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## LEGAL ASPECTS OF CONTROL IN THE RELATIONS BETWEEN THE STATE AND CIVIL SOCIETY

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The study of society in the legal aspect is related to the question of the state, as the latter is a form of organization of society. The state acts as an institution of society management. In this context, the relationship between society and the state is one of the complex problems of jurisprudence. It's about establishing effective ways and channels of communication. In the theory of management of socio-economic processes, control is considered as one of the main functions. The National Strategy for Civil Society Development for 2016–2020 contains the thesis that there is no effective public control over the activities of public authorities and local self-government bodies. Given this, the legal basis of the relationship between society and the state, the search for the most effective forms of public control over the state are urgent tasks of legal science.

Control as a legal form of interaction between civil society and state bodies has been investigated. The theoretical, legal and practical principles of public control over the exercise of state power in Ukraine from the point of view of political science, economic and legal science are considered. The socio-economic and legal nature of the controlling function of public administration and the influence of control on the effectiveness of the activity of state bodies are analyzed. It has been found out that the control of civil society by the activity of state bodies is feedback between society and the state. The factors that influence the effectiveness of public control and the interaction of civil society institutions and state bodies are identified.

Thus, civil society is a real social phenomenon that has a complex socio-political nature. Civil society carries out the social determination of many elements of people's way of life. Its role in a concentrated form is manifested in the demarcation of the legal means of all spheres of public life. The condition of public control is the transparency of government and the guarantee of the right to information. Civil society control over state bodies can be defined as activities carried out by civil society actors in the forms established by regulations on monitoring, evaluation of the results of the state apparatus to ensure compliance with certain criteria to improve the efficiency of public authorities.

**Keywords:** control, legal form, civil society, state bodies, interaction.

**Statement of the problem.** The study of society in the legal aspect is related to the question of the state, since the latter is a form of organization of society. The state acts as an institution of management of society. In this context, the relationship between society and the state is one of the complex problems of

jurisprudence. It is about establishing effective methods and channels of communication. In the theory of management of socio-economic processes, control is considered one of the main functions. The National Strategy for the Development of Civil Society for 2016–2020 contains the thesis that there is no effective public control over the activities of state authorities and local self-government bodies. In view of this, the legal foundations of the relationship between society and the state, the search for the most effective forms of public control over the state are urgent tasks of legal science.

**Analysis of studies of the problem.** Leading scientists have devoted their research to understanding control as a legal form of interaction between civil society and state bodies, and to substantiating it from the standpoint of legal science: V. Averyanov, O. Andriyko, V. Garashchuk, A. Denisova, T. Kychylyuk, S. Kivalov, L. Koval, T. Kolomojets, V. Kolpakov, D. Ovsyanko, O. Petryshyn, M. Rudenko, O. Sereda, V. Taroeva, H. Yarmaki, Y. Shemshuchenko and other scientists. In the context of integration into the European legal space, this topic acquires practical significance and requires scientific development based on the latest methodology of legal science.

**The purpose of the article** is to study control as a legal form of interaction between civil society and state bodies.

**Presentation of the main material.** In management theory, control is considered as a mandatory function carried out by management entities, during which the results are checked for compliance with the specified criteria, and if necessary, a set of measures to stabilize the situation is determined in order to increase management efficiency.

However, in legal science, it is not control itself that is mainly studied, but its varieties in the form of state control, financial control, etc. In jurisprudence, researchers include the concept of “control” as the implementation of an inspection and the adoption of appropriate measures.

For example, R. Pavlyk, in his study of the differences between the concepts of “state control” and “state supervision,” defines the content of the control function as follows: the control function of public administration in Ukraine should cover two important areas – control and supervision. These areas should be reflected in the powers of institutionally separate organizational and legal forms at the central, regional and local levels of government [1, p. 7]. Control is understood as an activity, since it includes the identification and analysis of the actual state of affairs, the assessment of activities, and the taking of measures to eliminate the identified shortcomings.

Control is an internal verification of the system’s compliance with the basic principles expressed in the basic values, political institutions, and important characteristics of the state and society. As for legal science, the concept of control is closely related to the concept of legality.

Investigating the principles of the rule of law, legality, and law and order, O. Petryshyn notes that it practically encompasses all the principles of legal statehood [2, p. 328].

Instead, O. Dniprov considers control over executive bodies as an element of legal support for the rule of law regime [3, p. 379].

At the same time, V. Garashchuk, revealing control as a special function of public administration, as a form of ensuring legality, notes that control is one of the forms of organizational and managerial relations - a set of actions to monitor the functioning of the relevant object of control in order to obtain objective information about the state of affairs; correct the behavior of the object; apply measures to prevent offenses; establish the causes and conditions that contribute to the violation of the requirements of legal norms [4, p. 55].

Considering that there is no definition of the term “control” (with the exception of the concept of “state control” provided in the Law of Ukraine of April 5, 2007 “On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity”), we consider it appropriate to propose the following characteristics of control as a type of activity:

- in the process of implementation, the controller, relying on certain legal possibilities, fulfilling his duty, has the right to adjust the activities of the controlled object;

- the essence of control activities is to observe and evaluate the objects being checked for compliance with established criteria, and take measures to prevent existing or possible deviations;
- the main purpose of control is to prevent actions beyond the given criteria.

In the context of legal science, it is worth emphasizing that control ensures the regime of legality and law and order, is a factor in maintaining the normal functioning of the social order.

Summarizing the above, it is advisable to propose a definition of the concept of control in theoretical and legal aspect. Control is the activity of subjects of social relations in the forms established by regulatory legal acts for the purpose of observing, evaluating, and adjusting the activities of the controlled object to ensure compliance with regulatory criteria in order to increase the efficiency of their activities.

In the humanities, there are different approaches to defining control. The managerial approach connects the implementation of control with checking compliance with the lawfulness of the activities of state bodies. The administrative approach pays attention to the effectiveness of the implementation of regulatory legal acts in the activities of civil servants. The political science approach explores the problems of interaction between society and the state in the sphere of the exercise of political power.

A. Kostenko, studying public control over the implementation of obligations under the Association Agreement between the EU and Ukraine, uses the concept of “public control”. The author considers public control as a mechanism for society's observation of the authorities [5, p. 21]. It is worth noting that the term “public control” was introduced in the Law of Ukraine of January 13, 2011 “On Access to Public Information”, although its definition is not provided.

The authors of the study “Tools and mechanisms for developing and implementing public policy in Ukraine” (S. Teleshun, O. Pukhkal, V. Karlova, I. Reiterovich, S. Sytnyk) note that the public uses institutional forms of interaction where the initiative belongs to the public: participation in the development and discussion of draft regulatory legal acts; public budget initiatives; activities of associations, public councils, advisory bodies, expert and analytical structures, commissions, innovation platforms; functional representation; public control over the activities of the authorities, etc. [6]. That is, public control over the state of decision-making is a form of feedback in the system of public administration.

The primary basis of public control is the activity of the population, which is manifested in the activities of civil society institutions, in the media, and in citizens' appeals.

The effectiveness of social control depends on the participation of society, civil society institutions, and citizens. The greater the number of citizens and public associations, who participate in the implementation of forms of direct democracy (referendums, citizen requests, public opinion, activities of representative government), the greater the influence felt by the authorities.

The activity of the population is the primary factor in the exercise of real social control over the state. Only in a society with socially active citizens does social control over the state take the form of feedback between the state and society.

It is worth noting that in political science a distinction is drawn between the types of control exercised by different social groups.

Society's control over state bodies is a complex systemic phenomenon that involves control by an individual citizen and control by an organized community of people united by a common characteristic.

In the context of our study, it is necessary to note that S. Timofeev and I. Domushey (referring to the representative of the Lviv School of Political Science O. Sushinsky) emphasize that the mission of control is closely related to its functions, noting that it is carried out and clearly manifested on the border and correlation of the concepts of “action-norm”, as a mechanism for identifying and bringing actions into compliance with norms, on the one hand, and norms with actions – on the other. By institutional feature, this system includes – public (people's) control over state authorities and local self-government bodies, their officials, which is carried out by all structures of civil society (citizen, community, association of citizens, people) [7, p. 56].

Different approaches of scientists allow to define general characteristics, which are studied in political science. The control of the society over the state bodies exists in a democratic society, is a manifestation of the legal, social state. The effectiveness of the measures of control over the state bodies by the society depends on the number of involved civil society institutions. The main factor of effective control of the society over the state bodies is the social activity of citizens. Only in a civil society with high social activity of citizens, the control of the society over the state bodies plays the role of an effective tool of influence on the activities of the state bodies. The control of the society over the state bodies is a complex systemic phenomenon, which is characterized by different types.

Economic scholars view societal control over state bodies as a form of social capital in the context of protecting economic interests and ensuring economic security.

Thus, Y. Grinchuk, O. Shemigon and M. Vykhov consider state control as an activity to increase the efficiency of managerial relations in the economic sphere [8].

At the same time, the scientific literature notes the existence of a conflict between public and state control, which arises due to a conflict of interests, when the bodies exercising state control seek to escape from public control. Therefore, a situation arises when individual state bodies seek to replace society with its organizational and management structure. This took place in 2012–2014 and led to the collapse of the system of state administration.

Control in the economy acts as a mechanism for increasing the efficiency of the activities of authorized bodies and a real means of protecting the interests of economic entities.

It is worth noting that V. Pihotsky, V. Rysin, A. Lyubenko, studying the effectiveness of financial control and state audit to ensure the financial and economic stability of the state, indicate that public control is implemented with the help of public institutions and on the basis of laws that oblige the authorities to provide information to society, as well as without the mediation of special state bodies [9, p. 209].

From the perspective of research in the field of political science and economics on society's control over state bodies, scientists identify the main goal of control as increasing the efficiency of management carried out by authorized power entities.

Political science and economics, considering public control over state bodies, investigate the current legislation – the basis for the functioning of civil society institutions. Therefore, research in the field of public control over state bodies in legal science determines the main direction of scientific research. At the same time, the concept of public control over the state in its pure form is practically not found in legal science.

According to Z. Kravtsova, public control is not only an integral part of public administration, but also an important factor in the development of civil society. However, in order for public control to become a truly effective means of influencing public administration entities, it is absolutely necessary to further improve the legal foundations of its organization and implementation [10, p. 323]. This is the observation and verification by citizens of the activities of state bodies, carried out on behalf of society on a non-professional basis in order to ensure legality, human and citizen rights, and national interests, as defined by the Law of Ukraine of June 21, 2018 “On National Security of Ukraine”.

Unlike state control, which is carried out by competent state bodies and is based on the principle of professionalism, control of non-governmental entities cannot be carried out only by professionals.

According to O. Andriyko, the more complex the system of executive authorities, relations with other state and non-state structures, and citizens, the greater the attention should be paid to the control function, which is aimed at verifying the fulfillment of the tasks set, identifying factors that negatively affect their fulfillment, and responding appropriately to detected violations [11].

Some authors define control in a broad framework. Thus, O. Skrypnyuk notes that the modern theory of state and law, constitutional law and administrative law science focuses on the study of the phenomenon of control mainly on the problems of democracy, power, civil society, moving away from its broad study. Control over power guarantees the prevention of negative consequences for the vital interests of citizens and society as a whole [11].

Based on the content of the concept of “control”, relations regarding control assume relations of subordination. Subjects of public relations, not endowed with state-authority powers, exercising control over the activities and results of the activities of state bodies, if necessary, can adjust the decisions of the state body, eliminating the discrepancy with the specified parameters that the object of control has committed.

Civil society does not allow the state to make the social system totalitarian. According to O. Slavna, civil society is closely connected with the state and with the law. The state is called upon to create optimal conditions for the development of civil society, a developed civil society is the social basis of a democratic, legal social state [12, p. 18].

Control over state bodies by entities not vested with state power can only be discussed in the context of a functioning democratic political regime with a developed civil society. In all other cases, control over state bodies by entities not vested with state power is often replaced in practice by monitoring activities.

As an example, we can cite the practice of public councils at central executive bodies in the period 2012–2013. In the process of activity, when a violation was detected, the public council turned to the leadership of the state body or to law enforcement agencies with a proposal to eliminate the violation, that is, it performed a monitoring function.

At the same time, it is worth emphasizing that the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, it provides for the creation of conditions for the development of civil society and public control in various spheres of social activity in Ukraine [13].

Therefore, summarizing the above, it is advisable to classify control according to certain characteristics: 1) by the number of control participants, civil and public control can be distinguished; 2) by the presence of state and governmental powers of the controlling entity, it is advisable to distinguish: internal, external and mixed control.

Civil society control over state bodies includes: civil, public control; external and mixed control. Civil society control over state bodies can be defined as activities carried out by civil society entities in the forms established by regulatory legal acts, regarding the observation, assessment of the results of the activities of state bodies to ensure compliance with certain criteria in order to increase the efficiency of their activities.

In this case, the question arises of what is included in the content of the criteria for the activities of state bodies, over which control is exercised. In a general sense, a criterion is an indicator that characterizes an object, process, or quantity, the value of which remains constant in a certain dependence.

In our opinion, the term “criterion” means a set of goals, objectives and indicators of the activities of a particular state body. The criteria for the activities of individual state bodies can be divided into: quantitative, qualitative and mixed.

Determining quantitative criteria for the activities of a state body is possible based on its functional purpose. However, quantitative parameters do not reflect the real state of affairs, so control cannot be limited to them alone. The second most difficult is the control of legal criteria established in the legislation, which have both qualitative and quantitative nature, since such characteristics of the activities of a state body, such as ensuring public safety or preventing offenses, cannot be determined only by quantitative methods. It is difficult to determine the compliance of the activities of the state apparatus with social and economic criteria, which are quantitative and qualitative, but have the property of entering into contradictions under certain conditions.

Under such circumstances, civil society control over state bodies serves not only to verify and evaluate activities, but also becomes an important aspect of interaction and feedback between society and state bodies. Information received by state bodies as a result of control by public authorities can sometimes be distorted in order to achieve formal compliance with one of the criteria for their activities.

Civil society actors, being interested in meeting needs, can also distort information, but the multiplicity of civil society actors exercising control over state bodies leads to the fact that their proposals for adjusting activities mutually neutralize biased statements and provide the state apparatus with objective information on the relevant problem. In this case, control is a type of legal form of interaction between civil society and a state body.

Non-legal forms of interaction between civil society and state bodies cannot be of the nature of control activity, since such interaction is aimed not at assessing the activities of state bodies with subsequent correction, but at resolving a specific interest that negatively affects the functioning of the entire state apparatus. The ultimate goal of control activity is to improve the activities of state bodies in order to most fully satisfy the social, group and personal needs of civil society subjects.

Control is one of the main types of legal forms of interaction between civil society and state bodies, aimed at establishing compliance of the activities of state bodies with the criteria defined in regulatory legal acts, which are carried out by a significant number of civil society entities.

**Conclusion.** Therefore, civil society is a real social phenomenon that has a complex socio-political nature. Civil society carries out social determination of many elements of people's way of life, its role in a concentrated form is manifested in the delimitation by legal means of all spheres of public life. The condition of public control is the transparency of power and the guarantee of the right to information. Civil society control over state bodies can be defined as activities carried out by civil society entities in the forms established by regulatory legal acts to monitor and evaluate the results of the state apparatus' activities to ensure compliance with certain criteria in order to increase the efficiency of the activities of state bodies.

The term "criterion" means a set of goals, objectives, indicators of the activities of state bodies. Civil society control over state bodies performs the function of feedback between the state and society. In the conditions of a democratic political regime and the development of a rule of law, many civil society entities arise that exercise control over state bodies on a non-professional and professional basis in a variety of organizational frameworks, which ensures the presence of clear interaction and adequate feedback between society and the state.

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## **ПРАВОВІ АСПЕКТИ КОНТРОЛЮ У ВІДНОСИНАХ ДЕРЖАВИ І ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА**

Дослідження суспільства в правовому аспекті пов’язане з питанням держави, оскільки вона є формою організації суспільства. Держава виступає як інститут управління суспільством. У цьому контексті взаємовідносини між суспільством і державою є однією з найскладніших проблем юриспруденції. Йдеться про встановлення ефективних способів і каналів комунікації. У теорії управління соціально-економічними процесами контроль розглядається як одна з основних функцій. Національна стратегія розвитку громадянського суспільства на 2016–2020 роки містить тезу про брак ефективного громадського контролю за діяльністю органів державної влади та органів місцевого самоврядування. З огляду на це, правові засади взаємовідносин між суспільством і державою, пошук найефективніших форм громадського контролю над державою є актуальними завданнями юридичної науки.

Досліджено контроль як правову форму взаємодії громадянського суспільства та державних органів. Розглянуто теоретичні, правові та практичні засади громадського контролю за здійсненням державної влади в Україні з погляду політології, економічної та правової науки. Проаналізовано соціально-економічну та правову природу контрольної функції державного управління, а також вплив контролю на ефективність діяльності органів державної влади. Встановлено, що контроль громадянського суспільства за діяльністю державних органів є зворотним зв’язком між суспільством і державою. Визначено фактори, які впливають на ефективність громадського та взаємодію інститутів громадянського суспільства і державних органів.

Отже, громадянське суспільство є реальним соціальним феноменом, що має складну суспільно-політичну природу. Громадянське суспільство здійснює соціальну детермінацію багатьох елементів способу життя людей. Його роль у концентрованій формі проявляється у правовому регулюванні всіх сфер суспільного життя. Умовою громадського контролю є прозорість влади та гарантія права на інформацію. Контроль громадянського суспільства за діяльністю державних органів можна визначити як діяльність суб’єктів громадянського суспільства, що здійснюється у формах, встановлених нормативно-правовими актами, з метою моніторингу та оцінки результатів діяльності державного апарату для забезпечення відповідності певним критеріям та підвищення ефективності роботи органів державної влади.

Ключові слова: контроль, правова форма, громадянське суспільство, державні органи, взаємодія.