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**Problematic aspects of regulatory consolidation of
administrative legal personality of public councils^{**}**

**Summary: 1. Introduction, 2. Materials and methods, 3. Results and
discussion, 4. Conclusions.**

DOI: 10.26350/18277942_000119

1. Introduction

Today, society and the state face organisational tasks that are reduced to one common denominator: how to make the system of public administration as comfortable and effective as possible? The problem of the institution of public participation in communication with public authorities is caused by several factors: the conceptual and essential uncertainty of this institution in the context of the public administration system reform, and the reform of civil society institutions; the search for an optimal model for organising state bodies; the lack of both scientific and statutory analysis of the legal regulation concerning the institution of public councils in administrative law, the need for a qualitative justification of scientific opinions on the problems of organising interaction between public authorities and civil society, etc.

A clear definition of the possibility of improving the terminology, which concerns the direct possibility of high-quality implementation of the entire range of their rights by such councils, will allow establishing a unified mechanism that is implemented by public councils and will help determine their place among other public institutions. At the same time, it would

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^{**} Il contributo è stato sottoposto a *double blind peer review*.

allow evaluating the specific features of management activities that are successfully implemented in the public administration processes of Ukraine's neighbouring countries: Hungary, Poland, Romania, etc. Furthermore, a qualitative study of the tools of public councils' activities would provide insight into the existing problematic aspects of their interaction with state authorities of various levels and local self-government bodies. This would serve as an appropriate component for improving the introduction of public councils under public administration bodies and their legal relations with public administration entities in terms of implementing executive and administrative activities². In addition, the practical component of the study can serve as an example for the post-Soviet countries. Public councils, as one of the most striking examples of interaction and communication between an individual citizen, a group of individuals and the state, its authorised body, are currently in the centre of attention of researchers and practitioners in the area of public administration. Their development as consultative and advisory formations is a multifaceted and complex process.

Admittedly, only in the presence of desire, experience, and time would the integration of public councils into the "body" of the public administration system take place as efficiently as possible. When introducing them, one should be guided by the thesis that the transfer of experience and theoretical basis of the countries of the European space should take place with certain national characteristics of Ukrainian society. This is especially true for defining terms and definitions of certain legal categories. Therewith, it is necessary to consider the social, economic, cultural, and administrative traditions of Ukraine, the state and level of development of state institutions, the legal regulation of civil society institutions in their interaction ensured by authorised public authorities and local self-government bodies. Therefore, to better understand the full range of legal means that public councils can implement in their activities, it was necessary to determine what is meant by the tools of public councils' activities. Based on this, the authors investigated the practical aspect of the legal personality of public councils through the lens of the historical

² M. RUDENKO – I. MALINOVSKA – S. KRAVTSOV, Justice for judges in Ukraine: Looking for peace and strong judiciary institutions in a sustainable society, In: *European Journal of Sustainable Development* 10 (1) (2021), pp. 339-348.

development and analysis of the current legislation governing the procedure for the activities of public councils in Ukraine. This determined the originality of this study. The paper hypothesised that the implementation of a statutory analysis of the legislation governing the activities of public councils in terms of determining the legal personality of the latter plays a positive role in understanding the role of such councils, the range of their rights and outlining the range of practical issues, legal gaps that they contain in such legislation.

2. Materials and Methods

Upon investigating the theoretical and practical component of the exercise of public councils' powers through appropriate legal instruments, the authors used classical methods of scientific cognition. This study was conducted using the method of analysing the current Ukrainian legislation and basic terms and categories, which allowed outlining the boundaries and scope of legal personality of public councils. In addition, the paper employed the historical method, which involved step-by-step reproduction of the development of public councils in Ukraine and the influence of foreign practice on such a public institution. The authors observed the results of step-by-step reproduction of this process, and concluded that observation "from the outside" is much more effective than the usual literature study.

Among Western scientists, it is worth mentioning the study of M. Weber³; N. Borjelli and V. Bright⁴; J. Habermas⁵. In Ukraine, this issue has not been addressed for a considerable period of time. Public councils are investigated by T.V. Andriychuk⁶, who defined public councils as an effective tool in the development and implementation of national policy; V. V. Perzhun⁷, who focused on the importance of developing socio-cultural

³ M. WEBER, *Basic sociological concepts*, Moscow, 1990.

⁴ N. BORJELLI – V. BRIGHT, *Public councils as a mechanism of consultation between the state and the public*, Minsk, 2009.

⁵ J. HABERMAS, *Public space and political publicity. Biographical roots of two mental motives. Between naturalism and religion*, Moscow, 2011.

⁶ T. ANDRIYCHUK, Public councils as a tool for public participation in the formation and implementation of public policy, In: *Political Management* 3 (7) (2011), pp. 71-79.

⁷ V. V. PERZHUN, Management culture as a socio-cultural mechanism of transition to public administration in Ukraine, In: *Effective public and municipal administration: theory, methodology, practice. I experience*. (pp. 43-47). Venice, 2020.

features of administrative culture for managers and representatives of public organisations; O. Savchenko⁸, who studied public councils as a tool for involving the public in decision-making, a tool for influencing the development of national policy. The study involved regulatory sources – the Constitution of Ukraine⁹, the Laws of Ukraine "On Public Associations"¹⁰, Decree of the President of Ukraine "On Ensuring Conditions for Wider Public Participation and Implementation of National Policy"¹¹, Resolutions of the Cabinet of Ministers of Ukraine "On the Establishment of the Council of Industrialists and Entrepreneurs of Ukraine under the Cabinet of Ministers of Ukraine"¹², "On Ensuring Public Participation in the Development and Implementation of National Policy"¹³ and a Standard Regulations on the Public Council under the Ministry, other Central Executive Bodies, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city, district, Kyiv and Sevastopol municipal state administration¹⁴.

Notably, the science of Ukrainian administrative law quite often brings up for discussion theoretical and practical issues of the activities of certain legal institutions. And it is appropriate to note that at the present stage of development of administrative law and administrative legislation, the problem of defining a term that would adequately correspond to the essence of the activities of bodies (officials) endowed with public authority related to the actual service of the people remains unresolved¹⁵. This statement can also be applied to the issue of defining the category of legal personality of public councils. After all, apart from the scientific debate about their place and significance for the development of a democratic society in Ukraine, the sphere of practical implementation by such

⁸ O. SAVCHENKO, Public councils as a subject of public control in Ukraine: legal principles and development trends, In: *Legal Bulletin* 1 (1) (2015), pp. 67-72.

⁹ <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (Accessed: 13.10.2022).

¹⁰ <https://zakon.rada.gov.ua/laws/show/4572-17#Text> (Accessed: 13.10.2022).

¹¹ <https://zakon.rada.gov.ua/laws/show/854/2004#Text> (Accessed: 13.10.2022).

¹² http://search.ligazakon.ua/l_doc2.nsf/link1/KMP93210.html (Accessed: 13.10.2022).

¹³ <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF#Text> (Accessed: 13.10.2022).

¹⁴ <https://zakon.rada.gov.ua/laws/show/353-2019-%D0%BF> (Accessed: 13.10.2022).

¹⁵ I. KOVBAS, Definitive – substantive analysis of public – government services, In: *Scientific Bulletin of Chernivtsi University*, 478, 11-76.

institutions of both their rights and the limits of their activities remains ignored.

3. Results and Discussion

Considering the scientific conclusions of Ukrainian researchers who have studied the development of public councils in Ukraine, the practice of involving the public in joint work with executive authorities began in 1993. The prototype of such an institution was the Council of Entrepreneurs of Ukraine, which was established under the Cabinet of Ministers of Ukraine by Resolution No. 210 of March 22, 1993¹⁶. This resolution established the corresponding Regulation. Even though it is no longer valid, analysing its text, one can state the fact that such a sub-legislative act does not provide the appropriate legal tools for exercising its rights. The issue of organisational elements of the Council's activities was also ignored. Only the general scope of such a council's activities was outlined, its personal composition was determined, and the corresponding powers were listed. Although it is unclear exactly how the listed powers should be implemented in the text of the document. However, despite this, the creation of such a platform for communication between the business sector and the executive branch was once an important step in establishing a dialogue between society and the state. In the future, the creation of public councils under executive authorities took place based on the Decree of the President of Ukraine No. 854 "On Ensuring Conditions for Wider Public Participation in the Development and Implementation of National Policy" dated 31.07.2004¹⁷.

Thus, the government for the first time established new mechanisms for implementing the constitutional right of citizens to be engaged in public administration through consultation of such bodies with society, which were not previously defined at the regulatory level. However, even in this case, whether intentionally or not, the legislator established rather limited powers of public councils. Due attention was not paid to the detailed regulation of the provisions concerning the working bodies of public councils. Because of this, they were unable to fully implement the range of functions that were assigned to them. It all came down exclusively to

¹⁶ As in footnote 11.

¹⁷ <https://zakon.rada.gov.ua/laws/show/854/2004#Text> (Accessed: 13.10.2022).

coordinating activities related to creating conditions for executive authorities to conduct public consultations. Furthermore, the disadvantage of this document was that it did not define a particular mechanism for forming public councils¹⁸. Notably, the lack of political will, proper motivation, and understanding of the importance of such an institution as public councils has led to improper regulatory consolidation of actually effective tools and mechanisms that would help implement really high-quality, not formal communication between society and the state. At the same time, the incentive for increasing the attention of the authorities to the functioning of the public council should be the course of Ukraine towards transparency in the activities of executive authorities and local self-government bodies, the social orientation of state management decisions and the elimination of corruption¹⁹.

In the future, the process of democratic transformation of the participation of such civil society institutions in public administration was reflected in the adoption of Resolution of the Cabinet of Ministers of Ukraine No. 996 "On Ensuring Public Participation in the Development and Implementation of National Policy" dated 03.11.2010²⁰. In this study, the authors once again failed to define the main elements of the administrative and legal status of public councils, but attempted to analyse one of its central elements, the legal personality of public councils. At the same time, it is necessary to identify the main functions of the latter that would give insight into the effectiveness of legal regulation of the implementation of the main purpose by public councils, which lies in the establishment of proper communication between society and public administration bodies at all levels.

It is worth agreeing with the opinion that the functions of public councils in the public legal sphere can be divided into the following types:

– advisory – lies in highlighting the position of civil society institutions regarding the policy of public authorities;

¹⁸ YU. ZH. SHAYGORODSKY – T. S. ANDRIYCHUK – A. YA. DIDUKH, *Power and society: dialogue through public councils*, Kyiv, 2011.

¹⁹ A. S. KRUPNIK, *Public councils: creation and organization of work. Reference and methodical manual for members of public councils*, Kyiv, 2012.

²⁰ V. TATSIY, Re-codification of the civil law of Ukraine: On the way to European integration, In: *Global Journal of Comparative Law* 10 (1-2) (2021), pp. 1-4.

- consulting – promotion of cooperation between public authorities and the public in the form of consulting by helping to organise all its types of consultations;
- representative – representation of the interests of certain groups of society in public power activities in all spheres of public life and their influence on the adoption of the necessary rules of conduct for them;
- controlling – implementation of public control over the activities of public authorities at all stages of adopting rules of conduct, which lies in expert examinations of draft decisions, monitoring the proposals of civil society institutions and the activities of councils;
- statutorily-assisting – help in creating regulations and introducing proposals concerning them (this function is incorrectly called rule-making by some scientists. This position indicates that public councils are subjects of rule-making, that is, they adopt statutory rules of conduct, which is categorically wrong);
- coordinating – acts as a "bridge", a mechanism for establishing a dialogue between state authorities in a certain area, local self-government bodies, public, religious, and other organisations, media, the public, the people, national minorities and society to reach consensus on a certain issue of public life;
- professional – an expert examination in a particular field by specialists who have special knowledge and understand the problem more comprehensively and broadly than ordinary citizens or individual representatives of public authorities;
- informative – communicating information about the activities of public authorities and their decisions, as well as drafts of these decisions, to the public;
- security – protection and remedying of citizens' rights and freedoms through reporting information about the facts of their violation and introducing proposals regarding the elimination of these facts;
- cultural and legal – creation of prerequisites for increasing the level of trust of citizens in public authorities, overcoming legal nihilism, stimulating social activity of the individual, increasing the overall level of legal culture of the population²¹.

²¹ A. V. VOLOSHIN – M. V. LATSIBA, *Effective organization of public council work*, Kyiv, 2011.

Admittedly, these functions determine the main vector of practical orientation of the activities of public councils. However, the authors believe that the definition of functions alone will not fully cover the entire practical ability of public councils to be an independent subject of public legal relations with government and local self-government bodies. To highlight the main regulatory shortcomings that enable the implementation of such functions, it is worth analysing the current Ukrainian legislation governing the activities of public councils. Furthermore, the corresponding Model Regulation on the Public Council under the Ministry, Other Central Executive Body, the Council of Ministers of the Autonomous Republic of Crimea, Regional, Kyiv and Sevastopol city, district, municipal state administration in the cities of Kyiv and Sevastopol does not allow clearly identifying the exact level of legal personality such councils are endowed with²². This questions their ability to provide actual assistance in the public sphere for governing the corresponding circle in public relations, providing suggestions, advising and commenting on the development of public power activities. This also leads to the consolidation of merely formal participation of citizens in the exercise of public power. It is impossible to call this a manifestation of public control over the activities of government representatives. Only an imaginary, non-viable form of such control is provided. The possibility of implementing participatory democracy will be reduced to nothing, because it occurs when individuals, being in the centre of decision-making, are "endowed with equal opportunities to determine the final decision"²³.

Furthermore, the materials of the results of the study "Investigating Public Opinion on the State of Development of Civil Society in Chernivetska Oblast" confirm the issue of insufficient tools to support public organisations and a clear definition of the legal personality of public councils. This study was conducted, among other things, with the involvement of former and new members of the public council under the Chernivetska Oblast State Administration to evaluate the functioning of

²² L. USACHENKO, Public advisory councils: status and prospects of functioning, In: *Efficiency of Public Administration* 18/19 (2009), pp. 388-390.

²³ C. PATEMAN, *Participation and democratic theory*, Cambridge, 1970.

public councils operating in the city of Chernivtsi and the Oblast²⁴. The results of such studies motivate the search for appropriate theoretical and practical considerations for the introduction and improvement of tools for the activities of public councils. Considering the above, one can distinguish several essential regulatory gaps that occur in the legal regulation of public councils.

Firstly, Paragraph 1 of the Model Regulation on the Public Council under the Ministry, Other Central Executive Body, the Council of Ministers of the Autonomous Republic of Crimea, Regional, Kyiv and Sevastopol city, district, municipal state administration in the cities of Kyiv and Sevastopol defines public councils as a temporary consultative and advisory body formed to promote public participation in the development and implementation of national and regional policies²⁵. Such definition does not fully correspond to the legal nature of the institution under study. The legislator's position as to the reason for this definition to contain the adjective "temporary" is unclear. The authors of this study consider it to be one of the clear confirmations that the public authorities do not intend to strengthen the position of such institutions. This may be connected with a factor in the possible effectiveness of public control. Therefore, the refusal to clearly define the legal personality of public councils confirms this.

For comparison, one can examine the definition of a public association. According to Paragraph 1, Part 1, Article 1 of the Law of Ukraine "On Public Associations", a public association is a voluntary association of individuals and/or legal entities of private law for the exercise and protection of rights and freedoms, satisfaction of public, namely economic, social, cultural, environmental, and other interests²⁶. This definition does not emphasise that such subjects are temporary. After all, the process of implementing public-power relations to ensure the exercise of citizens' rights and freedoms is not temporary. It may vary depending on the form of state

²⁴ <http://www.rieirs.org.ua/index.php/en/robota-institutu/proekty-ta-podii/item/347-hromadianske-suspilstvo-shans-na-partnerskyi-dialoh> (Accessed: 13.10.2022).

²⁵ As in footnote 13.

²⁶ T. SLINKO – O. UVAROVA, Freedom of Expression in Ukraine: (Non)sustainable Constitutional Tradition, In: *Baltic Journal of European Studies* 9 (3) (2019), pp. 25-42.

structure, form of government, or political regime. But its implementation is a gradual development of both society and the state²⁷.

Leaving such a definition in the form in which it is proposed by the legislator, in the future public councils will be unable to perform their tasks efficiently. Thus, according to Paragraph 3 of the Regulation, the main tasks of the public council are as follows:

- assistance in the citizens' exercise of their constitutional right to take part in the management of state affairs;
- assistance in the executive authority's consideration of public opinion upon developing and implementing national and regional policies;
- assistance in attracting representatives of interested parties to conduct public consultations and monitor the results of the development and implementation of national and regional policies;
- conducting public monitoring of the activities of the executive authority in accordance with the legislation;
- preparation of expert proposals, conclusions, and analytical materials on the development and implementation of national and regional policies²⁸.

If the provision in question remains unchanged, it can be argued that performing such tasks will become problematic for members of public councils. In a situation where the time such an institution will work for is unknown, it is difficult to contemplate on high-quality strategic planning of its activities. In this regard, the authors of the study propose to amend Paragraph 1 of the Regulation and set it out in the following wording: "Public Council under the Ministry, Other Central Executive Body, the Council of Ministers of the Autonomous Republic of Crimea, Regional, Kyiv and Sevastopol city, district, municipal state administration in the cities of Kyiv and Sevastopol (hereinafter referred to as "the public council") is an advisory body established to promote public participation in the development and implementation of national and regional policies". This will enable a qualitatively change in the effectiveness of public councils.

In accordance with Paragraph 5 of the Model Regulation, the public council has the following rights:

²⁷ E. YOUNG – L. QUINN, *How to write an effective analytical document in the field of public policy*, Kyiv, 2003.

²⁸ K. TRYKHLIB, Law-making activity in the case law of the constitutional court of Ukraine, In: *International and Comparative Law Review* 19 (2) (2019), pp. 27-75.

- to establish permanent and temporary working bodies (administration, secretariat, committees, commissions, expert groups, etc.);
- to involve employees of central and local executive authorities, local self-government bodies, representatives of enterprises, institutions and organisations, depending on the form of ownership (with the consent of their managers), as well as individual specialists (with their consent) in their work;
- to organise and conduct seminars, conferences, round tables, and other public events;
- to receive, in accordance with the established procedure, information from executive authorities and local self-government bodies necessary to ensure the activities of the council;
- to receive from the executive authority draft regulations on issues that require public consultation;
- to conduct, in accordance with the legislation, public expertise of the activities of the executive authority and public anti-corruption expertise of regulations, including draft regulations, developed by the executive authority.

Proceeding from the established rights granted to public councils, the authors propose their classification according to their functional purpose as follows:

- organisational rights (to establish permanent and temporary working bodies; to involve employees of central and local executive authorities, local self-government bodies, representatives of enterprises, institutions and organisations independent of the form of ownership);
- technical and regulatory rights (to conduct, in accordance with the legislation, public expertise of the activities of the executive authority and public anti-corruption expertise of regulations, including draft regulations, developed by the executive authority);
- informational rights (to receive from executive authorities and local self-government bodies the information necessary to ensure the activities of the council in accordance with the established procedure; to receive draft regulations on issues requiring public consultation from the executive authority);
- educational rights (to organise and conduct seminars, conferences, round tables, and other public events).

According to the authors, it is unclear why the above paragraph exemplifies only the list of "permanent and temporary working bodies (administration, secretariat, committees, commissions, expert groups)". The lack of a clear definition of these public council bodies does not allow properly outlining their internal system. In the text of this regulation, the name of such bodies is mentioned only once, with the exception of the secretariat of the public council. Thus, in accordance with Paragraph 26 of the Regulation, "Provision of the public council secretariat with premises for the operation of the council and holding its meetings, as well as, if possible, with means of communication, is performed by the executive authority. The chairman of the public council is responsible for the preservation of premises, property, etc. provided by the executive authority to the secretariat of the public council for temporary use". These organisational and structural divisions of public councils are also to a certain extent responsible for the high-quality, timely, and full use of such councils.

Therefore, it is necessary to supplement the corresponding provision with definitions that will enable the understanding of functions each of these structural elements performs. To establish definitions of such structural elements of public councils, it is worth referring to the interpretation of definitions offered by dictionaries of the Ukrainian language. Thus, the word "administration" refers to an elected body that governs an institution, organisation, enterprise, etc. The meaning of the word "secretariat" is defined as persons elected at meetings, conferences, etc. to keep minutes, prepare resolutions, etc. "A committee" is a collegial body that manages any branch of state or public activity. "A commission" is defined as a group of individuals tasked with solving certain issues. "A group" is defined as a set of individuals united by a common goal, idea, work, etc²⁹. Considering the above and taking the given definitions as a basis, the meaning and interpretation of which are proposed by researchers of the Ukrainian language, the authors propose to amend the Model Regulation on Public Councils and supplement it with a separate section, which would define the following terms:

- public council administration– an elected, permanent unit that is responsible for managing the public council, organising communication

²⁹ *Dictionary of the Ukrainian language*, Kyiv, 1980.

with other public councils, executive authorities and local self-government bodies;

- the secretariat of the public council – an elected, permanent unit that ensures the organisation and holding of organisational meetings of public councils, where issues concerning the public council activities are resolved;

- a public council commission – an elected, permanent or temporary public council unit that can be created to consider particular practical tasks in various areas of activity of public councils;

- a group attached to a public council – a voluntarily created, permanent or temporary public council unit that is established to unite specialists, experts from a particular area to develop specific proposals on any issues concerning the functioning of public councils.

4. Conclusions

Having investigated the current regulatory framework that governs the legal personality of public councils, the authors of the study concluded that the public council as an advisory body established under the executive authority, albeit has a separate legal regulation, is not without substantial technical, legal, and content shortcomings. If they are not eliminated, it will be impossible to refer to public councils as an important component formed by society and acting to meet the public and private interests of each of its participants. And positive changes in relations between the government and the population, public authorities and society will not receive their qualitative and productive development.

The development of a proper communication platform between public institutions and the state in Ukraine constitutes an important component uniting three important subjects – the individual, society, and the state. For this purpose, complex transformation processes are taking place in Ukrainian society and the state in terms of decentralising public power and introducing particular civil society institutions to take part in public administration. The institution of public councils occupies a special place in scientific research. However, issues concerning the legal regulation of the activities of public councils and determining their legal personality require a longstanding investigation. At present, it can be argued that the current regulatory framework contains a considerable number of legal gaps and inconsistencies. It is necessary to introduce appropriate changes to the

Model Regulation on the Public Council under the Ministry, Other Central Executive Body, the Council of Ministers of the Autonomous Republic of Crimea, Regional, Kyiv and Sevastopol city, district, municipal state administration in the cities of Kyiv and Sevastopol regarding the definition of public councils, as well as a clear definition of individual structural bodies that are stipulated in this Regulation. The authors of this study were unable to cover all aspects and problems of this subject. The main attention was paid to the role of public councils in the administration mechanism and the practical activities of public councils under public administrations. The research is independent, and there are no conflicts in the field of ethical standards with other studies.

Abstract In this study, the authors attempted to conduct a theoretical and statutory analysis of the consolidation of legal personality of the main public councils. The study of this category was aimed at studying the main terminology used in the legislation to determine the systemic legal means by which public councils realise their role as an institution of civil society. The authors investigated a considerable, relevant array of regulations that govern organisational aspects of the implementation of the rights and obligations of public councils. The study analysed the main provisions concerning the implementation of legal personality by public councils through the lens of the main regulations that determine their functioning grounds. Furthermore, it was declared that the state is responsible to each individual for its activities in the implementation and protection of the rights and freedoms of the latter.

Keywords: legal personality; administrative responsibility; rights and freedoms; Constitution; regulations