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SOME ASPECTS OF PUBLIC CONTROL AS A WAY TO ENSURE FAIR AND EFFECTIVE JUSTICE IN UKRAINE

Abstract. Purpose. The purpose of the article is to study public control as a way to ensure fair and effective justice. **Results.** The article analyses certain aspects of public control as a way to ensure fair and effective justice. Human and civil rights and freedoms are an important component of the implementation of constitutional provisions. The judiciary is a systemic tool for preventing and monitoring these violations. Control can be considered both as judicial control exercised by the courts, playing an important role in the process of implementing the principle of separation of powers, and public control exercised by society over the courts. In Ukraine, despite the reforms and changes in the justice system, there is no effective legal instruments of protecting the rights and freedoms of citizens, corruption continues to occur, Excessive length of court proceedings or execution of judgement. It is these components that require special study and public control. The National Agency of Ukraine for Civil Service monitors the quality of official duties performance, effectiveness and efficiency of service, as well as career planning, identification of the need to increase the level of professional competence of civil servants, encouragement of effective performance. Furthermore, public control should be considered as an inherent function of civil society. Its main task is to prevent judges from abusing their powers and exercising their interests to the detriment of the public. **Conclusions.** In order to prevent violations, both within the system (relationship between judges, their conduct) and in judgements, the activities of courts are controlled not only externally but also internally. The activities of the courts are controlled by a wide range of actors, including the President of Ukraine, the Verkhovna Rada, the State Judicial Administration of Ukraine, the High Council of Justice, the President of the Court, State bodies, municipal bodies and the public.

Key words: administrative and legal framework, efficiency, fairness, justice, public control, administrative law, courts.

1. Introduction

Human and civil rights and freedoms are an important component of the implementation of constitutional provisions. The judiciary is a systemic tool for preventing and monitoring these violations. Control can be considered both as judicial control exercised by the courts, playing an important role in the process of implementing the principle of separation of powers, and public control exercised by society over the courts. In Ukraine, despite the reforms and changes in the justice system, there is no effective legal instruments of protecting the rights and freedoms of citizens, while corruption, excessive length of court proceedings or execution of judgement occur. It is these components that require special study and public control.

The study is based on the work of academic theorists on administrative law, such as: B. Aver-

ianov, O. Bandurka, O. Bezpalo, Y. Bytiak, M. Havryltsiv, V. Halunko, I. Holosnichenko, S. Kivalov, M. Kovaliv, V. Kolpakov, A. Komziuk, O. Kuzmenko, A. Kravtsov, R. Melnyk, S. Ovcharuk, M. Taradai, I. Stakhura, A. Shcherbliuk, V. Felyk, and others.

The purpose of the article is to study public control as a way of ensuring fair and effective justice.

2. Control as a tool of public administration

In administrative law, control is classified as a tool of public administration. A common approach to the definition of public control has not yet been developed. The term “control” is defined as: a) verification of compliance of an object under control with the requirements; b) verification, accounting of activities; b) institution or organisation exercising super-

vision (Busel, 2005, p. 569). The term “public” comes from the Latin *publica*, *publicus*, that is, national, declared, explicit, known; organised for the public, society, folk, popular, national, nation-wide; all common, belonging to all (Dal, 1999, p. 535). According to Ya. Krehul, in a democratic society, public control over State authority by the public is, first and foremost, a guarantee of human and civil rights and freedoms. At the same time, active effective introduction of public control can increase influence of civil society on legislative initiative of State structures. Therefore, public control can prevent the authorities from violating existing legal provisions and officials from making premature, biased, unsubstantiated decisions and actions, leading to poor-quality legislation (Krehul, 2020). The essence of public control is to supervise the functioning of the relevant object under control; to obtain objective and reliable information; to take measures to prevent and eliminate violations; to identify the causes and conditions conducive to the offence (Zabarnyi, Kaliuzhnyi, Shkarupa, 2003). O. Muzychuk argues that control is a set of measures to verify the compliance of object under control with established requirements, during which the actor of control is authorised to interfere in the professional activity of the object under control by replacement or suspension from duty, revocation or termination of a decision, holding one liable (Muzychuk, 2010, p. 86). Therefore, control is a method of enforcing the law in the manner prescribed by the current legislation in order to eliminate and prevent certain violations. In Ukraine, judges are independent of any interference, influence or pressure on their decision-making is unlawful and entails punishment. However, in order to prevent violations, both within the system (relationship between judges, their conduct) and in judgements, the activities of courts are controlled not only externally but also internally. The activities of the courts are controlled by a wide range of actors, including the President of Ukraine, the Verkhovna Rada, the State Judicial Administration of Ukraine, the High Council of Justice, the President of the Court, State bodies, municipal bodies and the public.

3. Internal control over the courts

Next, the focus should be on some controlling powers of the relevant actors relating to the organisation and operation of the court apparatus, that is, internal control. For example: the President of a local court monitors the efficiency of the court’s staff and issues, under an act appointing a judge to office, a transfer of the judge, dismissal of a judge from office, as well as in connection with the termination of the powers of the judge, an appro-

priate order; reports to the High Qualification Commission of Judges of Ukraine and the State Judicial Administration of Ukraine, as well as through the judiciary’s web portal on vacant judicial posts within three days of their formation, etc. The President of the Court of Appeal controls the effectiveness of the court’s staff, approves appointments to the posts of Chairman of the court’s staff, Deputy Chairman of the court’s staff, introduces the application to the Chairman of the court’s staff, His deputy’s incentive or imposition of a disciplinary sanction in accordance with the law (Law of Ukraine on the Judiciary and the Status of Judges, 2016).

The Registrar of the Court Chamber is also responsible for supervising the analysis and review of judicial practice in cases falling within the competence of the Chamber; the President of the Appeals Chamber is responsible for the effectiveness of the activities of the separate structural unit providing the organisational support for the work of the Appeals Chamber, makes proposals for the appointment of the head of this unit and agree on his/her dismissal from office, makes a proposal for the incentive or imposition of a disciplinary sanction as prescribed by law; agrees on a draft regulation on such a structural unit and changes, etc.; the President of the Supreme Court monitors the effectiveness of the Supreme Court’s staff, approves the appointment of the Head of the Staff of the Court and the First Deputy, submits the application on incentive or disciplinary sanction for the Head of the Staff of the Court and the First Deputy in the manner prescribed by law.

Therefore, control is exercised by the representatives in the relevant administrative positions.

Broad powers of control are vested in judicial self-government bodies that can exercise both internal and external control over the activities of courts in Ukraine. They discuss internal court affairs or performance of specific judges or staff of the Court, and make decisions on these matters binding on the judges and employees of the Court, regulate the specialisation of judges to process specific categories of cases; regulate the level of loading on the judges of the relevant court, taking into account their performance of administrative or other duties; hear the reports of the judges holding administrative positions in this court, and the Head of the Staff of the Court, etc. (Law of Ukraine on the Judiciary and the Status of Judges, 2016).

The Decision 2 of the Council of Judges of Ukraine of February 4, 2016 provides for the main ways and forms of control over compliance with the requirements of the legisla-

tion on the settlement of conflicts of interest in the activities of judges and other representatives of the judicial system, the content and application of preventive mechanisms in the event of a conflict of interest, as well as the main measures to resolve the conflict of interests in the activities of these persons (if such conflict cannot be resolved in the manner prescribed by the procedural law), rules and remedies for violations of the law on conflict of interest (Decision of the Council of Judges of Ukraine on the Procedure for monitoring compliance with the legislation on conflicts of interest in the activities of judges and other representatives of the judiciary and its settlement, 2016).

In addition, judges are responsible for control under art. 2 of the Code of Administrative Procedure of Ukraine, providing that the objective of administrative proceedings is the fair, impartial and timely settlement of disputes in the field of public-legal relations with a view to the effective protection of the rights, freedoms and interests of individuals, rights and interests of legal persons from violations by authorised actors. In cases of appeal against decisions, acts or omissions of authorised actors, administrative courts check the legality of the decisions taken (Code of Administrative Procedure of Ukraine, 2005).

It should be noted that the control over unlawful decisions on administrative cases or criminal proceedings is partly the responsibility of the Prosecutor's Office. Its duty is to supervise compliance with the law by the bodies carrying

out operative-search activities, initial inquiry, pre-trial investigation, supervision of compliance with the law in the execution of judicial decisions on criminal cases, as well as other coercive measures related to the restriction of personal freedom of citizens (Law of Ukraine on the Prosecutor's Office, 2014). In case of violations, prosecutors are obliged to react.

In addition, the National Agency of Ukraine for Civil Service monitors the quality of official duties performance, effectiveness and efficiency of service, as well as career planning, identification of the need to increase the level of professional competence of civil servants, encouragement of effective performance (Order of the National Agency of Ukraine for Civil Service On Approval of the Standard Procedure for Evaluating the Performance of Civil Servants, 2012). With regard to public control, it should be considered as an inherent function of civil society. Its main task is to prevent judges from abusing their powers and exercising their interests to the detriment of the public.

4. Conclusions

Thus, in order to prevent violations, both within the system (relationship between judges, their conduct) and in judgements, the activities of courts are controlled not only externally but also internally. The activities of the courts are controlled by a wide range of actors, including the President of Ukraine, the Verkhovna Rada, the State Judicial Administration of Ukraine, the High Council of Justice, the President of the Court, State bodies, municipal bodies and the public.

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ПЕВНІ АСПЕКТИ ПУБЛІЧНОГО КОНТРОЛЮ ЯК СПОСОБУ ЗАБЕЗПЕЧЕННЯ СПРАВЕДЛИВОГО ТА ЕФЕКТИВНОГО ПРАВОСУДДЯ В УКРАЇНІ

Анотація. Мета. Мета статті полягає в тому, щоб дослідити публічний контроль як спосіб забезпечення справедливого та ефективного правосуддя. **Результати.** У статті проаналізовані певні аспекти публічного контролю як способу забезпечення справедливого та ефективного правосуддя. Забезпечення прав та свобод людини та громадянина в Україні є важливим складником реалізації конституційних норм. Органи судової влади є системним важелем у недопущенні цих порушень та здійсненні відповідного контролю. Контроль можна розглядати у двох аспектах: як судовий контроль, що здійснюють самі суди, виконуючи важливу роль у процесі реалізації принципу поділу влади, та громадський контроль, який здійснюється суспільством за діяльністю судів. В Україні, незважаючи на реформування та зміни у системі правосуддя, відсутні ефективні юридичні засоби захисту прав та свобод громадян, продовжують мати місце корупційні складники, надмірно тривале виконання судових розглядів справ або виконання судового рішення. Саме ці складники потребують особливого дослідження та здійснення публічного контролю. Національним агентом з питань державної служби здійснюється контроль за якістю виконання посадових обов'язків, визначення рівня результативності та ефективності служби, а також планування кар'єри, виявлення необхідності підвищення рівня професійної компетентності державних службовців, стимулювання результативної діяльності. Говорячи про громадський контроль, то його слід розглядати як невід'ємну функцію громадянського суспільства. Його основним завданням є недопущення зі сторони суддів зловживання владними повноваженнями та реалізації своїх інтересів на шкоду суспільним. **Висновки.** З метою недопущення порушень як усередині системи (взаємини між суддями, їхня поведінка) та прийняттям процесуальних рішень за діяльністю судів контроль здійснюється не тільки зовні, а і всередині системи. Контроль за діяльністю судів здійснюється широким колом суб'єктів, до яких належать Президент України, Верховна Рада, Державна судова адміністрація України, Вища рада правосуддя, Голова суду, державні органи, муніципальні органи і громадськість.

Ключові слова: адміністративно-правове забезпечення, ефективність, справедливість, правосуддя, публічний контроль, адміністративне право, суди.

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