



The role of foreign experience in the development of public control in Uzbekistan

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ABSTRACT

In this article, the role of foreign experiences in the development of public control in Uzbekistan, detailed information about measures to create enlightened mechanisms of effective legal bases for public control in Uzbekistan is revealed.

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Ўзбекистонда жамоатчилик назоратини ривожлантиришда хорижий тажрибанинг ўрни

АННОТАЦИЯ

Калит сўзлар:

Жамоатчилик назорати,
жамият,
демократия,
ҳуқуқий норма,
қонун,
фуқаролик жамияти,
жамоатчилик назорати.

Ушбу мақолада Ўзбекистонда жамоатчилик назоратини ривожлантиришда хорижий тажрибалар ўрни, республикамад жамоатчилик назоратини амалга оширишнинг самарали ҳуқуқий асосларининг ёритилган механизмларини яратиш борасидаги чора-тадбирлар ҳақида тўлиқ маълумот берилган.

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Роль зарубежного опыта в развитии общественного контроля в Узбекистане

АННОТАЦИЯ

Ключевые слова:

Общество общественного контроля, демократия, правовая норма, право, гражданское общество, общественный контроль.

В данной статье представлена полная информация о роли зарубежного опыта в развитии общественного контроля в Узбекистане, мерах по созданию просвещенных механизмов эффективных правовых основ общественного контроля в Узбекистане.

Conceptual foundations, strategies and unique mechanisms of civil society development are being created in Uzbekistan, which is taking its rightful place in the world community. It is known that non-governmental non-commercial organizations form the institutional basis of civil society. In recent years, significant measures have been taken to increase the role and importance of non-governmental non-commercial organizations and other institutions of civil society in implementation of democratic changes in all spheres of society and life of the country. The necessary institutional base has been created to increase the efficiency of activities of non-governmental non-commercial organizations and provide them with comprehensive support. The fact that continuous development of institution of public control as a special form of people power in our country has become a priority of our state policy was expressed in greeting of the First President of the Republic of Uzbekistan I. Karimov to the participants of international scientific and practical conference on the topic “Concept of deepening democratic reforms and development of civil society” as follows: “In the future, to implement our most important social and economic programs, to protect the rights and freedoms and interests of various segments of population, to create effective legal mechanisms for public control over the activities of state authorities and management bodies, and further strengthen social partnership between civil society institutions and state structures special attention will be paid to the issues of improving legislation, law enforcement practice” [1].

One of the goals of law enforcement process in our country is focused on increasing the effectiveness of regulatory mechanism of public control. In recent years, many forms of public control have become increasingly active. Among them are state bodies appeals and requests, participation in public board meetings of state bodies, public discussion, public hearing, public monitoring, public opinion research, hearing reports and information of state body officials by self-government bodies of citizens, etc. Public control can be carried out in other forms in accordance with legislation. The foundations of mutual cooperation between civil society institutions and state bodies in our country are closely related to the principles established in the Constitution of the Republic of Uzbekistan. According to Article 1 of the Constitution, Uzbekistan is a sovereign democratic republic, and Article 29 states that everyone has the right to freedom of thought, speech and belief. Everyone has the right to search for, receive and distribute information they want, and Article 30 stipulates that all state bodies, public associations and officials of the Republic of Uzbekistan must create an opportunity for citizens to familiarize themselves with documents, decisions and other materials related to their rights and interests [2].

How are these principles implemented in practice and what measures are taken in this area? In fact, civil society is a combination of non-governmental and non-profit organizations and institutions that represent the interests and wishes of citizens and are aimed at their implementation. Voluntary participation is often one of characteristics of civil society organizations. At the same time, civil society is not limited to public organizations, but any person who has an active civic position is also an important member of civil society. In other words, such citizen is a part of civil society and he is not necessarily a member of public organization. If we refer to international experience of civil society, this concept does not have a legalized definition and consolidation in the concepts of non-governmental or non-profit organizations in all countries. This feature distinguishes civil society as a matter of social responsibility on the part of the state. The basis of civil society activity is independent, collective, voluntary decisions. However, such activity should not contradict the constitutional foundations of the state. Currently, there are more than 10,000 non-governmental organizations in our country, their activities are diverse and reflect the characteristics of economic and social development and its cultural image of the country. In 1991, 23 non-governmental non-profit organizations were registered in 2010, 557 in 2016, 824 in 2017, and 873 in 2018. 215 foreign NGOs were also accredited in 2015, 249 in 2016, 287 in 2017, and 335 in 2018 at the Ministry of Justice. As of 2018, 9,860 organizations of all forms and statuses were registered in the Ministry of Justice. According to the Ministry of Justice, as of 2018, more than 20 million citizens are members of various NGOs.[3]

Nevertheless, as a result of comparative studies of international experience, the activity of non-state sector is mainly represented by social, practical activities. They also cover philanthropy, education, science, culture, ecology, human rights issues, professional life and other issues directly related to human life. In our country, civil society has reached a certain level of development, and on April 12, 2018, the Law of the Republic of Uzbekistan “On Public Control” was adopted. Almost a year has passed since its implementation, and now there is reason to analyze its initial results. First of all, this law created a list of subjects and forms of public control [4].

This law made it possible for the public to use a wide range of control tools, which allows increasing target and effectiveness of public control depending on specific situation and situation. These tools include public monitoring, public investigation, public discussion, public hearings, public opinion polls, and other forms. An important change related to adoption of the Law “On Public Control” of the Republic of Uzbekistan was that it was adopted through public control, not for direct participation of citizens in state affairs. Public control is a wide area for communication between society and the state, and it is useful in solving problems of social importance. This approach is a motivating factor aimed at strengthening the social activity and initiatives of citizens, helping to increase their legal culture and civic position. In our opinion, for the full implementation of the Law “On Public Control”, many more legal documents and acts should be amended. Until today, only some of them have been changed. At the same time, it is necessary for the full functioning of public control mechanisms provided for in harmonization of regulatory legal documents. It is necessary to follow foreign experience in application of legislation on public control and implementation of its various forms. In this regard, it is also important to pay special attention to the analysis and evaluation of new, innovative forms. Because public initiative remains an important resource for creative development of legislative and public control institutions.

Foreign and international experience of public control is distinguished by the diversity of its implementation. For example, in the United States, public control is carried out in two main ways – the will of citizens directly and indirectly through bodies elected by citizens working on behalf of the people (representative). Forms of direct public control by US federal and state laws, in particular:

- public legislative initiative;
- participation of citizens in management of local affairs through municipalities, citizen assemblies and meetings, public discussions;
- the ability of citizens to use information and documents on the activities of state bodies (including in electronic form on specialized websites on the Internet);
- investigative journalism and media activities;
- the ability of citizens to send written and electronic appeals to state and local government bodies, as well as officials;
- public discussion of draft normative legal documents concerning the rights, freedoms and legal interests of citizens, as well as other issues of public life;
- research, journalism, public opinion formation and influencing the ruling elite;
- mass examination of bills; participation in the hearing of the civil court.

According to the US Electronic Freedom of Information Act, “Every person or organization, regardless of nationality or country of birth, has the right to request documents held by federal government agencies. These bodies must give the answer no later than 20 working days” [5].

This right is guaranteed to be exercised:

- 1) the obligation of state bodies (primarily federal ministries and agencies) to submit annually a report to Attorney General of the United States on implementation of this right, an electronic version of which is available on special sites in the Internet;
- 2) The obligation of Attorney General of the United States of America – to provide the electronic version of summary report of the Office of the Attorney General for above-mentioned reports in a single open database to relevant committees and commissions of the US Congress simultaneously in writing and electronically;
- 3) the duty of Attorney General of the United States of America, based on received reports, to prepare reports and instructions on practical cases, sent to state authorities;
- 4) the rules of providing information requested by state authorities and management bodies at the request of citizens and obligation to prepare a report on this and submit it to the US Attorney General.

Public oversight is a mechanism for application and implementation of laws and decisions of public authorities in person of individual citizens and through civil society institutions, as well as evaluation of the results of these processes [6].

Among the forms of public control in EU countries, 4 main aspects can be noted:

- 1) working with citizens’ information and requests (asking for opinions, information work with; work with applications and proposals of public associations; study of citizens’ complaints);
- 2) public consultations (open hearings with the participation of all interested parties; closed hearings with the participation of public representatives; written consultations (electronic focus groups);
- 3) consultation forums (skills classes; conferences; civil courts);
- 4) interactive communication through social networks (on existing social networks; on specially created social platforms) [7].

A very interesting form of public control in the US and EU countries is the institution of civil veto, which allows the citizens of the country or its individual region or municipality to reject (cancel, enter into legal force) certain normative legal acts adopted by local authorities and their officials to recognize as not having) is to be understood as a right and opportunity. In fact, this form of public control is relevant because it allows direct influence on legislative (representative) authorities, which is difficult due to the representative nature of government consisting of persons elected directly by the population. There is a unique practice of implementing this form of public control, for example, calling officials to a referendum by citizens. In addition, in the US it is mainly a question of recalling elected officials (for example, members of federal parliament, state parliaments), later in Japan it was also possible to recall legally representatives of local authorities. In a number of EU countries, citizens can challenge the re-election of elected person or official before further procedures, or even remove them from power. For example, the Austrian Constitution allows Federal President to be removed from office by popular vote. The possibility of recalling deputy heads of local self-government bodies is also provided for. In the European Union, there are also public forms of public monitoring in the form of open and closed hearings, in the form of focus groups or through the Internet. Representatives of public organizations and mass media are invited to public discussions in the form of open and closed hearings. Information about these events can be posted in the Internet or invitations sent to participants. These consultations can be conducted interactively (in the Internet) or by e-mail, interviewing the public or community organizations.

This allows to determine the attitude of the society to discussed issues, as well as to develop solutions that meet the interests of the majority of subjects of public control. In recent years, this form of public control has become popular in the West, as citizens turn to public authorities and their officials via the Internet.

In Great Britain, citizens have the right to appeal to local authorities on local issues under the Community Support Act. In addition, forms of electronic public control are actively used in this country, citizens can monitor cases of documents, complaints, applications electronically, and this is also developing as one of the forms of public control. Residents can notify the municipality management electronically about the violation of current legislation by some officials or violation of their rights, freedoms and legal interests. At the same time, document circulation for these requests has been significantly simplified, time for preparing answers to them, as well as time for developing and implementing measures to restore (protect) the rights, freedoms and legal interests of citizens has been reduced. The foreign and international experience of public control is distinguished by its subjects, as well as the set of their powers. In the United States of America and the European Union, public authorities themselves are also subject to public scrutiny. This practice slightly changes the definition of the term "public control" to mean public control of government activities. Society is a subject of control, the state is an object of control. At the same time, the state itself is a second subject of public control and determines the rules and grounds of such control. However, one can argue with the position of this definition. In our opinion, the affiliation of the state authorities to various subjects of public control, on the one hand, leads to evaluation of one of the types of state control as a form of public control, and on the other hand, the state authorities become both the object and subject of public control.

One of the most interesting examples of public control over the observance of the rights of prisoners in prisons can be found in the experience of Japan. A very well-developed system of society interaction with prisons is interesting. The concept of public interaction with the correctional system in Japan is determined by Japanese mentality and culture.

First, Japanese culture is characterized by the existence of category of shame, shame, in particular, deprivation of freedom inspires the prisoner with feeling that justifies self-purification through suffering. If a person feels shame, this feeling is often experienced by the community that belongs to this person: family, company, school and especially the leader of the organization.

Secondly, Japan has created a nationwide system of fighting crime, which includes a wide network of public structures, in which citizens are actively involved, not even at the state level, in terms of participation of all state and municipal bodies [8].

In foreign experience, the activities of public organizations involved in the organization and conduct of public control are actively financed by state budget, as well as by local state authorities. In addition, these organizations have the right to attract funds directly from population, as well as from legal entities. According to the "Civil Society Development Fund", share of state financing in income of non-profit organizations: Western Europe, Canada, Israel – 54%; Eastern Europe – 42%; Anglo-Saxon countries – 36%; Scandinavia – 35%; Developed countries in Asia – 34%; Latin America – 19%. In countries such as France (60%) and Belgium (76%), the majority of non-profit organizations are publicly funded. In these countries, state funding is the main source of income for non-profit organizations [9].

In this regard, in the current legislation of our country, it is necessary to strengthen a similar obligation to finance the activities of public organizations involved in the organization, transfer or implementation of state control measures from the state and local budgets. This funding can be provided on a competitive basis or through government grants, tax credits, etc. Today in our country, the compatibility between different levels of legal regulation of the activities of civil society institutions is not fully ensured.

The procedure for registration of non-governmental non-profit organizations, the procedure for their activity shows the existence of bureaucratic requirements and obstacles, there are outdated and non-modern norms. It is possible to achieve growth in this direction by creating favorable legal conditions for organization of civil society institutions, state registration, professional activity and development, ensuring compatibility between different levels of legal regulation of the activities of civil society institutions. In other countries, for example, Federal Republic of Germany, the Russian Federation and other countries, registration is usually carried out on the basis of directly applicable laws. The interaction of the state power with civil society and business institutions is not fully ensured.

However, the cooperation of state power and management bodies with civil society institutions and business develops communication and mutual understanding between society and the state, increases the openness of state power and local self-government bodies, citizens' awareness of actions and decisions of authorities on issues of social and economic development of the country, ensures the use of information.

In Japan, “three-sector model” considers the development of civil society as a process based on mutual interests of all three sectors – state, civil society and business. A number of specialists for civil society institutions and participation of state bodies in ensuring the activities of some civil society institutions are not satisfactory. Working in civil society institutions requires not only high civic activity, but also specific professional training. In the “Third Sector” social management, social psychology, economics and management in NGOs, organizing work with youth and other specialties in the field of public policy and social sciences are required. In Germany, the USA and Sweden, the professionalism of NGOs is highly valued. The third sector is analyzed to determine the appropriateness of mission, its operation, effectiveness and efficiency, the value of proposal or revision, as well as the level of effectiveness of new programs to achieve the goals of civil society institutions. Evaluation should be open and honest. The professionalism of the services of non-governmental non-profit organizations is evaluated. The level of involvement of non-governmental non-profit organizations in the development and implementation of normative legal documents and social and economic development programs is low. In developed countries, the place, role and importance of NGOs is significantly higher. NGOs (international rating agencies, scientific centers, etc.) are playing a leading role in determining rating of the countries of the world (international indices, etc.) [10].

A number of reasons can be given for the use of international and foreign experience in formation and improvement of public control in our country: firstly, the process of establishing control over state power and its officials in foreign countries by democratic institutions of civil society has a long history, during which many successful forms and methods were developed and implemented;

secondly, since the construction of state legal system in Uzbekistan after disintegration of the former Union was based on the model of formation and operation of state power in developed countries, it is logical to use the best formation models of the world for organization and implementation of public control;

thirdly, globalization stopped many processes of regional interstate integration (for example, within the European Union), which led to a new stage in the development of institutions of public participation in exercise of control over state power. Among external forms of public control over state authorities and officials, which should be included in the laws of Uzbekistan, the following can be distinguished. Among external forms of public control over state authorities that should be included in our laws, the following can be distinguished. First of all, electronic public control, the essence of which is to provide the population (both citizens and public organizations) with interactive access to any information related to their rights, freedoms and legal interests.

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