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DOI <https://doi.org/10.32849/2663-5313/2022.7.10>**Yurii Nironka,***Candidate of Juridical Sciences, Lawyer, Director, 'Yurnikus' LLC, Soniachna street, 5, Odesa, Ukraine, postal code 65009, inironka@gmail.com***ORCID:** orcid.org/0000-0001-5772-7540Nironka, Yurii (2022). Institution of inspection as a form of public control. *Entrepreneurship, Economy and Law*, 7, 73–77, doi

INSTITUTION OF INSPECTION AS A FORM OF PUBLIC CONTROL

Abstract. Purpose. The purpose of the article is to consider the institution of public inspection as an important form of public control with the proposal of its more effective application. **Results.** The perspectives of scientists on the definition of inspection as a component of public control measures, as well as its definition in domestic draft laws are analysed. Public inspection is defined as a special procedure as opposed to general procedures. The purpose, grounds and procedure of public inspection are specified. The examples of public inspections conducted by trade unions, public inspectors of the State Environmental Inspectorate and in the field of improvement of human settlements, in the logging industry are given. It is emphasised that public inspection is carried out according to a certain procedure. Its main elements include: the adoption of a relevant decision by a public organisation indicating the subject matter and purpose of the public inspection; indication of the grounds for conducting it; indication of the persons involved in the inspection; their full powers during its conduct; term of conduct; signatures of representatives of the public organisation that made this decision. It is revealed that during the public inspection it is prohibited: 1) to carry it out on the issues beyond the competence of a public organisation; 2) for the entity subject to public inspection to provide with information that is extraneous to the issues being inspected; 3) to disclose confidential information of the entity subject to public inspection; to exceed the terms of public inspection. It is determined that the public inspection is carried out to find out the real activities of public authorities and its officials regarding the proper performance of their official duties and to prevent corruption and/or eliminate threats to other public interests, to protect the rights and legitimate interests of individuals and legal entities. Public inspections can also be carried out against legal entities, individual entrepreneurs, if they are subject to public control. **Conclusions.** It is concluded that public inspection as a procedure of public control has proved its effectiveness in various sectors and industries. However, its implementation is not always possible. Control bodies, notwithstanding the Ukrainian legislation, ignore the decisions of public organisations to conduct public inspections. This is due to the absence of a law on public control with a clearly defined procedure for conducting public inspections, which is urgently needed and will contribute to their greater effectiveness.

Key words: public control, public inspection, special procedure, grounds for public inspection, target of public inspection.

1. Introduction

Implementation of public control over the activities of public authorities and local self-government bodies, legal entities in order to prevent them from violations, prevent corruption, ignoring the interests of the person and the state is an important function of public organisations. Public control should ensure open and transparent activity of state and self-governing institutions, increase the level of citizens' participation in their governance, protection of human rights and freedoms, feedback between the state and society. The main procedures of public control are public monitoring, public hearings, public expertise, public investigation, hearing of reports on the results

of work, public inspections. Some of these procedures are more developed and applied, some are just being implemented. The latter include public inspection, which is effective in certain industries and areas, but needs to be used more. This is the reason for the scientific interest in the issues of public inspection

The issues of public control have been under study by scientists in various aspects. However, the analysis of their publications shows that such an effective and important form of public control as inspection has not yet been focused enough. Only some researchers, such as Yu. Zakharov, define the public inspection. In the works by O.S. Ihnatenko, A.S. Krupnyk, D.S. Pryputen, S.M. Hrydnytska and O.V. Tytova, public

inspection is listed among other forms and measures of public control. It should be noted that when considering the forms of public control in scientific works, public inspection is not always characterised. Therefore, this state of consideration of the inspection as a form of public control actualises this study.

The purpose of the article is to consider the institution of public inspection as an important form of public control with the proposal of its more effective application.

2. Regulatory and legal framework for public inspection

The concept of the term of inspection is contained in reference sources, national scientific literature, draft laws. Here are some examples. Among several dictionary definitions of the *Great explanatory dictionary of the modern Ukrainian language*, the following is worthy of attention: inspected, i.e. subjected to analysis to identify the presence of any component, element, etc. (Busel, 2004, p. 719). In the *Legal Encyclopedia* this term is interpreted as inspecting the implementation of laws, decisions, etc. and is one of the most important functions of public administration (Shemshuchenko, 1998, p. 323).

The public inspection in Draft Law 4697 on public control (registered in the Verkhovna Rada of Ukraine (VRU) on April 14, 2014) is defined as a special procedure of public control, which provides for a set of actions of the actors of public control to collect information, establish facts and circumstances of the activities of the entity subject to public inspection in order to determine its compliance with the current legislation and public interests (Draft Law on Public Control, 2014). The same definition is contained in the Draft Law on legal and organisational principles of public control and public dialogue in Ukraine (registration in the Verkhovna Rada on April 30, 2021, No.5458) (On legal and organisational principles of public control and public dialogue in Ukraine, 2014).

Some draft laws refer to the inspection as a type of public control measures, but the definition is not given, in addition, the articles on the inspection procedure have errors and are deficient. For example, the Conclusions of the Chief Expert Department of the Verkhovna Rada of Ukraine of January 04, 2016 on the Draft Law of Ukraine 'On public control' (Register No. 2737-1 of November 13, 2015, finalised), among other shortcomings, indicated that in parts 5 and 8 of Art. 16 of the Draft it is provided to conduct an inspection in the premises of the entity subject to public control during the working hours established by its internal labour regulations. At the same time, as it can be seen from the text of the Draft, the actors of public control shall not be respon-

sible for unjustified disorganisation of the work of state authorities and local self-government bodies, and other possible abuses (Conclusion of the Main Expert Department, 2016).

Other draft laws mention inspection as one of the forms of public control. For example, in the Draft Law of Ukraine 'On amendments to some Laws of Ukraine on the establishment of an institutional mechanism for public control over the activities of local self-government bodies and officials' (Register No. 2282 of October 17, 2019). The Draft indicates the public inspection of decisions, actions and omissions of officials and local governments for their compliance with the public interests of the territorial community, the requirements of the Constitution and Laws of Ukraine (On amendments to some Laws of Ukraine on the establishment of an institutional mechanism for public control over the activities of local self-government bodies and officials, 2019).

Some draft laws on public control do not mention inspection as a form of its implementation at all. This is evidenced by the analysis of the Draft Law on public control over the activities of authorities, their officials (Draft Law 9013 of August 07, 2018), which was withdrawn from consideration by the Verkhovna Rada on August 29, 2019 (On public control over activities of authorities, their officials, 2018).

The legal literature review reveals several definitions of public control, for example, it is considered as a public inspection by civil society of the state's activities for compliance with goals proclaimed, adjustment of these activities and the goals, subordination of public policy, activities of State bodies and officials to the interests of society, as well as supervision of civil society over the activities of the State and local self-government bodies aimed at protecting and ensuring the legitimate rights, interests and fundamental freedoms of a person, and respect for them (Zakharov, 2010).

D.S. Pryputen, studying the concept of public control in the field of activities of the National Police of Ukraine, considers it as a type of activity as follows: first, inspection or observation for the purpose of further inspection of activities aimed at fulfilling the assigned tasks and implementing the functions of the National Police; second, the possibility of stopping the identified violations (Pryputen, 2020).

S.M. Hrudnytska and O.V. Tytova study public control as a type of citizen participation in the management of public affairs, characterise it as a management function, a process of checking that the controlled object achieves its goals (Hrudnytska, Tytova, 2018, p. 30).

As well as public expertise and public investigation, public inspection is defined as a spe-

cial procedure that public organisations have the right to carry out to control the activities of public authorities. The general procedures of public control include: 1) hearing of performance reports; 2) public hearings; 3) public monitoring (Draft Law on Public Control, 2014).

The public inspection is carried out to find out the real activities of public authorities and its officials regarding the proper performance of their official duties and to prevent corruption and/or eliminate threats to other public interests, to protect the rights and legitimate interests of individuals and legal entities. Public inspections can also be carried out against legal entities, individual entrepreneurs, if they are subject to public control.

Public inspection cannot be an end in itself for public organisations. There must be certain grounds for its implementation, such as: 1) real information about illegal or corrupt activities of state authorities, local self-government bodies, legal entities, public organisations; 2) well-known facts that the said entities by their activities cause damage to the environment, public interests, interests of individuals and legal entities; 3) obtaining information on failure to eliminate violations by the entity subject to public inspection, which have been mentioned above; 4) appeals of public organisations to the entity subject to public inspection on issues that may be its target.

3. Specificities of public inspection as a form of public control

Public inspection is carried out according to a certain procedure. Its main elements include: the adoption of a relevant decision by a public organisation indicating the subject matter and purpose of the public inspection; indication of the grounds for conducting it; indication of the persons involved in the inspection; their full powers during its conduct; term of conduct; signatures of representatives of the public organisation that made this decision.

It should be noted that during the public inspection it is prohibited: 1) to carry it out on the issues beyond the competence of a public organisation; 2) for the entity subject to public inspection to provide with information that is extraneous to the issues being inspected; 3) to disclose confidential information of the entity subject to public inspection; to exceed the terms of public inspection.

Public inspection can be planned, unscheduled, thematic. For example, during public control, trade unions can check the calculations of wages and state social insurance, the use of funds for social and cultural activities, etc. (Legal grounds for public control by trade unions, 2020).

Public inspections are actively carried out by public inspectors of the State Environmen-

tal Inspectorate. Based on the results of public inspections, they record violations of environmental legislation and submit them to State environmental control bodies and law enforcement bodies to bring violators to justice. If it is impossible to establish the identity of the violator on the spot, public inspectors may deliver the violator to the law enforcement bodies and other local executive authorities (Regulations on public control in the field of environmental protection, 1994). They also participate in conducting, together with employees of state control bodies, raids and inspections of compliance by enterprises, institutions, organisations and citizens with legislation on environmental protection, compliance with environmental safety standards and the use of natural resources (Public control in the field of environmental protection, 2021).

The public inspection in the logging industry is established in detail. In particular, it provides for: inspection of the presence of relevant permits, identification of the location of the site within the quarterly network of forestry and identification of the location of the site in kind, determination of the boundaries and dimensions of the logging area, measurements of trees, measurements of trunks of felled trees, verification of documentation for the transportation of wood by vehicle, calculation of the measurements made (logging area, timber stock), verification with the data specified in the relevant permits of the forest user and identification of deviations, preparation of proper documentation (acts, conclusions, report), their publication in local, regional and national media) and transfer to the relevant competent authorities (state environmental inspection, prosecutor's office, etc.) (Methods of public control over logging, 2018).

The public labour protection inspector checks the state of working conditions and safety at the workplace, compliance by employees with the rules, regulations, instructions, other legal regulations on labour protection and makes proposals to the employer (its representatives) (Standard provision on the public labour protection inspector, 2013).

The need for a public inspection is specified in the Regulations on public control in the field of landscaping, public inspectors have the right to record violations of the relevant legislation and submit them to the state control bodies to bring the perpetrators to justice (Order of the Ministry of Construction, Architecture and Housing and Communal Services of Ukraine On the approval of the provision Regulations on public control in the field of landscaping, 2007).

However, frequently controlling bodies ignore the decision of public organisations to

conduct a public inspection. In their refusals, officials refer to Part 1 of Article 6 of the Law of Ukraine 'On basic principles of state supervision (control) in the field of economic activity'. According to the provisions of this article, the basis for conducting an unscheduled event on state supervision (control) is an appeal of a person, not a legal entity. They also note that the fact of violation of the applicant's rights has not been confirmed. As a result, they refuse to conduct public inspection. Such responses from officials of regulatory authorities contradict Article 38 of the Constitution of Ukraine, which establishes that citizens have the right to participate in the management of public affairs, the Resolution of the Supreme Court of Ukraine of May 6, 2020 in case No. 804/340/1849, which contains a reference to paragraph 1 of Part 1 of Article 21 of the Law 'On Public Associations', that in order to implement its objective(s), a public association has the right

to apply, in the manner prescribed by law, to public authorities, local governments, their officials with proposals (comments), applications (petitions) complaints and other legislative provisions (Controlling bodies regularly ignore requests from public organisations to carry out inspections, which is a violation of Ukrainian legislation and the rights of non-governmental organisations, 2021).

4. Conclusions

Therefore, public inspection as a procedure of public control has proved its effectiveness in various sectors and industries. However, its implementation is not always possible. Control bodies, notwithstanding the Ukrainian legislation, ignore the decisions of public organisations to conduct public inspections. This is due to the absence of a law on public control with a clearly defined procedure for conducting public inspections, which is urgently needed and will contribute to their greater effectiveness.

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Юрій Ніронка,

кандидат юридичних наук, адвокат, директор ТОВ 'Юрнікус', вулиця Сонячна, 5, Одеса, Україна, індекс 65009, inironka@gmail.com

ORCID: orcid.org/0000-0001-5772-7540

ІНСТИТУТ ПЕРЕВІРКИ ЯК ФОРМА ГРОМАДСЬКОГО КОНТРОЛЮ

Анотація. Мета. Метою статті є розглянути інститут громадської перевірки як важливої форми громадського контролю з пропозицією її більш ефективного застосування. **Результати.** Проаналізовано погляди науковців щодо дефініції перевірки як складової заходів громадського контролю, а також її визначення в вітчизняних законопроектах. Громадська перевірка визначена як спеціальна процедура на відміну від загальних процедур. Зазначено мету, підстави та процедуру громадської перевірки. Наведено приклади щодо проведення громадських перевірок профспілками, громадськими інспекторами Держекоінспекції та у сфері благоустрою населених пунктів, в лісогосподарській галузі. Наголошено, що громадська перевірка здійснюється за певною процедурою. До основних її елементів віднесемо: прийняття відповідного рішення громадською організацією із зазначенням предмету та мети громадської перевірки; вказівка на підстави проведення; зазначення осіб, які залучені до перевірки; їх повноваження під час її проведення; термін проведення; підписи представників громадської організації, яка прийняла це рішення. З'ясовано, що під час громадської перевірки забороняється: 1) її здійснювати з тих питань, які не відносяться до компетенції громадської організації; 2) надання об'єктом громадської перевірки інформації, яка є сторонньою до питань, що перевіряються; 3) розголошувати конфіденційну інформацію об'єкта громадської перевірки; перевищувати терміни проведення громадської перевірки. Визначено, що громадська перевірка здійснюється для з'ясування реальної діяльності органів державної влади та її високопосадовців щодо належного виконання ними своїх службових обов'язків та з метою попередження вчинення корупційних дій або/чи усунення загрози інших суспільним інтересам, захисту прав і законних інтересів фізичних і юридичних осіб. Громадські перевірки також можуть здійснюватися стосовно юридичних осіб, фізичних осіб-підприємців, якщо вони є об'єктами громадського контролю. **Висновки.** Зроблено висновок, що громадська перевірка як процедура громадського контролю засвідчила свою ефективність в різних сферах та галузях. Проте не завжди її проведення є можливим. Контролюючі органи всупереч українському законодавству ігнорують рішення громадських організацій про проведення громадських перевірок. Зазначене зумовлене відсутністю закону про громадський контроль з чітко визначеними для реалізації порядком і процедурою проведення громадської перевірки, який є нагальним для прийняття та буде сприяти більшій дієвості їх проведення.

Ключові слова: громадський контроль, громадська перевірка, спеціальна процедура, підстави громадської перевірки, мета громадської перевірки.

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