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ZABEZPIECZENIE ADMINISTRACYJNOPRAWNE PUBLICZNEJ KONTROLI PAŃSTWOWEJ REJESTRACJI AKTÓW STANU CYWILNEGO

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Adnotacja. W artykule przeanalizowano niektóre zagadnienia regulacji prawnej kontroli społecznej stosunków rejestracyjnych w systemie administracji publicznej. Uzasadniono, że samo w sobie zapewnienie regulacji prawnych w zakresie wspierania inicjatyw obywatelskich nie jest gwarancją aktywnego korzystania z tej instytucji przez przedstawicieli społeczeństwa. Autor dochodzi do wniosku, że kontrola publiczna nad działalnością organów rejestrujących stan cywilny jest szczególnym rodzajem kontroli i ma wiele cech, a mianowicie: brak charakteru władzy, nieobowiązkowość, sprawowanie kontroli publicznej w imieniu społeczeństwa i obywateli, specjalny podmiot. Taka kontrola opiera się na dobrowolnej działalności obywateli osobiście i w ramach stowarzyszeń społecznych, doradczych organów publicznych, innych instytucji społeczeństwa obywatelskiego i ma na celu poprawę administracji państwowej i miejskiej, eliminację stwierdzonych naruszeń podczas takiej kontroli.

Słowa kluczowe: prawa i wolności obywateli, kontrola publiczna, państwowa rejestracja aktów stanu cywilnego, administracja publiczna, procedura rejestracji.

ADMINISTRATIVE AND LEGAL PROVISION OF PUBLIC CONTROL OF STATE REGISTRATION OF CIVIL STATUS ACTS

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Abstract. The article analyzes some issues of legal regulation of public control of registration relations in the state administration system. It is substantiated that the provision of legal regulation of the promotion of civil initiatives in itself is not a guarantee of active use of this institution by representatives of society. The author comes to the conclusion that public control over the activity of civil status registration bodies is a special type of control and it has a number of features, namely: lack of an authoritative character, non-binding, public control on behalf of public and citizens, a special subject structure. It is based on the voluntary activity of citizens personally and or as part of public associations, other institutions of civil society and is aimed at improving state and municipal administration, eliminating violations discovered during it.

Key words: rights and freedoms of citizens, public control, state registration of acts of civil status, state administration, registration procedure.

АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ГРОМАДСЬКОГО КОНТРОЛЮ ДЕРЖАВНОЇ РЕЄСТРАЦІЇ АКТИВ ЦИВІЛЬНОГО СТАНУ

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Анотація. У статті аналізуються деякі питання правового регулювання громадського контролю реєстраційних відносин у системі державного управління. Обґрунтовано, що саме по собі забезпечення правового регулювання сприяння громадянським ініціативам не є гарантією активного використання цього інституту представниками суспільства. Автор приходить до висновку, що громадський контроль за діяльністю органів реєстрації активів цивільного стану є особливим видом контролю і має низку ознак, а саме: відсутність владного характеру, необов'язковість, здійснення громадського контролю від імені громадськості та громадян, особливий суб'єктний склад. Такий контроль ґрунтується на добровільній діяльності громадян особисто та або у скла-

ді громадських об'єднань, консультативно-дорадчих громадських органів, інших інститутів громадянського суспільства і спрямований на вдосконалення державного та муніципального управління, усунення виявлених порушень під час нього.

Ключові слова: права і свободи громадян, громадський контроль, державна реєстрація актів цивільного стану, державне управління, процедура реєстрації.

Introduction

Ensuring the rights and freedoms of a person and a citizen is a priority of the state. The mechanism of implementation of this direction is always being improved by the state. With changes in economic transformations, the legal system of state administration is being improved. The development of administrative and legal science is no exception. Norms of administrative law ensure equal human rights and opportunities and protect them from encroachment by violators of administrative law.

The problems of the development of the administrative and legal branches of law are inextricably linked with the development of the state. Administrative law regulates social relations. It establishes the duties and rights of all parties of social relations: both powerful and non-powerful subjects. The main component of the subject of administrative law, its core is the system of relations between the state administration and citizens and their organizations. The main task of administrative law is to ensure the constitutional rights and obligations of citizens.

The active application of the institution of ensuring public control over the registration of acts of civil status in the mechanism of legal regulation of social relations necessitates the establishment of the limits of the legal regime, preventing their excessive expansion, as well as the theoretical and legislative definition of single criteria, the presence of which implies the mandatory registration of a particular object, developing the basis of their classifications.

In recent years, the scope of application of the civil status registration institute has expanded, which has caused a significant increase in the number of legal relationships. Accordingly, the number of various normative acts constituting this administrative-legal institute has increased. Currently, in the conditions of a developing market economy, there are many independent economic entities. The complex and contradictory situation that has developed in the course of political and economic transformations leaves no doubt about the need for its regulation by the state.

Main part

The purpose of the scientific research is a comprehensive analysis of scientific works and legal analysis of the legislation on public control and supervision in the field of registration relations, the development of theoretical and organizational-legal foundations of administrative-legal guarantees as a means of ensuring the rights of citizens and organizations in the implementation of public control of state registration of acts of civil state. To achieve this goal, the following tasks were set:

- define the concept and essence of public control;
- to highlight features and features of public control of state registration of civil status acts;
- to find out the importance of public control to ensure the activity of state civil status registration bodies.

Research material and methods

During the writing of the article, special scientific methods of logical, systematic, comparative, and historical analysis were used, which were applied to define the concept and essence of the institution of public control.

Scientific works of leading scientists in the field of administrative law, theory of the state and law, constitutional law, civil law, financial law, and other fields of knowledge related to the topic being developed served as the theoretical basis of the research. These are the works of L. Nalivaiko, R., O. Savchenko, V. Yu. A. Tikhomirov, V. E. Chirkina, V. V. Chernikov, Oleksandr Bryhinets, Oksana Shevchuk, Ivo Svoboda, Yevgen Kotukh, Valentyna Radich and many others scientists. The fundamental scientific sources devoted to the study of guarantees for the realization and protection of the rights of citizens and organizations, which are in the general theory of law, in administrative law, and other branches of law, have been objectively analyzed.

Results and their discussion

In the literature, the mechanism of administrative and legal support of management is considered as a complex of norms of administrative law and general and special conditions based on them, processes, and means implemented by the state to preserve the established order of the management. With the help of this mechanism, the realization of the subjective rights of citizens and organizations is also analyzed and evaluated when implementing control and supervision measures concerning them, measures are taken to translate their ideal deeds into real ones.

The very concept of the purpose of activity does not initially belong to legal categories and has a philosophical meaning. It is defined as a result of the achievement of which certain actions are taken, the final result to which the process is aimed, or one of the elements of human behavior and conscious activity that characterizes prediction. Theoretical substantiation of control goals is of great practical importance since a correctly set, normatively established goal is a necessary condition for effectiveness. In addition, setting the goal of the activity is important for determining how public control of the registration of civil status acts will be carried out (Миронюк, 2020: 20).

Regarding the content of administrative and legal guarantees of the rights of citizens and organizations in the exercise of public control, O. Bratasyuk notes that however, the administrative and legal means constituting this content are not exclusive to the sphere of state control (supervision). These tools are universal for the administrative and legal methods of regulating public relations. Specificity and a unifying beginning are provided by: purpose, an object of guarantee, the subject of the application, and the period when they are applied (Bratasyuk, Shevchuk, 2022: 22).

However, as Menska O. A. notes, ensuring legal regulation of the promotion of civil initiatives in itself is not a guarantee of active use of this institution by representatives of society. They, as well as the increase of trust in the state power, which was discussed above, is impossible without creating certain conditions, and opportunities on the part of the state, ensuring its response to the citizen initiatives proposed for implementation. Unfortunately, so far, as the researchers note, the attitude of the authorities towards civil initiatives is at best condescending, and even wary (Менська, 2021).

Cooperation of civil status registration bodies with the public is an important condition for their high-quality and effective activity, which complies with the current legislation (Bryhinets, 2020: 205). The international experience of civil status registration shows that such interaction is productive and effective in today's conditions. Therefore, we consider it necessary to review the theoretical provisions regarding the definition of the concept of the administrative-legal status of subjects of public control over the activities of civil status registration bodies and to highlight the characteristics of the studied concepts. Since the research on the definition of the mechanism of the conceptual classification of the administrative-legal status of the subject of public control over the activities of the state registration bodies of civil status acts has not been studied much, we consider it appropriate to first consider the method of determining the general administrative-legal status of a citizen as a subject of control legal relations.

Although the category of the legal status of a person arose as one that characterizes the legal status of an individual, other legal entities also have legal status. This applies to political parties and associations of citizens. Since law serves a greater purpose than the regulation of interpersonal relations, it is clear that law by the state. This is due to the enormous importance of illegal social phenomena in society and their need for legal regulation.

The subject of social relations has a certain state of legal rights and obligations, which is usually called its legal status. Analyzing the concept of legal status, we note that a certain state of a participant in public relations is regulated by the relevant legal norms and is characterized by the presence of a complex of rights and obligations that constitute the legal status of the subject.

It is the rights, duties, and freedoms in the aggregate that form the legal status (Ігнатенко, 2019: 32), this, in turn, reflects the characteristics of the social structure, the degree of democracy, and the state of the legal system. Legal status determines the standards of possible and necessary behavior to ensure normal life in the social environment (Шевчук, Ментух, 2021: 283). It is also a concrete indicator of the true state of the state's interaction with other subjects of law. Speaking about the second category of subjects that coexist with natural persons, it is necessary to speak about collective subjects after analyzing the existing scientific methods of classification of subjects of public control. As for collective subjects of public control, they are characterized by the following characteristics:

1) the presence of two or more persons wishing to carry out or carrying out the organization of public control. Nalivayko L.R. notes that not necessarily all members of a collective entity can exercise appropriate control. The exercise of control by a collective subject, if at least one of its participants carries out such an activity, the responsibility for his actions falls on the entire subject (one of the journalists opens an author's column in the newspaper);

2) the common goal of the activity of the subject's participants. Also, this unity need not be a constant or primary goal of the campaign. Implementation of public control as a goal can be secondary or derivative, but the task of organizing public control must be mandatory;

3) there is no direct connection with the exercise of actual state power (Наливайко, Савченко, 2017: 38).

This "public element" is made impossible by the administrative-legal connection with state institutions in the exercise of public control. Public control is the opposite of state control, so the antagonism in the relationship makes the state-legal "connection" of the subject of public control impossible.

Therefore, collective subjects of public control include:

1) public associations (although trade unions are a special type of public association, they do not exercise real public control, so there is no need to single out trade unions as a separate category of target designation);

2) political parties not represented by the authorities;

3) mass media (Шевчук, Кузь, 2021: 62).

The object of administrative and legal regulation in the sphere of state control (supervision) is social relations that are formed in connection with ensuring the rights of citizens and organizations as participants in control (supervision) relations. The subject of regulatory influence is the behavior of control (supervisory) bodies and their officials. The guarantees are designed to ensure the behavior of these bodies, which is most in line with the legitimate interests of the controlled persons. This is achieved through the establishment of appropriate prohibitions, restrictions, duties, and procedures for control activities.

In this case, properly regulated and lawful control (supervisory) activity as such is a guarantee of compliance with the rights of controlled persons.

Public control is carried out with the help of direct (direct expression of the will of citizens) and indirect (through bodies formed by citizens) means. Means of public control means an action or system of actions used by citizens during the exercise of their control over the activities of state authorities and local self-government bodies. The means of implementation or forms of GC can be sociological and statistical studies; participation of citizens in elections, referenda, meetings, local initiatives, and public hearings; public examination of acts of public authorities and their projects; publications in mass media and social networks; public participation in the work of boards of authorities; inclusion of public representatives in working groups and commissions formed by the authorities; proposals, comments, statements, complaints, petitions, electronic petitions; activities of CGI, including consumer associations (Christensen, Læg Reid, 2022: 217).

The mechanism of public control provides for:

- subjects' access to information about the activity of the object of public control;
- creation and functioning of public control organizations;
- participation of subjects of public control in the work of consultative and advisory bodies of objects of public control;
- submission of individual or collective citizen appeals requests;
- filing lawsuits in court regarding the suspension or cancellation of the decisions of public control objects, or the termination of their activities, as contrary to the law and/or public interests.

One of the most important mechanisms of public control nowadays is media control, i.e. control with the participation of mass media. The media can participate in the control of the activities of authorities during the detection, collection, processing, and distribution of information about its shortcomings: manifestations of corruption, inefficiency, manifestations of bureaucracy, etc.

Public monitoring can also be considered an effective mechanism, i.e. a set of activities carried out by public organizations to identify problematic issues in the activities of state authorities and local self-government bodies in the performance of their management functions.

It is also important to note such a mechanism of public control as public expertise. One of the forms of public involvement in the control over the adoption of state decisions is public councils, which function as state and local self-government bodies. The international experience of public control shows that public participation in the formation and implementation of state policy can be considered effective only when problems voiced by citizens begin to be solved directly with their participation in the decision-making process.

The considered signs of public control in their totality make it possible to draw up a conceptual characteristic and formulate the concept of this phenomenon. At the same time, it is important to indicate the independence of public control in the definition;

- to abandon the definition of a closed list of persons who carry it out, a simple enumeration in the definition of forms and mechanisms of control;

- indicate the specificity of the object of social control;

- focus attention on the need to respond to negative phenomena detected during the control of state bodies, and other institutions of civil society and aimed at improving state and municipal administration, eliminating violations detected during it, including by establishing the compliance of the activities of bodies and organizations that carry out public powers, the results of their activities under regulatory requirements, goals, and tasks of public authorities (Andersen, 2022: 215).

Thus, public control is a public check by civil society of the activities of the state for compliance with its declared goals, adjustment of these activities and the goals themselves, subordination of the state policy, activities of its bodies and officials to the interests of society, as well as civil society supervision of the activities of state bodies and authorities of local self-government, aimed at protecting and ensuring human rights and legitimate interests and fundamental freedoms, and respecting them.

The given definition includes public control over the activities of state registration bodies of civil status acts, the specifics of which are determined in special controlled objects - bodies in structures and state power.

Grounds for checking the state registration of civil status acts may be the presence of substantiated data on violations of the constitutional rights and freedoms of a person and a citizen, contained in an expert opinion, or received from citizens. Appeals regarding the presence of such violations are submitted to the subject of public control in writing in compliance with the legislation on citizen appeals. Subjects of public control cannot consider appeals that belong to consideration by the courts, they stop the already started consideration if the person whose rights have been violated has appealed to the court for their protection.

During the inspection, the object of public control is obliged to cooperate with the subject of such control, at the request of the inspectors, to provide relevant explanations, materials, and documents related to the subject of public control.

Current legislation currently contains separate norms regulating certain types of public control. Some ministries and agencies are already adopting regulatory acts on public control. However, in the field of state registration of acts of civil status, it remains fragmented, with significant gaps.

An essential step for realizing the right of citizens to public control could be the addition of the norms of the Constitution that citizens and associations of citizens have the right to exercise public control of the activities of executive authorities, local self-government bodies, state and communal enterprises, institutions and organizations, forms and the procedure for its implementation shall be established by law.

The involvement of foreign citizens and stateless persons as individuals subjects of public control over the activities of subject to public control over the activities of state registration bodies of civil status acts seems justified and reasonable because most often they are no less concerned than citizens of Ukraine with the activities of state registration bodies of civil status acts, in which they are located. In addition, the possibilities of participation in public administration (especially those related to the Internet) that exist today allow virtually any person to be involved in such activities. The application of public control measures is possible only if the controlling persons comply with additional requirements, the fulfillment of which can also be carried out by foreign citizens and stateless persons, in particular, the specificity of control over the provision of human rights is such that only public supervisory commissions have the right to carry it out. (Andersen, 2022: 35).

Public control in Ukraine in the field of state registration of acts of civil status is currently, unfortunately, poorly developed. The reasons for this are the lack of understanding of its necessity and essence by state officials, its general reluctance to accept the primacy of the interests of civil society over the interests of the state, the underdevelopment of civil society, and its weak institutional capacity for public control. Subjects of public control lack professional knowledge, communication, skills, etc. A significant part of civil society organizations only simulates public control, while their actions are aimed at satisfying their interests.

To strengthen public control, quantitative and qualitative growth of public organizations, increase their competence, institutional and resource capacity, improvement of communications, search and use of new control technologies, and improvement of joint actions are necessary.

Conclusions

The analysis of the theoretical and legal foundations of public control over the activity of civil status registration bodies in the structure of state power allows us to draw the following conclusions.

First, public control over the activities of civil status registration bodies is a special type of control based on the voluntary activity of citizens personally and or as part of public associations, non-governmental non-commercial organizations, consultative public bodies, other institutions of civil society and aimed at improvement of state and municipal administration, elimination of violations discovered during it, including by establishing compliance of the activities of state and local self-government bodies, organizations that exercise separate public powers, with regulatory requirements, goals, and tasks of the functioning of public authority.

Secondly, public control over the activities of civil status registration bodies has many features that allow it to be distinguished from other types of control, namely, the absence of an authoritative nature, non-compulsory performance of public control on behalf of the public and citizens, a special subject composition public control - persons who carry out this type of control cannot be state authorities and local self-government bodies.

Thirdly, the purpose of public control over the activities of civil status registration bodies is manifested in its strategic and tactical goals, private goals of the persons who carry it out, as well as in the tasks of the thunder control.

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