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PUBLIC CONTROL IN THE FIELD OF JUDICIAL AUTHORITIES: THEORETICAL AND LEGAL CHARACTERISTICS

The formation of Ukraine as an open, democratic, legal state is proportionally interconnected with ensuring the ability of civil society institutions to exercise public control over the activities of state authorities and local governments at the appropriate level. Public control is the basis for guaranteeing democracy.

Judicial reform requires, among other things, ensuring high-quality cooperation between judicial authorities and the public. In this context, public scrutiny is an integral component of creating an effective mechanism for cooperation between judicial authorities and civil society institutions. Given the above, the scientific and practical interest in the issues of public control over the activities of judicial authorities is actualized.

Various aspects of control, including public control, have been studied in the scientific works of O. Andriiko, Yu. Barabash, S. Bratel, A. Grabylnikov, S Denysiuk, M. Koziubra, T. Nalyvaiko, S. Nistratov, M. Novikov, O. Petryshyn, O. Polinets, G. Pryshliak, O. Sushinskyi, V. Shestak, S. Shestak and others. K. Babenko, M. Vilhushinsky, V. Horodovenko, I. Hrytsenko, P. Kablak, M. Logunov, O. Ovsiannikova, V. Oliinyk, S. Prylutskyi and others have studied the issues of the relationship between judicial authorities and the public. These scholars have made a significant contribution to the development of the theoretical foundations of public control and the functioning of judicial authorities.

Public control is a necessary condition for the functioning of society, as it is an effective guarantee of social security and stability. History shows that state institutions of any form of state system or government in the absence of control over them tend to degenerate and degrade. Such conditions are a favorable ground for the development of totalitarian methods of government, which inevitably leads to restrictions on human rights and freedoms. In addition, this kind of control provides a real opportunity for the population to influence political processes in society, to be an active participant in public life [1; 2, c. 158], i.e. to promote the implementation of constitutional provisions that the only source of power in the state is the people.

The control of public authorities by civil society is a characteristic feature of both democracy and a democratic state. The social purpose of democracy is manifested in its function as a function of control, which is aimed at ensuring the activities of state bodies within their competence [3, c. 33]. Both the state and civil society should have equal powers, as a result of which civil society will be able to combat abuses in public administration effectively, as it controls the activities of the bureaucracy, helps to identify offences committed in the process of state power [4, c. 16; 5, c. 113].

The independence of courts and the independence of judges is a guarantee of protection of human and civil rights and freedoms, rights and legitimate interests of legal entities, as well as the interests of society and the state [6, c. 9]. However, any democratic constitutional system is based on the axiomatic assumption that power should be divided, limited, accessible, predictable, effective and controlled [7, c. 249]. There is now a significant need for radical changes in the judiciary and the reform of some of its institutions. In the process of building the rule of law, one of its most important criteria is the creation of a fair, transparent and efficient judiciary [8]. In this aspect, public control is an effective mechanism for deterring and counteracting the abuse of power by public authorities, including the judiciary, as is constantly emphasized by international human rights institutions.

Public confidence in the judiciary, as well as in the authority of the judiciary in matters of morality, honesty and integrity of judicial authorities is of paramount importance in a modern democratic society (Bangalore Principles of Judicial Conduct) [9]. One of the priority tasks of the judiciary in Ukraine in accordance with the Strategy for Reforming the Judicial system, Judicial proceedings and Related Legal Institutions for 2015-2020 is to increase public confidence in judicial authorities and related legal institutions [10].

A comprehensive review provides an opportunity to state that public control is one of the fundamental social phenomena that determines the vector of state and legal development of Ukraine. "Public control over the activities of judicial authorities" is a type of social control exercised by civil society institutions or individual citizens through a set of legal and organizational measures to protect and ensure human rights and freedoms, meet the needs and interests of society by establishing compliance with judicial authorities in accordance with the law.

Theoretical and legal analysis of domestic legislation is important, which provides for public control over the activities of judicial authorities in order to generalize, systematize and further improve and bring to international standards.

Analysis of current legislation allows us to identify the following groups of regulations in the field of public control over the activities of judicial authorities: 1) national legislation: the Constitution of Ukraine, laws of Ukraine, bylaws, etc.; 2) international treaties ratified by the Verkhovna Rada of Ukraine.

In Part 1 of Article 5 of the Constitution of Ukraine stipulates that the only source of power in Ukraine is the people, which it exercises directly and through state authorities and local governments; Part 1 of Article 38 provides that citizens have the right to participate in the management of public affairs [11]. These provisions are the primary legal basis for public control in Ukraine.

During the period of Ukraine's independence, in order to solve the problem of normative legal regulation of public control, attempts were made to develop a draft Law of Ukraine "On Public Control", among them registered bills "On Public Control" № 6358 of July 13, 2001; № 6246 of October 11, 2004; № 4697 dated April 14, 2014; № 2737-1 dated May 13, 2015; draft Law of Ukraine "On Public Control" № 2297a of July 6, 2015; draft Law of Ukraine "On Civil Control over the Activities of Authorities, their Officers and Officials" № 9013 of August 7, 2018. Despite the fact that there is no unambiguous concept and common vision of public control over the activities of judicial authorities in the domestic legislative activity, these draft laws show a desire to improve and specify the institutional capacity and procedural aspects of public control. The development of such a socially important law is an urgent need in today's conditions, as the existence of practical problems associated with the formation of public control makes it impossible to create such a law hastily.

Bylaws that ensure the implementation of public control include: Decrees of the President of Ukraine of August 1, 2002 "On additional measures to ensure openness in the activities of public authorities"; of February 7, 2008 "On priority measures to ensure the implementation and guarantee of the constitutional right to appeal to state authorities and local governments"; Resolution of the Cabinet of Ministers of Ukraine of August 29, 2002 "On measures to further ensure openness in the activities of executive bodies"; of November 3, 2010, which approved the Procedure for public consultations on the formation and implementation of public policy; Clarification of the Ministry of Justice of Ukraine dated February 3, 2011 "Interaction of the state and civil society institutions"; National Strategy for Promoting the Development of Civil Society in Ukraine for 2016-2020, approved by the Decree of the President of Ukraine of February 26, 2016, etc.

Speaking about the normative legal framework of the institute of public control, which should be based on thorough comprehensive theoretical and practical research, it should be noted that today Ukraine has international (European) obligations, which it undertook during membership and in the framework of cooperation in institutions such as the UN, OSCE, Council of Europe, NATO, EU, etc. These organizations have developed rules, recommendations and standards relating to the organization and implementation of public control in certain spheres of public life and should be implemented in national legislation [12, c. 124].

Among the basic documents cannot be ignored international regulations, including: Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, the United Nations Convention against Corruption encourages honesty, accountability and good governance of public affairs and state property.

In today's conditions, public control over judicial authorities can take two forms: direct – provided through the direct participation of civil society in the administration of justice (people's assessors, jurors) and indirect – provided through openness and publicity, access of citizens and the media to judicial information and its objective coverage [13, c. 348]. Given the specifics of the organization and functioning of the judicial system, the media is, first, one of the forms of indirect control, which largely depends on its effectiveness; secondly, an important means of communication between judicial authorities and the public. The development of the information society has helped to increase the role of the media in shaping the worldview of citizens, in particular regarding the activities of judicial authorities. By informing the population, the mass media form in citizens the ability to analyze the activities of the government and increase the responsibility of the latter.

The main indicator of the democratic state of society is the degree of freedom of the press, as the media must breathe power into the minds of most citizens, so that they are not controlled by either undemocratic states or undemocratic market forces [14, c. 8]. It is important to emphasize that public opinion about the courts is formed under the influence of the media, which are the main public channel for mass dissemination of information, and the publicity of the proceedings is an unalterable requirement of today [15]. The media are directly involved in shaping public opinion by disseminating information of a certain direction, which they can directly produce [16, c. 45].

Given the fact that there should be no restrictions on the admission of journalists to court hearings, except as provided by law, the very creation of an effective system of interaction between courts and the media is an urgent task today. Circumstances in the presence of which the public and the press may not be allowed by the court are the same as in national regulations.

The media is the intermediary that provides the link between the state and society. Independent media embody and represent public opinion as a social institution and as a "fourth power" perform the functions of observer and controller of the legislative, executive and judicial branches. The importance of the media for civil society is also to create a symbolic public sphere – an imaginary public forum that can be used to express and lobby public and local interests [17, c. 35; 18, c. 198]. However, it should be noted that the interaction of courts with the media is a difficult problem, as the Ukrainian media still need to be modified, in particular through the adoption of generally accepted rules of integrity and respect for judicial authorities, which in practice has created an information vacuum that is manifested in the absence of an effective mechanism for interaction between the media and the courts, sometimes biased attitude to the coverage of their work.

Standards of interaction between courts and the media are enshrined in international instruments. In accordance with UN Economic and Social Council Resolution 1296 of 11 November 1994, the Madrid Principles on the Interaction of the Media and Judicial Independence were extended. The main provision of the document is the statement that the function and right of the media is to collect and disseminate information, statements and critical allegations about the proceedings, as well as coverage of court cases before, after and during the trial without violating the presumption of innocence [19].

In the judiciary's relationship with the media, the main goal should be to protect judges from the pressure of public opinion inspired by the media's findings in the case under consideration or to be considered. At the same time, society should have free access to the courtroom through the media. Courts should not be afraid of public opinion and should not be exempt from media criticism. Legal force and finality of sentences do not exclude the possibility of such criticism, as justice is one of the most important participants in the social game in a democratic state governed by the rule of law. It is also impossible to build the authority of courts on prohibitions and lack of access to information. As a rule, this has the opposite effect [20; 21, c. 119].

However, in practice there may be cases when publications in the media do not only increase the authority of the judiciary, but also reduce the level of trust in them in society. Criticism of a judge's actions in a media publication is an ambiguous issue. For example, according to the judgment of the European Court of Human Rights in the case of De Gayes and Geisels v. Belgium. The court recognized that "judges should be protected from destructive attacks by the media that are not based on any factual grounds". At the same time, if criticism of judicial problems or individual judges is based on "proper and thorough journalistic investigations which are part of the public discussion of important public needs", then there is no reason to restrict the freedom of the media [20; 22].

It should be noted that judges of Ukrainian courts in the presence of such publications very rarely apply to the court to protect the honor and dignity of both their own and the judiciary [23, c. 8]. In order to establish interaction between the media and judges, it is necessary to implement the practice of European countries. In particular, such a form of communication as a meeting of court chairmen with editors-in-chief and newspaper publishers has proven itself. These conversations are organized not so much to inform newspapers as to maintain a constructive relationship between the judiciary and the media. Personal contact, calm round table discussion remove some problems in relations with the press and simplify further cooperation [24, c. 64].

Interesting is the experience of the United Kingdom, where the Supreme Court has officially allowed journalists to use Twitter to transmit messages from court hearings. Earlier in the United Kingdom, the use of social networks in the courtroom was not allowed, and photography and video recording were prohibited during court proceedings. Journalists could use dictaphones only in exceptional cases. Violation of these rules was punishable by contempt of court [25, c. 23].

Summarizing the above, we can conclude that in Ukraine the formation of democracy acquires a

qualitatively new meaning – from a declarative foreign policy course, it is gradually becoming a comprehensive domestic policy of reform. At this stage, control becomes relevant as a necessary component of state and public life, a factor in the development of civil society. In modern conditions of state formation and reform of legal institutions, public control occupies an important place in the activities of judicial authorities. Public control over the activities of judicial authorities is a type of social control carried out by civil society institutions or individual citizens through a set of legal and organizational measures to protect and ensure human rights and freedoms, meet the needs and interests of society by establishing compliance with the functioning of judicial authorities according to legal requirements. As one of the indirect forms of control and the most important communication channels, the activity of the media plays a leading role in exercising public control over the activities of judicial authorities. Awareness of citizens about the activities of judicial authorities through the media and the desire of the judiciary to provide such information in full will help increase the authority of the judiciary in society, the establishment of relations between the citizen and the court. Thus, an important task today is to establish a constructive relationship between the media and the courts in order to form in citizens an objective opinion about the organization of the courts and the consideration of cases. The effectiveness of the interaction between the court and the media is possible through the creation of an organizational system of communication. In particular, on the one hand, the creation of press services in courts with highly qualified press secretaries, on the other hand, to pay attention to the problems of journalism, because Ukraine lacks journalists who could cover the activities of judicial authorities and the peculiarities of court cases.

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СТАНОВЛЕННЯ ВІДПОВІДАЛЬНОГО ПРЕДСТАВНИЦЬКОГО П РАВЛІННЯ В СУЧАСНІЙ ДЕРЖАВІ

Сучасний розвиток супроводжується глобальними викликами, відповіді на які передбачають пошук нових форм організації та здійснення влади. Ліберальні форми організації влади у різних науково-теоретичних вимірах, концепціях та політико-правових моделях (класичний лібералізм, неолібералізм, лібертаріанство, кейнсіанська модель економічного розвитку), побудовані на приматі прав і свобод людини і громадянина, індивідуальному егоїзмі, вільній конкуренції, обмеженні влади правом [10; 14]. В умовах кліматичних загроз, розростання пандемії, поширення тероризму постає питання про новий зміст соціальної відповідальності держави, про її завдання поєднати принципи лібералізму, примату прав і свобод людини як найвищої цінності та права соціуму, тобто мова йде про нове прочитання таких фундаментальних категорій, як парламентаризм і вибори, конституція і верховенство права, відповідальний уряд і відповідальне урядування, що зрештою зводиться до потреби розгляду проблеми відповідального представництва. Адже згадані інститути та категорії є не просто формами здійснення влади, але і незаперечними правовими цінностями, що створюють своєрідний аксіологічний підмурок функціонуванню влади.

Тому питання запровадження та функціонування відповідального представницького правління в Україні, а, як показує практика боротьби з поширенням коронавірусу, і для інших держав, набуває першорядного значення саме в контексті курсу на розбудову демократичної правової держави.

Підґрунтя теоретичного концепту відповідального представницького правління складає категорія представництва, добре відома правовій науці та практиці ще від античної доби. Невипадково Г. Єллінек ідею представництва відносив до першопочаткових правових поглядів людини [5, с. 418], що трактується як «здійснення якоюсь особою (представником) юридичних дій на основі і в межах певних повноважень від імені іншої особи – того, кого представляють» [2, с. 365]; вчинення правочинів та інших юридичних дій однією особою (представником) від імені та в інтересах іншої особи згідно з довіреністю або в силу закону [3, с. 1064].