

Methodological Principles of Using International Experience to Ensure the Transparency of Decision-Making: Legislative Regulation of Public Consultations in Ukraine

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ABSTRACT

The article defines methodological principles of using international experience in ensuring the transparency of decision-making on the example of legislative regulation of public consultations in Ukraine. Factors that encourage the intensification of scientific discourse on this issue: the practical orientation of the publications of European colleagues who research in detail and quickly legislative and law enforcement practices in the field of state interaction with the public, discussion in Ukraine of draft laws regulating one form of such interaction - public consultations. The main research method used by the authors is documentary analysis. All materials studied were divided into the following groups: current Ukrainian legislation, draft laws, international legal acts.

Keywords: *international experience, public consultations, methodological principles, transparency, legislative regulation, law enforcement practices*

1. INTRODUCTION

During 2021, we have witnessed a gradual expansion of both doctrine and practice of citizen participation in development and decision-making process at the level of the European Union. The evolution of the relevant provisions of two basic European agreements shall be compared: the Maastricht Treaty of 1992 (Articles 8b, 8d) and the Lisbon Treaty of 2007 (Articles 8, 8A, 8B) [1, 2]. Starting from the right to vote and be elected to the European Parliament, to submit a petition to the European Parliament and to the Ombudsman, to the introduction of a citizens' initiative mechanism at EU level.

On March 18, 2021, a Joint Declaration of the European Parliament, the Council of the EU and the European Commission was signed with the eloquent title "Engaging with citizens for democracy - Building a more resilient Europe" [3]. By the spring of 2022, it is planned to obtain a "civic vision" of the EU further development. The following issues were proposed for discussion: economy, social justice, jobs, education, youth, culture, sports, digital transformation; European democracy:

values, rights, rule of law, security; climate change, environment, health; EU in the world, migration.

From 17 to 19 September 2021 in Strasbourg, the first of four groups of people in the format of European Citizens' Panel began discussing fundamental issues for the four groups and the EU, as a result of which participants will form certain proposals [4]. This event is one of the components of the Conference on the Future of Europe, which, in our opinion, is a manifestation of a modern rethinking of the decision-making process in the light of current social trends - inclusiveness and transparency [5]. In addition, these events are a new reason to think about the urgency of improving the democracy institutional mechanism in Ukraine, in particular through the diversification, taking into account the realities of the XXI century, the elements of participation.

2. LITERATURE REVIEW

It should be noted about the efficiency of scientific reflection of European colleagues. For example, during the realization of the Conference on the Future of Europe

measures, they not only observe and welcome this non-standard initiative. In addition, they draw attention to the problems of legal and organizational uncertainty of the Conference on the Future of Europe and its prospects [6].

In view of the Conference on the Future of Europe, researchers are analyzing previous non-standard practices of interaction with citizens. For example, the French Citizens' Convention on Climate: 150 citizens representing all groups of French society were randomly selected. Citizens listened to experts on various topics - from climate to the economy, and then formulated their own proposals. Due to this approach, an effective consensus has been reached and the interests of all stakeholders have been taken into account. As a result, scholars see positive prospects for new tools of interaction between legislators, professional experts and citizens: the help to address the shortcomings of democracy and the creation of a true European welfare [7].

We support a comprehensive approach to the study of citizen participation as one of the concepts that are related to each other, ie the correlation with e-rulemaking and policy effectiveness at the EU level [8-12]. Researchers point to both the positive and problematic aspects of regulating public consultation in the EU. The EU Commission truly has a long tradition of advising stakeholders in shaping its policy. At the same time, they note the systematic / systemic inability to make these consultations equally accessible to all stakeholders. Thus, the conclusions argue that the EU can no longer assume that all stakeholders - especially citizens and civil society groups - have equal access to EU institutions. It also states that the EU institutions have a procedural obligation to ensure that everyone has virtually equal access to the decision-making process. Researchers also propose a number of structural reforms in this area [13].

In our opinion, the works of scientists who carefully study the general process of stakeholder influence on the development and adoption of legal acts deserve special attention for the study and use in Ukrainian realities. By the way, public consultations are considered by some to be just the tip of the iceberg. Thus, the example of the European Union Aviation Safety Agency (EASA) shows that a minority of interest groups that help develop rules participate in public consultations [14].

Thus, the practical orientation of the publications of European colleagues, who study in detail / meticulously the legislative and law enforcement practices in the field of state interaction with the public, necessitates the activation and discussion of bills regulating one of the forms of such interaction in Ukraine: public consultations. scientific discourse on these issues.

Taking into account the abovementioned, the purpose of the article is to determine the methodological principles of using international experience in security

ensuring transparency of decision-making based on legislative regulation of public consultations in Ukraine.

3. METHODOLOGIES

The main method used for the study is documentary analysis. The documentary material was studied and divided into the groups.

Applicable Laws and Draft Laws, International Treaties: Constitution of Ukraine, Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine" 2.12.1997, "On the Committees of the Verkhovna Rada of Ukraine", Draft Laws №7453 dated 27.12.2017. and №4254 dated 23.10.2020., Procedure for holding public consultations on the formation and implementation of public policy. Approved by the Resolution of the Cabinet of Ministers of Ukraine of November 3, 2010 № 996, Treaty on European Union and Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. [1-2, 15-22].

4. RESEARCH RESULTS

The study proposes to consider the problem in two contexts: improving the legal mechanism for citizens to exercise their constitutional right to participate in the public affairs management (Article 38), in particular through public consultations, and the Verkhovna Rada of Ukraine reformation [15].

In our opinion, the attempts to regulate the order of public consultations in Ukraine prove the complexity of the implementation of international standards and best practices in any sphere of public relations at the national level. Thus, there are two relevant legislative initiatives: the bill №7453 of 27.12.2017, which was returned to the initiator of the introduction on 18.09.2018 for revision, and the bill №4254 of 23.10.2020, which was adopted on 05.03.2021 in the first reading [18-19].

The discussion of these documents lasted more than three years. In addition, a significant number of comments on the first of these projects were made by European (OSCE Office for Democratic Institutions and Human Rights) and Ukrainian experts [23-25].

In the second project, the test of which was identical to the first one, some comments and recommendations are taken into account, however, a number of conceptual comments were not regarded. We support the provisions of the Verkhovna Rada of Ukraine GNEU on the draft law "Public Consultations" №4254 [25]. In particular:

- some the main recommendations and proposals contained in international and European standards for public participation in political decision-making and participation in public administration were not taken into account in the Bill 254254 (paragraph 1 of the GNEU conclusion) [21, 22];

- the bill lays down the post-Soviet paradigm of "public involvement" instead of introducing an effective mechanism for exercising the constitutional right of citizens to participate in the management of public affairs, the provisions of the project (paragraph 1 of the GNEU conclusion);

- the subject of the legislative initiative proposes another additional mechanism, the application of which will be limited and will create conflicts with other laws of Ukraine, such as the law "On access to public information", "On associations of local governments", "On the principles of state regulatory policies in the field of economic activity", "On strategic environmental assessment" (paragraph 2 of the GNEU conclusion) [26];

- the mechanism of public consultations, in particular on draft laws developed by People's deputies of Ukraine, contains a lot of unfounded and contradictory instructions (paragraphs 3, 4 of the GNEU conclusion) [25].

Discussing the need to increase the Verkhovna Rada of Ukraine transparency, in particular through effective public hearings in committees, has a long history as it has been more than ten years. Taking in the account the fact that the relevant procedure in Ukraine and in other countries is usually governed by the provisions of one article - for example: Article 29 of the Law "On Committees of the Verkhovna Rada of Ukraine", Article 70 of the Rules of Procedure of the German Bundestag. Thus, there is a question: what is wrong with us and what distance should our country overcome on the way to mastering European practices [17, 27]?

In our opinion, a partial answer to this difficult question was given by the Civic Network OPORA based on the results of the online marathon, which took place on May 25, 2021 [28].

According to the OPORA study, the interaction of the Verkhovna Rada of Ukraine committees with stakeholders is not systemic. Thus, according to the criteria for evaluating counseling, only 3 out of 23 received satisfactory rates. These are the Committee on the Organization of State Power, the Human Rights Committee and the Committee on Humanitarian Policy. The corresponding lowest rates are in the Regulations Committee, the Finance Committee and the Budget Committee, which shows the lack of "political will" to increase the inclusiveness of the decision-making process, in particular in the area of public financial policy [27].

At the same time, it should be noted that the problems during their interaction with stakeholders, according to the staff of the secretariats of the committees and the heads of the committees are such: criticism is of interested parties without submitting proposals and initiatives, unwillingness to compromise, lack of activity, lobbying and politicization of stakeholders, the presence

of commercial interests, unprofessionalism, unclear position of government agencies on certain issues and formal responses to inquiries, low level of trust in Verkhovna Rada, unsystematic communication, etc. [27].

Historical experience shows that without the proactive position of civil society, changes in favor of increasing the inclusiveness of the process of developing and adopting management decisions can not occur. Thus, it is the position of the active part of Ukrainian society (scientists, professional experts, public associations) that mainly determines the state of legislative regulation of the organization and holding of public consultations / hearings in parliamentary committees.

A priori, the world's best legislative and law enforcement practices on public consultation should be carefully studied and used. The mechanical way is the implementation of the foreign countries law in the legislation of Ukraine without any rethinking and adjustment. There is a resource-intensive way (time, intelligence, finance, etc.) which provides the development of a methodology for using international experience in Ukraine in any field.

The study considers only relevant methodological principles. Borrowing a positive experience from one country to another is usually metaphorically compared to transplanting either a tree from one soil to another, or an organ from donor to recipient. At the same time, attention is paid to culture in general, and legal culture in particular sense.

Thus, the basic position of the legal culture concept, which was founded by the American lawyer Lawrence M. Friedman [29], is as follows: legal culture, which is interpreted as values, ideas and attitudes of society to the law, is an important factor in socio-legal change. The thesis about the possibility of difficulties in implementing the borrowed legal norms in the case of a significant difference between the legal culture of the society whose legislation is being received and the legal culture of the society, whose legal system is thus updated, is also extremely relevant. In addition to the need to take into account the possible significant differences between the legal cultures of the donor country and the recipient one, there are other problems in using international experience to ensure transparency in decision-making such as specific historical circumstances, including the state of civil society; features of the state legal system, etc., a detailed consideration of which will be the area of our further research.

The methodology of using international experience should consist not only of a list of potential problems, but also of a promising areas of activities in the context of finding the best approach to standardizing the organization and holding of public consultations /

hearings in Verkhovna Rada committees. The study offers the following areas:

- from the philosophy of paternalism to the philosophy of cooperation between the state and citizens, because even the use of the term "involve" to define the relationship between public authorities and citizens during public consultations consolidates the active role of the state and passive role of citizens (part two of article 3 of the bill 2020) [19, 3];

- the standardization issue of interaction consideration between the legislature and stakeholders, in particular public consultations / hearings, in the context of the general problem of creating an effective mechanism for citizens to exercise their right to participate in public administration, which requires, for example, unification of legislative terminology. The terminological diversity ("public consultations", "parliamentary hearings", "committee hearings", etc.) lacks logical validity and systematicity (see: Procedure for public consultations on the formation and implementation of public policy; Articles 28, 29 Law "On Committees of the Verkhovna Rada of Ukraine") [17];

- modernization of the participation procedure of interested parties elements in the discussion of draft laws already considered by the current Ukrainian legislation, which are considered by parliamentarians (see the Law on Committees of the Verkhovna Rada of Ukraine of 04.04.1995 №116 / 95-VR) [17].

5. CONCLUSIONS

Events within the Conference on the Future of Europe, practical orientation of European scholars' publications who study in detail / meticulously and promptly legislative and law enforcement practices in the field of state interaction with the public, discussions on the quality of bills №7453 and №4254, lasting in Ukraine more than three years, encourage the intensification of national scientific discourse, in particular on the modernization of the legal regulation of public consultations at the level of the Verkhovna Rada of Ukraine committees.

The difficulty of international standards and best practices implementation in any sphere of public relations, in particular attempts to regulate the order of public consultations in Ukraine, causes (encourages) understanding of the factors that complicate the creation of an effective legal mechanism for citizens to exercise

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their constitutional right to participate in the management of public affairs. On the example of the Verkhovna Rada of Ukraine we can talk about the existence of significant problems in communication between the state and stakeholders and citizens in general: lack of "political will" to expand the inclusiveness of the decision-making process, in particular in public financial policy; critical remarks of stakeholders without submission of proposals and initiatives, as well as their unwillingness to compromise and lack of activity, political and commercial involvement and unprofessionalism; unclear position of state bodies on certain issues and formal answers to inquiries; low level of trust in the Verkhovna Rada; non-systemic communication, etc.

They are supporters of the international experience use in any field not mechanically, but based on the methodology developed by Ukrainian scientists, professional experts, and relevant public associations. During its preparation it is expedient to pay attention to legal culture as an important factor of social and legal changes, specific historical circumstances in which Ukraine is currently, features of the legal system, etc.

The methodology of using international experience should also contain a list of promising areas of activities to bring national legislation in line with international standards. In the context of standardizing the procedure for organizing and conducting public consultations in the committees of the Verkhovna Rada of Ukraine, the study proposes the following: from the philosophy of paternalism - to the philosophy of cooperation between the state and citizens; consideration of the public consultations regulation in the context of the general problem of creating an effective mechanism for citizens to exercise their right to participate in the management of public affairs, which requires, for example, unification of legislative terminology; modernization of the participation procedure elements for interested parties in the discussion of draft laws, which are considered by parliamentarians, already enshrined in the current Ukrainian legislation.

AUTHORS' CONTRIBUTIONS

Oleksandr Yarmysh – 40 % - literature review, Empirical research, conclusion.

Tetiana Tielkiniena – 40 % - development of concept, methodology, empirical research, conclusion.

Anna Kondratova – 20 % - translation, references.

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