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Conceptual Basis of Legal Monitoring Implementation in The System of Public Administration

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Abstract

In the study, the question of the theory and practice of legal monitoring is developed and the expediency of introducing legal monitoring into the system of public administration of Ukraine with the purpose of its perfection is substantiated. It is shown that the basis of monitoring is a system of indicators that characterize a concrete measure of a change in a particular phenomenon or process. The practice of applying the integral indicator of government administration to Governance Research Indicator Country Snapshot is presented. Moreover, examples of monitoring are provided for such indexes as government effectiveness; regulatory quality; rule of law.

As a result of the study, a recommendation was made to assess the state of the state administration system, focused on the results of monitoring the effectiveness of legislation and its practice. The monitoring mechanisms are proposed for elimination of shortcomings in the legislation.

The improvement of the legal system is an incentive for improving the legal and informational literacy of all categories of civil servants. Such a task can be solved by introducing new criteria into the system of attestation of specialists in public administration and court employees. This is necessary to add and refine the training programs for students in management and information specialties. Legal monitoring should be part of the administrative and legal reforms in Ukraine.

Keywords: Legal monitoring, State administration, Efficiency of legal acts, Monitoring indicators, Legal control.

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[I] INTRODUCTION

Improving the system of public administration and ensuring Ukraine's security depends on streamlining of law-making and enforcement. Only on this basis can a law-governed state succeed, an administrative reform and transformation be carried out, and a social, legal and democratic state develop. By improving the efficiency of public administration, it is possible to streamline the legal system, raise the level of the legal culture of society, the legal consciousness of legislators and all citizens.

As a result of the implementation of legal monitoring in the system of public administration, a balance will be struck between security and freedom, the participation of civil society institutions in the system of control over the activities of state authorities and local self-government. In addition, it will be possible to monitor the development of tools and governance mechanisms in public administration technologies.

[II] MATERIALS AND METHODS

The study of legal monitoring as a type of legal control, in particular, engaged A. Akmalova, D. Kapitsina (2013), Y. Arzamasov, Y. Nakonechny (2009), and N. Chernogora (2010) developed the theory and methodology of monitoring in law-making. M. Lysenko performed the development of the problem of legal monitoring as an administrative and legal means of ensuring legality in the lawmaking activity of the executive authorities (2014). O. Tomkina (2005) unfolded the theoretical principles of the publication and implementation of acts of the Cabinet of Ministers of Ukraine. Particular attention deserves an economic analysis of the legal foundations for the development of the rule of law that was developed by R. Cooter (1997), the work of F. Snyder (1993) on institutes, processes, tools and methods for the study of the effectiveness of the European Community law, as well as a quality policy manual edited by R. Stanley, H. Bullock J. Mountford (2001).

However, the system for assessing the quality and effectiveness of regulatory acts in monitoring practice, as well as the mechanism of the Ukrainian state, requires more detailed study, urgent improvement and reform. To date, in the special literature there is no holistic research on the issue of legal monitoring as managerial technology.

The purpose of the research is to argue the need for the implementation of legal monitoring in the system of public administration of Ukraine with a view to its improvement.

Reliability and theoretical and practical justification of the study is ensured through a set of general scientific and special-scientific methods, as well as a number of newest methods of scientific knowledge. The methodological basis of the research was provided, in particular, by the dialectical method of scientific knowledge, through which the relationship between psychological factors and the law-making process was investigated. Dialectical logic ensured adherence to the general principles of scientific knowledge: objectivity, unity of theory and practice, the development of the subject of research, its logical certainty and systemicity.

The formal-logical method was applied during the study of legislative activity. With the help of psychological method, certain aspects of monitoring of legislation, ties of legal phenomena, in particular the transition of quantitative properties, qualitative features, as well as legal psychology of lawmakers, were studied.

The innovative pragmatic method of legal monitoring has served to gain knowledge about the quality and effectiveness of legislative acts. This method is an independent, special type of legal control,

which combines information (demonstration), analytical, interpretive, expert, forecast, system support of law-making and law enforcement.

[III] RESULTS

The monitoring institute has been known for a long time and is used in various spheres of society's life. Monitoring is used to solve managerial problems. The essence of monitoring as managerial technology is expressed in the implementation of continuous or periodic control of specific parameters, whose conservation should be within certain limits. Monitoring of public administration, as a rule, is aimed at monitoring the progress of socio-economic processes. Especially new vision of monitoring of public administration manifests itself in the context of strategic planning of socio-economic development of the state and society.

The basis of monitoring is the system of indicators, that is, indicators characterizing a concrete measure of change of a particular phenomenon or process. The analytical component of the monitoring is to summarize and analyze the information gathered about how a certain state authority cope with the realization of its powers. On the basis of collected and processed monitoring results, a system of changes for state policy can be developed, which will ensure the elimination of its shortcomings.

The Governance Research Indicator Country Snapshot (GRICS) has been developed on the basis of several hundred variables, taken from 25 different sources of 18 organizations, and consists of 6 indexes that reflect the 6 government controls: Voice and Accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of law; Control of Corruption (The International Bank for Reconstruction and Development, 2004, pp. 34-35).

The GRICS indicator, as well as other integral indicators of public administration, allows us to give an overall assessment of the state of governance in a given country. However, it is impossible to identify concrete aspects of the legal framework or practice of state bodies, which lead to the data of the values of integral indicators (Pokazateli jeffektivnosti, pp.10-11).

In this regard, we consider it appropriate to use such management technology as legal monitoring. Legal monitoring is a type of legal control. Internal (official) and public legal control – an integral element of state and municipal management. The administrative control is administrative. Public control happens as a state (constitutional-legal, administrative-legal, financial-legal, environmental-legal), as well as public. In the same spirit, experts talk about international legal control that affects public administration (Onyshchuk, 2017, p. 332).

Varieties of state public control may be parliamentary, judicial, presidential, government, departmental control. The supervisory branch of power is also the prosecutor's office (Marochkin, Karkach, et al., 2006, p. 3).

It should be noted that a prominent indicator of spheres of legal regulation is forecasting, which is based on the monitoring of the application of the rules of law. The need for a prognostic study depends on its relevance and significance, which are determined on the basis of legal monitoring data, analysis of other factors. The monitoring reveals disadvantages, and the forecast offers ways to eliminate them (Chernogora, 2010, pp. 23-24).

Governance Research Indicator Country Snapshot (GUICS) is a rule of law. In accordance with Articles 8; 129; 147 of the Constitution of Ukraine in Ukraine, the principle of the rule of law is recognized

and in force. Right is not identified with the law, which can sometimes be unfair; "... the legal regulation of tax and budgetary relations in relation to the national tax on profit paid by communal enterprises (in accordance with Article 103 of the Budget Code of Ukraine) ensures observance of the principles of justice, which is an integral part of the rule of law principle (part 1 of Article 8 of the Constitution of Ukraine). One of the manifestations of this principle in the tax area is the creation of an effective tax system, which should be based on the balance of interests of the state, territorial communities and taxpayers" (Venice Commission, 2016, p. 84).

One of the manifestations of the rule of law, – underlined in point 4.1. The decision of the Constitutional Court of Ukraine in the case on the imposition of a more lenient punishment by the court of November 2, 2004 No. 15-rp / 2004, is that the law is not limited only to the law as one of its forms, but also includes other social regulators, in particular norms of morality, traditions, customs, etc., which are legitimized by society and are conditioned by the historically achieved cultural level of society" (Constitutional Court of Ukraine, 2004).

The above elements of the law are united by a quality that corresponds to the ideology of justice, the idea of law, which has largely been reflected in the Constitution of Ukraine.

Practical recommendations on the application of legal monitoring mechanisms to improve legislation are contained in the Council of Europe document "The Practical Impact of the Council of Europe on Monitoring Mechanisms to Strengthen Respect for Human Rights and Rule of Law in the Member States" (Strasbourg, 2010). The document combines a selection of examples of measures taken by the Council of Europe in the member states of the EU as a result of monitoring of human rights and corruption (Council of Europe, 2010).

The bodies of state power and their officials, as well as specially created by the said bodies of the structure, are subjects of legal monitoring that have the authority to exercise state control over the state of law (Baranov & Tolstik, 2012, p. 334).

In the doctrine of public administration and jurisprudence, the concept of "supervision" is closely correlated with the notion of "control". The concept of "control and surveillance function" has become widespread. Distinguish their own legal control, during which verifies the lawfulness, expediency of activities and supervision as "narrowed control", which is limited to verifying the rule of law. Differentiation of legal control and supervision can be carried out on the characteristic features of relations between managers and subordinates. Legal control can be "bottom", "from above", state and public. And supervision requires special powers of state authorities in relation to institutions, adherents, and often not attached to the service hierarchy (Akmalova & Kapicyna, 2013, p. 14).

In lawmaking activity of executive authorities, legal monitoring is a separate type of activity, which is related to complex collection, form assessment, quality control and analysis of the effectiveness of implementation of legal acts. The implementation of legal monitoring extends to law-making and enforcement processes and is unlimited in time (Lysenko, 2014, p. 102).

The monitoring of legislation and law enforcement practice with the aim of correcting them in the course of monitoring the implementation of laws by the relevant state authorities and local self-government bodies is one of the most important directions of activity of the prosecutor's offices and one of the main organizational forms of participation of the prosecutor's office in the legislative activity of state authorities (Pashtov, 2014).

In today's conditions of the information society, all actors of rulemaking, as well as actors that provide the rule-making process, require proven, clear information about the quality of the legal acts. Such information is necessary for the subjects of regulatory development in order to make appropriate amendments and additions to the legal acts, based on scientifically substantiated forecasts, to make them consistent with the current legislation and international standards (Arzamasov & Nakonechnyj, 2009, p. 7).

In order to organize the macro-analysis of the state of Ukraine's legislation, as well as to develop and approve the methodology for monitoring the legal system, it would be advisable to establish an All-Ukrainian Center for Monitoring Law under the patronage of the President of Ukraine.

It seems that more attention should be paid to the monitoring subjects, which are targeted by a certain law. In fact, it is about controlling law enforcement "from above" (actual control of law enforcers and legislators or "control from the side" (control of the scientific community and the development of recommendations).

The formation of relevant and useful tools for the implementation of state programs should be accompanied by the modernization of the process of obtaining information and recommendations that are required by public officials. In the UK, for example, a database of contact information for politicians and officials has been created. It facilitates the exchange of information on the latest professional approaches to the development and adoption of managerial decisions, alternative approaches (Stanley, Bullock, et al., 2001, p. 17).

[IV] DISCUSSION

Law enforcement is effective when, in addition to the development of legal doctrine, political, economic and social life beyond the law is improved. The emphasis is placed on the social context in which the law acts on an interdisciplinary level. This definition of effectiveness is wider than the effectiveness of the legal doctrine, including implementation, impact and compliance (Snyder, 1993, p. 20).

In the process of intensifying economic development, legislation is complicated. Therefore, officials need additional information on the adoption and enforcement of laws. When laws depict social norms, private citizens use their resources to help officials comply with the law. For example, filing a complaint or testimony against alleged perpetrators (Cooter, 1997, pp. 91-92).

Control and supervision, as compared with monitoring, are more of a managerial and law enforcement impact. Supervision involves mainly official inspections of the activities of a public authority or non-governmental organizations, as well as certain administrative-legal sanctions. An essential feature of legal monitoring is its role in supporting the flow of information and systematization of legislation.

For example, let's look at monitoring domestic violence in the United States. The public association "Human Rights Defenders" is monitoring the implementation of international human rights standards in order to promote civil society development and strengthen the rule of law. One of the most important steps in effectively combating domestic violence is the assessment of compliance by the Government of the country with international human rights law. The implementation of laws on the prevention of domestic violence is an important area for the establishment of such a monitoring assessment. The indicated method combines six components: planning of the monitoring project;

monitoring of international legal protection against domestic violence; preliminary studies of the legal system; interview on the implementation of domestic laws against violence; writing a report; propaganda activities (The Advocates for Human Rights, p. 9).

Legal control, as a system and a holistic process, manifests itself in such a traditional way as supervision and in a more modern form, as monitoring. The monitoring tool "dossier of the law" (draft law) is: experiment, expert evaluations, public consultations, unified information networks, demonstration of results. Under this condition, the use of monitoring as a method, form, instrument of legal control (supervision) is preserved, along with other forms and methods (checking the legality of activities, issuing orders, assessing the effectiveness of legal regulation, legal expertise, imposing sanctions, etc.) (Onyshchuk, 2017, p. 337).

In addition, it is necessary to take into account the history of the creation of a law (draft law), the further development of law and society. Their transformation affects the interpretation of the rules of law (Herzberg, 2005, p. 4).

As for the concept of "evaluation of legal regulation", various options are being developed as adjacent issues for jurisprudence, economics, and public administration. Including "assessment of regulatory influence", "quality of assessment of regulatory influence". Evaluation of legal regulation is closely linked to expertise and monitoring. In some projects, the evaluation processally integrates legal control, monitoring and expertise. In others, legal control and monitoring can use the assessment of legal regulation as an instrument or form. In this way, evaluation procedures are also added: public consultations and independent expertise.

The essence of legal monitoring is not in the control over the system of legal acts, but in the analysis of legislation in close connection with law enforcement practice to identify trends and problems of its implementation. This activity should not act as a method of exercising control of the state. Legal monitoring only provides information about the legal cycle. On the basis of the analysis of the above information, managerial decisions can be made (Onyshchuk, 2017, p. 340).

The process of creating rules of law has a legal character, which necessitates the legal regulation of its mechanisms. The absence of rules of law in this system can not be filled or replaced. As a result, the law-making activity itself without mechanisms does not seem possible. Therefore, one can agree with the viewpoint of Belarusian scientist S. Zholernovich that the content of the principle of regulation essentially reveals the dependence of law-making activity on the existence of regulatory regulators, which provide it (Lysenko, 2014, p. 134), an important role among which belongs to the rules of law, which are classified into certain species

O. Tomkina carried out the classification of the current practice of evaluating the effectiveness of the acts of the Cabinet of Ministers of Ukraine on types. The scholar selected the following criteria: time (preliminary and next); subjects of realization (social, scientific, legal, professional) (Tomkina, 2005, p. 18).

The most effective indicators of the normative acts of the Cabinet of Ministers of Ukraine are as follows: quality; the presence of really defined volumes and sources of material and financial provision, the real mechanism of legal support for the implementation of acts in everyday practice; high organization and professional qualifications of specialists who control the execution of acts, as well as their direct executors in the system of executive bodies; continuously effective sociological monitoring of public opinion regarding issued acts of the Cabinet of Ministers of Ukraine; the quality

of law enforcement activities and the lawfulness of the behavior of the direct participants in the regulated social relations; a high level of legal culture of citizens, collective actors, society as a whole (Tomkina, 2005, pp. 18-19).

One of the strategic tasks of the mechanism of interaction between parliament and government is their close cooperation in law-making activities. In order to assess the level of implementation of law, it is necessary to analyze the number of adopted and rejected bills by the Verkhovna Rada, which were made by the government.

It should be noted that during the first year of work the Parliament of the VIII convocation considered almost a third (28%) of all registered bills and draft resolutions of the Verkhovna Rada – 1344 normative acts. 765 legislative initiatives became laws. This represented 16% of the total number of draft documents registered in the Verkhovna Rada of Ukraine and 57% of the number of bills considered by the Verkhovna Rada of Ukraine during this time. Out of all 765 adopted documents, 597 (78%) were initiated by deputies, 110 (14%) – Cabinet of Ministers and 58 (8%) – the President of Ukraine. 85% of the legislative initiatives of the President (58 of 68 documents) submitted to the Parliament were supported by deputies and became the Laws.

Within the framework of the USAID Program "RADA: Accountability, Responsibility, Democratic Parliamentary Representation", the civilian network of OPORA, in the course of 2016, formed the ratings of 105 deputies whose activities were monitored and published in the "Ratings" section of the RADA website. Monthly rating and place in the rating of each of the 105 deputies were shown in their profiles (OPORA, 2016).

Indicators of monitoring the legislative activity of people's deputies of Ukraine and their activity in the electoral district were: 1) attendance of committees; 2) attendance of plenary sessions; 3) admission of plenary sessions; 4) the number of registered regulations; 5) the number of registered bills; 6) the number of bills on the problems of the district; 7) the number of bills related to the election program; 8) the number of requests; 9) the number of requests for district problems; 10) the number of essential performances; 11) activity in the district / oblast: number of receptions outside the district (OPORA, 2016).

The above method of monitoring the evaluation of the legislative effectiveness of MPs is a publicly useful initiative. However, it can not be considered legally. The method unilaterally takes into account only quantitative indicators. Taking into account the above, we see that it is expedient to supplement the monitoring evaluation with technical and technological indicators of quality and efficiency of the law. Undoubtedly, the formation of a ranking by quantitative and qualitative indicators will stimulate the people's deputies of Ukraine to increase productivity, will help to identify shortcomings in the draft law.

[IV] CONCLUSION

1. Monitoring as a type of legal control complements the management function. This is a special condition (kind) of control, when the subject of special systematic observation (tracking) and analysis are the dynamics and quality of activity of the subjects of rule-making, its normative regulation. In some cases, when monitoring is largely formalized and serves to fulfill specific tasks, "narrow" specialists treat it as an independent one.

2. To implement legal monitoring as a management technology, it is necessary to develop and adopt the basic Law of Ukraine "On Regulatory Acts". Its adoption will make possible the development and adoption of other laws: "On Legal Monitoring", "On Public Legal Control", "On Examination of Legislation", "On Parliamentary Lobbying". It is necessary to approve a single normative mechanism, as well as its possible versions. In turn, the drafting and adoption of bills will improve the implementation of the model of the legal organization of state power in society on the basis of the rule of law over the state, will limit the arbitrariness of the legislative, executive and judicial branches of power through. It will become possible to clearly regulate the process of qualitative preparation, adoption and interpretation of legislative acts of Ukraine.

3. The improvement of the legal system is an incentive for improving the legal and informational literacy of all categories of civil servants. Such a task can be solved by introducing new criteria into the system of attestation of specialists in public administration and court employees. This is necessary to add and refine the training programs for students in management and information specialties. Legal monitoring should be part of the administrative and legal reforms in Ukraine. Therefore, civil servants must implement a set of measures aimed at eliminating manifestations of legal nihilism in society. It is advisable to record the achieved and expected results at all stages of the management cycle, as well as in relation to all types (levels) of results (state policy and government regulation, implementation of programs and projects, performance of state functions and the provision of public services, activities of civil servants).

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