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PUBLIC GENDER-LEGAL EXPERTISE AS A FORM OF PUBLIC CONTROL: THEORETICAL AND LEGAL ASPECT

Людмила Сірко. ГРОМАДСЬКА ГЕНДЕРНО-ПРАВОВА ЕКСПЕРТИЗА ЯК ФОРМА ГРОМАДСЬКОГО КОНТРОЛЮ: ТЕОРЕТИКО-ПРАВОВИЙ АСПЕКТ. Досліджено громадську гендерно-правову експертизу як форму участі громадян в управлінні державними справами, яка в умовах сучасних державно-політичних трансформацій є однією з дієвих форм громадського контролю. Наголошено, що активне застосування громадської гендерно-правової експертизи проєктів нормативно-правових актів та чинного законодавства дозволить виявити та попередити наявність правових норм, які є дискримінаційними чи можуть у майбутньому призвести до обмеження або переваги однієї статі над іншою.

Акцентовано, що ефективна участь в управлінні державними справами щодо проведення громадських гендерно-правових експертиз зумовлена роботою її суб'єктів, зокрема, громадськими організаціями.

Ключові слова: гендерна рівність, інститути громадянського суспільства, гендерно-правова експертиза, громадська гендерно-правова експертиза, управління державними справами.

Relevance of the study. In the conditions of democratic transformations taking place in our state, the search for new progressive forms of political communication between public authorities and civil society institutions continues. In particular, in the field of public administration the issues of studying public control and public gender-legal expertise, as one of its effective forms, are relevant.

Today, an important social task is to ensure gender equality. Professional legal expertise, part of which is gender law, improves the quality of both existing legislation and draft regulatory acts in the field of equal rights and opportunities for women and men. However, one of the important tools for the influence of civil society institutions on the formation of gender equality in all spheres of life is the conduct of public gender-legal expertise.

Recent publications review. The study of public legal expertise is connected with the scientific works of such scientists as: A. Balatska, K. Babenina, V. Zakharova, M. Latsyba, O. Litvinov, K. Levchenko, O. Orlovskiy, E. Pozniak, O. Sushko, O. Khmara, A. Chernousov, I. Shevchenko and others.

The article's objective. Regarding the European integration aspirations of our state, it is important to consider a new form of participation of civil society institutions in the management of public affairs, namely public gender-legal expertise, aimed at establishing gender-based legal norms that are discriminatory or may lead to restrictions or advantages of one sex over another in the future.

Discussion. For public authorities at all stages of the political or public decision-making process, including on issues related to the principle of gender equality, an important component is information, as well as taking into account the views of civil society institutions, which can be obtained, for example, through consultation or dialogue. Thus, with the help of two-way communication, opinions are exchanged and joint bills, recommendations, strategies, etc. are developed. However, the interaction of public authorities with civil society institutions in the field of ensuring the principle of gender equality can be effective only if the partnership provides for their openness to each other and mutual responsibility.

The current legal framework is imperfect and creates obstacles for the implementation of public initiatives. Given the above, in the context of the introduction of comprehensive reform of public authorities in our country began to use various forms of public control, but the

vast majority of them, having a sufficiently low efficiency, requires a thorough theoretical and practical study.

The Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” contains norms that provide for the need to conduct only gender-legal expertise of compliance of current legislation and draft regulatory legal acts with the principle of equal rights and opportunities for women and men [1]. For example, the conclusion of the gender-legal expertise is submitted as a mandatory component for consideration together with the draft normative legal act. However, there are no provisions on public gender-legal expertise.

In order to address state and social issues related to the realization of the principle of gender equality, it should be emphasized that the implementation of reforms is confirmed by enshrining in law the possibility of public gender-legal expertise, the primary task of which is to change stereotyped perception of women and men at the initiative, in particular, of individuals, legal entities and public associations.

Gender-legal expertise is the process by which the various impacts of proposed / existing policies, programmes and legislative acts on women and men are assessed. Quite often, the potentially different impact of policies, programmes and legislative acts on different sexes is masked or unclear [2]. Due to this form of participation of civil society institutions in the management of public affairs, it is possible to compare how and why public policy affects women and men, as well as to determine the ratio of the sexes. The phenomenon under study often has a latent effect. The readiness of the state apparatus to formulate and implement state policy in the field of equal rights and opportunities for women and men depends primarily on how the subjects of power react, especially those who have the legislative initiative in the context of public legal expertise.

In accordance with paragraph 4 of the Procedure for gender-legal expertise, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28.11.2018 № 997 (hereinafter – the Procedure), at the initiative of individuals, legal entities and public associations there may be conducted public gender-legal expertise of regulatory legal acts [3].

If we compare the provisions of the Resolution of the Cabinet of Ministers of Ukraine “Issues of Gender-Legal Expertise” dated 28.11.2018 № 997 with the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Promoting Public Legal Expertise of Executive Bodies” dated 05.11.2008 № 976, it should be noted that the latter contains an expanded list of legal entities at the initiative of which the study may be conducted. Regarding the regulation of public gender-legal expertise, the legislation needs to be improved, which can be implemented by supplementing the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” and the Resolution of the Cabinet of Ministers of Ukraine “Issues of Gender-Legal Expertise” with such a legal entity as institutions of civil society. This addition will expand the list of legal entities at the initiative of which public gender-legal expertise can be conducted.

It should be noted that the Resolution refers only to the expertise of draft regulatory legal acts, nothing is stated about the current regulatory legal acts and further changes to them. Despite the fact that individuals, legal entities and public associations may conduct public gender-legal expertise, compared to gender-legal expertise, there is no obligation for the authorities to take into account the conclusion based on the results. Thus, given the current challenges of globalization, the urgent issue is to supplement the Resolution with provisions on the possibility of initiating a public gender-legal expertise not only of draft regulatory legal acts, but also of current legislation. It is also necessary to provide the direction of the conclusion to the body that developed the project or adopted a legal act in order to be able to take it into account.

In the context of the analysis of problematic aspects of the provisions of regulatory legal acts in the field of public gender-legal expertise, it should be noted that there is no definition of the concept under study enshrined in law. Thus, the need to study the definition of the concept of public gender-legal expertise as a new form of public control presupposes the introduction of this concept into legal circulation. The processed material has allowed to define the concept of public gender-legal expertise as a component of the mechanism of democratic governance, which involves civil society institutions using a set of measures aimed at identifying in draft regulatory legal acts and current legislation norms that are discriminatory on the basis of sex or may lead to the limitation or advantage of one sex over the other in the future. Based on the results of this expertise, there has been drawn a conclusion, which is recommended to be taken into account by public authorities in their activities.

In the conditions of formation and implementation of the policy of the modern state,

public gender-legal expertise can be effective and efficient only in the presence of a clearly defined procedure for its implementation, but currently this procedure is absent.

Resolution of the Cabinet of Ministers of Ukraine “Issues of Gender-Legal Expertise” dated 28.11.2018 № 997 approved a new procedure for conducting gender-legal expertise [3]. This document does not contain provisions on the stages of public gender-legal expertise, as well as the transfer of the conclusion on the results of its conduct, as well as the possibility of its further consideration by public authorities.

This procedure is regulated by legislation governing other forms of public control. The lack of a procedure for conducting public gender-legal expertise necessitates the development of its methodology. The Ministry of Justice of Ukraine, for example, has to determine the procedure for conducting a public gender-legal expertise.

In order to comprehensively address the issue of developing a procedure for conducting public gender-legal expertise, it is important to determine how it will be carried out. This issue can be addressed, for example, through two stages, one of which is mandatory and the other is optional. In the first stage, a draft or current legal act is checked for compliance with the principle of gender equality. As for the second stage, it is implemented in case of detection of non-compliance with this principle during the first stage and involves in-depth expertise by civil society institutions, which will further explain the problem thoroughly and implement basic recommendations for its elimination.

In order to conduct the second stage of public gender-legal expertise effectively, it is advisable to conduct it taking into account the guidelines, which can be presented in the form of the following stages:

The first stage is a description of the subject of regulation of the analyzed draft or current regulatory legal act.

At this stage, the following issues are clarified: the range of public relations, which will be regulated by a draft regulatory legal act or are regulated by current legislation; the group of the population to which the provisions of the draft regulatory legal act will apply or the current legislation applies; the responsibility of public authorities that will exercise or are exercising control over the implementation of the provisions of the draft regulatory legal act or current legislation, etc.

The second stage is the study of national and international legislation in the field of gender equality.

The provisions must be applied as during the gender-legal expertise. Among the national legal acts in the field of gender equality are: the Constitution of Ukraine, the Laws of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” of 08.09.2005, “On Principles of Preventing and Combating Discrimination in Ukraine” of 06.09.2012, “On Prevention and Counteraction to Domestic Violence” dated 07.12.2017, “On Combating Trafficking in Human Beings” dated 20.09.2011, National Action Plan for the Implementation of UN Security Council Resolution 1325 “Women, Peace, Security” for the period up to 2020 year, approved by the order of the Cabinet of Ministers of Ukraine from 24.02.2016, the National Action Plan to implement the recommendations set out in the concluding observations of the UN Committee on the Elimination of Discrimination against Women to the eighth periodic report of Ukraine on the Convention on the Elimination of All Forms of Discrimination against Women 2021, approved by the order of the Cabinet of Ministers of Ukraine dated 05.09.2018 № 634-r, etc.

The study of international regulatory legal acts can be divided into two parts: the first involves the analysis of acts that contain general grounds for ensuring the principle of gender equality; the second involves the study of acts that formulate standards for ensuring the principle of gender equality in the context of the studied area of social relations, for example, they relate to employment and representation, overcoming gender-based violence, and so on.

The third stage is the search for relevant laws, regulatory legal acts and public gender-legal or gender-legal expertise.

According to K. Levchenko, this stage is important because the national legislation contains a large amount of bylaw regulatory legal acts and orders of the Cabinet of Ministers of Ukraine, departmental orders and other documents [4, p. 289]. It is bylaws that often specify the norms formulated in the laws.

The fourth stage is a thorough analysis of the norms on the possibility of their effective implementation.

It should be borne in mind that articles can be related to ensuring the principle of gender equality both directly and indirectly. The draft regulatory legal act or current legislation is de-

terminated as to whether they are: gender-neutral, discriminatory on the basis of a certain sex, gender-unbalanced, do not provide equal opportunities for women or men, etc.

The fifth stage is the preparation of the conclusion and its publication. It is formed on the basis of generalization of each of the stages of expertise and is a mandatory component of expertise.

The conclusion should consist of an introductory, analytical and final part, which contains data on the civil society institution that conducted the expertise, substantiated comments on the compliance of the project or current legal act with the principle of gender equality or information on their absence; suggestions on possible ways of further refinement or improvement, etc. The opinion should be posted both on the official website of the civil society institution that conducted the expertise and on the website of the public authority that draft regulatory legal act or adopted the current legislation.

With the adoption of the Resolution of the Cabinet of Ministers of Ukraine “Issues of Gender-Legal Expertise” dated 28.11.2018 № 997 NGOs began large-scale work in the framework of the National Plan and recommendations of the UN Security Council and public gender-legal expertise.

There is national experience in conducting pilot public gender-legal expertise of bills submitted to the Verkhovna Rada of Ukraine. Thus, thanks to cooperation with NGOs, experts, international donor agencies and with the support of the USAID Eastern Europe Foundation Programme, the research work was actively started in the Verkhovna Rada of Ukraine of the VIII convocation by the inter-factional parliamentary association “Equal Opportunities”. The methodology of the pilot expertise for compliance of draft laws with the principle of equal rights and opportunities for women and men was based on the requirements of the Laws of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” and “On Ensuring Equal Rights and Opportunities for Women and Men”. Its approaches can be used as anti-discrimination and for other groups of protected features [5].

It should also be noted that the National Academy of Legal Sciences of Ukraine is actively involved in reforming the legal system and legislation, which promotes the participation of civil society institutions in the management of public affairs, in particular in the field of public gender-legal expertise. Following the existing experience of establishing such research centres, an important event was the decision to establish a Training and Research Laboratory to study the legal status of internally displaced persons and gender equality (hereinafter – the Laboratory) in 2017. In public gender-legal expertise, which is systematically conducted by specialists of the Laboratory, we can focus on the following: Programmes for the preservation and development of cultural and natural heritage sites located in the Dnipropetrovsk region for 2014-2019; Program for the development of small and medium enterprises in the Dnipropetrovsk region for 2019-2020, Program for supporting war veterans and family members of the fallen participants in hostilities in obtaining land ownership in 2019-2021; Code of Judicial Ethics, etc.

Thus, based on a comprehensive study of public gender-legal expertise as a form of participation of civil society institutions in the management of public affairs, we can draw the following **conclusions**.

1. The entry of our state into the democratic system of relations requires consideration of the peculiarities of the rights of women and men as socially equal. Public gender-legal expertise in the context of modern state and social transformations, as well as in the context of European integration aspirations of our state is one of the effective forms of public control. It is also a manifestation of real democracy, which allows civil society institutions and the state as a whole to interact effectively, while establishing a meaningful dialogue at all stages of the decision-making process in the field of gender equality. The application of effective public gender-legal expertise of draft regulatory legal acts and current legislation will identify and prevent the existence of legal norms that are discriminatory or may lead to the restriction or advantage of one sex over another in the future.

2. We consider it necessary to supplement the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” and the Resolution of the Cabinet of Ministers of Ukraine “Issues of Gender-Legal Expertise” dated 28.11.2018 № 997 in terms of regulating public gender-legal expertise with: first, such a legal entity as civil society institutions; secondly, the possibility of initiating expertise not only of draft regulatory legal acts, but also of existing legislation; thirdly, to consolidate the possible consideration of conclusions based on the results of public gender-legal expertise by public authorities in their activities.

3. Public gender-legal expertise is a component of the mechanism of democratic governance, which involves civil society institutions using a set of measures aimed at identifying in draft regulatory legal acts and current legislation norms that are discriminatory on the basis of sex or may lead to the limitation or advantage of one sex over the other in the future. Based on the results of this expertise, there has been drawn a conclusion which is recommended to be taken into account by public authorities in their activities.

4. The lack of a procedure for conducting public gender-legal expertise, enshrined in national legislation, is an obstacle to its effective conduct. In the context of modern globalization challenges, the urgent task is to develop a special methodology for conducting public gender-legal expertise in order to facilitate the orientation of civil society institutions in the field of public gender-legal expertise. The Ministry of Justice of Ukraine, for example, has to define this procedure for conducting public gender-legal expertise. The procedure for conducting public gender-legal expertise should be presented in two stages. The first stage is mandatory and involves checking the draft regulatory legal act or current legislation for compliance with the principle of gender equality. The second stage is implemented in case of non-compliance of the bill or current regulatory legal act with this principle and involves civil society institutions to conduct in-depth expertise, which will thoroughly explain the problem and put into practice the recommendations based on its elimination. In order to conduct public gender-legal expertise effectively, it is advisable to conduct the second stage, taking into account the guidelines which are presented in the following stages: the first stage – a description of the subject of regulation of the analyzed project or current legislation; the second stage – the study of national and international legislation in the field of gender equality; the third stage is the search for relevant laws, other regulatory legal acts and public gender-legal or gender-legal expertise, if any; the fourth stage – a thorough analysis of the rules on the possibility of their effective implementation; the fifth stage is the preparation of the conclusion and its publication.

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Abstract

The article examines public gender-legal expertise as a form of citizen participation in the management of public affairs, which in the conditions of modern state and political transformations is one of the effective forms of public control. It is emphasized that the active application of public gender-legal expertise of draft regulatory legal acts and current legislation will identify and prevent the existence of legal norms that are discriminatory or may lead to the restriction or advantage of one sex over another in the future.

The current legislation has been analyzed and it is proposed to supplement the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” and the Resolution of the Cabinet of Ministers of Ukraine “Issues of Gender-Legal Expertise” dated 28.11.2018 № 997 in terms of regulating public gender-legal expertise.

Keywords: *gender equality, civil society institutions, gender-legal expertise, public gender-legal expertise, public affairs management.*