

CRITICAL PERSPECTIVES ON PUBLIC CONTROL SUBJECTS

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Abstract

The aim of this study is to represent critical perspectives on public control subjects, regulated by the Federal Law "On the Fundamentals of Public Control". In order to achieve the settled goals a set of cognition methods was used. Specifically, the detecting of legislative vacuums was performed with the use of technical-legal and system-structural methods. As a result, in the study the uncertainty of the law and its vague wording regarding two categories of public control participants - nongovernmental organizations and citizens were found. In fact, without fixing them in a specialized article naming the subjects of public control entities, the legislator lays upon them the certain legal powers in this respect. A scientific novelty lies in the development of a particular scientific concept, which would consider the previously mentioned participants as the legalized public control entities. The practical significance of the proposals and results lies in a significant expansion of the public control entities, intended to allow a huge number of public organizations and willing citizens to join public control entities on legal grounds.

Keywords: public control, non-commercial organizations, citizens, forms of public control

1 INTRODUCTION

Nowadays public control is becoming an integral part of democracy. Citizens have rights not only to participate in state administration personally or through their representatives, but also to exercise public control over the government authority administration. It is rightly noted in legal literature that openness and publicity of the administration work are the backlash that connects the authorities with citizens, allows them to understand social interests and needs (Bujanov and Mikheeva, 2017, p.669).

Now there is no doubt that the more opportunities citizens have to control the administration of public authorities, the more effective they will work. It seems that for this purpose a big amount of legal facilities was created, for example the Federal Law "On the Fundamentals of Public Control in the Russian Federation", which was adopted in 2012. Scientists sure, that this law can be realized in conditions of the authority's openness, their interaction with citizens (Kudryavtzev, Mikheeva and Mikheev, 2016, p.1919).

However, soon after the adoption of the law, was found a lack of regulation in many issues. They are the concepts of subjects and objects of public control, their forms, the rights of public controllers and the legal

consequences of the obtained results. The mechanism of cooperation of public authorities with public organizations and the media, which would successfully deal with control functions, is not settled (Belousov, Gornev and Mikheeva, 2015, p.63). D.S. Mikheev and J.G. Dudko also agree with this opinion, considering public organizations as potential subjects of public control. They believe that many socially oriented non-commercial organizations have enough competence to conduct a public inspection or public expertise (Mikheev, Dudko, 2015, p.77).

A number of authors consider the absence of the right of the public control entities to interfere in activities of the investigated objects as the omission of the law (Yapryntsev, 2017, p.28). It is difficult to agree with this statement, if for no other reason than the incompetent intervention of public inspectors in the work of the investigated objects can be harmful to them, pause their activity and cause other negative consequences. We agree with the opinion of other authors, according to which the function of public control is not to paralyze the authorities, but to contribute to their better work (Polyansky, Borisov, 2017, p.16).

The given examples testify not only of the controversy about the previously mentioned Federal Law, but also serve as a push to the legislator to make adjustments to the law. We believe, that fundamental issues, that need to be polished, are related to the subject category of public control. The main purpose of the article is to substantiate new subjects of public control, which can revive the whole institution of public control, make it more viable and be able to actually affect the activities of the authorities. The study proposes specific conclusions and recommendations for improving the existing legislation, which will give additional legal mechanisms in the field of public control.

2 METHODS

The study used, mainly, special legal methods. Appraisal of the current legislation on public control was performed using legalistic and system-structured points of view. They made it possible to reveal legislative vacuums that negatively affect the implementation of the law. The classical general scientific methods of cognition with a help of analysis, synthesis and analogy contributed to achieving goals and to solving the assigned tasks. Methodological instruments relied on such cognition principles as a logical interdependence, scientific objectivity, scientific prognosis.

3 RESULTS AND DISCUSSION

According to the scientists and practitioners of state-building, the institution of public control in a democratic state is a necessary element of the relationships between the government and civil society. It is the mechanism of public control that is recognized by most specialists, experts and politicians as one of the key factors in achieving positive results in countering and preventing corruption, creating the most "corruption-free" public and governmental space in most European countries.

The mentioned Federal Law created the legal basis for the development of public control. It defined the objectives and basic principles of public control, its subjects, forms of implementation. An analysis of the legislative act shows that, in general, it has a legal potential for the development of a new social institution.

It is obvious, that the goals of public control are relevant. –They include increasing the level of citizens' confidence in the governmental activities, ensuring close interaction of the state with civil society institutions, helping to prevent and resolve social conflicts, ensuring transparency and openness of public authorities, forming intolerance to corrupt behavior in the society, implementing civil initiatives aimed at protecting the rights and legitimate interests of citizens, and non-governmental organizations.

The exercise of public control is also based on the principles of the priority of the rights and legitimate interests of a person and a citizen; self-sufficiency and independence of the public control subjects from state authorities, local self-government and other investigated authorities; publicity and openness of both public control and public discussion of its results; the obligation to review the final documents prepared on the basis of the results of public control, recommendations and conclusions contained in these documents. The listed principles protect public control subjects. However, the law also provides the investigated authorities with the legal protection. It enshrines the inadmissibility of unreasonable interference of the public control subjects in the activities of governmental bodies, local self-government, and other investigated authorities. Unauthorized influence on the specified bodies and organizations is not allowed.

We believe that the scientific and theoretical basis laid in the cornerstone of the Federal Law is solid. It is based both on the observance of the interests of citizens, which the law intends to defend, and on participants of public control, who stand on different sides. The legal guarantees provided for by the law in this part are reasonable and fair in relation to the public control subjects and to organizations the activities of

which are the subject to public investigation.

Such a balance is worthy of respect, but it is not always visible in subsequent rules. A special discontent is caused by the chapter of the Federal Law, which regulates the issues of the parties. It is subject to fair criticism by many scientists and practitioners.

Nowadays, the main subjects of public control are not citizens, not structures formed by citizens, but public formations created with the participation of governmental bodies or bodies of local self-government. These formations, in accordance with Article 9 of the Federal Law, are different levels of public chambers and public councils at public authorities. In order to implement various forms of public control, these public chambers and public councils have the right to create temporary structures, for example, public inspectorates and public control groups, to involve citizens as public inspectors or public experts.

It is easy to see that there are no citizens and non-governmental organizations as independent subjects of public control in the legislative rules. In legal literature and in the practice of governmental and public life, non-governmental organizations are considered as the basic institutions of civil society (Belousov, Gornev and Mikheeva, 2015, p.307). The authors raise an issue of involving non-governmental organizations in governance (Mikheeva, Kudryavtsev and Yaichnikova, 2015, p.280). A.Yu. Lomaev stresses that in a legal state an important role should be played by non-governmental organizations of citizens, which through their activity help to monitor observance of the principles of the rule of law (Lomaev, 2018, p.390).

Meanwhile, the Federal Law contains the Article 3, which partially regulates the participation of non-governmental organizations in public control. Following the rule of law, they can be the organizers of such forms of public control as public monitoring and public debates. The possibility of participation in other forms of public control is also provided.

Comprehension of the above-mentioned legal provisions shows that, in fact, non-governmental organizations are subjects of public control, although their status is noticeably narrowed compared to those listed in the Article 9. These contradictions indicate vacuums in the law and the absence of legal logic. It would be reasonable to include non-governmental organizations in the list of public control subjects with the remark that they are entitled to exercise public control in the forms of public monitoring and public debates and to participate in other forms. Such presentation of a problem will bring the parties of the public control institution into a balance, and will raise the status of non-governmental organizations as an element of civil society.

The more difficult situation is with such category of public control as "citizens". They are also absent in the official list of public control subjects, although they received some legal regulation in special Article 3 "The right of citizens to participate in the implementation of public control". The question is posed, as the title of the article suggests, namely about participation, and not about the full exercise of public control.

Citizens have a right to participate in public control, both personally and as part of non-governmental public organizations and other non-governmental non-profit organizations. This rule was specified and the following legal construction was fixed enshrined in the following paragraph: "Citizens participate in the implementation of public control as public inspectors and public experts". We can see again a legislative incorrectness and irrationality. The rule of the right of personal participation of a citizen in public control is further subject to significant adjustment in the direction of decreasing autonomy in accordance with his/her desire to participate in control measures.

Since the adoption of the Federal Law there are discussions on this issue. O.A. Okolesnova notes that citizens are unambiguously the main subjects of public control. Their participation should be possible on an individual basis (Okolesnova, 2014, p.8). O.S. Sokolova unequivocally recognizes citizens as subjects of public control, moreover considers them as holders of priority rights in this activity (Sokolova, 2015, p. 133). We have also repeatedly expressed the opinion that the absence of citizens among the subjects of public control is contrary to the Article 32 of the Constitution of the Russian Federation, enshrining their right to participate in the administration of state affairs either directly or through their representatives. If citizens have chosen the authorities, they have the right to control their activities (Mikheeva and Mikheev, 2017, p.269). Citizens are interested in controlling the governmental activities, especially the municipal authority, because it has a direct impact on the life sustenance of the population (Yakhina, Vavilov and Mikheev, 2015, p.229).

Taking into consideration the opinions presented we can clearly see the legal justification for the inclusion of citizens in the parties of public control. This message is based on the Article 32 of the Constitution of Russia, which describes the right of citizens to participate in the administration of state affairs. This right fully covers the institution of public control. It cannot be limited to any conditions and be contingent upon the will of any third parties.

The previously mentioned legal shortcomings of the Federal Law negatively affect its implementation. Public control did not become the legal instrument through which civil society can control authorities.

4 CONCLUSION

In order to improve the institute of public control and activate its implementation in law enforcement practice, legislative changes are needed to be made. They are aimed not just at adjustment of the list of public control subjects, but should provide citizens and their organizations with wide possibilities at their own discretion to exercise public control over the activities of government bodies and local self-government.

In order to promote this legal position, it is necessary to make a number of additions to the Federal Law.

1. Expand the functions of non-government organizations with respect to public control. Limiting their activities only to issues of public monitoring and public disputes is clearly not enough for full participation in public control. For which reason, public organizations should take a legal position in the list of legalized public control subjects without any restrictions and exemptions.

2. Citizens of the Russian Federation, by virtue of the constitutional provision of the Article 32, have a right to participate in the administration of state affairs. Their inclusion in the list of the public control subjects is a logical legislative continuation of the noted article. Such participation of citizens requires unconditional inclusion in the law of at least a special article, and at most – a separate chapter, including the specifics of the realization by a citizen of the right to exercise public control. If possible, the law should not contain reference rules. Its purpose is not just to give an idea of the public supervisory powers to citizens, who intend to be familiarized with rules, it is to involve them directly in the implementation of their rights.

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REFERENCE LIST

- Belousov E.I., Gornev R.V., Mikheeva T.N. (2015). About Participation of Institutes of Civil Society in Public Control over the Activities of Local Authorities. *Review of European Studies*. Vol. 7. DOI:10.5539/res.v7n8p59.
- Belousov Yevgeny I., Gornev Roman V., Mikheeva Tatiana N. (2015) Problems of interaction between civil society institutions and local authorities. *Mediterranean Journal of Social Sciences*. Vol 6 No 3 S7. DOI:10.5901/mjss.2015.v6n3s7p307
- Bujanov, Y., Mikheeva, T. (2017). Legal Aspects of Public Control in the Regions of the Russian Federation. *Proceedings of Intcess 2017 4th International Conference on Education And Social Sciences 6-8 February 2017 –Istanbul, Turkey*. P.P..668-671.
- Federal Law of July 21, 2014 №212-FZ "On the basis of social control in the Russian Federation." (2014). *ollection of laws the Russian Federation*, vol. 30.
- Kudryavtzev, V.V., Mikheeva T.N. and Mikheev D.S. (2016) Publicity Problems in Formation of Representative Bodies of Municipalities in the Russian Federation. *The Social Sciences*, vol. 11 (8). P.1919-1922.
- Lomaev A.Yu. (2018). Public control as the most important instrument of civil society formation. *Eurasian Law Magazine*№ 7 (122).
- Mikheev D.S., Dudko I.G. (2015). Public control and transparency of local administration. *The Mari State University Reporter*. Series "historical studies. Juridical science". № 2(2).
- Mikheeva, T.N., Kudryavtsev, V.V. and Yaichnikova, J.S. (2015). About the Strengthening of Publicity in the Formation of Local Representative Bodies: Rather-Legal Analysis. *Review of European Studies*. Vol.7. DOI:10.5539/res.v7n8p280.
- Mikheeva T.N. and Mikheev D.S. (2016) On Changes of Public Control in the Legislation // *Proceedings of SOCIOINT 2017 -4th International Conference on Education, Social Sciences and Humanities 10-12 July 2017- Dubai, UAE*.

- Okolesnova O.A. (2014). Information and legal foundations of public control in the Russian Federation: extended abstract of dissertation in support of candidate of juridical sciences degree. Moscow, 2014.
- Polyanskiy V.V., Borisov I.B. (2017). Public control in an election: learning guide. M.: Barah-M.
- Sokolova O.S. (2015). Legal regulation of citizen participation in public control. Administrative and municipal law. № 2 (86). DOI: 10.7256/1999-2807.2015.2.12797.
- Yakhina O.V, Vavilov N.S. Mikheev D.S. (2015) Availability of Municipal Services as a Means of Communication of Municipal Authorities and Citizens. Review of European Studies. Vol. 7. DOI:10.5539/res.v7n8p227.
- Yapryntsev, Ivan M. (2017). The Essence and the Concept of Public Control as the Mechanism for Citizen Participation in Management of State Affairs. Governmental power and local self-government. No 3. P.29.