure convinces that the participation of public councils in conducting consultations with the public differs in a number of aspects. At the same time, consultations with the public must be a dialogue between the state and society, through which both parties become informed about different perspectives and proposals of government policy and which provide citizens with the opportunity to influence the content of decisions made by public authorities [15, p. 4]. Accordingly, public councils are subjects that largely mediate the studied form of public-state dialogue.

It is important to note that consultations with the public take place based on the so-called indicative plans, which reflect the vision of the main directions of consulting work. Public councils take part in drawing up an indicative plan of consultations with the public. In particular, public councils form proposals that must be taken into account.

The Institute of Public Consultation allows citizens to express their opinions directly and participate in decision-making on issues related to the public law sphere. In the process of public discussions, citizens have the opportunity to familiarize themselves with the proposals, express their opinion on them and put forward their ideas. Public discussions allow for wider participation of citizens in political life, as well as increase transparency and openness of the decision-making process.

With the development of information and communication technologies, this institute is becoming more and more widespread, as online platforms for public discussion allow members of the public to express their opinions, exchange information, engage in debates and propose ideas. Public discussion of draft regulations using special Internet portals is an important component of the concept of e-democracy, which improves the rule-making process and contributes to increasing efficiency between the state and its citizens. Any state that enters the global information space is obliged to ensure the availability of not only legal information for ordinary citizens, but also the process of creating laws and management decisions, in order to evaluate such decisions by society at earlier stages of their development.

Scholars emphasize that public consultations are necessary at the stage of identifying a legal problem and finding ways to solve it to create an effective law [16, p. 26-34]. Consultations with the public provide an opportunity for everyone to express their opinion on proposed changes in legal regulation or directions of public policy. Public consultations provide an opportunity for citizens to make constructive proposals and express negative arguments about projects and therefore can be a relevant public form of expressing the opinion of the population.

However, the effectiveness of the public consultation procedure depends to a large extent on the presence of a relevant interest on the part of representatives of civil society. This can only be achieved if these consultations are not limited to formal steps, and the proposals made are taken into account. Therefore, the state should be primarily interested in such a procedure. State bodies should take into

account and systematize constructive proposals received during consultations, and adjust their activities. The use of modern technologies in this process only improves the implementation of this goal.

Thus, the Laws of Ukraine "On Law-Making Activity" [17] and "On Public Consultations" [18] have been adopted. However, these regulations are not currently in force, but will enter into force 12 months after the termination or cancellation of martial law. In particular, the issue of distinguishing between public consultations or public consultations in the terminology of prospective legislation with public expertise remains open. The status of comments and proposals expressed during consultations with the public does not receive regulatory regulation; similarly, the idea of prohibiting further radical changes to the text of the regulatory legal act that has passed public discussions does not find embodiment.

In the context of the topic of our study, we emphasize that public councils as an institution of civil society are generally excluded from the future process of public consultations. It is appropriate to note that in the text of these laws the term "public council" does not appear at all. Some norms can be interpreted broadly and their provisions can be applied to public councils; however, this approach will not increase the effectiveness of such a type of activity as public consultations. The subject, which currently occupies an important place in the process of conducting consultations with the public, will turn into an impartial observer. It is unlikely that such a situation can be acceptable. Public councils are an established civil society institution with a powerful potential for use in the field of public consultations. Therefore, neglecting opportunities seems highly inappropriate to us. In particular, in our opinion, the list of interested parties provided for in paragraph 1 of part 1 of Art. 1 of the Law of Ukraine "On Public Consultations" should also include public councils under executive authorities.

Another important area of activity of public councils is the implementation of public expertise. The conduct of public expertise is regulated by the "Procedure for Facilitating the Public Examination of the Activities of Executive Authorities", approved by the Decree of the Cabinet of Ministers of Ukraine dated November 5, 2008, No. 976 [19]. In accordance with the second paragraph of paragraph 1, the public council may conduct a public examination of the activities of the executive body under which it is established.

Public examination is one of the forms of implementation of the constitutional rights of citizens to participate in the management of state affairs. The main purpose of the public examination is to take into account and protect the interests of citizens in the adoption and implementation of government decisions. The meaning of conducting a public examination is to search for solutions to socially significant problems, optimize these solutions, assess the reaction of various social groups to possible solutions, forecast and plan social or managerial activities. The main task of public expert activity is to prevent the adoption of incompetent managerial decisions in any field or inadequate implementation of decisions.

Public expertise, like any other, must have a clear goal, meaningful and important from the point of view of the decision-making process. It should be based on professional knowledge and have a clear, well-grounded methodology. The examination procedure should be transparent, protected from manipulation and free from conflicts of interest.

The introduction of public expertise into the practice of political life is aimed at solving several problems, such as: interaction of various public structures with the law-making process, overcoming the alienation of power from society, creating a legal framework aimed at achieving social agreement, improving the quality and efficiency of legislation through the use of the intellectual potential of the population, identifying and accounting for the entire range of legitimacy of legislation, as well as eliminating the formed legal nihilism by forming people's sense of involvement in law-making activities and responsibility for its results, increasing trust in the law and state power in general. Public expertise is a mechanism that creates conditions for coordinating the interests of different social groups with the needs of the development of society, i.e., coordinating conflicting interests in the context of insufficient resources for the functioning and development of society as a whole [20, p. 112–199].

The Institute of Public Expertise provides an opportunity for interested parties not only to receive and study information from the authority (or official) on the implementation of their programs, budget spending, and the provision of administrative services, but also to directly influence the formation of decisions of public authorities [21, p. 4–7]. Also, the public examination is aimed at preventing conflict situations and minimizing the negative consequences of errors that may arise during decision-making; in addition, it provides a comprehensive, systematic assessment of the activities of the authority. It can become a social institution that takes into account and expresses the consolidated opinion of organized public structures on topical issues of state and socio-economic policy: priorities of legislative activity, state and regional programs and mechanisms of implementation; the issue of social reforms and the possibility of including the potential of civic initiatives.

In our opinion, in order to optimize the rules for conducting public examination, it is necessary to determine the indicators of the effectiveness of its procedures, as well as to ensure that the opinion of experts is really taken into account in the course of decision-making by public authorities. This form of public control in the activities of public councils, of course, contributes to the improvement of the activities of public authorities. After all, public expertise is a real lever for decision-making by public authorities, which can prevent and resolve social conflicts, and therefore increase the level of citizens' trust in the activities of the state.

In the current conditions, public expertise does not reveal the potential of its social significance, which is necessary to solve issues of initiative, expand the objects of public expertise, properly accept and take into account the results of the examination, as well as responsibility for ignoring them.

An important feature of the public examination is that the public administration entity is obliged not only to take into account the proposal, but also to develop and approve measures aimed at their implementation based on the results of consideration of expert proposals; and then submit to the public formation a written response on the results of consideration of expert proposals and measures aimed at their implementation, while posting the relevant information on its own website.

6. Conclusions

Thus, we consider the main functions of public councils to be controlling, consultative and expert. The control function of public councils currently needs a more complete regulation, because the formulation of the powers of public councils only in the plane of public monitoring is clearly insufficient. Public monitoring is only the first stage of public control; however, the reaction to the response to the identified state of management, shortcomings, or problems in the activities of the public authority is no longer covered by the concept of monitoring. The tradition of participation of public councils in conducting consultations with the public is also, in our opinion, not sufficiently taken into account in the prospective legislation, so we propose to the list of interested parties provided for Clause 1 of Part 1 of Art. 1 of the Law of Ukraine "On Public Consultations" to include public councils under executive authorities. Regulation of the expert function of public councils is currently carried out in accordance with the basic requirements. Among the positive aspects, it is worth noting that the public administration entity is obliged not only to take into account the proposal, but also to develop and approve measures aimed at their implementation based on the results of consideration of expert proposals. At the same time, the development of specific forms of public control, consulting and expert functions requires further scientific research, especially in the context of research and implementation of the experience of the best European practices.

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