

Public Inquiry as a Form of Public Control of the Civil Society Institutes in Russia

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Abstract: In this study, there are investigated the questions related to legal regulation of mechanisms of public control by the civil society in Russia in regard to state authorities, local government and officials. Based on the analysis of federal legislation of public control and modern scientific doctrine, the researchers concluded the absence of the public inquiry among the forms of public control, powered by the law; public inquiry comprises the following subjects: public associations, labor unions, mass media and advocacy. In frames of the investigation the researchers have formulated and grounded the suggestion of making corresponding changes to the Federal law of 21.07.2014 #212-FZ «on the basis of social control in the Russian Federation» as regards to the expansion of the forms of public control. This change will strengthen the role of civil society institution in organizing the public control after state authorities, local government and officials in the Russian Federation.

Key words: Authorities, civil society institutions, public control, suggestion, strengthen

INTRODUCTION

Nowadays civil society in Russia undergoes the formation process: modernization of existing and implementation of the new forms of relations between authorities and civil society institutions (Mikheeva, 2015). In the formation and development of the civil society an important part is devoted to the presence of a civilized based on a solid legal basis of the interrelation mechanism of state and civil society institutions (Gilbert, 2010; Hyden, 1997). This thesis is accepted in the scientific circles and approved by the first persons in the country.

However, under current conditions what is more important is the formation of each separate institution like public associations, labor units, mass media, advocacy, rather than institutionalization of the civil society (James and Hatch, 2013). Enhancement directions of legal acts in the sphere of civil society institutions maintenance show that nowadays the legislator lays special emphasis upon the fulfillment of the public control after state authorities, local government and officials, provided by the civil society. This approach fully satisfies the Article 32 of the constitution of the Russian Federation which consolidates the right of participating and managing state affairs. Such participation is reached by the public control after the bodies of state, municipal government and the officials.

In this connection a special role is allotted to the Federal law of 21.07.2014 #212-FZ «on the basis of social control in the Russian Federation» (further-law of public control). According to the paragraph 1, Article 3 of the law of public control, citizens of the Russian Federation possess the right of taking part in fulfilling the public control personally and as a member of public associations and other non-state and non-commercial organizations, wherein public associations, labor unions, mass media and advocacy possess the right of participating in public control fulfillment as civil society institutions.

Assuming everything mentioned law mechanism investigation of organizing the public control by the civil society institutions is of particular interest at the moment.

Literature review: Speaking of the current investigations state it is worthwhile pointing out that the problem of the public control is a complex one and touches upon the constitutional, administrative and municipal rights sphere. This fact allows differentiating among several approaches.

First of all it is the investigation of the public control institution from the viewpoint of constitutional and administrative right in broad theoretical sense (Baglay, Bakhrakh, Kutafin and others).

Second it is the tendency of investigating public control after the state authorities. Several works by A.P. Alehin, M.I. Baitin, A.W. Virtuk, K.S. Gadgiev,

B.S. Ebzeev, V.E. Chirkin, etc. are devoted to the modern aspects of control after state authorities and executive authorities in particular.

Third, it is investigation of public control after the law enforcement organs activities as a whole (T.A. Boydarenko, S.E. Vitzin, V.P. Desyatih) and particularly penitentiary system (S.I. Kuzmin, V.M. Morozov, V.V. Fedorov).

Fourth, investigation of the public control after the local authorities (a separate investigation in this branch was managed by Y.S. Yaichnikova and separate aspects were reflected in the works by K.Y. Eliseeva, A.M. Kononova, E.A. Neznamova, E.S. Sugrina, V.V. Chumanova).

Thus, even if some problems in the interaction of state and local authorities with civil society institutions are solved the forms of the public control still remain poorly studied especially if it comes to the questions of public control organizations: public associations, labor unions, mass media, advocacy.

MATERIALS AND METHODS

The systemic, legal comparative and formal juridical research methods as well as methods of logical analysis, synthesis, analogy and interpretation of legal rules form the methodological basis of this scientific study. The using of such methods allowed to reveal and to analyze problematic issues relating to legal regulation of mechanisms of public control by the civil society in Russia. For instance in the course of working on this article it has been discovered that neither federal nor regional legislations contain a precise definition of public control and their drafts.

The systemic and legal comparative analyses showed the absence of the public inquiry among the forms of public control powered by the law; public inquiry comprises the following subjects: public associations, labor unions, mass media and advocacy.

RESULTS AND DISCUSSION

About the public control concept: Public control theme occupies a sufficient place in scientific sphere and has numerously been raised in lawyers' works. An outstanding legislator V.V. Grib defined the public control as control, managed by the civil society institutions and aimed at estimating the officials and organs of public authority on all levels activities (Grib, 2010).

In the context of organization of public control in municipality Y.S. Yaichnikov concluded that it should be understood as organizational legal activity of controlling

subjects with a definite scope of impact bounded by the proper territory. It regards the questions related to the corresponding organs' and officials' competencies and aimed at protecting people's rights, juridical bodies and forming legitimacy mode.

O.S. Zabralova considers the public control to be a variation of social control managed either by citizens of by their associations and units that involve citizens into the process of state ruling.

S.M. Zubarev is of the same position he points out that public control is an independent type of social control established by the law and managed by the competent subjects in order to ensure the legitimacy mode of authorities' activities (Zubarev, 2011). Even a short analysis allows concluding that there is no unity of the approaches to the public control nature.

In order to increase the activity performance in the sphere of public control there was adopted the law of public control. In this connection legislative definition is of great interest. Public control in Article 4 of the law of public control is defined as "activity of the public control subjects, executed purposely for observing the state and local authorities activities, state and municipal bodies, other bodies and organizations that exercise the peculiar public powers according to the federal laws and aimed at public examination, analysis and public estimation of constituted acts and made decisions".

A comparative analysis of the legal definition and suggested in the scientific circle shows that understanding of public control notion as a whole is reduced to the activity of competent subjects, possessing corresponding powers, aimed at estimation of state authorities work, local authorities and officials. We cannot but agree to O.V. Shinyaeva's viewpoint: as the main purpose of public control is the resistance for possible offenses and overindulgence of the powers the real result of the public control is the legislative mode provision. Yaichnikova has also mentioned this result (Mikheeva and Yaichnikova, 2015). We suppose that this aspect should be reflected in the public control legal definition.

Participation of the civil society institutes in exercising public control: Legal system analysis of the public control shows that the law refers civic chamber of the Russian Federation, civic chambers of the subjects of the Russian Federation, civic chambers of municipalities, public councils at the federal bodies of executive power, public councils at legislative and executive governmental bodies of the Russian Federation subjects.

It is provided by the law that for maintaining public control in the cases, pointed out by the legislation, there

can be created public observational commissions, public inspections, groups of public control and other public control structures. In fact this position does not extend the list of subjects and such institutions like civil society institutions, public associations, labor units, mass media and advocacy lack opportunity of managing independent public control.

However, it worthwhile agreeing to D.S. Mikheev's opinion about the fact that public institutions should have more or less defined legal influence levers (Mikheev, 2010).

Despite the fact that public control is becoming one of the most prioritized ways of control after authorities (Mikheev *et al.*, 2015) the Russian legal system does not allow civil society institutions to fulfill the functions they are supposed to fulfill in the democratic society. Adopting the law of public control will not change the situation drastically: in fact the civil society institutions have been left behind the public control system. However, according to our nature and status the civil society institutions can effectively participate in the public control (Mikheeva and Yaichnikova, 2010).

As an example public associations are not mentioned in the list of public control subjects even though its' nature determines participation in organizing public control as currently during the preparations and accepting state decisions the value increases of both civil groups that stand for people's interests and formed according to the principle of occupying the same territory and civil groups that owe a special status the one called civil association (Grib, 2010). As a rule public associations act in social sphere and usually solve issues which are closely connected with the authorities' activities objects (Belousov *et al.*, 2015a, b). This gives the reasons to consider the public associations to be an important resource for providing public control.

The civil society formation is connected with the increased role and emphasis of mass media. As A. Galkin says mass media in the civil society fulfills the functions of uniting the society and is aimed at providing "integrity of the whole society" and historical continuity of its' development and also at creating mechanisms for reconciling interests and settling conflicts. In addition to it is worth pointing out that under this context mass media appears as an instrument of publicity and openness based upon the dialogue between the authorities and civil society.

Modern states use publicity as a basic fundamental instrument that connects authorities and people and stands for legal arrangement (Mikheev, 2014). The main task for mass media is the creation of mechanisms for

dialogue between the authorities and civil society, people. According to this fact, V.V. Grib describes mass media and communications as "more effective mean" of public control after the state (Grib, 2010). S.A. Suslikov agrees to this point of view, he points out that mass media and communication means become more available in the civil society and a common control instrument.

Recently, the professional units institution in the countries with good developed market economy is invoked not only to protect their members' labor rights but to influence the state and civil society development and its interaction between the state and local authorities.

Only one thesis is devoted to the question of participating of labor units as public associations in providing public control in the law of public control: in the Article 3, it is stated that the peculiarities of public control by the professional associations can be set by the corresponding federal laws. However there is no adopted legislative thesis that directly consolidates the right of labor units to be the subject of public control and to have equal rights with the subjects enumerated in the law of public control (Klementyev and Malyshev, 2011).

This situation was commented by the head of legislative department of Federation Apparatus of independent labor units in Russia, Y.I. Peleshenko. As the main purpose and task of the labor units he considers the public control after following labor legislation and the fact that labor units are legislatively not related to the subjects of public control. All this make the law of public control to be a profanation of public role.

Advocacy institution is a complex subject of constitutionally-legal relations as advocacy nature proceeds originally from the private and public interests creating the unity of advocacy as civil society institution. Performing as non-state institution from one side, advocacy fulfills the key functions in public interests branch connected with justice administrating and also key functions in ensuring everyone of lending assistance protection of the interests also free of charge. Nowadays advocacy is not only the civil society institution but an important civil society instrument which is built into the judicial system and is invoked to embody the civil society interests in this sphere, first of all to make sure the court's judgments are fair. As a civil society representative, the lawyer fulfills an important function in frames of advocacy inquiry that can prove as a public control instrument. E.G. Martynchik agrees to it and notes that applying for advocacy the status of civil society institution means applying for advocacy inquiry the status of civil society tool as a significant element for civil society defense (Martynchik, 2003).

Summing up all the mentioned above one can come to conclusion that today there appeared a sharp necessity to broaden the list of public control subjects by means of making amendments into the Article 9 of the law of public control and include into consist of such subjects public associations, mass media, labor units and advocacy. This amendment tends to give the right of public control after following legislation by the state authorities, local government and officials to these institutions. This is the way to avoid an unsettled problem that slows down introduction of a new society institution (Mikheeva, 2015).

Society inquiry as a form of public control: Legislatively there are regulated the following forms of the public control: public monitoring, public inspection, public examination, public discussions and public hearings. Other forms of public control are not mentioned in the law of public control. By force of nature and status civil society institutions have a wide range of powers for managing public control. For example, public associations and labor units can provide public inquiry, so as mass media can provide journalist inquiry and advocacy-advocatory one.

Public inquiry means collecting and analyzing information and facts regarding the rights and people's interests violation, power overindulgence by the officials. As a rule it is being implemented in the case of identifying exact violations from the authorities' side. Public inquiry can have official and unofficial status and character. The most significant efficiency condition in providing public inquiry consists in defining its' methods, mechanisms and basic constituents. It is important to define what information is required how it can be collected and what collecting methods will be applied (analysis of exact documents, methods of getting them, statistic information, quizzes for those who possess necessary information, etc). While providing public inquiry, defining the aim and possible variants of using the results are of the highest priority.

A sufficient condition for efficient provision of public inquiry is the readiness of authorities to cooperate with the publicity. As a rule in democratic state with strong civil society there are no essential problems in cooperation between publicity and authority when providing public inquiries. As numerous Russian scientist point out in the countries that undergo the civil society formation and democratic principles handling development the level of cooperation efficiency between publicity and authorities in providing public inquiries remains to be low (Stepanova, 2010). Sometimes authorities can prevent the publicity from providing such inquiries. That is the reason why the necessity of fixing in legislation the mechanisms for providing public inquiries

creation initiative groups and their power is considered to be one of the most important factors for providing public inquiry. We assume that it is necessary to include into the law of public control the Article 26.1 "public inquiry" that will regulate all the mentioned points.

CONCLUSION

Based upon the conducted analysis of the novels of domestic legislation in the public control sphere and the law of public control in particular modern approaches to the public control by the authors defined the public control as the activity of competent subjects that own corresponding powers, aimed at estimating the work of state authorities, local government and officials and the real result of it should be the provision of legitimacy mode.

Based on the investigation the researchers have formulated the suggestion of amending the legislation in terms of public control. The suggestions are as follows:

- To complement Article 9 that sets a list of public control subjects with the civil society institutions like public associations, mass media, labor units and advocacy
- To include into Paragraph 3 "forms and order of public control provision", Article 26.1 "public inquiry: where there will be regulated the mechanism of providing public inquiry, initiative groups creation, their powers, etc.
- Summarizing all the points it should be noted that current legislation has several gaps in public control formation as their existence obstructs the public control institution development. Formulated in the investigation theoretical and practical conclusions are targeted at excluding such gaps and efficiency increase of the mechanisms of the civil society's participation in practicing the social control of the local authorities' activities

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