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TRANSPARENCY AS A DEMOCRATIC STANDARD OF THE GOVERNMENT FUNCTIONING

Actualization of the research of this problem stems from the fact that in recent years the index of democracy in Ukraine as the characteristics of the political regime is gradually losing the ground. Author of the article holds analyze the experience of providing transparency of government through civil control in democratic countries of Europe and the world, opportunities and ways of careful usage of this experience in Ukraine. An analysis of an experience of authority openness implementation, by applying public control in foreign countries. The article singled out certain provisions to overcome the global problems of the application of social control in transparent government

The Article 5 of the Constitution of Ukraine stipulates that the bearer of sovereignty and the only source of power in Ukraine is the people. The people exercises power directly and through the bodies of government and local self-government. Universal Declaration of Human Rights of UN Part 3. 21 states that the will of the people shall be the basis for government. Article 38 of the Constitution of Ukraine stipulates that the citizens of Ukraine have the right to participate in public affairs. The people delegates their authority to individuals who are obliged to ensure an open and effective implementation of the public interest.

Openness of the government promotes democracy, civil society and activate public control over the government and administration functioning, and access to any information is a prerequisite for such control. Only in case of developed political and legal culture of a democratic civil society, which on the legal basis controls government, state-organized society can both limit and self-limit state mandatory administrative team aspirations¹.

Actualization of the research of this problem stems from the fact that in recent years the index of democracy in Ukraine as the characteristics of the political regime is gradually losing the ground. According to the latest survey of British research center The Economist Intelligence Unit in 2012, Ukraine ranked 80 among 167 countries, went down in almost all five indexes: electoral process and pluralism, government functioning, citizens activity in the political process, political culture and public

¹ Селіванов, В. М. (2002). *Право і влада суверенної України: методологічні аспекти*. Київ: Ін Юре.

liberties and holds its first place in the category of «hybrid regimes»¹. The situation in Ukraine indicates dangerously low levels of democracy and guarantees of the civil rights. Changes that are waiting for Ukraine should, first of all, to increase the credibility of citizens to authorities, to put into practice of the governance fundamentally new institutions which guarantee compliance of public authorities with the regulations of law and ethics, including through the use of public control. Unfortunately, Ukraine has not yet developed such a mechanism to a sufficient level, so it is reasonable to study foreign experience.

The aim of the study is to analyze the experience of providing transparency of government through civil control in democratic countries of Europe and the world, opportunities and ways of careful usage of this experience in Ukraine.

No one can say that transparency as a democratic standard of the government is unexplored issue. Transparency of government was relevant at all stages of the development of national jurisprudence, it was investigated by E. Afonin, I. Beginina, V. Burenko, I. Pygolenko, G. Pyzina, S. Romaniuk, O. Sushyi, E. Tykhomyrova, O. Todyka, O. Yatsuns'ka and others. An institute of social control is not also ignored by scientists, it is studied by M. Baimuratov, O. Batanov, A. Krupnyk, O. Lazor, V. Latsheva, O. Lysiak, N. Mishyna, T. Nalyvaiko, O. Orlovs'kyi, S. Poltorakov, O. Sakhanenko, T. Yaremenko and others. However, today, there are not enough of comprehensive deployments, in which the value of public control of ensuring transparency in government would be considered. Also, little attention is paid to the value of international experience to provide transparency of government by citizens.

One of the most common tool of influence of civil society upon the state authorities is public control, it is one of the function of civil society, a manifestation of which is a public revision of government by citizens and their associations to meeting the objectives that the government proclaims and it is aimed at correcting of both its activities, and these goals. Mechanism of public control over the government activities is one of the forms to exercise the democracy, a tool for protection and maintenance of the rights and freedoms of a person, which is manifested in the activities of individuals, their collective formations within the political and legal system².

¹ The rate of world countries according to the level of democracy – information about research. *The Center of humanitarian technologies*. <<http://gtmarket.ru/ratings/democracy-index/info>>

² Крупник, А. С. (2007). Громадський контроль: сутність та механізми здійснення. *Теоретичні та прикладні питання державотворення, 1.*; Заворотченко, Т. М.

It must be admitted that Ukraine has not developed a stable democratic tradition of participation of all sectors and groups in matters of social development. Society and Government are parallel, and the independence of the last from the public opinion and position of the population is almost absolute. Huge resources of public organizations in the sphere of public interests protection should be treated with cautious attitude.

Implementation of democratic public control in Ukraine is rather problematic. The state is not actually ready for this, from the side of state still there is no slightest sign of recognition of mechanisms to take into account the interests of society at all levels. A full public control is an indispensable attribute of a true democratic society. In Ukraine such a society is forming, but the government is not really interested in its creation¹. According to the revisions carried out by public controllers, references, protocols or acts of violations were compiled. These results are mainly of a strong public response, they are published in the media and seriously affect the decision of the authorities². These conclusions are advisory in nature, however, they contribute to the openness and accessibility of the government, and provide a link between civil society and government. Often, such openness initiated by the public is not always readily perceived by state authorities, mechanisms to achieve it are ineffective and results are regularly ignored.

An establishment of the feedback from the authorities to the public, public dialogue and partnerships of authorities and civil society, improving the effectiveness of the public involvement in the development and implementation of public policy is a question of primarily importance, but unfortunately, they can not be realized in Ukraine without an involvement of qualitative, effective practices created by advanced democratic countries.

An adoption of an institute of transparency is a continuing trend, institutions of transparency or institutions of openness were established in many liberal democratic countries. The founder of this tradition is Sweden, which has adopted in 1766 a law on press freedom. Later this example was inherited by Finland (the Law «On Openness of public documents», 1951), the USA (the Law «On Freedom of Information», 1966), Denmark (the Law «On Access to Administrative Documents»,

(2012). Загальна характеристика системи політичних прав і свобод людини і громадянина в Україні. *Часопис Київського університету права*, 3.

¹ Каспрук, В. В. *Постпомаранчеві виклики української дійсності*. <<http://viktorkaspruk.wordpress.com/2013/04/18>>

² Гуцаленко, Л. В., Дерій, В. А., Коцупатрий, М. М. (2009). *Державний фінансовий контроль*. Київ: Центр учбової літератури.

1970) Norway (the Law «On Transparency in administrative management», 1970), France (the Law «On Access to administrative documents», 1978), the Netherlands (the Law «On Establishment of publicity of administration», 1978), Australia (the Law «On Freedom of information», 1982), Canada (the Law «On Access to Information», 1982), New Zealand (the Law «On Administrative information», 1982), Austria (the Law «On Disclosure of federal administrative agencies», 1987), Belgium (the Law «On Disclosure of administration», 1994), the Republic of Korea (the Law «On Disclosure of public bodies information», 1996), the UK (the Law «On Freedom of information», 2000), Japan (the Law «On Print media», 2001) and others¹.

The first country that started to establish the principle of transparency of government bodies, was Sweden. Nowadays, public consultations in Sweden are the basis for the quality of state policy and strengthening its legitimacy. The interaction of people with state authorities are implemented through on-line conferences, wherein such interactions are initiated as by the group of individuals or individual, or directly by the government. This experience of public control is still new and not very popular, but as experience shows, it is quite effective and democratic.

In France, Britain and Germany there is an information department in each ministry, ministers use the services of press secretaries for public relations.

Control of the government in the UK is carried out in accordance with the constitutional principle of responsible government. The essence of that doctrine is that the Minister is responsible for the activities of his ministry and should resign if there are shortcomings in the work of subordinate ministry. Parliamentary control is public, and it is combined with public control and an institute of political responsibility of the ruling party during the next elections. This is achieved there, in particular, thanks to the constant broadcasting of the House of Commons meetings. Citizens of the UK use such forms of public control which are sent to the House of Commons: oral requests; written requests (interpellations); resolution of reprimand; vote of no confidence; participation in the work of special parliamentary committees with control every individual ministry and all government in general; appeal to the Parliamentary Representative of Administration Affairs. For example, according to the rules of the House of Commons every daily meeting (except Friday) starts with «hours of questions.» Every year the government receives about 40

¹ Афонін, Е. А., Сушій, О. В. (2010). *Транспарентність влади в контексті європейської інтеграції України: конспект лекції до короткотермінового семінару в системі підвищення кваліфікації кадрів*. Київ: Вид-во НАДУ.

thousand oral requests. All these forms of control, firstly, allow the Government more deeply to analyze the existing problems and, secondly, to improve government activities. In the UK, as well as in Sweden, the task of getting by citizens all public services in «on-line» form is successfully solved. The system of taxes over the Internet is being developed, modern information portals for the public, the electronic «supermarkets» where politically active citizens are informed about the activities of the authorities are being created. The program «Electronic citizens, e-business, e-government. Strategic concept of public services in the information age» («E-citizen, e-business, e-government. A strategic framework for public service in the Information Age») is introduced and it is a government strategy that involves the use of all kinds of electronic information services via the Internet, mobile communications, digital television, service centers not only to provide information about the activities of the state authorities to citizens, but also to improve an effectiveness and efficiency of the state apparatus in general¹.

Federal Republic of Germany is a country with a developed democratic government structure and developed autonomous local government, this model of governance at the regional level is effective for over 200 years through the existence of a single administrative authority to which every citizen can address. It simplifies the communication of citizens with the government, because such requests are mandatory to be transferred. A citizen can get any information on administrative processes for all matters of regional management, having addressed to only one institution. In addition, the work of Parliament Bundestag is public. Over the years, it has never used its right for a closed session. Over a four-year term of the Bundestag power the number of visitors within its walls reaches on the average about 1 million of people (including people from other countries). Every year more than 20 thousand of citizens use their right to petition, which means that during the terms of the Bundestag power, every one in a thousand German citizen addresses to it, indicating an active political position of the citizens².

Polish active youth people in cooperation with the Fund of social communication and with Modern Didactic Vilnius Center has launched a new social project «Transparent Poland» to implement transparent

¹ Крайнік, П. І. (2011). *Система державного управління Сполученого Королівства Великобританії і Північної Ірландії: досвід для України*. Київ: Вид-во НАДУ.

² Ковбасюк, Ю. В., Загороднюк, С. В., Крайнік, П. І. (2010). *Система державного управління Федеративної Республіки Німеччина: довід для України*. Київ: Вид-во НАДУ.

government in 2008¹. Its general goal was to implement appropriate standards of public life and encourage an active citizenship, to adapt the best management practices in the regions, based on six fundamental principles: transparency, an atmosphere of intolerance to corruption («zero» tolerance of corruption), public participation, predictability, accountability and professionalism, four of them are directly related to issues of government transparency. During 6 years Poland has made considerable progress in the implementation of government transparency and reduce corruption in the country. The principle of accountability in this project takes into consideration the activities of public institutions and provides the community with comprehensive information about financial and organizational issues of their activities. This principle is enforced by requiring the publication for the public of the annual budget digest «Whence we have money and how they are spent.» Moreover, within the project «Transparent Poland» codes of ethics for public servants were created, they were developed separately within each local government area, and all their provisions were offered by local officials individually².

Among the Norwegian public so-called «discussion clubs» has recently received considerable spreading, they are places for development of new ideas and conceptual proposals of intellectual «brain» centers around which political, professional or academic communities in Norway (especially its capital) are combined, and where a number of important political issues are tabled for discussions. In view of the chamber nature of the Norwegian capital these discussion clubs («breakfasts» Civita, NUPI conference, etc.) create powerful targeted effects on public opinion and political decision-making. Such specialized intellectual clubs now have got the features of defining public lobby. Government of Norway are responsible for the needs of its users. It applies to politicians who need reasonable advices for decision-making from the public and businesses, who are seeking for high quality services tailored to their needs, as well as people whose needs are the rule of law, public order or other essential public services that must necessarily be taken into account. A prerequisite for activation of public political position and intensity of public control in Norway is stipulated by the fact that citizens receive higher education and become more educated about their rights, also active assistance is provided by the media, that watch that the state sector serves the needs of the general public, reports on its work on

¹ Projekt «Młodzi w przejrzystej Polsce. Aktywny samorząd». <http://www.ceo.org.pl/portal/b_mpp2008_o_projekcie_doc?docId=45721>

² Крет, О. (2011). Транспарентність влади: польський досвід. *Сучасна українська політика. Політики і політологи про неї*, 22, 334-340.

time and true to fact and performs its duties as required by the law¹. The presence of social security often creates its own demand.

In Switzerland, referendum predominates among the other forms of public expressions, that reduced the popularity of social control in the country, although it arose from the people's desire to control representative bodies of the government, to restrict their extensive freedom in decision-making. If a position of a particular social group is neglected, or there is a threat to the government transparency, there is a danger that an issue will get to a wide public debate and in the future to a referendum. Under the influence of such control a competent system of government has formed, in which three parties, the government, parliament and citizens, interact with each other. Citizens undertake the authority to make major decisions of national importance, as they have the highest democratic legitimacy. The parliament is charged with making decisions of a lower level, and the government makes the current solutions. This idea of a hierarchical distribution of competence in accordance with the criterion of a material importance is reflected also in the rule-making procedure in the form of the constitution, laws and regulations². The need for public control disappears when the community itself makes decisions of national importance.

In Ireland and Luxembourg there is the system of three-sided forums for representatives of the government, business and trade union organizations³. Government agencies provide advisory units that extend information to the citizens and get it from people and public organizations. The composition of advisory units includes volunteers who clarify the interests of the community during such meetings.

A study, conducted by the sociological service of the Ukrainian Alexander Razumkov Center for Economic and Political Studies, gave the reasons for disappointing conclusions: Ukrainians believe that public control is still necessary, but it makes sense mainly when it's exercised by specialists. They estimate their influence upon the government critically, indicating the low efficiency of the existing forms and methods of public control.

¹ Ковбасюк, Ю. В., Загороднюк, С. В. (2011). *Система державного управління Королівства Норвегія: досвід для України*. Київ: Вид-во НАДУ.

² Ковбасюк, Ю. В., Загороднюк, С. В. (2011). *Система державного управління Швейцарської Конфедерації: досвід для України*. Київ: Вид-во НАДУ.

³ Іжа, М., Радченко, О. (2012). Громадський контроль в системі публічного управління як ефективний інструмент експертизи державно-управлінських рішень. *Публічне управління: теорія та практика*, 4 (12).

While looking for the ways to introduce foreign experience to provide transparency of government in Ukraine, it is useful to consider the *forms of securing of transparency and government openness*, which are crucial indicators of the democratic character of a political regime and the degree of their necessity and effectiveness. First of all, this is *a political communication* which consists of official documents such as laws, decrees, regulations in official publications and from the moment of their publication, *political information* which consists of programs, appeals, statements of political leaders, *articles* in the media and posters. Secondly, they are *public relations* which means the ensuring of mutual understanding and cooperation of authorities with the public in forms of the study of public opinion, forecasting of the social and political processes, harmonization of private, public and government interests. Thirdly, they are *public consultations* in forms of public hearings, roundtables for developing with regards to knowledge, experience and interests of citizens. Fourthly, they are *public boards* that mean advisory bodies for mutual coordination of administrative actions. Fifthly, this is *an addressing of citizens* that means public chambers for appeals of people together with solving the issues of particular individuals. Sixthly, this is *e-government* which means the introduction of dialogue and cooperation of the government with citizens through electronic media¹.

Ukraine has a practice of various forms of social control implementation, including public hearings as one of the components in quite an effective mechanism to monitor the quality of management services of local government bodies. Usually, the statutes of local communities within the competence of the public hearings include the following questions: reports of deputies and local government officials; discussions of the most important issues of local importance; consideration of local initiatives; discussions of drafts for legal acts of local self-government².

The Control of special non-profit public organizations is another, typical for Ukraine, form of social control, which indicates the futures of democratic transformations in the country. But in Ukraine, such organizations are usually separated from the public and are not accountable to it, the citizens are not aware of either purposes, or practical activity of such organizations. In addition, there is a competition between non-profit public organizations and widely-advertised commercial pseudo-public

¹ Ярошенко, В. М. (2012). Транспарентність та відкритість влади як механізми становлення інституту демократичної громадянськості. *Наукові праці. Політологія*, 170, 182.

² Крайнік, П. І. (2011). *Система державного управління Сполученого Королівства Великої Британії і Північної Ірландії: досвід для України*. Київ: Вид-во НАДУ.

organizations which exercise public control «on request» and the results can be hardly called true.

Different types of public meetings are oriented to public control in Ukraine, such as meetings, rallies, demonstrations, picketing, which are used as means of support, or as means of pressure to the government and local authorities, in order to force them to take certain decisions¹. This form of social control, in practice, is quite effective, but it often provides significant economical losses for the state and personal non-property losses for citizens.

An analysis of an experience of authority openness implementation, by applying public control in foreign countries, is worth noting that this experience will be relevant and meaningful in Ukraine. Although there is a number of global issues of this practice applying in frames of national realities of the state creating, certain provisions to overcome them can be highlighted:

1. The main reason for the ineffectiveness of public control in Ukraine is the validity of the results, notably its absence. The results of public examinations can at best create a stir in the media and public condemnation. Often, the procedure for some forms of such control is not reflected in the legislation. There is an urgent need to reform legislation in the sphere of public control: firstly, there is a need to create an institute of public control in the basic law; secondly, there is a need to pass the Law of Ukraine «On public control», which would be provided by the basic principles of public control implementation and the content of the state policy to protect people's rights to exercise public control over the activities of government bodies, local authorities, enterprises, institutions and organizations, officials and business entities; thirdly, to adopt the local referendum law that will provide an opportunity for local referendums and general obligation to carry out decisions of local referendums made by the jurisdiction of territorial communities; fourthly, to provide grounds for prosecution for obstruction of public control, including criminal.

2. Public control begins with the will of a citizen. No one can talk about government openness, if citizens do not demand such openness. Therefore, the first and major step in addressing the issue of transparency of Ukrainian government is to promote public political consciousness. To do this there is a need: to restore such a function of parties as an expression of the interests of citizens; to stimulate the creation and establishment of reputable public organizations, giving them broad powers to

¹ Іжа, М., Радченко, О. (2012). Громадський контроль в системі публічного управління як ефективний інструмент експертизи державно-управлінських рішень. *Публічне управління: теорія та практика*, 4 (12).

influence and control the activities of the authorities; to establish a political responsibility and to provide mechanisms for rapid removal from power based on allegations of politicians in non-compliance with their election programs or formal commitments¹. Participation of people in government life is a main prerequisite for the existence of democracy, hence the implementation of these measures should be initiated by citizens themselves.

3. Similar to Poland project «Transparent Ukraine» launched in Ukraine, unfortunately, is only at the doctrinal level, and is enough far away from practice, though it sets a real possibility not only for direct participation of citizens in local government, but also for effective control by public the activities of any government agencies. The program operates with the support of the Polish side. The project is jointly carried out by two partners: Foundation of Local Democracy Development in Poland (FRDL) and the Pilip Orlik Institute of Democracy in Ukraine. A series of meetings, seminars and training in Poland and so on are planned, everything in order to teach the parties (government and community) to conduct an effective dialogue. At present, the state sufficient activity is not observed. Implementation of the Polish-Ukrainian project is almost complete, but it is tested only within some administrative-territorial unit. It is necessary to intensify assistance from the state to Pilip Orlik Institute of Democracy for the implementation of the project.

4. Popular foreign form of social control that can operate effectively at the territory of Ukraine is an on-line conferences. On-line conference for public with representatives of the government, where the latter will be able to report on their activities. The very practice of direct exchange of information, views and advices is needed not only for the planning of the optimal course for authority actions in certain areas, but also for the smooth obtaining of information by the citizens on issues that are interesting for them. In consideration of the fact that not all government bodies and local authorities have their own official pages and hardware for online conferences, their conduct may be inappropriate, or impossible.

5. Non-governmental organizations constitute the most important component of participation in an open, democratic society by bringing a large number of people. The fact that many of these individuals are also voters, underscores an additional connection with representative democracy. To strengthen public control, quantitative and qualitative growth of non-governmental, non-profit public organizations are needed.

¹ Джеріх, А. С., Давиденко, Е. М. *Політична проблема пасивності громадян в умовах демократії*. <http://www.rusnauka.com/13_EISN_2009/Politologia/45263.doc.htm>

Enhancing of their competence and resource capacity, improving communications, searching and using new technologies, improving joint actions of citizens can ensure the reliability of the information received, qualitative conclusions of the control results and finally fair and transparent activities of public authorities.

6. Development of functioning in Ukraine an electronic government (E-Government) that is a system of providing information services to citizens by the authorities. Extensive computerization of the entire set of internal and external relationships and processes using appropriate information and communication technologies will improve the efficiency, effectiveness and transparency of government activities and means of public control. Technologies of e-government are aimed at improving internal, interdepartmental and intergovernmental operations, providing online services and improving communications between citizens and authorities. E-government is a projection of the current system to a virtual space, a tool that enhances an actual characteristics and principles of the state system, so there is a need to develop its popularity and control truthfulness of the information¹. The extent of its use shows the democratic aspirations of the state, and Ukraine in the ranking system of E-Government users is at the sixty-eighth position, what causes an appropriate conclusions.

7. Media plays an important role in ensuring of public control. However, now it doesn't perform this role effectively enough. In many regions a lot of the media are focused on maintaining the current government's interests. Central media though it is more free, but still does not become a decent public government controller². At present, the main objective for media is to obtain financial independence, public support and to create real of guarantees for safe journalism.

8. In order to improve the results of public control, it is important to collaborate with non-governmental organizations, research institutions, and especially university centers, where people can get qualitative advice on techniques, methods, tools, and the feasibility of its implementation.

¹ Афонін, Е. А., Сушій, О. В. (2010). *Транспарентність влади в контексті європейської інтеграції України*: конспект лекції до короткотермінового семінару в системі підвищення кваліфікації кадрів. Київ: Вид-во НАДУ.

² Крупник, А. С. (2007). *Громадський контроль: сутність та механізми здійснення. Теоретичні та прикладні питання державотворення, 1.*