

Essence and legal nature of public control

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Abstract: As you know, effective management of socio-economic processes today depends not only on how well the decisions of state bodies are passed and communicated to the executors, but also on how public control is exercised over the activities of the state bodies themselves, authorized to make decisions affecting the interests of the country's citizens.

Keywords: legal, control, government

Introduction: In this regard, in the Republic of Uzbekistan, the issues of implementation by non-governmental non-profit organizations and other civil society institutions of public control over the activities of government agencies and officials have become particularly relevant in the light of the action strategy for the five priority areas of development of the Republic of Uzbekistan in 2017-2021 years approved by Presidential Decree of 07.02.2017, № UP-4947 “On strategy for further development of the Republic of Uzbekistan”.¹

In fact, we can say that this decree gave a powerful impetus to further development of public control in the country. Thus, according to the decree, the first priority direction of the Action Strategy is to improve the system of state and public construction. At the same time, the improvement of the system of social construction provides for the introduction of effective mechanisms of dialogue with the people, development of modern forms of public control, increasing the efficiency of social partnership, development of civil society institutions, increasing their social and political activity, as well as strengthening the role of mass media, protection of professional activity of journalists.²

And yet, speaking about the essence and legal nature of public control, it should be said that the matrix of public control is initially composed of the constitutional principle of the people's power.

Thus, in accordance with Article 2 of the Constitution, the state expresses the will of the people and serves their interests. State bodies and officials are responsible to society and citizens. In accordance with Article 7 of the Constitution, people are the only source of state power. In accordance with Article 9 of the Constitution, the most important issues of public and state life shall be submitted for discussion by the people and put to a general vote (referendum).

Article 14 states that the State shall base its activities on the principles of social justice and legality in the interests of the welfare of man and society. All state bodies, public associations and officials shall be obliged to provide citizens with an opportunity to get acquainted with materials affecting their rights and interests (Article 30 of the Constitution). Article 32 of the Constitution of Uzbekistan grants citizens the right to participate in the management of the affairs of society and the State both directly and through their representatives. Such participation, as noted herein, shall be exercised through self-government, holding referendums and democratic formation of state bodies, as well as development and improvement of public control over the activities of state bodies. With regard to this article of the Constitution, it is correctly noted that “this new constitutional norm in its content is aimed at implementing the constitutional principle of separation of powers, further deepening the reforms to form an effective system of checks and balances between the branches of power. The constitutional norm provides public control over the activity of state bodies by citizens, non-governmental non-profit organizations, citizens' self-governance bodies, mass media and other institutions of civil society”.³

Public control as a fundamental principle of organization of interaction between state and civil society is an indicator of maturity of a democratic state and civil society. It is in this regard that the legal literature began to pay close attention to the theoretical and methodological foundations of public control, the analysis of which begins with an attempt to give an interpretation of public control.

Thus, Doctor of Law S.M. Zubarev gives the following definition: “Public control is a systematic activity of authorized institutions of civil society and individual citizens on establishment of conformity of functioning of state bodies to

normative-legal standards and correction of revealed deviations by means of appeal to authorized state bodies or to public opinion”.⁴

Doctor of Political Science Yu.A.Nisnevich defines civil control as ...an integral part of the most effective democratic mechanism of society's influence on public power - the mechanism of public opinion, which in a democratic state is the true “fourth power”.⁵

A.A. Goncharov believes that "civil control is the monitoring of the activities of state and municipal authorities, other state bodies and officials, the assessment of the legality and effectiveness of these activities, as well as the adoption of legal measures to prevent identified violations of human rights and freedoms by these bodies and officials. The term "civil control" (or public control, people's control) is used to mean citizens' participation in local self-governance, in resolving issues, most often of local significance, of domestic importance, i.e. the most initial form of civil control. Meanwhile, in the author's opinion, civil control should be understood in a broader sense.⁶

N.N.Kuleshova defines public control as “on-state control of public associations and individuals (i.e., subjects not endowed with state power) over the activities of state bodies, local authorities and their officials.”⁷

D.M. Ovsyanko notes: “...social control over the activity of government bodies consists in the fact that the authorized state bodies (legislative, executive, judicial authorities) and public organizations, using organizational-legal methods and means, identify whether the activity of the controlled government bodies and their officials do not allow any deviations from the rule of law, and if such deviations exist, they are promptly eliminated.”⁸

Similarly, I.S.Dreisler notes that “public control is one of two types of social control, the second type of which is state control. These types of social control, having a number of similar and distinctive features: unity of goals and fundamental objectives, coincidence of principles, at the same time differ in the way they are created, implemented, legal position, nature of powers.”⁹

In A. Denezhkin's opinion “public control is systematic activity of the
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authorized institutions of civil society and individual citizens to establish conformity of functioning of the state bodies to normative-legal standards and correction of the revealed deviations by means of appeal to the authorized state bodies or to public opinion”..¹⁰

G.A.Marzak believes that “public control is an active activity of civil society institutions and individuals aimed at identifying and suppressing violations of human rights and freedoms by government agencies and their officials, as well as at exercising systematic control over the functioning of government agencies in strict compliance with regulatory legal standards, contributing to the improvement of public administration.”¹¹

According to A. de Tocqueville, “the guarantee of democracy is public control. If we fail to gradually introduce and strengthen democratic institutions and if we abandon the thought and the need to instill in all citizens ideas and feelings that will first prepare them for freedom and then allow them to enjoy it, no one will be free - neither the bourgeoisie, nor the aristocracy, neither rich nor poor”.¹²

N.Borzelli understands public control as “a complex of relations and mechanisms that allow people to control the activities of the state, which are usually regulated by law”..¹³

With the construction of a democratic state based on the rule of law and a strong civil society in Uzbek jurisprudence, interests in the theoretical aspect of public control have also increased in recent years.

Thus, A.S.Yusupov and T.Kenzhaev consider public control as “an independent type of social control of competent subjects aimed at ensuring the regime of legality in the activities of government bodies”..¹⁴

K.T.Odilkoriev and U.H.Mukhamedov understand “public control” as a study, analysis and evaluation of the activities of government agencies and officials, as well as its compliance with public interests.¹⁵

K.T.Odilkoriev believes that “public control, being an integral part of civil society, means systematic monitoring and verification by civil society institutions and the general public of the activities of government agencies and administration,

their officials in terms of compliance with the law.”¹⁶

According to H.R. Mukhamehodjaeva, “public control is exercised by public associations, political parties, social movements, and creative unions, societies of scientists, women's, youth, veterans' organizations, mass media, as well as self-governing bodies and citizens and is a form of social control of society.”¹⁷

B. Ismailov describes public control as “activity of civil society institutions, citizens of the Republic of Uzbekistan and their associations on control over activity of state bodies and administration”.¹⁸

G. Ismailova believes that “public control is a factor that serves the presence of mutual consent, equality and responsibility between an individual, society and the state to establish social justice in society.”¹⁹

Professor M. Najimov writes in his monograph devoted to the constitutional and legal bases of realization of public control that “public control is a set of methods and means directed on provision of legality of activity of state bodies, state enterprises, organizations and establishments, study of non-observance by subjects and their officials of legislative acts directed on provision of rights, freedoms and lawful interests of citizens”.²⁰

In R. Khakimov's opinion, “public control, being an integral part of a strong civil society, means systematic control of civil society institutions, the general public over the activities of government agencies and state administration and their officials in compliance with the law.”²¹

The aforesaid allows to draw a conclusion that when characterizing public control, scientists speak not so much about the concept of public control as about its elements, which include "establishment of compliance of state bodies' functioning with regulatory and legal standards and correction of revealed deviations", "democratic mechanism of society's influence on public power", "monitoring of activity of state and municipal authorities", "evaluation of legality", "suppression of revealed violations of human rights and freedoms", "organizational-legal methods and means", "appeals to authorized state bodies or to public opinion", "complex of relations and mechanisms" and a number of others.

Thus, the scientific literature, however, as well as at the legislative level, lacks a unified approach to the concept of public control.

Meanwhile, as the analysis of legal literature has shown, the scientists of the state control carried out in some spheres do not perceive it as such in pure form and see in it partially the elements of public control.

In particular, N.M. Dobrynin writes, "parliamentary control is often called political, in the sense that the control powers of a parliament are based not only on its own rights established by law, but also on the opinion of a voter, which expresses the supreme power of any democratic state"..²² And he further notes that "this type of control is public, which is more open to parliamentary scrutiny. In this sense, in our opinion, parliamentary control cannot be called state control in its purest form, because it combines public control with other control authorities."²³

We cannot agree with this position of the scientist, and first of all, because the parliament, as the highest representative body, has and is endowed with special powers to exercise parliamentary control.

In this sense, there is a wide range of opinions on parliamentary oversight in the legal literature. For example, scientists say that, firstly, parliamentary control is "the first function of parliament, which is the *raison d'être* of parliament".²⁴ Secondly, "parliamentary control is the third ... branch of parliamentary activity".²⁵ Thirdly, "parliamentary control is the observation of the actions of the government".²⁶ "Parliamentary control is the right of the legislature to control the activities of the government and lower-level executive bodies".²⁷

In the Republic of Uzbekistan, in the context of the current Law of the Republic of Uzbekistan "On parliamentary control", great attention is also paid to the essence and purpose of parliamentary control.

So, S.Artikova notes that "parliamentary control is a kind of state control arising from the essence of parliament as the highest representative and legislative state body, which consists in the control of the parliament or its bodies over the activities of state bodies, as well as other enterprises, institutions and organizations, the result what is the appropriate response".²⁸ Here she notes that "the goals of

parliamentary control are: ensuring the implementation of the law, preventing the domination and personalization of state bodies, as well as ensuring the principle of the balance of all branches of government".²⁹

The foregoing allows us to conclude that the parliament has special powers to control the activities of the executive branch. Therefore, at its core, parliamentary control is state control.

In our opinion, when characterizing the concept of "public control", first of all, it is necessary to proceed from the constitutional principle of democracy, and in particular Article 7 of the Constitution of the Republic of Uzbekistan, in accordance with which the people are the only source of state power.

In this regard, if we proceed from the concept being implemented today in our country **«not the people serve the state bodies, but the state bodies must serve the people»**, then it becomes obvious that human rights, freedoms and legitimate interests prevail over the activities of the state and its organs. That is why, summarizing the above, in our opinion, public control should be understood as “a set of organizational and legal measures aimed at establishing by citizens, non-governmental non-profit organizations, citizens' self-government bodies and other civil society institutions control over the activities of state bodies and officials, according to their observance guaranteed by the Constitution of the Republic Uzbekistan of rights, freedoms and legitimate interests of a person and a citizen.

Meanwhile, some scholars speak in favor of a combination of state and public control, which allows the authorities and society to receive objective information about the contradictions that need to be resolved, initiates actions that can overcome problem situations and difficulties. In this part, one can only partially agree with IO Bachilo's opinion that “public control, as a rule, is combined with state control, complementing it. This combination gives the most positive results in the fight against negative phenomena in the work of the management apparatus. The difference between these forms lies mainly in the methods of exercising control functions. Bodies of state control act on behalf of the state and are endowed with

appropriate powers, bodies of public control are usually deprived of powers of a legal-power nature».³⁰

Yes, in general, public control is combined with state control. But we cannot agree with the opinion that public control complements state control. The term "complementing it" means state control in some way takes public control to the background and makes it dependent on state control. In our opinion, public control takes an independent place in the system of social control. That is why public control cannot be an addition to state control, since it is carried out with the aim of protecting public interests, which is not always convenient for officials and state bodies. Moreover, if we proceed from this message, then in this case, public control will be led by the state, which certainly contradicts the nature of public control.

Based on the foregoing, it should be concluded that public control is inherent in the very nature of civil society, that is, it was originally embedded in the nature of civil society. It is in this connection that one should not consider public control as something artificially invented model of civil society. Moreover, public control should be considered today as a form of legal activity of civil society, which allows civil society to independently exercise public control over the activities of state bodies and its officials.

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