

CIVIL CONTROL OVER IMPLEMENTATION OF THE COMMITMENTS UNDER THE EU-UKRAINE ASSOCIATION AGREEMENT

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(стаття надійшла до редколегії – 10. 03. 2019 р., стаття прийнята до друку – 20. 04. 2019 р.)

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In the active phase of institutionalization of civil society institutions, the enhanced capacity of civil society and its role in the European integration processes of Ukraine, it is noteworthy that the analysis of civil control mechanisms in the context of execution by Ukraine of the Association Agreement is critical. The author structured the modern theoretical approaches to the understanding of civil society and substantiated the need for active involvement of civil society in the implementation of the Association Agreement between Ukraine and the EU. The special role in this process belongs to the Ukrainian side of the EU-Ukraine Civil Society Platform whose main tasks are to prepare an impartial analysis of the Agreement execution in various spheres, to make recommendations on priority steps to accelerate reforms, to clarify the tasks and significance of the Association Agreement to general public and to establish cooperation with European civil society.

The systematization and analysis of the main forms of public control, namely: the public expertise, the public investigation, the public audit, the public monitoring, the control test, allowed the author to evaluate the implementation by the state authorities of Ukraine of 8 areas of the EU-Ukraine Association Agreement provisions for the period of January 2015 – March 2017 by means of public monitoring and, as a result, to prepare recommendations for public authorities.

At the same time, it is worth emphasizing that Civil Society Institute uses a wide range of public control mechanisms to evaluate actions and decisions of the authorities in the context of European integration. However, CSI's recommendations are often ignored by public authorities and local self-government bodies. This can be explained by the lack of the established tradition of interaction between them, weakness of CSI itself, as well as the authorities' reluctance to be sensitive to recommendations. In this regard, CSI often comes up with initiatives to international partners and thus tries to affect the course of the reforms through external influence.

Key words: *civil society, the public control, the EU-Ukraine Association Agreement, the public investigation, the public audit, the public monitoring.*

ГРОМАДСЬКИЙ КОНТРОЛЬ ЗА ВИКОНАННЯМ ЗОБОВ'ЯЗАНЬ У РАМКАХ ВИКОНАННЯ УГОДИ ПРО АСОЦІАЦІЮ МІЖ УКРАЇНОЮ ТА ЄС

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Структуровано сучасні теоретичні підходи до розуміння громадянського суспільства та обґрунтовано необхідність активного залучення громадянського суспільства під час виконання Угоди про асоціацію між Україною і ЄС. Особлива роль у цьому процесі належить Українській стороні Платформи громадянського суспільства Україна-ЄС, головними завданнями якої є підготовка неупередженого аналізу виконання Угоди у різних сферах, вироблення рекомендацій щодо пріоритетних кроків для прискорення реформ, роз'яснення завдань та значення Угоди про асоціацію широкій громадськості та налагодження співпраці з європейським громадянським суспільством. Систематизація та аналіз основних форм громадського контролю: громадська експертиза, громадське розслідування, громадський аудит, громадський моніторинг, контрольна перевірка, дали змогу оцінити реалізацію органами державної влади України протягом січня 2015 – березня 2017 рр. положень

восьми сфер Угоди про Асоціацію між Україною та ЄС за допомогою громадського моніторингу та в результаті підготувати рекомендації органам державної влади.

Ключові слова: громадянське суспільство, громадський контроль, Угода про асоціацію між Україною та ЄС, громадська експертиза, громадське розслідування, громадський аудит, громадський моніторинг.

Proclamation by Ukraine of its orientation towards the EU has left traces on the relationship between authorities and public. Today, public society in Ukraine is experiencing a rise. The events of 2014 played a significant role. Popular uprisings in Maidan were the response of pro-European citizens to a then President Viktor Yanukovich's refusal to sign the Association Agreement with the European Union. That is, Maidan became a catalyst for the institutionalization of civil society in Ukraine. Thus, as of July 2013, there were 50,850 registered civil society organizations in Ukraine, while by the end of 2015, their number had reached 67,911 [Діяльність, 2016]. Therefore, in the active phase of institutionalization of civil society institutions, the enhanced capacity of civil society and its role in the European integration processes of Ukraine, it is noteworthy that the analysis of civil control mechanisms in the context of execution by Ukraine of the Association Agreement is critical.

Theoretical-methodological and institutional issues of interaction between society and power are studied by the national scholars Belskaya [Бельська, 2016], Voichuk [Бойчук, 2007], Horban' [Горбань, 2011], Kolodiy [Колодій, 2002], Solar [Соляр, 2013], Stepanenko [Степаненко, 2015], and others. Important is the experience of foreign scientists who studied civil society: Arato [Arato, 2000], Diamond [Diamond, 1999], Keane [Keane, 1999], Rozenblum [Rosenblum, 1998], Walter [Walter, 2002].

The objective of the article is to systematize the civil control mechanisms over the commitments under the EU-Ukraine Association Agreement.

A new understanding of the nature of civil society emerged approximately in the middle of the nineteenth century, while its main qualitative parameters had been formed by the end of the first half of the twentieth century. The modern existing approaches to understanding civil society can be structured into the following main groups:

1. A broad approach whose supporters perceive civil society as a certain stage in the development of any society. With this approach, "civility" becomes a characteristic feature of the entire society as a whole, including the state as one of the integral parts of this society [Соляр, 2013: 272]. The Australian researcher J. Keane suggests considering civil society through the prism of such notions as power, property, violence, politics, public sphere and democracy. The author reconsiders democracy within the context of changes at the end of the twentieth century in the countries of Central and Eastern Europe. J. Keane's idea of the

necessity for the parallel development of civil society and state institutions is an important point [Keane 1999: 147].

Civil society is different and autonomous not only from the state and society as it is, but also from the party system. "Civic organizations can form alliances with parties, but if they are assimilated by them, they will lose their unique ability to be mediators and the foundation of democratic development" [Diamond, 1999: 230]. In order to implement economic, political and social reforms in those countries that have decided to take the path of democratic development, not only political parties but also effective state institutions are required.

2. The approach which considers civil society as a complex of all non-state social relations. With this approach, civil society claims to be a natural form of opposition to the power authority [Горбань, 2011: 14], a developed system of social relations underpinned by non-state relations which are implemented in the activity of civil society institutions – political parties, public organizations, initiatives, public movements, non-state media, and have a decisive impact on state authorities activity and oppose it in case of strengthening the authoritarian tendencies.

The American sociologists Nisbett and Berger, in their turn, emphasized the special significance and importance of intermediate structures: churches, families, communities, voluntary associations – as intermediators between the individual and the state. They offered political institutions to protect and assist intermediary structures in every possible way, and to use them wherever possible.

3. A point of view according to which there exist such basic spheres of public life as: the public sphere, the economic sphere, the family sphere and, finally, the social sphere, which is, the sphere of free communication of members of society in order to implement a certain common interest, the scope of freedom. Such an approach is in compliance with the "Habermasian" idea, according to which civil society is intended to exercise control both over the state by restraining it in encroachments on personal, political, cultural, public freedom of citizens, and over capital. The German researcher Habermas in the theory of social communication expands the domain of civil society. He tries to unite the notions of "welfare state" and "civil society" aiming at a high level of freedom for all the citizens and a higher level of social justice. Such actions are supposed to lead to a social partnership between society and capital, business field and public free associations as one of the basics of civil society. These

measures are focused on reducing tension in society that entails the enhanced level of social harmony [Еволюція, 2010: 4].

The experience of European civilization has shown that without the continuous improvement and development of civil society, the effective development of the state itself is either significantly inhibited or even terminates. The key to the functioning of a strong and lasting civil society is a permanent dialogue on the schemes: individual- political power, society-state. It is on this very concept of interaction between those components that the ideal of civil society as a whole can be built, that is, its level of development is just a matter of their effective cooperation and complementarity.

The implementation of EU-Ukraine Association Agreement will fail without active involvement of civil society. Successful implementation of the EU-Ukraine Association Agreement is possible subject to the five basic conditions:

- mutual responsibility of Ukraine and the EU for their commitments;
- setting clear priorities for each year;
- increased cooperation of the Government and Parliament of Ukraine at all stages of the legislative process;
- system monitoring for a true picture of reforming process;
- effective communication concerning the tasks and importance of the Association Agreement for the society.

The special role in this process belongs to the Ukrainian side of the EU-Ukraine Civil Society Platform whose main tasks are to prepare an impartial analysis of the Agreement execution in various spheres, to make recommendations on priority steps to accelerate reforms, to clarify the tasks and significance of the Association Agreement to general public and to establish cooperation with European civil society.

According to the provisions of the Association Agreement (Articles 469–470), there was declared the participation of the “third sector” in implementing the terms of the Agreement for “the purpose of informing about the Agreement execution and accounting the contribution of civil society organizations” [Угода, 2014].

The Agreement provides for the creation of the Civil Society Platform consisting of the representatives of civil society of Ukraine, on the one hand, and members of the European Economic and Social Committee (EESC), on the other hand, as a forum for holding meetings and exchanging viewpoints. At the moment, the Platform consists of 30 members, 15 on each side. In general, the Platform duplicates the structure of the European Economic and Social Committee (EESC) and consists of the representatives of

trade unions, employers, and other civil society organizations.

Active participation of the public is required for successful and timely implementation of the Agreement terms. The reform implementation will not have a proper public control without interference of civil society organizations. The general public should be involved in monitoring in order to increase the transparency of programs.

Public control is a relatively new form of social activity for Ukraine. The public control mechanism is used for representatives of civil society institutions to directly monitor respect for rights and public interests or execution by the authorities of their powers and responsibilities.

The practice of public control is quite widespread in European countries. Thus, in many European countries, framework documents regarding cooperation between non-governmental organizations and public authorities were drawn up in order to determine guarantees, roles, responsibilities and procedures for cooperation. The basis of such cooperation is a series of normative documents. In particular, the European Charter of Local Self-Government on behalf of the member states of the Council of Europe establishes that the right of citizens to participate in public affairs is one of the democratic principles that are followed by all the member states of the Council of Europe [European Charter, 1985]. Furthermore, the recommendations of the Committee of Ministries of the Council of Europe “On Local Public Services and the Rights of Users of Their Services” stipulate that all the organs providing social and administrative services are subject, in terms of meeting customers’ needs, to periodic evaluation followed by public discussion of assessment results [Recommendation].

Public control includes a range of different forms that can be applied depending on the goals and objectives. The main forms of public control are: the public expertise, the public audit, the public investigation, the public monitoring.

One of the common forms of public control is the public expertise. The public expertise provides for the involvement of independent experts in order to evaluate state decisions, procedures, and implementation of public policy [Наливайко, 2014: 30]. Non- governmental associations and citizens can carry out the public expertise on their own through such public control tools as: appeal to public authorities, local self-government bodies, as well as their officials and officers; an inquiry to public information managers with whose help they can obtain legal acts and their projects.

Carrying out independent expert examinations by public associations is currently the most commonly used form of this public control tool. For example, only from

September 2013 through August 2014, the Center for Political Studies and Analytics in cooperation with the Center for Political and Legal Reforms, the Ukrainian Institute of Public Policy, carried out the expertise of dozens of acts that had corruption risks [Різнovidи корупції].

The next form of public control is the public investigation. It is the method of gathering information which involves work with numerous sources, thorough analysis, comparison, search for contradictions and concealed information for the purpose of promulgating the data which are of public interest. The public anticorruption investigation aiming at restricting competition in Government Procurement, inappropriate use of public funds, could be given as an example.

The public audit is not often used by civil society institutions. In a broader sense, this is the assessment of an organization, system, project, product, event or person for compliance with the standards. Audit may be legal, financial, or technical, when it refers to relevant standards. More specifically, audit refers to financial statements or accounts or, more generally, to financial management [Політичні рекомендації 2011]. On the basis of the previous experience of reform monitoring and advocacy under visa liberalization, the NGO "Europe without Barriers" has developed the research methodology that allows to monitor the quality of the implemented changes after introducing the visa-free regime, the willingness of local authorities to continue the reform on-sites and the willingness of central government officials to conduct efficient communication of the necessary changes for the sake of moving forward.

By the results of the work carried out by a group of experts from 6 regions of Ukraine under the coordination of the NGO "Europe without Barriers", there was the public audit of the new state directions initiated in the context of visa liberalization and found its continuation in the Association Agreement, in particular, regarding the issuance of new identification documents, implementation of the integrated border management approach, migration management and asylum policy, as well as combating discrimination [Аудит реформ]. All of the above-mentioned allowed the author to elaborate point recommendations for the authorities in each region depending on the state of the reforms under study adoption.

The most common and often employed control mechanism is public monitoring. The analysis of European experience of public authorities indicates that monitoring of work efficiency must be an essential component of management organization in the executive branch. Such activity implies the planned and systematic collection of information on a specific problem or activity of public bodies, which is carried out according to the accepted scheme in order to achieve positive

changes. That is, this system of regular monitoring and performance appraisal of management bodies is related to the achievement of their goals, execution of tasks and programs, as well as timely detection and elimination of errors and deviations in work, control of authenticity of the acquired results.

An important component of public monitoring mechanism is the performance assessment of public authorities. Thus, efficiency is understood as:

- an opportunity to yield the result;
- the significance of obtaining the result for those to whom it is intended;
- the ratio of the result significance to the amount of efforts spent on its achievement [Ажажа, 2012: 270–277].

Civil society plays an active role in monitoring the performance of Ukraine's commitments under the EU-Ukraine Association Agreement. The report "From Goals to Results: Implementation of the Association Agreement through the eyes of stakeholders" [Звіт УС] prepared by the Ukrainian side of the Ukraine-EU Civil Society Platform with the support of the project "Public Synergy" proposes a range of recommendations based on the monitoring results. Some of them are as follows: for public authorities to provide stakeholders with information on the process of developing solutions, holding events and their results; to introduce systematic monitoring the planned progress of the reforms, including monitoring the effectiveness of new legislative provisions after their adoption; to analyze the Ukrainian and international experience of practical implementation of state strategic documents; to introduce training programs of the proper specialization and to conduct training activities for employees and workers; to put into the budget financial instruments and funds required for the Agreement implementation.

Consequently, public control is that very instrument which is of great importance for Ukraine at this stage, while for the EU, in its turn, the effective work of public sector in Ukraine proves the balance of both social and political systems, guarantees fair and adequate compliance with the terms of the Association Agreement, promotes the reduction in the level of abuses by authorities. The European Union in its foreign policy, in particular, in its relations with Ukraine, often appeals to public consultations as a means of control. For example, consultations are held concerning the tools of external financial assistance through which Ukraine receives financial assistance from the EU. Independent consulting companies are preparing draft reports for all the instruments of external financial assistance.

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