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## THE CONTENT OF PUBLIC OVERSIGHT AS A FUNDAMENTAL FUNCTION OF CIVIL SOCIETY AND AN OBJECT OF ADMINISTRATIVE AND LEGAL REGULATION

**Abstract. Purpose.** The purpose of this article is to formulate the foundations for ensuring effective and result-oriented public oversight as a fundamental function of civil society and as an object of administrative and legal regulation. **Results.** Public oversight is defined as the purposeful activity of members of the public (natural persons – citizens of Ukraine, foreign nationals; and legal entities – public organizations, representatives of institutions and enterprises), aimed at supervising the adherence of public authorities to legality, discipline, protection of human rights and freedoms, and the exercise of the powers vested in them. One of the key tasks of the theoretical framework of administrative law science is to overcome terminological inaccuracies, eliminate vagueness and definitional uncertainty. At the same time, the formulation of authorial definitions is often impossible without correlating similar or identical terms. Thus, within the scope of this section, it is necessary, in our opinion, to analyze and compare the concept of "public oversight", particularly the main scientific approaches of domestic and foreign scholars, with other related categories. Such related concepts include social oversight, civil oversight, public control, etc. The process of correlating similar or identical concepts makes it possible to establish interrelationships, connections, or, conversely, differences, which, in turn, stimulates a deeper analysis of the studied phenomena and the identification of their essential characteristics and features.

**Conclusions.** Based on the analysis of public oversight as a fundamental function of civil society, the following conclusions are drawn: the concept of "oversight" forms the theoretical basis for defining and identifying the characteristics of public oversight; public oversight as an object of administrative and legal regulation should be understood as the purposeful activity of members of the public (natural persons – citizens of Ukraine, foreign nationals; and legal entities – public organizations, representatives of institutions and enterprises), aimed at supervising the adherence of public authorities to legality, discipline, protection of human rights and freedoms, and the exercise of the powers vested in them. Ensuring effective and result-oriented public oversight is a necessary precondition for state development, as restricting citizen participation may lead to the lack of accountability of public authorities.

**Key words:** public oversight, the public, oversight activity, subjects of public oversight, accountability mechanism, public authorities, local self-government bodies.

### 1. Introduction

In general terms, public oversight is understood as a form of civic activity exercised by various public organizations, initiative groups, and individual actors for the purpose of supervising and monitoring the compliance of public authorities and local self-government bodies—as well as other non-governmental institutions entrusted with the performance of public functions—with the principles of legality, discipline, and the protection of the rights and legitimate interests of citizens.

It should be noted that oversight—

including public oversight—can be fully regarded as one of the most important and effective means of ensuring legality. A modern democratic society cannot function without a coordinated and multi-actor system of public oversight in the field of public administration and the management of state affairs. The involvement of diverse subjects of public oversight primarily means ensuring and guaranteeing such principles of public administration as openness, transparency, publicity, and efficiency, which today are fundamental to its functioning.

For Ukraine, as a relatively young state in an active stage of development and consolidation, the issue of public oversight remains particularly relevant. This is due to numerous factors, the most significant of which is the state's conscious aspiration—manifested through its key governmental institutions—for autonomy and independence from various forms of societal influence.

From scientific, legal, public, and political perspectives, public oversight remains a topical and widely debated issue in modern Ukraine. Despite the lack of adequate and specific legal regulation, the concept of public oversight is interpreted quite broadly in all of the aforementioned domains, which typically complicates its correct and precise understanding, and more importantly, its practical application.

Given that the topic of public oversight in the doctrine of administrative law is both extensive and, at the same time, insufficiently and unclearly regulated at the legislative level, it is appropriate to determine how scholars conceptualize this category, particularly when considering public oversight as an object of administrative and legal regulation. Indeed, among contemporary domestic scholars, the issue of interpreting and defining the content of public oversight is far from settled, and ongoing academic discourse continues to seek a definitive formulation and identification of its essential legal characteristics.

General issues of public oversight have been addressed in the scientific works of O. Andriiko, I. Holosnichenko, V. Horsheniiov, A. Dolhopolov, M. Kelman, V. Kolpakov, O. Muzychuk, T. Nalyvaiko, O. Poklad, S. Stetsenko, Yu. Shemshuchenko, among others. The study of the category of oversight in the sphere of public administration has also been the subject of research by leading domestic administrative law scholars, such as V. Averyanov, Yu. Bytiak, V. Harashchuk, L. Hordiienko, D. Luchenko, A. Melnyk, O. Muzychuk, N. Nyzhnyk, O. Obolenskyi, and O. Sushynskyi, among others.

## 2. The Etymological Origin of the Term "Control"

In light of the above, it is considered appropriate to begin the analysis of the concept of *public oversight* with an examination of its etymological origin, in order to gain a more comprehensive and profound understanding of the term. According to the *Comprehensive Explanatory Dictionary of the Ukrainian Language*, the term "control" is defined as follows:

1. verification of compliance of a controlled object with established requirements;

2. verification, monitoring of the activity of someone or something, oversight over someone or something;

3. an institution or organization that carries out oversight or verification of someone or something;

4. inspectors (Busel, 2005). The derived verb "to control" is defined as "to verify someone or something."

An analysis of this dictionary interpretation of the term "control" reveals that the definitions lack several critical attributes that would fully reflect the meaning of the concept, namely: the identification of deficiencies or deviations from established requirements; correction of shortcomings or inefficiencies; imposition of liability; and the identification of the correlation between the prescribed standards and the actual state of affairs. All existing definitions provided by the dictionary offer merely evaluative criteria of control as a certain process. Moreover, the latter two definitions simply refer to the subjects involved in this activity.

It is worth emphasizing that the term *control* is the subject of study in numerous academic disciplines and fields, and can therefore justifiably be regarded as a multidisciplinary, multifaceted, and polysemic phenomenon. Scholars attempt to interpret and conceptualize it from the perspectives of sociology, philosophy, political science, law, management theory, and others. From the legal perspective, jurisprudence approaches the notion of control in a manner closest to its philological understanding. The *Legal Encyclopedia* defines *control* (from the French *contrôle* – inspection, from Old French *contrerole* – a list with a duplicate used for verification) as *the verification of compliance with laws, decisions, etc.* It is considered one of the most important functions of public administration. According to the object, subject, and scope, it is classified into state, departmental, supra-departmental, industrial, and other types of control (Shemshuchenko, 2001).

The *Glossary of Terms and Concepts in Public Administration* defines public oversight as one of the mechanisms of citizen participation in public governance and the supervision of governmental bodies, as well as an important factor in ensuring legality in public administration, without which democracy cannot exist (Malynovskyi, 2005). The *Political Science Dictionary* provides the following definition: control (public oversight) is a type of social control exercised by associations of citizens and by individual citizens over the compliance of state

bodies, cooperative and public organizations, enterprises, institutions, and public officials with the requirements of the Constitution and the laws of Ukraine (Holovatyi & Antoniuk, 2005).

An analysis of specialized literature demonstrates the existence of a significant number of scholarly approaches to the understanding of public oversight within the legal doctrine. On the one hand, this suggests that the category has been studied in depth; on the other hand, it points to a lack of unified understanding and interpretation. In our view, the formulation of unified and optimal approaches to understanding the concept, legal nature, essence, and main features of public oversight will provide the basis for establishing effective civic supervision over the activities of specialized anti-corruption bodies. Through oversight, deficiencies, shortcomings, and deviations from established norms may be identified, as well as the reasons behind them and possible solutions to rectify the detected issues. It may be argued that oversight is a management function that facilitates the detection of errors in order to take corrective actions. This is done to minimize deviations from standards and ensure that the stated objectives of an organization are achieved in the desired manner.

According to A. Tarasov, *control is a means of obtaining information about the life of society as a whole, about the political, economic, and social processes taking place within the state, and about the activities of its authorities and administrative institutions* (Tarasov, 2002). The core element of oversight is the ability to obtain information about the controlled entity. As V. Averyanov maintains, control must be recognized as a function of the state, since it is the primary actor performing the oversight function in society. Control is, on the one hand, a means of verifying the correctness of the state's actions and policies, and on the other, a mechanism for evaluating the outcomes of administrative activity at various stages of its implementation (Averyanov, 1998). V. Harashchuk, considering oversight as a distinct function of public administration, emphasizes that *control is inspection, as well as observation conducted for the purpose of preventing undesirable occurrences, detecting, averting, and halting unlawful behavior by individuals or institutions* (Harashchuk, 2002).

The second component of the term *public oversight* is the adjective *public*, which is derived from the words *hromada* (community) and *hromadskist* (the public). According to the *Comprehensive Explanatory Dictionary of the Ukrainian Language, public (hromadskyi)* is defined as:

1. relating to a community (*hromada*);
  2. arising or occurring in society or relating to it; social;
  3. pertaining to or belonging to the entire community or society; collective;
  4. voluntarily serving various aspects of community life;
  5. inclined to social interaction; sociable, companionable (Busel, 2005).
- At the same time, *community (hromada)* is defined as:
6. a group of people united by common status, interests, etc.;
  7. an association of people pursuing specific common goals; an organization;
  8. in Ukraine and Belarus – a rural land-based association, as well as the meeting of its members;
  9. an organization of Ukrainian liberal-bourgeois intelligentsia in the 1860s–1890s (Busel, 2005).

### 3. Principles of Legal Regulation of Public Oversight

An essential component of our research lies in defining the concept of *public oversight* as a coherent legal category, which is impossible without establishing its normative regulation. Unfortunately, to date, the term does not possess a unified and unequivocal definition, either in legal doctrine or at the legislative level.

For example, the Basic Law of Ukraine (Constitution of Ukraine, 1996) refers to *oversight* only occasionally (e.g., oversight of product quality and safety, parliamentary oversight, etc.), and does not provide any definition of the term. We share the view of those scholars who consider Article 3 of the Constitution of Ukraine as the starting point for defining such an administrative and legal category as public oversight. This provision stipulates that the state, through its institutions established by the people, is accountable to the individual for its activities (Zhukrovskiy, 2014).

It is important to note that various legal provisions addressing the definition and regulation of public oversight in specific sectors can also be found in other legislative acts of Ukraine, such as the Laws of Ukraine “On Citizens’ Appeals,” “On Access to Public Information,” “On Information,” “On Local Self-Government,” “On Associations of Citizens,” “On Scientific and Scientific-Technical Activities,” “On Scientific and Scientific-Technical Expertise,” “On Consumer Rights Protection,” and others. However, these legislative acts lack a consistent approach to understanding public oversight as an administrative and legal category and as an object of administrative and legal regulation.

A more detailed discussion of the legal regulation of public oversight in general, and in relation to specialized anti-corruption bodies in particular, will be addressed in the following subsection.

To date, no specific legislation directly regulating public oversight as a legal institution has been adopted in Ukraine. Only a few legislative initiatives have attempted to address this issue, such as the Draft Law of Ukraine "On Public Oversight," prepared by Member of Parliament S. Kyrychenko, and another version of the same title proposed by S. Tihipko. An analysis of these drafts shows that the aim was to establish, at the legislative level, the definition and principles of public oversight, its key areas of implementation, a list of oversight actors, procedural rules for its execution, and a mechanism of accountability for non-compliance or improper fulfillment of lawful public demands.

The first draft defines public oversight as the organizationally structured activity of Ukrainian citizens aimed at verifying the compliance of oversight objects (state authorities, local self-government bodies, enterprises, institutions, organizations, their officials, and business entities regardless of their legal form or ownership) with the Constitution of Ukraine, national legislation, and other normative legal acts, as well as with state discipline (Draft Law of Ukraine on Public Control, 2008). The author of the second draft defines it as the activity of oversight subjects focused on supervising, verifying, and evaluating the activities of oversight objects for compliance with Ukrainian legislation and societal interests (Draft Law of Ukraine on Public Control, 2014).

An analysis of these proposed definitions reveals a lack of consensus on defining the actors of public oversight (individual citizens or public associations), as well as its main purpose (supervision, verification, and evaluation of the activities of oversight objects for compliance with national legislation and public interest; compliance with the Constitution and laws of Ukraine; or supervision of the legality of activities of state and local government bodies and their officials). Moreover, the definitions fail to clearly identify not only the subjects but also the objects of public oversight. A more detailed analysis of oversight actors, based on the existing draft laws, will be provided in subsequent sections.

Legal doctrine includes a wide array of research dedicated to public oversight. For instance, T. Nalyvaiko defines public oversight as an organizational and legal form of voluntary association of citizens aimed at satisfying

and protecting their personal and collective legal, social, economic, creative, age-related, ethno-cultural, and other shared interests (Nalyvaiko, 2010). S. Shestak describes public oversight as the control exercised by citizens and their voluntary associations to ensure the legality and transparency of state functioning and to foster stable and effective interaction between the state and the population (Shestak, 2009). Another contemporary Ukrainian researcher, I. Skvirskyi, defines public oversight as public activity aimed at inspection or observation for the purpose of identifying, preventing, or stopping unlawful actions, decisions, or inaction by public administration actors. In his view, public oversight is a specific institutional and value-based structure that ensures the relative stability of relations and interactions within the framework of state–society social dynamics (Skvirskyi, 2013).

Thus, based on the analysis of doctrinal approaches and selected legislative initiatives, it can be concluded that public oversight should be understood as the purposeful activity of members of the public (natural persons—citizens of Ukraine, foreign nationals; and legal entities—public organizations, institutional and corporate representatives), aimed at supervising the adherence of public authorities to legality, discipline, the protection of human rights and freedoms, as well as the exercise of their delegated powers.

One of the important tasks of the theoretical component of administrative law science is to eliminate terminological inaccuracies, remove ambiguity, and clarify definitional uncertainty. In most cases, formulating precise authorial definitions is not possible without correlating similar or identical terms. Therefore, within this subsection, we deem it necessary to analyze and compare the concept of *public oversight*, particularly the main academic approaches developed by domestic and foreign scholars, with other related legal categories. These include *social oversight*, *civil oversight*, and *public (institutional) oversight*. The process of comparing such related or analogous terms makes it possible to identify their mutual relationships, links, or, conversely, distinctions. This, in turn, stimulates a more in-depth analysis of the studied phenomena, their essential characteristics, and distinctive legal features.

The clarification of legal terminology should begin with the comparison of the term *public oversight* with the broader category of *social oversight*. In contemporary research, *social oversight* is unquestionably considered an interdisciplinary concept studied within such fields as philosophy, sociology, political science,

jurisprudence, legal philosophy, and sociology of law.

From the standpoint of political science, *social oversight* is understood as a society's capacity, rooted in the principles of democracy, to simultaneously act as both the object of governance by the state (i.e., subject to state control) and the subject of governance (i.e., through public oversight), including self-regulation (Arabadzhyiev, 2013). In legal scholarship, O. Danylyan distinguishes between broad and narrow understandings of *social oversight*. In its broad sense, it represents a set of mechanisms within a social system through which self-organization and self-preservation are ensured by establishing and maintaining a normative order. This is achieved by applying models of behavior, including values, legal and moral norms, administrative directives, customs, traditions, and others. In the narrow sense, it is a collection of means and methods employed by society to respond to deviant behavior in order to reduce or eliminate it (Danylyan, 2009).

When comparing the concepts of *social* and *public oversight*, most scholars agree that public oversight constitutes one of the forms of social oversight exercised by citizen associations and individuals. It is viewed as an important means of realizing democracy and engaging the population in the governance of society and the state (Melnyk, Obolenskyi, Vasina, Hordiienko, 2003).

Thus, a general conclusion may be drawn: social oversight is broader in both substance and scope than public oversight. The relationship between the two is that of the whole and the part; public oversight represents only one component of the broader category of social oversight.

The next related concept to be addressed is *civil oversight*. Ukrainian legislation currently recognizes the concept of *democratic civil oversight*, which is defined in the Law of Ukraine "On National Security of Ukraine" (21 June 2018) as a set of legal, organizational, informational, personnel-related, and other measures conducted in accordance with the Constitution and laws of Ukraine. These measures are designed to ensure the rule of law, legality, accountability, and transparency of security and defense sector bodies and other institutions whose activities involve the lawful restriction of human rights and freedoms. It also supports their effective operation, performance of assigned functions, and contributes to strengthening national security (On the National Security of Ukraine: Law of Ukraine, 2018).

Legal doctrine offers different approaches to distinguishing between *public* and *civil oversight*.

Some scholars argue that the distinction is rather conditional, or even non-existent. According to this viewpoint, civil (public) oversight is understood as a social phenomenon whereby civil society participates in determining the state's domestic and foreign policy directions, resolving socially significant issues at all levels, and monitoring the implementation of these policies (Melnyk, Obolenskyi, Vasina, Hordiienko, 2003).

O. Selivanova holds that while *public* and *civil oversight* are similar in nature, they are not identical. The term *public* is linked to a collective of individuals united by territorial, cultural, or other unifying factors, while *civil* is derived from the Greek *politēs* (citizen), itself formed from *polis* (city), and denotes a *resident of the city*. Therefore, the subject of public oversight is often depersonalized, representing a collective interest. Conversely, *civil oversight* implies a high degree of subject personalization, where the individual is consciously engaged in exercising control over the functioning of public authorities (Hulyev, 2001).

In our opinion, a distinction does exist between *civil* and *public oversight*, primarily in terms of the actors involved. In the context of *civil oversight*, the principal actors are often military or security institutions, and the primary objective is to oversee and correct the functioning of the state's defense-related structures.

Finally, the correlation between *public oversight* and *institutional public oversight* is another area actively discussed among modern Ukrainian and foreign scholars. For instance, M. Baranov sees the essence of public (institutional) oversight in establishing mechanisms for public communication between civil society and institutional authority in the process of drafting, promoting, and adopting legislative and executive decisions (Baranov, 2007).

According to V. Kravchuk, public (institutional) oversight is a system of organizational and legal forms that ensure legality in the activities of public administration, the protection of human rights and freedoms, and the effective fulfillment of tasks and powers by public authorities and local self-government bodies, as well as their officials and employees. Public oversight is classified according to the conducting subject: state, public (civil society), municipal, and international (Kravchuk, 2015).

Therefore, it can be concluded that *public (institutional) oversight* is a vital component of all political and democratic processes within a state and is a prerequisite for the development of civil society. In its essence, public oversight is a complex phenomenon that encompasses both state



and public components – in other words, *public oversight* is a subset or component of the broader category of *institutional public oversight*.

#### 4. Conclusions

Summarizing the results of the study, the following key conclusions can be drawn: the concept of *control* serves as the theoretical foundation for formulating and distinguishing the features of *public oversight*. Public oversight, as an object of administrative and legal regulation, should be understood as the purposeful activity of members of the public (natural persons – citizens of Ukraine and foreign nationals; and legal entities – public organizations, institutional and corporate representatives) aimed at monitoring the compliance of public authorities with the principles of legality and discipline, the protection of human rights and freedoms, and the exercise of the powers vested in them.

Ensuring effective and result-oriented public oversight is a vital prerequisite for the development of the state, as limiting citizen participation may lead to an absence of accountability within the system of public authority. One of the key contemporary directions for the functioning of this institution involves the search for optimal forms and methods for implementing democratic public oversight.

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## ЗМІСТ ГРОМАДСЬКОГО КОНТРОЛЮ ЯК ОСНОВНОЇ ФУНКЦІЇ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА ТА ОБ'ЄКТУ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ

**Анотація.** *Мета* статті полягає в формуванні засад забезпечення ефективного та результативного громадського контролю, як основної функції громадянського суспільства та об'єкту адміністративно-правового регулювання. *Результати.* Визначено, що під громадським контролем слід розуміти цілеспрямовану діяльність представників громадськості (фізичних осіб – громадян України, іноземців; та юридичних осіб – громадських організацій, представників установ і підприємств), яка полягає у нагляді за дотриманням органами державної влади законності, дисципліни, захистом прав і свобод людини, а також виконанням наданих їм повноважень. Одним із важливих завдань теоретичної складової науки адміністративного права потрібно визначити подолання будь-яких термінологічних неточностей, усунення нечіткості та дефінітивної невизначеності. При цьому формулювання авторських визначень у більшості випадків не є можливим без співвідношення схожих чи тотожних термінів. Так, зокрема, в межах даного підрозділу, на нашу думку, слід проаналізувати та співставити поняття «громадський контроль», а саме: основні наукові підходи вітчизняних і зарубіжних дослідників, з іншими суміжними категоріями. До таких суміжних понять у подальшому ми віднесемо: соціальний контроль, цивільний контроль, публічний контроль тощо. Процес співвідношення суміжних, тотожних понять дозволяє встановити взаємні відношення, зв'язки, або, навпаки, відмінності, що, у свою чергу, стимулює поглиблений аналіз досліджуваних явищ, виявлення їх сутнісних характеристик, ознак тощо. *Висновки.* За результатами аналізу громадського контролю, як основної функції громадянського суспільства, зроблено наступні висновки: поняття «контроль» є теоретичною основою для формулювання поняття та виокремлення ознак громадського контролю; під громадським контролем як об'єктом адміністративно-правового регулювання слід розуміти цілеспрямовану діяльність представників громадськості (фізичних осіб – громадян України, іноземців; та юридичних осіб – громадських організацій, представників установ і підприємств), яка полягає у нагляді за дотриманням органами державної влади законності, дисципліни, захистом прав і свобод людини, а також виконанням наданих їм повноважень. Забезпечення ефективного та результативного громадського контролю є необхідною запорукою розвитку держави, оскільки обмеження участі громадян може призвести до безконтрольності публічної влади.

**Ключові слова:** громадський контроль, громадськість, контрольна діяльність, суб'єкти громадського контролю, механізм відповідальності, органи державної влади, органи місцевого самоврядування.

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