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Legal regulation of public control over the activities of Ukrainian law enforcement agencies: Experience of Ukraine and certain countries

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Abstract

The purpose of the article was to determine the specific features of public control over the activities of certain law enforcement agencies and to develop suggestions for their improvement. The methodological basis of the research is general scientific (method of philosophical dialectics, etc.) and special legal methods of cognition (systemic, theoretical and legal, formal and dogmatic, comparative, state modeling method, etc.) The authors have developed their own definition of the concept of public control over the activities of law enforcement agencies. In the conclusions it has been offered to develop and approve the Law of Ukraine «On public control over the activities of law enforcement and supervisory bodies», which would systematize all forms of public control provided for in the Ukrainian legislation. Finally, suggestions have been developed for the introduction of positive international experiences of public control over the activities of law enforcement agencies in various countries.

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Keywords: public control; public council; public agencies; law enforcement agency; law enforcement officials.

Regulación legal del control público sobre las actividades de los organismos encargados de hacer cumplir la ley de Ucrania: Experiencia de Ucrania y ciertos países

Resumen

El propósito del artículo fue determinar las características específicas del control público sobre las actividades de ciertos organismos encargados de hacer cumplir la ley y desarrollar sugerencias para su mejora. La base metodológica de la investigación es científica general (método de la dialéctica filosófica, etc.) y métodos jurídicos especiales de cognición (sistémico, teórico y jurídico, formal y dogmático, comparativo, método de modelación estatal, etc.) Los autores han elaborado su propia definición del concepto de control público sobre las actividades de los organismos encargados de hacer cumplir la ley. En las conclusiones se ha ofrecido desarrollar y aprobar la Ley de Ucrania «Sobre el control público de las actividades de los organismos encargados de hacer cumplir la ley y de supervisión», que sistematizaría todas las formas de control público previstas en la legislación ucraniana. Finalmente, se han desarrollado sugerencias para la introducción de experiencias internacionales positivas de control público sobre las actividades de los organismos encargados de hacer cumplir la ley en varios países.

Palabras clave: control público; consejo público; organismos públicos; organismo encargado del cumplimiento de la ley; funcionarios encargados de hacer cumplir la ley.

Introduction

The activities of law enforcement agencies are aimed at protecting human and civil rights, freedoms and legitimate interests from violations and damages. Human rights and freedoms may be limited during certain procedural actions and while selecting precautionary measures. The legislation provides various mechanisms to prevent abuse by law enforcement officers while performing their duties. Public control is one of the ways to ensure the rights of citizens when communicating with law

enforcement officers. Proper legal regulation of the forms and methods of public control should ensure its effectiveness. The above arguments determine the relevance of the chosen topic of scientific research.

The purpose of the article is to determine specific features of public control over the activities of certain law enforcement agencies and to develop suggestions for its improvement.

1. Analysis of recent research

Problems of exercising public control over the activities of executive authorities have repeatedly become the subject matter of scientific research. In particular, O. Pashchynsky studied the essence of public control as a factor in the democratic development of the state and society (2021: 496-498). I. Skvirskyi studied organizational forms of public control (2013: 223-227). V. Teremetskyi revealed the main general theoretical aspects of monitoring the activities of law enforcement agencies (2014: 96-120). Besides, V. Teremetskyi studied the experience of subjects of control over the activities of law enforcement agencies of leading foreign countries. The scholar rightly noted that the use of European standards in the organization and implementation of control over the activities of law enforcement agencies will contribute to the application of the most effective organizational and legal forms of control into the management practice of all law enforcement agencies of Ukraine (2017: 266).

Problems of public control over the activities of certain law enforcement agencies were studied in the works: on the activities of the National Police of Ukraine – V. Hrytsenko (2021) and O. Yunin (2021), on the activities of the State Fiscal Service of Ukraine – S. Homov (2016), on the activities of the National Guards of Ukraine – T. Bairachnaia (2017). The specifics of legal regulation of public control over the security sector were studied by H. Goncharenko (2020).

The works of these scholars are related to public control over the activities of executive authorities or only certain law enforcement agencies. At the same time, there is a scientific need for the unification of the system of public control over the activities of law enforcement agencies.

2. Methodology of the study

The methodological basis of the research was general scientific and special legal methods of cognition. It is worth mentioning the method of philosophical dialectics among general scientific methods, which is revealed by using the methods of analysis and synthesis, ascending from simple to

complex, from abstract to concrete, modeling, abstraction, idealization, and formalization.

The special and legal methods used in the research combine systemic, theoretical and legal, formal and dogmatic, comparative and legal, cognitive methods, as well as the method of state and legal modeling. In particular, the system method made it possible to study the system of legislation of Ukraine, which regulates the activities of law enforcement agencies. Theoretical and legal method was used to clarify the main concepts of Ukrainian law in the field of public control. The norms of the legal institution of public control were studied by using the formal and dogmatic method. The method of state and legal modeling was used to formulate suggestions for amending the legislation that regulates public control over law enforcement agencies.

3. Results and discussion

3.1. Theoretical and legal principles of public control over the activities of law enforcement agencies of Ukraine

Ukrainian legislation defines and reveals the features of most of the existing legal categories. However, the concept of “public control” has not been legislatively enshrined yet. There is no special law that would regulate the general principles of the public control institution (Yunin, 2021: 203). Therefore, we have to rely on the doctrinal definitions of this term during the scientific research.

Many scholars expressed their own understanding of public control. For example, O. Pashchynsky defines public control as a form of implementation of the constitutional rights of citizens to participate in the management of state affairs, which is manifested through the legally guaranteed opportunities to observe the activities of public authorities, participate in the discussion of regulatory acts, and interact with authorities (2021: 498). The given definition characterizes the essence of public control over any state authority.

V. Teremetskyi defines control over the activities of law enforcement agencies as one of the types of social control, which only has its own purpose, tasks, object and subject matter; it is carried out by international, state and non-state entities that have different scope of control powers, in particular by the right to exercise intervention into the activities of law enforcement agencies by the control subjects, and whose content consists of verifying the compliance with the requirements of legislative acts and by-laws that regulate the activities of such agencies (2014: 119–120). The scholar indicates in this definition the characteristic properties of any control over the activities of law enforcement agencies. Therefore, public control can also be considered as a type of social control.

V. Hrytsenko and O. Yunin formulate in their works own definition of the concept of public control over police activities. At the same time, according to V. Hrytsenko, the essence of public control over police activities consists of observing these activities and gathering information about the work of law enforcement officers. The main tasks of such control are to increase the effectiveness of the police and to protect human and civil rights and freedoms (2021: 58). O. Yunin believes that the essence of such control is not only in public monitoring and supervision over the activities of police officers, but also in the implementation of joint projects, programs and activities (2021: 203).

In his definition H. Goncharenko emphasizes the entities of public control – the institutions of civil society. At the same time, the purpose of such a control is to ensure the rule of law and transparency of the activities of security agencies (2020: 164).

Based on the existing doctrinal definitions of the concept of “public control over the activities of law enforcement agencies”, we suggest that it should be understood as a set of organizational and analytical measures of public organizations and certain citizens in regard to monitoring and collecting information about the work results of law enforcement agencies in order to protect the rights, freedoms and legitimate interests of individuals and legal entities, as well as to improve the efficiency of the law enforcement system in general.

The list of law enforcement agencies of Ukraine is contained in the Law of Ukraine “On State Protection of the Employees of Court and Law Enforcement Agencies”. They include: the prosecutor’s office, the National Police, the Security Service, the Military Law Enforcement Service of the Armed Forces of Ukraine, the National Anti-Corruption Bureau of Ukraine, the state border protection agencies, the Bureau of Economic Security of Ukraine, agencies and institutions for the execution of punishments, pre-trial detention centers, state financial control agencies, fish protection agencies, state forest protection agencies, other agencies that perform enforcement or law enforcement functions (Law of Ukraine No. 3781-XII, 1993: P. 1 Art. 2). The activities of the listed agencies are the object to public control.

The authors of this research offer to consider specific features of legal regulation of public control over the activities of those law enforcement agencies that have the authority to carry out operative and search measures and investigative actions. In particular, the specifics of public control over the activities of the police, the National Anti-Corruption Bureau, the State Bureau of Investigation and the Bureau of Economic Security.

3.2. Forms of public control over the activities of law enforcement agencies

Forms of public supervision over the agencies whose activities are related to restrictions on human rights and freedoms are provided by the Law of Ukraine “On National Security” (Law of Ukraine No. 2469-VIII, 2018: Art. 10). Citizens of Ukraine in accordance with this Law participate in the implementation of public supervision through public associations, whose members they are, through local councils’ deputies, personally by applying to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine or to state authorities in the manner established by law. The legal status of public associations, the powers of local councils’ deputies, the procedure for addressing authorities are established by separate laws of Ukraine.

The right of a citizen to address claims, complaints and petitions to authorities is enshrined in the Law of Ukraine “On Appeals of Citizens” (Law of Ukraine No. 393/96-BP, 1996: Art. 17, 20), which stipulates that a complaint against a decision of a certain law enforcement officer may be submitted to the authority or a higher-level official. The term of its review is one month. A deputy of such a council according to the Law of Ukraine “On the Legal Status of Members of Local Councils” (Law of Ukraine No. 93-IV, 2002: Art. 13) may apply to law enforcement officers located on the territory of the respective council with a deputy request to carry out certain actions, taking measures or providing official clarifications on matters falling under their competence.

The term for the consideration of such an appeal is set for ten days, and in case of the need for additional verification, it can be extended up to a month. A citizen who believes that his rights have been violated by law enforcement officers can personally file a complaint or can appeal to a local council deputy. Questions that were raised in the citizen’s appeal to the deputy can be addressed to the chief of the local law enforcement agency during a meeting with the local council deputies.

The powers of the Commissioner for Human Rights of the Verkhovna Rada are established in the relevant law. According to the Law of Ukraine “On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights” (Law of Ukraine No. 776/97-BP, 1997: Art. 15-17), based on a citizen’s appeal, the Commissioner can initiate proceedings on violation of human rights and freedoms. In case of detecting a violation of the law within the activities of law enforcement agencies, the Commissioner has the right to submit a request for the elimination of the detected violations. In this case, the activity of the Commissioner has an indirect form of public control over the activities of law enforcement agencies.

Various organizational and legal forms of public control over the activities of law enforcement agencies are known in legal science. In particular, I. Skvirskyi names such forms of public control as the work of public councils under authorities, public examination of by-laws, observation of public representatives over the exercise of powers by officials. The scientist recognizes informing the public about the results of the activity of an authority as an indirect form of public supervision (2013: 226). The forms of public control listed by the researcher relate to the activities of both civil and paramilitary authorities.

Legislative acts regulating the legal status of law enforcement agencies also determine the conditions and forms of public control over the activities of these authorities. The Law of Ukraine “On the National Police” (Law of Ukraine No. 580-VIII, 2015: Art. 86-90) provides such forms of public supervision over police activities as information on the activities of law enforcement officers on the police agency’s website, the report of the chiefs of territorial police agencies to local self-government agencies, preparation of joint projects, programs and events with representatives of the public. The possibility of adopting no confidence resolution to the chief of the territorial police department by the local council has been established. Control over police activities can be carried out in the form of involving members of the public in the joint consideration of complaints about the actions or omission of police officers. We believe that the reports of the chiefs of territorial police agencies to the local council are an effective mean of creating a positive public opinion about the police. At the same time, the mechanism of public participation in considering complaints about the actions or omission of law enforcement officers needs a thorough regulation.

Participation of citizens in the protection of public order we can mention as one of the joint activities of the public and the police. According to the Law of Ukraine “On Citizens’ Participation in the Protection of Public Order and the State Border” (Law of Ukraine No. 1835-III, 2000: Art. 1), public formations for the protection of public order and the state border can be created on the basis of public self-employment. It is worth noting the important preventive role of the public in preventing the commission of offenses.

To characterize public control over the police activities, it is worth paying attention to the Resolutions of the Cabinet of Ministers of Ukraine, which regulate public participation in the formation and implementation of the state policy. In particular, it refers to the Resolution of the Cabinet of Ministers of Ukraine “On ensuring public participation in the formation and implementation of the state policy” dated from November 3, 2010, which approved the Procedure for conducting consultations with the public on issues of the formation and implementation of the state policy (Resolution No. 996, 2010).

This by-law provides public discussion of draft by-laws, electronic consultations with the public and studying public opinion during the development and adoption of regulatory legal acts of the Ministry. The validity of this Resolution is also applied to the Ministry of Internal Affairs of Ukraine. However, certain orders of the Ministry of Internal Affairs of Ukraine may refer to issues that contain state secrets. Therefore, discussion of such orders by the public is not allowed.

The Model Regulations on Public Councils was also approved by the specified Resolution of the Cabinet of Ministers of Ukraine dated from November 3, 2010. The provisions envisage the establishment of the relevant advisory agencies under each Ministry. Besides, the provisions state that the main tasks of the public council are to take into account public opinion during the formation and implementation of the state policy, to conduct public monitoring over the activities of the executive authorities (Resolution No. 996, 2010).

The Regulations on the Public Council under the Ministry of Internal Affairs of Ukraine was approved by the Order No. 38 of the Ministry of Internal Affairs of January 16, 2020. The Regulations state that the public council prepares consultations with the public, sends mandatory proposals for consideration regarding the activities of police agencies, conducts public monitoring over the openness and transparency in the activities of the Ministry of Internal Affairs of Ukraine (Order No. 38, 2020: par. 4). Therefore, the public council under the Ministry of Internal Affairs of Ukraine was created and serves to exercise public supervision over the police activities.

Public control over the activities of the National Anti-Corruption Bureau is based on the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” (Law of Ukraine No. 1698-VII, 2014: Art. 30, 31). It is intended to inform the public about the activities of this law enforcement agency on the official website. The legal principles for the formation and powers of the public council under the National Anti-Corruption Bureau of Ukraine have been established. In particular, regarding the hearing of the reports of this law enforcement agency, the election of representatives to the Disciplinary Commission of the National Anti-Corruption Bureau of Ukraine.

The powers of this agency are regulated in details in the Regulations on the Council of Public Control under the National Anti-Corruption Bureau of Ukraine. The Council in accordance with the Regulations promotes public discussion of draft by-laws of the National Anti-Corruption Bureau of Ukraine, organizes public events for the discussion of current issues of the activity of this law enforcement agency.

An important power is the possibility of appointing three representatives to the competition commissions, which conduct competitions for the

appointment of public employees of the National Anti-Corruption Bureau of Ukraine (Resolution No. 132, 2022: par. 5, 6). Therefore, the legislation provides sufficiently broad opportunities for exercising public control over the activities of the Anti-Corruption Bureau. Not only the obligation to inform the public about the activities of this authority has been established.

The possibility of creating a council of public control has been established. The powers of the specified council concern not only the discussion of the results of the work of the National Anti-Corruption Bureau of Ukraine, but also the participation of its representatives in disciplinary and competitive commissions of the National Anti-Corruption Bureau of Ukraine. The possibility of public participation in the discussion of draft by-laws, which are being developed in the Anti-Corruption Bureau, deserves a favorable response.

The possibility of exercising public control over the activities of the State Bureau of Investigations of Ukraine is established in the Law of Ukraine "On the State Bureau of Investigations" (Law of Ukraine No. 794-VIII, 2015: Art. 27, 28). The management of the law enforcement agency is obliged to inform the public about the results of its activities by publishing relevant information on the official website. The creation of a public control council is envisaged. The powers of the council members are to discuss information about the activities, implementation of plans and tasks of the State Bureau of Investigations of Ukraine.

An important power is the appointment of three representatives to the Disciplinary Commission of the State Bureau of Investigations of Ukraine. But the tasks, functions and powers of the public control council are established in the corresponding Regulations in more details. The relevant council is recognized as a consultative agency in accordance with the Regulations on the Council of Public Control at the State Bureau of Investigations of Ukraine. The specified council submits suggestions to the management of the State Bureau of Investigations of Ukraine regarding consultations with the public, organizes public discussion of draft by-laws of the State Bureau of Investigations of Ukraine.

It is worth noting the importance of the participation of representatives of the public control council in disciplinary commissions, as well as in the development and approval of the Rules of Professional Ethics of the Employees of the State Bureau of Investigations of Ukraine (Law of Ukraine No. 42/2020, 2020: par. 5). Therefore, the public control council has sufficiently broad powers to supervise over the activities of the employees of this law enforcement agency.

We would like to note that the Regulations on the Public Control Council under the SBI include certain powers that are not enshrined in the Law of Ukraine "On the State Bureau of Investigations" (Law of Ukraine No.

794-VIII, 2015). In particular, with regard to the development of the departmental legal act – the Rules of Professional Ethics of the Employees of the State Bureau of Investigations of Ukraine. We believe that all powers of this advisory agency should be established at the legislative level.

The implementation of public supervision measures is provided by the Law of Ukraine “On the Bureau of Economic Security of Ukraine” (Law of Ukraine No. 110-IX, 2021: Art. 33, 34). We talk about the provisions of the Law, which provide the formation of a public control council, publication of information about the Bureau’s activities on the website, the possibility for council representatives to participate in the disciplinary and competition commissions of this Bureau, etc. The indicated powers fully comply with the legal status of the public control council under the State Bureau for Investigations and the National Anti-Corruption Bureau of Ukraine. It is important to note that all those powers are enshrined in a legislative act, but not in the Regulations on the relevant council, which is a by-law.

3.3. International experience of public control over the activities of law enforcement agencies and the possibility of borrowing it by Ukraine

Solving the problems of ensuring public control over police activities has always been in the focus of scientific research. In particular, V. M. Vasylenko studied legal regulation of public supervision in the USA, Great Britain and the countries of continental Europe. The researcher notes that public access in the US is ensured to most official documents and police acts, which are published in electronic form in general public access. The Commissioner of Territorial Police Management in Great Britain is elected by the population of a certain district for a four-year term. The chief of the local police reports to the territorial community for re-election after the end of the term (Vasylenko, 2019: 247).

The indicated forms of public control over the activities of law enforcement agencies are considered sufficiently effective. In particular, citizens’ access to official police documents, which are published on the authority’s website, improves citizens’ awareness of their rights and facilitates familiarization with the results of investigations. The election of the chief of the local police by the residents of the territorial community for a certain period ensures the interest of the leadership of law enforcement agencies in achieving a positive public opinion about their activities. The given examples of the forms of public control over police activities can be borrowed and implemented in Ukraine.

O. P. Babikov claims that public control over law enforcement agencies in EU countries is carried out through the dissemination of independent analytical studies and information, monitoring of attitudes to the protection

of human rights and respect for the rule of law, conducting public opinion research on the activities of law enforcement officers and public debates. The scholar names such forms of public control over law enforcement activities as inspections by parliamentary committees, the activities of the Commissioner for Human Rights, judicial control and the activities of local self-government agencies (Babikov, 2029: 172).

It can be agreed that conducting public opinion research on the activities of law enforcement officers and public debates on this issue are important elements of public control. At the same time, the activities of the Commissioner for Human Rights and MPs belong to the methods of exercising democratic civil control over law enforcement agencies of the state, and not to the forms of public supervision.

R. V. Myronyuk draws attention to the activities of international human rights organizations, which must respond to human rights violations within the activities of law enforcement agencies. The researcher names such organizations as “Amnesty International”, the Geneva Center for the Democratic Control of Armed Forces, whose activities cover both military units and law enforcement agencies, the European Platform for Policing and Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Myronyuk, 2020: 52–53). The activities of these international public organizations are based on the Resolutions of the Council of Europe, whose member is Ukraine. Therefore, proper conditions for the activities of the relevant international public organizations to control over the police activities should be created in our country.

O. D. Tereshchuk studying specific features of public supervision over police activities in foreign countries draws attention to the experience of Poland and Georgia. In particular, a positive example in Poland is the organization of public organizations assisting the police. The researcher emphasizes that the performance of joint law enforcement tasks by such organizations is not only a form of interaction, but also a form of public supervision over police activities. The scholar also considers the Georgian experience of monitoring law and order on the streets with the help of video cameras to be positive, since the offenses and the police work are simultaneously photographed (Tereshchuk, 2018: 405–408).

It is worth paying attention to the fact that there are legal principles for the creation and operation of public organizations for the protection of public order in Ukraine, as well as in Poland. Placing video cameras on many streets, definitely allows recording both offenses and the work of police officers while detaining offenders. At the same time, there is the problem of public access to such recordings from video cameras. There are fears about interference into private life due to the location of many video surveillance cameras on the city streets.

V. O. Burbika gives examples of problems of interaction between the police and local self-government agencies in France. The researcher claims that local safety and crime prevention councils are being created at the commune level in France. These councils include representatives of the public, local self-government agencies and state authorities.

There is practice of concluding agreements on interaction between local self-government agencies and law enforcement agencies, which provide for joint measures on preventing crimes (Burbika, 2018: 140). The activity of the named councils may have the character of public control over the police activities, because members of the public must participate in their work. At the same time, concluding agreements on cooperation between the police and self-government agencies is more a form of cooperation in combating crime than a mean of public control.

Thus, various forms of public control over the activities of law enforcement agencies are used in foreign countries. It is worth paying attention to the provision of public access to official police documents in the USA, the election of the chief of the local police by residents of a territorial community in Great Britain, the existence of local councils on security and crime prevention issues in France, the supervision over the observance of the rights of the participants in criminal proceedings by international human rights organizations. The experience of implementing the listed control and supervisory measures by the public of foreign countries should be thoroughly studied in order to consider the issue of the possibility of its application in Ukraine.

Conclusions

We would like to note as a conclusion of our research that the procedure and conditions of public control over the activities of law enforcement agencies of Ukraine are enshrined in many regulatory legal acts. On the basis of the analysis of legislation and the study of scientific literature we offer to understand public control over the activities of law enforcement agencies as the complex of organizational and analytical measures of public organizations and certain citizens in regard to the observation and collection of information about the results of the work of law enforcement agencies in order to protect the rights, freedoms and legitimate interests of individuals and legal entities, as well as to improve the efficiency of the law enforcement system in general.

Analysis of the current Ukrainian legislation allows us to assert the presence of a certain system of public control over the activities of law enforcement agencies, regardless of their types. The indicated public control is carried out due to the following main forms: publication of

information about the results of the activities on the websites of such authorities; activities of public control councils or public councils; periodic meetings of chiefs of territorial police agencies with local councils deputies; joint activities of police officers with the public; public participation in the consideration of complaints against illegal actions of police officers; holding public consultations during the development and adoption of departmental by-laws; participation of public representatives in the work of disciplinary and competitive commissions of the National Anti-corruption Bureau, the State Bureau of Investigations, the Bureau of Economic Security; appeal of the Commissioner for Human Rights to law enforcement agencies with the purpose of monitoring the observance of human rights; appeals by local councils deputies sent to law enforcement agencies in the interests of voters; personal appeals of citizens to the court, the prosecutor's office or the chiefs of law enforcement agencies aimed at appealing the actions / omission or decisions of certain officials.

In order to improve the legal regulation of public control over the activities of law enforcement agencies, we offer to develop and adopt the Law of Ukraine "On Public Control over Law Enforcement and Supervisory Agencies". This Law should systematize measures of public control over the activities of all agencies that perform enforcement or law enforcement functions, and it should concern not only law enforcement agencies of Ukraine, but also all existing state supervisory inspections and services.

The Law should enshrine the procedure for the organization and powers of public councils under each of the authorities, which has enforcement and law enforcement functions; terms for holding consultations with the public; types of joint actions of law enforcement officers and the public representatives; the list of information to be made public on the website of any law enforcement agency, etc.

The authors made a conclusion about the expediency of borrowing international experience in the organization of public control over the activities of law enforcement agencies. In particular, public access to official police documents, including certain information of the Unified State Register of Investigations, should be introduced in accordance with the practice of public control in the USA. It is worth implementing the principle of selecting local chiefs of territorial police departments by the public according to the experience of Great Britain. The creation of district councils of public control over police activities, which include representatives of public organizations and local self-government agencies, should be considered as a positive experience of France.

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