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IMPROVEMENT OF LEGAL REGULATORY MECHANISM FOR PUBLIC CONTROL OVER ACTIVITIES OF SPECIALISED ANTI-CORRUPTION BODIES OF UKRAINE: INTERNATIONAL PRACTICE

Abstract. Purpose. The aim of the article is to analyse the international experience of public control over the activities of State authorities, identifying the positive aspects, proposing ways of their implementation, which will contribute to the effectiveness of this control over the activities of specialised anti-corruption bodies. **Results.** The article reveals an analysis of international experience in public control over the activities of State authorities. The positive experience of a number of countries, which have legislated the possibility of performing “preventive-control” measures on transparency of the work of executive authorities with the public in the form of hearings, discussions and other consultations with the public. It is underlined that introducing positive foreign experience, Ukraine should invent its own way of developing public control over the activities of State authorities, especially those entrusted with the function of preventing and combating corruption. It was noted that the way of public control institutionalisation must be based on international democratic foundations, considering the specificities of the national State formation. Relying on positive international practice, a number of additions to the legislation of Ukraine in force are proposed to contribute to the effectiveness of public control over the activities of specialised anti-corruption bodies. It is determined that in order to observe the principle of publicity and transparency in the activities of authorised persons, in our view, it is advisable to provide for mandatory disclosure of information and reporting on the results of monitoring and evaluation of the implementation of anti-corruption programmes by a state authority, prepared by an authorised unit (authorised person). **Conclusions.** It is concluded that the public is one of the independent and impartial actors of anti-corruption control, which can resist corruption manifestations both at a practical level and by involving special anti-corruption bodies in the development of various anti-corruption initiatives and participating in the adoption of their decisions. However, the development of public control and the strengthening of its role depends on the State, which should provide at the legislative level effective conditions for the development of this institution, and the organisation of legal cooperation between specialised anti-corruption bodies and the public in the fight against illicit enrichment.

Key words: public control, specialised anti-corruption bodies, international anti-corruption practice, State authorities.

1. Introduction

Full-fledged cooperation between society and the State is possible provided the latter meets principles of the legal State, its openness and accountability to citizens (Nalyvayko, Savchenko, 2017, p. 105), facilitated by the invention of more effective ways at the legal level to regulate the public’s cooperation in monitoring the activities of the bodies entrusted with the prevention of corruption in Ukraine.

To date, a number of laws have been drafted to improve the legal regulatory mechanism for

public control over compliance with the principle of legality by State authorities. But it should be noted that even at the project level, the development of a single unified regulation on improving the administrative and legal regulatory mechanism for public control over the activities of specialised anti-corruption bodies has been neglected.

Some issues of public control were studied by scientists such as: O. Andriiko, L. Apasova, A. Balatska, O. Dzhafarova, V. Harashchuk, T. Kolomoiets, V. Kolpakov, A. Kom-

ziuk, A. Krupnyk, O. Muzychuk, I. Skvirskyi, D. Kholdar, T. Chepulchenko, O. Chub, Ye. Shevchenko, M. Shunin, and others.

The aim of the article is to analyse the international experience of public control over the activities of State authorities, identifying the positive aspects, proposing ways of their implementation, which will contribute to the effectiveness of this control over the activities of specialised anti-corruption bodies.

2. Specificities of public control

One of the significant gaps in the implementation of public control over the activities of specialised anti-corruption bodies is the absence of a specialised legal regulation that would accumulate and clearly define legal criteria, specificities and implementation of such control.

A range of draft laws on public control have been sent to the Verkhovna Rada of Ukraine, but none of these have been adopted to date. The legal analysis of draft laws on the implementation of public control over the activities of State authorities leads to the conclusion that most of them do not correspond to the legal nature of associations of citizens and other actors of public control, with the determination of their place and their relations with State bodies. The proposed project novels on the legal regulatory mechanism for public control in most cases contradict the current legislation. Most scientists argue that foreign experience in public control in terms of activating the role of the public in administrative appeals of actions and acts of local self-government and other State authorities, which has already passed the test of time in foreign countries, should be studied and implemented. For example, in the Kingdom of the Netherlands, special advisory commissions (20-25 persons) are set up to consider complaints about the actions and decisions of the above-mentioned bodies, i.e., when exercising their administrative legal personality shall include the inhabitants of the city, elected by the municipal parliament (council) for the term of office of the latter. The commissions' work in subgroups with specialisation (social affairs, construction, etc.), and complaints are examined by panels consisting of 2-3 commissioners once or twice a month. Although the decisions of the respective commissions are of a recommendatory (advisory) nature (members of the commission do not have to have a law degree), however, as practice shows, "the authorities in the absolute majority of cases listen to the recommendations of advisory commissions". The Commission reviews the decision not only and not so much on the basis of legality as on the basis of fairness (common sense, etc.), which demonstrates the implementation of the rule of law in the administration (Opinion

on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019; Control over the activities of local self-government bodies (foreign experience): Information reference prepared by the European Information and Research Centre at the request of the Committee of the Verkhovna Rada of Ukraine, 2017).

3. Foreign experience in counteracting public corruption risks

The issue of administrative appeal of actions and acts of local self-government bodies in the Republic of Poland is regulated by the Code of Administrative Procedure, which states that the relevant relations are regulated by filing a complaint against acts, actions of bodies of "territorial self-government" by this code (art. 2), complaints are submitted to the Appeals Board of Self-Government (art. 17), to the Chairman of the Council of Ministers or to the relevant Ministers (art. 18), the procedure for the submission and consideration of complaints is defined (part II-X) (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019; Control over the activities of local self-government bodies (foreign experience): Information reference prepared by the European Information and Research Centre at the request of the Committee of the Verkhovna Rada of Ukraine, 2017).

The positive foreign experience of Andorra, Belgium, Finland, Norway, Switzerland and Belgium should also be noted, because they have legislated the possibility of performing "preventive-control" measures on transparency of the work of local self-government bodies with the public in the form of hearings, discussions and other consultations with the public. In our opinion, this practice of public control should be introduced in a special legal regulation, with mandatory scope of preventive-control measures on the activities of the State specialised anti-corruption bodies.

In Finland, the Act on Administrative Procedure (Administrative Procedure Act, 2003) clearly defines the obligation of local authorities to address the parties, to which the event or decision relates, in order to receive comments from them by the time the matter is resolved, which may well be considered as a manifestation of prior public control. Similar provisions are in legislation of Norway (Act relating to procedure in cases concerning the public administration, 1967), of the Republic of Poland (Law of 1990 "On Local Self-Government" (Ustawa o

samorządzie terytorialnym, 1990)) (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019).

Therefore, the most positive foreign experience in preventing corruption by public authorities is the practice of Norway, the Republic of Poland, the Kingdom of the Netherlands, Finland, etc., which can be borrowed and implemented by Ukraine at the legislative level. Introducing positive foreign experience, Ukraine should invent its own way of developing public control over the activities of State authorities, especially those entrusted with the function of preventing and combating corruption. The way of public control institutionalisation must be based on international democratic foundations, considering the specificities of the national State formation.

The institution of local human rights ombudsmen is of significance in the system of public resistance to the emergence of corruption risks in the practical activities of public authorities and the prevention of these manifestations. This experience is actively used in such countries as: Great Britain, Iceland, Norway, Romania, Slovenia, Portugal, Republic of Moldova.

The ombudsmen are specifically mandated and relatively independent supervisors, who, in case of violation of human rights and freedoms by decisions or actions of officials and employees of public authorities, give them advice and recommendations to correct and improve their decisions. The experience of Belgium, Finland, Norway and Switzerland, where the legal regulations govern the implementation of precautionary measures in the form of mandatory hearings, discussions or other forms of interaction with citizens in respect of possible violations of local government is quite acceptable in domestic practice (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019; Control over the activities of local self-government bodies (foreign experience), 2017). In national practice, this is reflected in the institution of the authorised (authorised unit, authorised person), coordinated by the National Agency for the Prevention of Corruption. This institution should be thoroughly analysed to determine further ways of its improvement.

4. Features of the activities of public authorities and the public in the prevention and combating of corruption

For effective cooperation of all State authorities, including special anti-corruption bodies, with the public in preventing and combating corruption, the Cabinet of Ministers of Ukraine has developed a Draft Law 4135 On the Principles of the State Anti-Corruption Policy for 2021 - 2025 of September 21, 2020, providing for the adoption of the Anti-Corruption Strategy for 2021-2025, the introduction of a number of additions to the existing legislation. This Anti-Corruption Strategy envisages ways of harmonious cooperation of all State bodies, considering the adoption of measures aimed at improving the areas of work of specialised anti-corruption bodies in the fight against and prevention of corruption, preventive measures to minimise the manifestations of anti-corruption risks among officials and employees.

It is for the coherent and coordinated implementation of measures to prevent and detect corruption in State bodies, local self-government bodies, enterprises, institutions and organisations related to the management of a state body, as well as in State trust funds, it is mandatory to form (define) independent and functionally independent structural units (authorised persons), which are entrusted with the functions of prevention and detection of corruption. Article 13-1 of the Law of Ukraine "On the Prevention of Corruption" provides for the list of State bodies and institutions in which these units are established and authorised persons operate, the definition of their tasks. The coordination and methodological function is entrusted to the National Agency for the Corruption Prevention (hereinafter referred to as NACP) that approves the Standard Regulations on the Authorised Unit (Authorised Person) and the procedure for consent to the dismissal of the head of the authorised unit (authorised person) (Law of Ukraine on the prevention of corruption, 2014).

According to the Standard Regulations on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption, drawn up and approved by Order 277/21 of the NACP of May 27, 2021 (Order of the National Agency for the Prevention of Corruption of Standard Regulations on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption, 2021), an authorised person shall be elected from among the employees of the relevant body and shall be entrusted with the functions of such person. This person is appointed to a separate position, which is included as a structural unit of the staff of a state body.

The main tasks of the authorised units (authorised person), defined both by the Law of Ukraine "On the Prevention of Corruption" and the Standard Regulations on

the on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption, include: development, organisation and supervision of activities to prevent corruption and corruption-related offences; organisation of work on assessment of corruption risks in the activities of the relevant body, preparation of measures to eliminate them, submission of appropriate proposals to the head of such body; provision of methodological and advisory assistance on compliance with legislation on the prevention of corruption; implementation of measures to identify conflicts of interest, assistance in resolving them; informing the head of the relevant body and the NACP about the detection of a conflict of interest and the measures taken to resolve it; verification of the submission by declaring entities of declarations and the reporting on cases of failure or late submission of such declarations in a certain manner to the NACP; implementation of control over compliance with anti-corruption legislation, including consideration of reports on violation of the requirements of the Law of Ukraine "On Prevention of Corruption", including at subordinate enterprises, institutions and organisations; provision of protection of employees, reporting a violation of the requirements of the law, from negative measures by the head or employer in accordance with the legislation on the protection of whistle-blowers; informing the head of the relevant body, the NACP or other specially authorised actors in the field of anti-corruption about violations of legislation on prevention and combating of corruption (Law of Ukraine on the prevention of corruption, 2014). It should be noted that the scope of powers of the authorised unit (authorised person) does not include cooperation with the public, disclosure of information and reporting on the results of monitoring and evaluation of the implementation of anti-corruption programmes by the State body. This information must be prepared and provided twice a year by the authorised unit (authorised person) of the NACP, as prescribed by the Standard Regulations on the authorised unit (authorised person) for the prevention and detection of corruption.

This calls into question the transparency and impartiality of the activities of the authorised unit (authorised person) of the State body. In order to remedy this situation, we believe it would be appropriate to add a paragraph

to the Standard Regulations on the authorised unit (authorised person) for the prevention and detection of corruption, approved by NACP's Order 277/21 of May 27, 2021, providing for public participation in the control over anti-corruption activities by authorised persons.

Moreover, in order to observe the principle of publicity and transparency in the activities of authorised persons, in our view, it is advisable to provide for mandatory disclosure of information and reporting on the results of monitoring and evaluation of the implementation of anti-corruption programmes by a state authority, prepared by an authorised unit (authorised person).

For more effective interaction of State authorities, local self-government bodies, authorised units (authorised person) in these bodies, specialised anti-corruption bodies, as well as the public, relevant experts, international anti-corruption projects to invent effective and efficient ways to combat and prevent corruption violations, identify practices to minimise corruption risks and prevent the emergence of new corruption schemes, we propose to create permanent sectoral platforms on the basis of the NACP.

5. Conclusions

Foreign practice shows that it is necessary to establish at the legislative level specificities for regulating public control over the activities of public authorities, including those entrusted with the task of combating corruption, with the establishment of a mandatory range of public preventive-control activities in respect of these bodies.

The public is one of the independent and impartial actors of anti-corruption control, which can resist corruption manifestations both at a practical level and by involving special anti-corruption bodies in the development of various anti-corruption initiatives and participating in the adoption of their decisions. However, the development of public control and the strengthening of its role depends on the State, which should provide at the legislative level effective conditions for the development of this institution, and the organisation of legal cooperation between specialised anti-corruption bodies and the public in the fight against illegal enrichment.

References:

Act relating to procedure in cases concerning the public administration of 10 February 1967. Retrived from: <https://www.sjofartsdir.no/en/shipping/legislation/laws/act-of-10-february1967-no-00-relating-to-procedure-in-cases-concerning-the-public-administration/> (in English).

Administrative Procedure Act. (2003). Retrived from <http://www.finlex.fi/en/laki/kaannokset/2003/en20030434> (in English).

Ustawa o samorządzie terytorialnym z dnia 8 marca 1990 r. Retrived from <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19900160095> (in Polish).

Висновок на проєкт Закону України Про внесення змін до деяких законів України щодо створення інституту механізму здійснення громадського контролю за діяльністю орханів і посадових осіб місцевого самоврядування [Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government]. (2019). *rada.gov.ua*. Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=67115 (in Ukrainian).

Контроль за діяльністю орханів місцевого самоврядування (іноземний досвід): Інформаційна довідка, підготовлена Європейським інформаційно-дослідницьким центром на запит Комітету Верховної Ради України [Control over the activities of local self-government bodies (foreign experience): Information reference prepared by the European Information and Research Centre at the request of the Committee of the Verkhovna Rada of Ukraine]. (2017). *rada.gov.ua*. Retrieved from: <http://euinfocenter.rada.gov.ua/uploads/documents/29223.pdf> (in Ukrainian).

Закон України Про запобігання корупції: від 14.10.2014 № 1700-VII [Law of Ukraine on the prevention of corruption from October 14, 2014 № 1700-VII]. (2014). *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1700-18#Text> (in Ukrainian).

Nalyvaiko, L.R., Savchenko, O.V. (2017). *Teoretyko-pravovi zasady hromadskoho kontroliu za diialnistiu orhaniv derzhavnoi vlady [Theoretical and legal principles of public control over the activities of public authorities]*. Kyiv (in Ukrainian).

Nakaz Natsionalnoho ahentstva z pytan zapobihannia koruptsii «Типове положення про уповноважені підрозділи (уповноважену особу) з питань запобігання та виявлення корупції»: від 27 трав. 2021 № 277/21 [Order of the National Agency for the Prevention of Corruption of Standard Regulations on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption from May 27, 2021 № 277/21]. (2021). *nazk.gov.ua*. Retrieved from <https://nazk.gov.ua/uk/documents/nakaz-vid-27-07-2021-277-21-pro-zatverdzhennya-typovogo-polozhennya-pro-upovnovazhenyj-pidrozdil-upovnovazhenu-osobu-z-pytan-zapobigannya-ta-vyavlennya-koruptsiyi/> (in Ukrainian).

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УДОСКОНАЛЕННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ЗДІЙСНЕННЯ ГРОМАДСЬКОГО КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ СПЕЦІАЛІЗОВАНИХ АНТИКОРУПЦІЙНИХ ОРГАНІВ УКРАЇНИ: МІЖНАРОДНА ПРАКТИКА

Анотація. Мета. Мета статті – провести аналіз міжнародного досвіду зі здійснення громадською контролю за діяльністю органів державної влади, визначивши позитивні моменти, запропонувати шляхи їх впровадження, що сприятиме ефективності здійснення цього контролю за діяльністю спеціалізованих антикорупційних органів. **Результати.** Стаття розкриває аналіз міжнародного досвіду зі здійснення громадською контролю за діяльністю органів державної влади. Виділено позитивний досвід країн, які на законодавчому рівні закріпили можливість проведення з громадськістю «попереджувально-контрольних» заходів відносно прозорості роботи органів виконавчої влади, які проходять у вигляді слухань, обговорень та інших форм консультацій із громадськістю. Звернуто увагу, що, впроваджуючи позитивний зарубіжний досвід, Україна має винайти власний шлях розвитку громадського контролю за діяльністю органів державної влади, особливо тих, на які покладено функцію запобігання та протидії корупції. Наголошено, що шлях інституціоналізації громадського контролю повинен ґрунтуватися на базі міжнародних демократичних основ з урахуванням особливостей національного державотворення. Спираючись на позитивну міжнародну практику, запропоновано внести низку доповнень до чинного законодавства України, що сприятимуть ефективності здійснення контролю громадськістю за діяльністю спеціалізованих антикорупційних органів. Визначено, що з метою дотримання принципу публічності та прозорості в діяльності уповноважених осіб, на нашу думку, доцільним є передбачити обов'язкове оприлюднення інформації та звітності за результатами моніторингу та оцінки виконання антикорупційних програм державним органом, підготовленої уповноваженим підрозділом (уповноваженою особою). **Висновки.** Зроблено висновок, що саме громадськість є одним із незалежних і неупереджених суб'єктів антикорупційного контролю, який на практичному рівні здатен протистояти корупційним проявам, а також шляхом задіяння у розробці різних антикорупційних ініціатив спеціальних антикорупційних органів, участі у прийнятті їх рішень. Однак розвиток громадського контролю та посилення його ролі залежить

від держави, яка має забезпечити на законодавчому рівні ефективні умови розвитку цього інституту, а також на рівні організації правової співпраці спеціалізованих антикорупційних органів із громадськістю у боротьбі з незаконним збагаченням.

Ключові слова: громадський контроль, спеціалізовані антикорупційні органи, міжнародна антикорупційна практика, органи державної влади.

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