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Public Councils as a Legal Form of Partnership between the State and Its Citizens

Pavlo KRAINII[1]

[1] Assistant Professor of the Department of Public Law, Faculty of Law, Yuriy Fedkovych Chernivtsi National University, Ukraine.
p.krayniy@chnu.edu.ua

Abstract: Today, the existence of every society and every state is marked with the presence of generally accepted phenomena that radically distinguish the legal status of an individual from his ancestors, who lived hundreds or even thousands of years ago. These phenomena are: democracy, legal society, human rights, good governance, participatory democracy, etc. The study of legal relations between an individual or a group of individuals and the state, represented by the system of government in one form or another, has been carried out by a large number of well-known legal scholars, sociologists, political scientists, and economists, all of whom offered numerous theoretical concepts, represented different scientific schools, and worked in various fields of research. The basic issue they have been trying to solve both in the past and at present is how an individual citizen or a group of individuals can influence the decision-making processes of public authorities that affect the interests of each of them. It turned out that the institutions we are aware of (like those of political parties, public organizations, unions) are not the only legal forms of association of the country citizens who seek to exercise public power and represent the interests of certain groups of their compatriots. The active changes that took place in the world after the Second World War, as well as the emergence of the third generation of human rights were a logical continuation of the growing influence of liberal ideas and views, which proved the existence of new scientific alternatives, ideas and concepts for developing the theory of deliberative democracy. The latter's main objective was the idea of citizens' active involvement in decision-making by the authorities and local governments, which consequently led to the phenomenon of public-private partnership. The article under discussion contains a legal analysis of the institution of public councils as one of the legal forms of such interaction through the theory of communicative action. At the same time, the paper will contain an attempt to analyze the current Ukrainian legislation that determines and regulates the legal status of public councils. This will enable to draw conclusions about the level of involvement of citizens in the decision-making process. In addition, the article will lay particular emphasis on a study of the already established and existing public councils in Ukraine, as well as will identify the positive and negative aspects of their activities, which will help to work out the problematic aspects of their legal status and offer practical ways to eliminate them.

Keywords: *deliberative democracy, stste-private partnership, social institutions, public councils, public authority, public governance.*

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1. Introduction

The process of building up a civil society in our country began with the proclamation of Independence. The formation of a new legal matter, which had to ensure proper legal regulation of public relations in the field of public administration and guarantee every citizen the right to participate in exercising state power and local self-government, was reflected in the adoption of the Fundamental Law - the Constitution of Ukraine. Thus, citizens of Ukraine have the right to freedom of association in political parties and public organizations in order to exercise and protect their rights and freedoms, as well as to satisfy their political, economic, social, cultural and other interests, except for restrictions established by law in the interests of national security and public order, public health or protection of the rights and freedoms of others. Besides, citizens of Ukraine have the right to participate in the management of state affairs, to vote at all-Ukrainian and local referendums, to freely elect and be elected to public authorities and local governments (The Verkhovna Rada of Ukraine, 2021a). Naturally, the above provisions are reflected in the regulatory and normative-legal acts, adopted by the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine. They regulate the activities of political parties, public associations, and public organizations in various spheres of public life. However, the events of the Revolution of Dignity made it possible to understand that only the active involvement of various forms of public participation can serve as an effective way of the state-citizen partnership. This is confirmed by the process of active involvement of public councils in the process of making important decisions and adopting certain regulations and administrative acts. Nevertheless, they are not regarded as truly independent civil society institutions that demonstrate a paradigm shift from public administration bodies to the implementation of state-law partnerships, including all stakeholders. They perform only an optional rather than an advisory function. The study of public councils as a form of the state-citizen partnership will allow us to understand the prospects of changing the concept of such interaction, which in the long run, may become one of the key factors in ensuring effective public governance and protection of human and civil rights.

2. Theoretical Background

The study of the legal nature of public councils cannot be carried out without considering its place in the system of public governance. Modern theories

of democracy offer two different approaches to the understanding of citizens' participation in public administration decision-making. The first one has been elaborated by the supporters of the elite theory of democracy, who claimed that the main emphasis in the interaction between the masses and political elites should be laid on the leading role of the latter. It is important that the democratic model should establish the necessary minimum level of citizens' participation, whereas the right to make political decisions should belong to competent elites and bureaucracies: democracy is "such an institutional system for political decision-making, where individuals gain the opportunity to make decisions through competing for the electors' votes" (Schumpeter, 1995).

The most distinctive feature of democracy is the competition between the commomly recognized leaders in elections. And only participation of the average voter in such a process is correct, as other forms and types of participation will be attempts to control power, which can lead to non-recognition and leveling of the role of leader. This approach is popular and widespread, but it has one major drawback: it removes any responsibility for making appropriate government decisions from citizens and transfers it exclusively to elites. In this case, there is no mechanism to counter the abuse of power by elites. Another point of view is presented by scholars, who emphasize the importance (for the exercise of power by the majority) of public debates, during which citizens agree among themselves on the issues of political significance. J. Dewey agreed that the procedural features of democracy are the electoral process and the rule of the majority. However, these principles are based on the right of citizens to form and express their own beliefs, as well as on the recognition of all citizens as individual and at the same time equal, "due to which decisive civic expression is considered as the collective expression of the ideas of the majority" (Dewey, 2003). The application of two drastically different concepts in our study will enable us to objectively examine public councils as an institution, whose formation has been stipulated by the development of society. This ensures the right of every interested citizen to participate in making important decisions, adopting and implementing regulatory or administrative acts. Civil society as a sphere of interaction between separate individuals requires the support of state power: the communicative power of civil society offers its own vision of future options for the development of political events; the administrative power, in turn, implements the recommendations made in the process of civil communication.

Keeping to legal norms, the administrative power will not be able to ignore the results of public discourse. Therefore, the vector followed by the representatives

of deliberative democracy indicates the need to expand the meaning of the concept of" civic choice". This necessity suggests an increase in the number of procedures, through which citizens participate in public governance. Consequently, individuals will have the opportunity to express their civic position not only by voting in elections, but also through the formation of public councils. They will be able to take part in public debates and discussions on any important issues, thereby expressing their own civic position.

It is worth mentioning that in Ukraine, the research of public councils was carried out without any systematic scientific approach. This supposes the existence of scientific and practical vacuum at present. On the other hand, any discussions on reforms begin and end with the frustration caused by the need to involve the public councils in the process. What is more, today there is a sufficient lack of comprehensive domestic studies on the institute of public councils. There are some attempts in the field of economics, political science, sociology, and public administration. They mostly point at a certain conditionality of expanding the political participation of civil society through these bodies (Rosanvallon, 2009) or, on the contrary, - to the excessive number of public advisory institutions at the national level (Schmidt, 2011). There are also some scholars who either study the constitutional and legal status of advisory bodies (Nesterovich, 2017) or just public councils in terms of public administration (Shaihorodskyi et al., 2017). The purpose of our research is the implementation of a comprehensive scientific study of the theoretical foundations of the institution of public councils as a form of activity of citizens within the state-citizen partnership, as well as the analysis of current legislation regulating their activities.

3. Argument of the paper

The research under discussion aims at studying the legal nature of public councils, their place and role in the process of administering public authority, with the participation of the citizens who are eager to express their own point of view on a particular issue. Social interaction between citizens and the state occurs through dialogue and communication, which results in the adoption of specific government decisions. Among the forms of the latter are legal acts of public administration.

In the course of the research, we used the dialectical method, which helped to determine the preconditions for the emergence of public councils and their formation in Ukraine according to communicative theory. In addition, we used the method of systematic analysis, which helped to identify and articulate the major peculiarities of

public councils as an effective form of organization of social groups in decision-making and discussion at both state and local levels. Due to the use of the specially-legal method, we managed to analyze the current national legislation, which administers legal regulation of public councils in Ukraine. This will enable us to investigate the level of consolidation of the administrative and legal status of public councils. The method of comparison made it possible to conduct a study of the activities of public councils in higher authorities and local governments. The statistical method was used to demonstrate the effectiveness of the actual implementation of the state-citizen partnership with the participation of public councils.

4. Arguments to support the thesis

Ensuring the activities of public councils in Ukraine stipulates the creation of a new concept of the state-citizen partnership in making important decisions in various areas of public activity. The change in the understanding of the importance of public councils in exercising public governance leads to the emergence of new social legal relations between the citizen and the state through specially established institutions of civil society. At the same time, there arises a problem of how to understand the legal nature of public councils in terms of the role of the following components: public (private) and state. In case the representatives of public administration bodies prevail in the work of public councils, it will be expedient to point out the predominance of the state's influence on the final results of the discussion of a particular problem by the respective public councils. In addition, in this case, we might speak of a significant influence on the final decision of the respective heads of public authorities through members of public councils, which is unacceptable. This suggests the risk of reducing the role and influence of public councils in the decision-making process, since the process of exercising public power will be reduced exclusively to the activities of state bodies. On the other hand, granting a too broad range of rights to public councils can provoke imbalance in the decision-making process in the state. The solution of the above problem requires a detailed study of the evolution of public councils in Ukraine, which will clearly outline the issues of legal regulation of their administrative and legal status. Apart from that, it is necessary to pay peculiar attention to the understanding of the legal nature of public councils, prospects for their development and activities in terms of the actively implemented reforms in Ukraine. It is essential to identify the main markers that will help to choose the vector of development of public institutions in our country, taking into account both international and national

experience. The current legislation that regulates the activities of public councils should be examined separately, which will make it possible to outline the role of each participant in the process of the state-citizen dialogue.

5. Arguments to argue the thesis

The prevalence of the concept of anthropocentrism, which has received unanimous support in democratic countries, as well as the proclamation of human rights, their recognition, guarantee and protection, brought the legal component of communication and interaction between the individual and the state to a new level of scientific study. Such studies initially attracted the attention of sociologists, politologists and philosophers. The first attempts to investigate their legal nature were made in the XX century. From the very beginning, it was not possible to reach a consensus on a clear division of rights and responsibilities between public institutions and the state, represented by the public authorities. In fact, the real state of affairs showed a clear advantage of the state over society in decision-making, although alongside the bodies of state power there always operated the institutions of direct and immediate democracy, which formed a pro-government elite, as well as implemented the respective political programs and represented the interests of those categories of citizens who voted for it. Such an algorithm, with regard to certain differences, exists in all democracies. However, since the second half of the 20th century, there has been circulating the idea that the state or municipal authorities should involve public organizations in making important decisions. The "era of the masses", which emerged in the first half of the XX century, allowed to form a new vision of the future mechanism of implementing what we will eventually call public governance, whereby every stakeholder can participate in important current national and local government decisions. Such discussions have affected the further development and formation of new approaches that relate to specific institutions of civil society in order to represent the interests of interested citizens in the dialogue with the authorities at various levels.

Ukraine should realize today's necessity of shifting its public policy from the statist plane to the anthropocentric one. The proclamation of Ukraine's independence became the starting point, from which it started the formation of its own system of public authorities, determined the powers of government and local self-governments, and strengthened human and civil rights. It was necessary to ensure legal regulation of relations regarding citizens' participation in the decision-making process by the above-mentioned bodies, citizens' access to public service,

their participation in the procedure of adopting normative and administrative acts, providing for out-of-court and court protection of citizens' rights. The imperfection of the dialogue between society and the state became especially acute during and after the events of the Revolution of Dignity. Human and civil rights and freedoms were grossly violated. This has led to a completely different level of discussion on the participation of public councils as institutions of civil society in establishing and maintaining the effective communication between society and the state, which would meet all the generally accepted requirements for anthropocentrism.

This has stipulated a thorough professional study of the administrative and legal status of public councils and their structural elements. Moreover, the available domestic experience on this issue was insignificant. It became necessary to study the practice of ensuring the activities of public councils and other advisory bodies by foreign states. At the same time, it was important to borrow foreign experience to determine the optimal model of such a status for public councils, as it is not individual in each country and depends on historical, social, economic, and political factors. In addition, it is rather doubtful that stability in decision-making processes is impossible without the approval of international legal standards of socio-political existence of the state, standards of interaction and communication with various social groups and individuals. The formation of a stable state, its political, legal and socio-economic development will comply with the provisions (envisaged by the Constitution) on the establishment of a legal, democratic, social state.

On condition of determining the optimal model of public councils, it will be possible to reconsider the importance of such institutions. To do this, it is necessary to study the current concept of the organization of state bodies. In this respect, particular significance is assigned to the process of reforming the state apparatus and state-authoritative powers of public bodies, which rely on Ukraine's international obligations. This process is aimed at expanding the democratic foundations of public administration, strengthening the principles of civil society and increasing the international prestige of the state. However, democracy is a two-way process, both on the part of the state and on the part of civil society. The analysis of the issue of citizens' participation in exercising public power is partricularly relevant for the transformation period of building the state with the rule of law. It is crucial to take into account the international experience or the experience of a specific foreign country on this issue.

State power will not be accepted by society if it pursues only the state interests. It becomes unadapted to the changes taking place in public life. It stops

being democratic and is more likely to become totalitarian or authoritarian. At the same time, all external signs of the existence of an appropriate system of legislation, that determines the role of civil society institutions, can be preserved. But only legally. Ignoring citizens' point of view can, in this case, lead to resistance, protests and riots. Even provided that there is an ideal legal framework that ensures the operation and functioning of public councils, a substitution of concepts is very likely to happen in the long run. If such a process takes place in real time, it seems quite probable that it might result in creating artificial obstacles, which will remove the individual (the citizen) from participating in government decision-making. Consequently, there arises an incongruity between the interests of the individual and the state. It will be impossible to build up a truly partnership under such conditions. It is public councils that can serve as the balancing component between the individual and the state. They will play the role of a safeguard that is able to prevent the authorities or an individual from making a decision that would infringe on the rights and freedoms of citizens. Hence, it will be possible to talk about the balance between the interests of the individual, society and the state, as well as about the establishment of partnerships between these entities.

A logical continuation of the concept of active involvement of public councils as an expression of the state-citizen partnership can be found in the theory of communicative action, whose representatives criticize the nature of modern democracies and emphasize the necessity of implementing instrumental rationality, the latter including efficiency and goal achievement. What is more, the manifestation of communicative rationality, which is mostly reached through mutual understanding, consensus and agreement between people, may be a good alternative (Habermas, 2001, p. 48). The main object of communicative rationality is the democratic community and civil society. Consequently, there occurs a special type of social action - instrumental action. It is applied by the individuals who aim solely at achieving their own goals, along with the participation of other people (Nazarchuk, 1993, p. 41).

Therefore, the theory of communicative action should be used as one of the main factors in determining the system-forming elements of the dialogue between the state and an individual. It should be perceived as the basis for analyzing the effectiveness of the implementation of public councils in Ukraine, which will serve as a starting point for the formation of public administration bodies, whose officials would sincerely care about public interest and opinion. Of course, the notion of the public is somewhat broad for understanding it as a participant of the legal relationship

between the state and an individual. It is obvious that the activity of public councils is possible on condition that there is a sufficient number of interested citizens, who possess special knowledge, skills, education, etc. Only in this case, the activity of public councils will have a positive result and will be effective.

A key category of the communicative model is the so-called "ideal of intersubjectivity", which rests on the relationships between two subjects. It is interesting that this category has different interpretations. The paper relies on the thesis that the concept of" intersubjectivity" is related to the description of the experience of various individuals, who accentuate the sovereignty of this experience in terms of their personal characteristics and circumstances. From this point of view, "intersubjectivity" is a combination of experience of various individuals, who are constantly in the state of mutual communication (Ogurtsov, 1993, p. 238). The above category is important for understanding communicative theory. It helps to understand the nature of social action and, as a consequence, leads to the formation of appropriate legal forms of such communicative actions.

If we depict this theory schematically, we can definitely claim that on the one side of the scheme, we will have a person who speaks, represented by the state and public administration bodies. After all, they are the only ones endowed with all the power to perform the respective functions. On the other side, there will be a person who listens, that is an individual, a citizen. The latter can unite in social groups and thus protect their rights and freedoms. The legal procedure for exercising human and civil rights and freedoms will take place, inter alia, through the proper public governance, whereby the participants exchange ideas and opinions, have mutual rights and responsibilities towards each other. According to communicative theory, the existence of such a dialogue can take place in two ways. The first is marked with the cognitive usage, in which there are two participants: the speaker and the listener. The speaker enters into "communication" with the listener on a particular issue or the speaker interacts with the listener on the basis of a common understanding of the situation. These two models establish two different forms of possible legal relationships concerning some things or situations in the world. It is important that public councils in modern society can act as a communicator to establish such intersubjectivity. Their activities include the participation of both citizens and representatives of public authorities.

We completely agree with the statement that "the purpose of this communicative court is not to indicate a specific way of organizing our actions or our institutions; on the contrary, its procedure ensures that any position that can be

based on sound evidence will have the right to life and the opportunity to engage in dialogue in order to present itself in a favorable light. The purpose of discourse is to take into account the positions of all stakeholders in assessing a particular situation "(Melkevik, 2004 p. 102). As a result, in a society that is actively changing and showing an increasing need to be involved in the decision-making process of state authorities, public councils are an effective tool of communication. Due to this theory, the administrative and legal status of public councils should comprise both the subject, who raises the issue, and the listener, to whom the question is addressed. At this point, we might draw an intermediate conclusion that public councils have a dual legal nature. They must include representatives of the public, as well as representatives of government and local self-government. Only in this way, it is possible to arrange high-quality communicative interaction and exchange of views in a particular field of activities. For our country, public councils are a relatively new phenomenon. Nevertheless, their proper legal regulation is possible only when keeping to the actively implemented principles of good governance.

In relation to normative consolidation of the postulates of communicative theory, it is worth outlining the concept of Good Governance, which was introduced in the European Union (hereinafter - the EU) at the beginning of the XXI century. This notion derived from previously adopted and recognized approaches that resulted from the principles of the formation of the EU, the practical component of its functioning and the need to solve urgent problems at the time. Such concepts were a complex, multilevel system of government, political systems and a single administrative space in Europe.

As a model of management, Governance was formed after the adoption of the United Nations Development Program "Governance for Sustainable Human Resources Development" (1997). The main principles of "Good Governance" were outlined in the UN Program: participation in public administration decisions; consensus in decision making; feedback; efficiency in conducting public policy; responsibility of all participants of the process; transparency; equality; rule of law; strategic vision (Shaulska, 2018). In continuation of the development of these principles, a number of other documents were adopted. In 2001, the European Commission adopted a White Paper on European Governance, which defined the concept of governance as "rules, processes and behavior that affect the way government is exercised at European level, especially in matters of openness, participation, accountability, efficiency and coherence" (European Governance, 2001).

We entirely support the idea of experts in Administrative Law that openness, participation, responsibility, efficiency and coherence have been outlined as the basic principles of "good governance". The essence of the above principles is usually clarified and specified. For instance, the revised standards of "good governance", articulated on the basis of the major principles, include: "appropriate legislation, legality, participation, transparency of decision-making, access to information, proper organization, proper staff, proper financial and budget management, efficiency, responsibility and supervision" (Averyanov, 2007, pp. 25-26). In fact, it is this approach to the definition of good governance and its principles that had a great impact on the further formation of the national concept of the introduction of certain civil society institutions into state life, whereas proper administrative and legal regulation of their formation and operation can be considered as a form of the state-citizen partnership, where authorities and individuals (citizens) can act on an equal footing in the process of discussion, development and approval of acts at various levels, ranging from public and ending in local.

Some scholars point out that any involvement of citizens to actively participate in discussing and adopting managerial decisions has many advantages and ultimately is a means of raising an educated and interested citizen. These advantages are: the authorities' obtaining all the necessary information from citizens; identifying the values that citizens support and share, as well as the issues they are concerned about; increasing the legitimacy of the adopted decisions; involving community intelligence in the elaboration of possible solutions; creating a positive image of bodies of power; bringing up an educated active citizen, etc. (Shevchuk, 2012).

In this respect, we suggest making a brief historical survey of the introduction of public councils in Ukraine. Everything began with the Council of Entrepreneurs of Ukraine, which was founded under the Cabinet of Ministers of Ukraine by the Resolution №210 of March 22, 1993. In accordance with p.p. 1-3 of this Resolution, the Council of Entrepreneurs of Ukraine under the Cabinet of Ministers of Ukraine (hereinafter - the Council) is a permanent consultative and expertise body that is in charge of promoting state policy of entrepreneurship and market infrastructure under the conditions of economic reforms. The Council is formed by the Cabinet of Ministers of Ukraine on the proposal of the respective associations of entrepreneurs and consists of the Chairman, Secretary and members of the Council. The personnel of the Council is approved by the Cabinet of Ministers of Ukraine. The Council carries out its activities in compliance with the provisions on interaction between state executive bodies, enterprises, institutions

and organizations, as well as associations of entrepreneurs (The Cabinet of Ministers of Ukraine, 1997).

Looking into the content of the Resolution, we can say that it was the first attempt to regulate the activities of the consultative-advisory body in our country, although with some significant gaps, like the lack of proper legal regulation of the administrative and legal status of this body. There have been identified no legal instruments that would fully assist such a Council in advising and coming up with specific proposals for the Cabinet of Ministers of Ukraine and other executive bodies. The council had only the general sphere of its activities outlined and the powers listed. Despite this, the creation of such a platform for communication between the business sector and the executive bodies was at that time an important step towards setting up a dialogue between society and the state. As we can see, even at the beginning of Ukraine's independence, the leaders of the state clearly realized the need to involve in their work certain initiative groups of citizens, who perform activities in various spheres of public life in order to establish a precise and effective dialogue on a particular issue. We might also claim that the foundation of the Council was the first attempt to maintain such cooperation.

It is essential that our country has chosen for itself the foreign policy course of joining the European Union. Therefore, the active development of the administrative and legal status of public councils can demonstrate the real desire of the state to make qualitative changes in the decision-making process. As an example of this desire, Ukraine decided to to solve the problem of implementing the principle of transparency in public decision-making. Informing citizens about public affairs and respective decisions taken for their implementation is a sign of an efficient dialogue, a vivid indicator of the state-citizen partnership. Any act of public administration today is no longer perceived as the exclusive command of the state or the competent authority.

Even despite the adoption in 1996 of the Constitution of Ukraine, which gave every citizen the right to participate in the approval of important state decisions (e.g. the right to vote and be elected; the right to associate in public organizations; the right of legislative initiative; the right to participate in referendums, etc.), the state did not return to the issue of establishing a public-private dialogue with the purpose of implementing proper public administration. The only explanation that can be given to such negligence is the statist paradigm of state's domination over society, which was still prevailing in public minds. This approach, actually, did not allow to establish the partnership between the state and the individual, since there was no new

understanding of the place and role of public councils as advisory bodies that would fully involve the authorities in the decision-making process at that time. The changes that have taken place in Ukraine since the implementation of a number of reforms, in particular, the reform of administrative law, made it possible to look at the situation somewhat differently. Meanwhile, Europe has begun to develop a brand-new concept that allowed to view the importance of public participation from a different perspective – the introduction of public councils.

As a result, the enhancement of the possibility to form public councils under executive bodies was formalized by issuing the Decree of the President of Ukraine № 854 "On providing conditions for wider public participation in the formation and implementation of public policy" of 31.07.2004. The Decree provided for: effective organizational and legal conditions in comprehensive implementation of the constitutional right of citizens to participate in the management of public affairs; ensuring openness of executive bodies; due regard to public opinion in the process of preparing and implementing decisions; maintaining a continuous dialogue with all social groups; creating opportunities for free and objective coverage of all processes in this field by mass media, etc. (The President of Ukraine, 2004).

Despite the urgent need to reform the system of public administration bodies with the active involvement of public councils, the legislator did not pay due attention to developing the necessary mechanism for the introduction of new ways of participation of public councils in the state decision-making. The document did not suggest the administrative and legal status of public councils. In fact, the implementation of the constitutional right of citizens to participate in public administration was declared in the form consultations with society. It all boiled down to the coordination of activities related to the creation of conditions for the executive authorities to consult with the public.

Ignoring of the above principles has had a negative impact on changes in public governance. Their proclamation and public support, without proper promotion, hinders any attempts to build an influential and effective institution of public councils in Ukraine. Much time was lost. Notwithstanding the urgent need for Ukraine's accession to the European family, all active changes during the transition to a new system of consultative-advisory bodies (public councils undoubtedly belong to this category) have not been envisaged by law. For example, Ukrainian legislators forgot that accession to the EU concerns not only the changes in legislation and the introduction of European principles of "good governance" and "good administration". It also presupposes the accumulation of the relevant

institutional and administrative capacity of the candidate country. An integral part of the latter two is the compliance of the system of bodies of power and the system of public governance with the requirements, clearly outlined by the EU. The most difficult part of solving this problem is that the candidate countries must not only adhere to the above principles in public governance, but also create a legal basis for building an appropriate administrative system and public administration institutions that could contribute to the EU achievements (”acquis communautaire”). What is more, such a system should include active participation of civil society institutions, public councils being their external form of expression.

In addition, this aspect clearly demonstrates the whole range of twelve principles of ”good governance”, set out in the Strategy on Innovation and Good Governance at the local level, approved by the Committee of Ministers of the Council of Europe in 2008. As an example, we will consider several such principles to demonstrate the significance of improving the institution of public councils in Ukraine.

The principle of fair elections, representation and participation demonstrates the adequate promotion of citizens' rights during the election process and participation in it. If it is interpreted broadly, it reveals mediation between the state and the individual through legitimate intermediate bodies. “Citizens are at the center of civic activity, and they are necessarily involved in public life at the local level. All men and women can participate in decision-making directly or through legitimate intermediate bodies that represent their interests. Such broad participation is based on freedom of expression, assembly and association. There is always a place for an honest attempt to mediate between legitimate interests and reaching a broad consensus on what the community wants most of all. Decisions are made according to the will of the majority, whereas the rights and legitimate interests of the minority are always respected” (Council of Europe, 2008). This principle has been reflected in Ukrainoan legislation concerning the activities of public councils. In accordance with paragraph 1 of the Standard Regulations on the Public Council under the Ministry, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, oblast councils, Kyiv and Sevastopol city and district councils (hereinafter - the Regulations)”public council is a temporary advisory body that serves for promoting public participation in the formation and implementation of state and regional policy” (The Cabinet of Ministers of Ukraine, 2010). The legislation has enshrined the definition of public councils, but limited it to the level of the executive branch. Besides, public councils are defined as ”temporary advisory bodies”, which does not fully correspond to the

legal nature of these institutions and may lead to a situation, whereby the latter will play a purely formal, optional role in the process of involving citizens in the exercise of public power. The process of carrying out, for example, educational activities or activities in the field of health care does not take place with clearly specified deadlines, because the right of a person to education or health care (in accordance with the Constitution of Ukraine) is inalienable and inviolable.

The principle of openness and transparency implies that "there is public access to all information that is not classified for some specific reasons in compliance with the requirements of law (for example, protection of privacy or fairness of procurement procedures). Information on decisions, implementation of policy and its results becomes available to the public in the way that they can effectively monitor and facilitate local government" (Council of Europe, 2008). In this case, it will be possible to exchange the information (at a professional level) on important issues between a particular body of public administration and the citizen provided that the administrative-legal status of public councils has been properly evaluated. Public councils may be far more effective than the mechanism of individual's out-of-court protection. The Law of Ukraine "On Access to Public Information" works out a mechanism for a person to obtain relevant information by submitting a request. Public councils can act as an institution that is formed in the interests of citizens and can help them obtain public information. Therefore, one may even come to the revision of the existing mechanism of out-of-court protection of human rights, when the latter is granted access to information. They will have a legally specified and guaranteed opportunity to conduct a dialogue between the respective body and the individual. This directly corresponds to paragraph 4 of the Regulation, which outlines the following tasks of public councils: promoting the exercise of citizens' constitutional right to participate in the management of public affairs; promoting the consideration of public opinion by the executive body during the formation and implementation of state and regional policy; promoting the involvement of stakeholders in public consultations and monitoring the results of the formation and implementation of state and regional policy; conducting public monitoring of the activities of the executive body in accordance with the legislation; preparation of expert proposals, conclusions, and analytical materials on the formation and implementation of state and regional policy. This is what distinguishes the public council from other civil society institutions. A vivid example is the current Public Council under the Ministry of Internal Affairs of Ukraine, which actively operates and performs its tasks.

During 2020, as the result of this cooperation, 1,738,119 administrative resolutions were drawn up, of which -1,479,726 were executed. Fines in the total amount of UAH -259,598,532 were paid. In addition, the total number of fatal road accidents decreased from 17% to 14% (The Ministry of Internal Affairs of Ukraine, 2021). This example demonstrates the need to exchange opinions between public authorities and the citizens on a range of certain issues, so as to provide citizens with all the information necessary to help them understand public policy issues and make competent recommendations, as well as to seek the views of different segments of the population. Of course, the main indicator of the effectiveness of consultations, including public councils, is the state's following the recommendations obtained from discussions and respective proposals made by public councils.

However, not all public councils under the ministries fully understand the organizational and legal basis of their activities, although, according to the openly promulgated reports on the implementation of annual work plans, it looks that all tasks, assigned to them, have been fulfilled. For instance, the activities of the Public Council under the Ministry of Education and Science. It is a temporary advisory body established to promote public participation in the formation and implementation of public policy, effective interaction of the Ministry of Education and Science of Ukraine (hereinafter - MES) with civil society institutions (hereinafter - CSI), public control over the activities of MES, with due regard to the wishes of the citizens in the formation and implementation of state policy in the field of competence of the Ministry of Education and Science. Along with other rights, it has the right to start and terminate the work of permanent and temporary bodies (management board, secretariat, committee, commissions, initiative, project and expert groups, etc.) (The Ministry of Education and Science of Ukraine, 2021). Yet, in accordance with the openly promulgated minutes of the meeting of the Council №12 of September 12, 2019, the issue of strengthening the responsibility of the members of the Presidium of the Public Council under the Ministry of Education and Science of Ukraine for organizing its work was raised. During the discussions on this issue, it turned out that the speaker was not aware that the presidium of the public council had not been elected so far. This is confirmed by the remark of one of the council members. Such a precedent may indicate the superficiality of the work of the public council, the lack of understanding of the full range of legal mechanisms, envisaged at the level of both the Standard Regulations and the Special Regulations on the Public Council under the Ministry of Education

and Science of Ukraine. The activities of such an advisory body may lose the expected significance and relevance.

The Public Council under the Ministry of Justice of Ukraine promotes the exercise of citizen's constitutional right to participate in the management of public affairs and encourages the Ministry of Justice to take into consideration the public opinion on the formation and implementation of public policy. It also involves stakeholders in public consultations and monitoring the results of the formation and implementation of the state policy, as well as conducts public monitoring of the activities of the Ministry of Justice in accordance with the law; prepares expert proposals, conclusions, and analytical materials on the formation and implementation of public policy. These tasks are fulfilled in the following way: the Public Council prepares and submits to the Ministry of Justice proposals regarding an approximate plan for public consultations; prepares and submits to the Ministry of Justice proposals for the organization of public consultations, including the involvement of representatives of interested parties; prepares and submits to the Ministry of Justice mandatory proposals, conclusions, and analytical materials on resolving issues in the respective field of its activities; prepares the draft regulations on the improvement of the body's activities; conducts public monitoring of the Ministry of Justice's implementation of the proposals and comments of the public; ensures transparency and openness of its activities in terms of complying with regulations on preventing and combating corruption; informs the public about its activities, decisions and the status of latters' implementation; provides the relevant information to the Ministry of Justice for publication on its official website; collects, summarizes and submits to the Ministry of Justice public proposals on resolving issues of public importance; prepares and publishes an annual report on its activities (The Ministry of Justice of Ukraine, 2021).

When analyzing the report on the Council's activities, it becomes clear that they are constructive, inambiguous and professional. In 2021, the Council comprised 8 committees.

For example, during the period of 2019-2020 (the term under report) the **Committee on Constitutional Legislation and Other Branches of Public Law:**

- developed the draft law "On Cultural Centers", relying on the Standard Resolution of the Cabinet of Ministers of Ukraine "On Cultural Centers and Their Supervisory Boards", which was later submitted to the Committee on Humanitarian and Information Policy of the Verkhovna Rada of Ukraine;

- held consultative meetings with people's deputies of Ukraine to introduce to them the draft Law of Ukraine "On Internal Audit";

- had its chairman participate in the "Forum on Legislative Improvement of the Activities of State Registrars in a Pandemic", which took place on 30.08.2020;

- verified the facts (set out in the appeal to the Public Council 2019-2021) regarding the anti-Ukrainian activities of the political parties "Opposition Platform - for Life" and "Shariy Party", as well as drew conclusions on the ban on these political parties;

- had its committee members participate in the work of the Committee on Humanitarian and Information Policy of the Verkhovna Rada of Ukraine. The latter Committee (with the involvement of the members of the Public Council) helped to implement a number of extremely important measures, especially those related to the most problematic fields of Ukraine's legislation.

The Committee on Civil Law and Other Fields of Private Law:

- elaborated the draft law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Enforcement of Judgments and Decisions of Other Bodies", with its further submission to the Cabinet of Ministers of Ukraine;

- took part in the consideration of appeals to the Public Council 2019-2021 and ensured their implementation by the Ministry.

The Committee on Anti-Corruption Legislation, Financial Monitoring, Anti-Money Laundering and Anti-Raider Legislation:

- involved in its sittings more than 70 people who addressed the Public Council 2019-2021 with appeals;

- considered 23 issues of the agenda, of which - 6 cases on the facts of raiding. A total of 14 appeals to the Public Council 2019-2021 were considered;

- prepared and sent 9 letters to the respective departments of the Ministry regarding raiding, unsatisfactory work of the state registration units and the executive service, as well as court decisions;

- took part in public hearings on the topic: "Bringing to justice the Aggressor State, Its Officials and Their Accomplices for the Occupation of the Sovereign Territories of Ukraine". It also arranged a round table sitting in the format of a video conference on the topic:" Countering Raiding. Problems and Ways to Solve Them" (The Ministry of Justice of Ukraine, 2021).

The activity of such a committee significantly complements the activity of the bodies of the Ministry of Justice of Ukraine in the field of counteraction to

raiding and illegal circulation of funds. Cases of appealing against the actions of state registrars are especially relevant in society. However, joint counteraction to raiding in Ukraine with the participation of a public council may be more effective. Since one of the ways to ensure the individual's violated right is out-of-court protection, the Ministry of Justice of Ukraine has established Collegiums to review complaints against decisions, actions or omissions of the state registrar, state registration entities, and territorial bodies of the Ministry of Justice. In accordance with the Regulations, the Collegiums are permanent advisory bodies under the Ministry of Justice and its territorial bodies, which (within the powers envisaged by the Procedure for reviewing complaints against decisions, actions or omissions of the state registrar, state registration entities, and territorial bodies of the Ministry of Justice – approved by the Resolution of the Cabinet of Ministers of Ukraine of December 25, 2015 № 1128) carry out a peer review of complaints in the areas of state registration of real rights to immovable property and their encumbrances, as well as complaints concerning state registration of legal entities, individuals - entrepreneurs and public entities.

The same ministry, together with the activities of the Public Council, has set up another advisory body, as well as adopted a corresponding provision that works out its major tasks. Unlike the Public Council, which consists of representatives of civil society institutions that have mainly the right to collect information from the authorities and discuss problematic issues with the public, the above Collegium has a distinctive administrative and legal status. It draws conclusions based on the results of the complaint. By its legal nature, the conclusion is nothing but an act of public administration. It has a precise structure and fixed requirements that must be met.

On the contrary, the Public Council is entitled only to prepare proposals based on the results of its activities. No requirements are set for these proposals. They can be of any form. Nevertheless, even if such a proposal is formed by an advisory body, it must have a clearly defined structure, mandatory details, etc.

It is important that the participation of active citizens in the work of public councils should rest on professionalism and competence. At the same time, it is necessary to take into account the peculiarities of the sphere, in which the public administration body and the public council will operate. If the council is established for the purpose of examination or control over specific activities, the majority of its members will be experts in the respective field.

Citizens' participation in exercising public power is an important factor in the development of the state. It enhances public awareness, forms the appropriate

level of legal culture and promotes consensus between private and public interests, between government and the individual. In our opinion, in order to ensure truly effective communication between the citizens and the state, as well as to promote the state-citizen partnership, it is essential to reconsider the criteria for the very definition of public councils in Ukraine.

On analyzing the Standard Regulations on Public Councils, one might notice a number of shortcomings, which need to be eliminated. For example, the public council under the Ministry, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, oblast councils, Kyiv and Sevastopol city and district councils is defined as a temporary advisory body that serves for promoting public participation in the formation and implementation of state and regional policy. In this relation, there arises a logical question as to the timeliness of its activities. If we compare the above activities of public councils at the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine and the Ministry of Education and Science of Ukraine, it could turn out that the range of issues addressed to public councils directly depends on public policy pursued by the Ministries. It is difficult to imagine that crime, violation of citizens' rights in the field of legal protection or active development of the educational system in our country are static and volatile phenomena.

On the contrary, the activities of such public councils should accompany the exercise of public power at various levels: state and local. The respective draft regulations must necessarily be taken into account. If there is no chance to ensure the continuity of the work of public councils and their activities, the constant dialogue and communication between the individual and the state will not be possible. This problem can be solved by adopting a new normative legal act, which will establish in detail the administrative and legal status of public councils.

6. Conclusions

Having studied the theoretical and normative aspects of public councils, we can claim that public councils today are an effective legal form of ensuring and implementing the partnership between the state and a citizen. The basis of theoretical research of their activities should be communicative theory, which allows to consider public councils as institutions of civil society, thus allowing to maintain a constant dialogue between the state and society. Appropriate normative consolidation of the legal status of public councils will ensure the right of citizens to

exercise public power in Ukraine, to participate in procedures for discussing specific provisions in a particular area of public life.

The lack of a sufficient number of theoretical and applied legal research on this topic does not allow for a full study of public councils, as one of the guaranteed and secured forms of participation in the state-citizen partnership. The analysis of the current legislation on this issue provides an opportunity to outline such legal gaps in the legal regulation of the functioning of public councils in advance. These gaps concern the fact that the activity of public councils takes place on the basis of a by-law (the latter determining the basic categories, rights, and responsibilities of the members of the public council), as well as works out the procedure for their selection. In our opinion, their legal status should be regulated at the level of a separate legal act. Secondly, as the analysis of the activities of individual existing public councils in ministries showed, council members do not always understand what rights and responsibilities they have. There were even situations when they did not understand the organizational and legal forms of public councils, which indicates a lack of sufficient knowledge about the activities of public councils.

We believe that the normative act regulating the activities of public councils should necessarily require appropriate training. Thirdly, the definition of public councils, made by the Standard Regulations, should be changed by removing the word ”temporary”. We are convinced that the activities of public councils should take place on a regular basis. Fourthly, it is important to consider the possibility of improving the mechanism for revising respective recommendations by public administration bodies. This will serve as an additional ground for increasing the influence of public councils in the process of making appropriate decisions.

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