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THEORETICAL AND LEGAL BASIS OF PUBLIC CONSULTATIONS IN UKRAINE

One of the methods of involving the public in the formation of public policy, which is widely used in democratic countries, is public consultation. It is

a tool that develops dialogue and trust between all participants in this process and makes the development and adoption of reforms more relevant to the demands of their consumers. The culture of public consultations in Ukraine is only gaining popularity, and therefore it is very important to form the conceptual, methodological and legal basis of this participation mechanism.

Foreign and domestic approaches to understanding public consultations are considered. On their basis, the key characteristics of public consultations were formed, namely: the two-way nature of communication between a public institution and interested citizens; application both during the development of policies and at the stages of their updating and implementation; completeness by the adoption of a decision or the adoption of a normative legal act, which necessarily takes into account the suggestions of the public; initiation of the consultation by issuing an official document by the authority (resolution, order, etc.) that describes in detail the content and terms of the public consultation; the obligation to include in the target audiences of public consultations citizens, groups of persons, legal entities that are tangential to this policy, who will be the first to use the services that will arise as a result of the implementation of the policy, as well as independent experts and representatives of public organizations.

The history of the formation of Ukrainian legislation on public consultations is analysed. The differences between the current draft of the Law on Public Consultations compared to the 2016 draft are highlighted, namely: the presence of a non-exhaustive list of subjects of power; identification of parties interested in public consultations; supplementing the forms of conducting public consultations with targeted consultations; replacement of the Information Register of interested persons with an online platform for interaction with citizens and institutions of civil society; lack of disciplinary responsibility for violation of the requirements of the law for officials of subjects

of power, who are responsible for conducting public consultations; reducing the number of principles of conducting public consultations from seven to six and adding the principle of proportionality instead of the principles of the rule of law and legality.

It has been established that the procedure for conducting them proposed in the draft Law on public consultations meets international standards and good practices and existing theoretical and methodological developments and covers the following stages: drawing up a plan for conducting public consultations; drawing up a consultation document; publication of a consultation document; provision of informing interested parties about holding public consultations; holding events within the framework of public consultations; publication of proposals received during public consultations; study and analysis of proposals; publication of the report on the results of public consultations and the final draft of the regulatory and legal document.

Key words: *public consultations, good governance, participation, public institutions, public policy, national and local public policy making, stakeholders, citizens and stakeholders involving.*

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ТЕОРЕТИКО-ПРАВОВІ ЗАСАДИ ПРОВЕДЕННЯ ПУБЛІЧНИХ КОНСУЛЬТАЦІЙ В УКРАЇНІ

Одним із методів залучення громадськості до формування державної політики, що широко використовується в демократичних країнах, є публічні консультації. Це інструмент, який розвиває діалог і довіру між усіма учасниками цього процесу та робить розроблення й ухвалення реформ більш релевантними запитам їхніх споживачів. Культура публічних консультацій в Україні лише набуває популярності, а тому дуже важливо сформувати концептуальну, методологічну та правову базу цього механізму участі.

Розглянуто зарубіжні та вітчизняні підходи до розуміння публічних консультацій. На їх основі сформовано ключові характеристики публічних консультацій, а саме: двосторонній характер комунікації між публічною інституцією та зацікавленими громадянами; застосування як під час розроблення політик, так і на етапах їх оновлення та реалізації; завершеність ухваленням рішення або ухваленням нормативно-правового акта, у якому обов'язково враховуються пропозиції громадськості; ініціювання консультацій шляхом видання органом влади офіційного документа (постанови, наказу тощо), у якому детально описується зміст

консультацій), який детально описує зміст та умови проведення публічної консультації; обов'язковість включення до цільових аудиторій публічних консультацій громадян, груп осіб, юридичних осіб, які мають дотичне відношення до цієї політики, які першими користуватимуться послугами, що виникнуть унаслідок реалізації політики, а також незалежних експертів та представників громадських організацій.

Проаналізовано історію становлення українського законодавства про публічні консультації. Виокремлено відмінності чинного проєкту Закону «Про публічні консультації» від 2016 року, а саме наявність невичерпного переліку суб'єктів владних повноважень; визначення зацікавлених у проведенні публічних консультацій сторін; доповнення форм проведення публічних консультацій цільовими консультаціями; заміна Інформаційного реєстру зацікавлених осіб онлайн-платформою для взаємодії з громадянами та інститутами громадянського суспільства; відсутність дисциплінарної відповідальності за порушення вимог закону для посадових осіб суб'єктів владних повноважень, на яких покладено обов'язки з проведення публічних консультацій; зменшення кількості принципів проведення публічних консультацій з семи до шести та додавання принципу пропорційності, замість принципів верховенства права та законності.

Установлено, що запропонована в проєкті Закону про публічні консультації процедура їх проведення відповідає міжнародним стандартам і кращим практикам та наявним теоретико-методологічним напрацюванням й охоплює такі етапи: складання плану проведення публічних консультацій; розроблення консультаційного документа; оприлюднення консультаційного документа; забезпечення інформування зацікавлених осіб про проведення публічних консультацій; проведення заходів у межах публічних консультацій; оприлюднення пропозицій,

отриманих під час публічних консультацій; вивчення та аналіз пропозицій; оприлюднення звіту про результати публічних консультацій та остаточного проєкту нормативно-правового документа.

***Ключові слова:** публічні консультації, належне врядування, участь, державні установи, державна політика, формування державної політики на національному та місцевому рівнях, зацікавлені сторони, залучення громадян та зацікавлених сторін.*

Problem statement. In December 2023, the European Council, as the highest political body of the European Union (hereinafter referred to as the EU), decided to start negotiations on Ukraine's accession to the EU. This means that active reforms in the system of public management and administration await our country in the coming years. High-quality development and implementation of reforms requires broad public involvement and discussion, especially at the national level. Therefore, public authorities are increasingly interested in reaching out to target audiences for the development of national policies.

One of the methods of involving the public in the formation of public policy, which is widely used in democratic countries, is public consultation. It is a tool that develops dialogue and trust between all participants in this process and makes the development and adoption of reforms more relevant to the demands of their consumers. The development of public consultation will contribute to the implementation of the principles of good governance in the public administration system by involving stakeholders in decision-making with the aim of balancing public and private interests, introducing modern standards for the preparation of effective and effective decisions.

The culture of public consultations in Ukraine is only gaining popularity, and therefore it is very important to work out the conceptual and methodological basis of this participation mechanism and highlight the successful experience of

public institutions that have already conducted public consultations and have developed good practices on this issue. That is why the conducted research is relevant and timely.

Analysis of recent research and publications. In Ukraine, public consultations do not too often become the subject of scientific developments. In this context, it is worth mentioning the works of T. Andriychuk, O. Boyko, T. Gurzhii, M. Rusyniuk, O. Chaltseva, K. Shvets, V. Behlytsa, V. Yaroshenko and others. Highly appreciating the contribution of these scientists to the researched issue, we note that today there is generally no comprehensive theoretical-methodological and legal justification of public consultations as a tool for the formation and implementation of public policy and solving issues of local importance.

The purpose of the article is to highlight the conceptual, methodological, and legal foundations of public consultations in the system of public management and administration of Ukraine.

Presenting the main material. The problems of public consultations in Ukraine have been investigated by us from the standpoint of theoretical and methodological justification and legal support.

The concept of «public consultations» due to its word structure is at first glance quite simple to interpret, and therefore this term is often used to describe absolutely all forms of communication initiated by a public authority: both simple surveys on the website of the city council, and public hearings in the Verkhovna Rada of Ukraine, and discussion of the draft law. This diminishes the role of public consultations as a form of expression of the fundamental right of citizens to participate in the conduct of public and local government affairs, as well as in the adoption of public-management decisions. In this regard, it is worth considering foreign and domestic approaches to understanding public

consultations and distinguishing those characteristics that most fully reflect its essence as an important tool of good governance.

Public consultations should be understood as a relationship between the institutions responsible for regulation and the parties who may be affected or who are interested in the relevant normative legal act [1]. They promote greater transparency and accountability of public institutions and help ensure that potential conflicts are identified long before a policy, law or other decision by public institutions is made. The approach to the adoption of normative legal acts based on public consultations not only contributes to greater democratic legitimacy of such documents, but also increases trust in public institutions and facilitates the implementation of adopted normative acts.

In an official document from the Organization for Economic Cooperation and Development (hereinafter referred to as the OECD), public consultation is one of the key regulatory tools that, along with other tools such as regulatory impact analysis, regulatory alternatives, and improved accountability mechanisms, are used to improve regulatory transparency, efficiency, and effectiveness. The OECD distinguishes three interrelated forms of interaction with interested public representatives, which in practice are often mixed with public consultation programs, complementing, and replacing each other, namely [2, p. 1]:

notification – transmission of information about regulatory decisions from the authorities to the public. It is a one-way communication process in which the public plays the role of a passive consumer of public information. The notification is not in itself a public consultation, but can be a first step towards it, as it gives interested parties time to prepare for future public consultations;

consultation – active search for opinions of interested groups. This is a two-way flow of information that can occur at any stage of the development of a normative legal act: from defining the problem to evaluating the existing

regulation. It can be a one-step process or, as is more often the case, a continuous dialogue;

participation – active involvement of interest groups in the formulation of goals, policies, and approaches or in the development of regulatory and legal documents. Participation usually aims to facilitate the implementation of a regulation, improve public acceptance of its provisions, and generally increase political support. Most often, public institutions resort to participation when they wish to increase the sense of «ownership» of or commitment to regulatory acts.

The United Nations, in its documents on the Sustainable Development Goals, considers public consultation as a formal process through which citizens and other interested parties express their feedback and visions of policies, plans, proposals, and laws proposed by public institutions. They can take place at different stages of policy development: from studying ideas presented in proposals or analytical documents to reviewing draft legislation or reports. It is emphasized that public consultations should be well planned, adequately resourced and based on a genuine desire by the authorities to involve citizens and stakeholders and take their views into account. At the same time, the contribution of citizens and interested parties in public consultations should influence proposals, plans, policies, or decisions, and not be a symbolic demonstration of citizen participation [3, p. 45–46].

One of the studies of the Council of Europe emphasizes the usefulness of public consultations not only for citizens, but also for government institutions. In particular, it states that public consultations with interested parties pave the way for sustainable regulations and more effective decisions that take into account the impact of these decisions on the lives of citizens and the functioning of businesses. Cooperation with the public at an early stage of the development of regulations can prevent possible conflicts at a later stage. In addition, early engagement with relevant stakeholders provides authorities with additional

arguments, perspectives, opinions, knowledge, and information, as well as critical thinking – all of which undoubtedly contribute to better informed decisions and laws [4, p. 4].

Ukrainian scientists V. Behlytsia and V. Yaroshenko understand public consultations to be discussions of draft decisions of public authorities with citizens (interested parties). Moreover, the government does not involve all citizens in such a discussion, but only those who will be directly affected by the discussed decision in the event of its adoption. Public consultations are needed by the public in order to declare their position to the authorities, to defend their values, to present their arguments, to improve the quality of decisions and policies in general, to participate in public administration, to understand why the authorities make this or that decision, to support what is important to society decision and at the same time control its implementation [5, p. 66].

M. Rusyniuk calls public consultations a key policy-making tool, which, on the one hand, enables the authorities to explain their actions and gain the support of various interest groups, and on the other hand, provides a legitimate opportunity for the public to take an active part in solving state affairs. Conducting public consultations is one of the cheapest and most effective methods of obtaining up-to-date empirical information about the current situation in the analysed area [6, p. 124].

O. Chaltseva and K. Shvets interpret public consultations as a process of communication between state authorities, citizens and interested parties, with the help of which the parties to the dialogue become informed about various perspectives and proposals of government policy and which provide an opportunity for citizens to influence the content of the decisions they make public authorities [7, p. 63].

T. Andriychuk considers public consultations as one of the main tools of deliberative democracy, designed to help overcome conflicts, build mutual

understanding between different parties, and seek consensus on issues sensitive to society in the period between elections, which is especially important for young democracies [8, p. 52].

Based on foreign and domestic approaches to understanding public consultations, we highlight their main characteristics:

public consultations are a two-way communication process between a public institution and interested citizens;

public consultation is conducted primarily regarding the development of policies, although its use at the stages of their updating and implementation is not excluded;

the public consultation must end with the adoption of a decision or the adoption of a normative legal act, which necessarily takes into account the suggestions of the public;

the initiation of a public consultation must be certified by a relevant official document of the authority (resolution, order, etc.), which describes in detail the content and terms of the public consultation;

the target audiences of public consultations are citizens, groups of persons, legal entities, which will be most affected by the policy being developed. Among the target audience should be people who are tangential to this policy, that is, those on whom its implementation directly depends, and people who will be the first to use the services that will arise as a result of the implementation of the policy, for example, if the issue of preschool education is being discussed, then it is worth to hear the opinion of parents whose children go to kindergarten. At the same time, a sample of equal representation should be ensured, for example, if we invite doctors to a public consultation, it is important to hear the opinion of both the therapist and the surgeon. Also, an important feature of the democratic approach to the formation of the target audience is the

participation of independent experts and representatives of civil society organizations.

Regarding the public consultation algorithm, the following general procedure is defined by international standards and good practices:

drafting and publication of a consultation document by a subject of authority;

adoption and publication of proposed changes;

consideration of proposals;

publication of a report based on the results of public consultations [9, p. 15].

In the extended version, the process of public consultations includes seven stages, namely:

1. Making a decision to hold consultations and define goals.
2. Development of consultations.
3. Communication and engagement.
4. Consultations and collection of answers.
5. Analysis of answers.
6. Impact on policy development.
7. Reporting of results.

Since public consultations are a component of the development of policy by a public authority, their organization and conduct must take place within the framework of current legislation. In addition, legal support allows unifying the conceptual and categorical apparatus of public consultations.

One of the first legal acts that defined the requirements for holding public consultations in Ukraine was the Resolution of the Cabinet of Ministers of Ukraine «On Ensuring Public Participation in the Formation and Implementation of Public Policy» dated November 3, 2010, number 996 [10]. In particular, it prescribes the purpose and goals of public consultations, outlines

the subjects of public consultations, describes the procedure for conducting public consultations and features of conducting electronic consultations. At the same time, this document equates public consultations with the study of public opinion, which blurs the essence of public consultations and the importance of their direct influence on the development of public policy. Also, its significant drawback is the extension of the action exclusively to the bodies of the executive power and leaving other public institutions and local self-government bodies without proper attention. Therefore, there is a need to provide public consultations with a separate legal regulation with a wider range of influence.

The development and adoption of Ukrainian legislation on public consultations is determined by clause 5 of Section II of the Public Program on the Implementation of the Basics of the Public Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2015-2017, which, in particular, refers to the strengthening of public control over decision-making by elected officials, in particular by introducing a mechanism for preliminary public discussion of socially important decisions using positive domestic experience based on the best global practice [11]. To fulfill this point, during June-October 2015, the Ministry of Justice of Ukraine together with the Coordinator of Organization for Security and Co-operation in Europe (hereinafter referred to as the OSCE) projects in Ukraine and the Secretariat of the Cabinet of Ministers of Ukraine held regional round tables in the cities of Kyiv, Odesa, Poltava, Dnipro, Lviv, Rivne on the topic «Civil society and the state: discussion of proposals to the draft law on public consultations», in particular, with the participation of people's deputies of Ukraine, which analysed the practice of law enforcement regarding the holding of public consultations in Ukraine and discussed approaches to the meaningful filling of the conceptual provisions of the draft law.

In March 2016, a public discussion of the provisions of the draft law «On Public Consultations» was held in the communication center of the Secretariat of the Cabinet of Ministers of Ukraine, and in May of the same year, independent experts, scientists, and representatives of non-governmental organizations joined the public discussion of the provisions of the draft law.

On September 1, 2016, the draft law on public consultations received an opinion with recommendations from the OSCE Bureau for Democratic Institutions and Human Rights. It, in particular, discussed the elimination of the exhaustive list of subjects of public consultations, the definition of the terms «public consultations» and «information with limited access», the addition of the principles of public consultations with the principle of impartiality and non-discrimination, the definition of a public institution responsible for the coordination of standardization and improvement of procedures public consultations, establishing a minimum proposed period of 15 working days for submitting proposals from the public, allocating sufficient financial and human resources to ensure the effective organization and conduct of the consultation process, increasing the period of storage of documents related to public consultations to at least five years [9].

Finalization of the draft Law on Public Consultations lasted four years until it was registered in the Verkhovna Rada of Ukraine on October 23, 2020, under number 4254. The initiator of the draft law is the Cabinet of Ministers of Ukraine. The document was adopted as a basis on March 5, 2021. Currently, the draft law is awaiting a second reading in the Verkhovna Rada of Ukraine. Note that the current draft of the Law, compared to the 2016 draft, contains a non-exhaustive list of subjects of authority, defines the parties interested in public consultations, supplements the forms of conducting public consultations with targeted consultations by sending interested parties a consultation document to clarify the position of interested parties regarding the essence of the draft act, in

particular with regard to the impact on the interests of such parties, replaces the Information Register of Interested Persons with an online platform for interaction with citizens and institutions of civil society, does not contain disciplinary liability for violation of the requirements of the law for officials of subjects of power, who are responsible for conducting public consultations. Also, in the updated draft of the Law on Public Consultations, the number of principles of conducting public consultations was reduced from seven to six, and the principle of proportionality was added instead of the principles of the rule of law and legality. The recommendation of the OSCE Bureau for Democratic Institutions and Human Rights regarding the introduction of a separate principle of impartiality and non-discrimination was partially implemented: the principle was not singled out, and the principles of non-discrimination and inclusiveness were spelled out in the principle of participation. A detailed description of the principles of conducting public consultations is given below [12]:

the principle of participation – the opportunity to participate in public consultations of interested parties at all stages of the formation and implementation of public and regional policy, solving issues of local importance. No one can be denied participation in public consultations, except in cases provided by law. Authorities should proactively involve interested parties in public consultations, taking into account the equal participation of persons of different ages, persons with disabilities, representatives of national minorities, persons in unfavorable conditions, vulnerable or socially alienated persons, etc.;

the principle of openness and transparency – subjects of authority must make public information about which draft acts are subject to public consultations, what forms are used to conduct public consultations, with which interested parties and why public consultations are held with them, how public consultations will affect the adoption final decision;

the principle of accessibility – subjects of authority choose the time, place, formats, and conditions of public consultations that are convenient for the interested parties, during the preparation of materials for public consultations, simplicity of presentation is ensured for the understanding of their content by the interested parties;

the principle of accountability – the obligation of reporting by the subjects of power on taking into account the proposals and comments received as a result of public consultations with the justification of the adopted decision;

the principle of efficiency – holding public consultations at all stages of the formation and implementation of national, regional policy, solving issues of local importance, when interested parties can influence the formulation of the problem, ways of solving it, main goals, methods of implementation, performance indicators and general provisions of projects acts;

the principle of proportionality – the form of conducting public consultations, their duration, the number of events within the framework of public consultations must correspond to the degree of influence of the draft act that is the subject of public consultations.

The Explanatory Note to the draft Law on Public Consultations clearly spells out the purpose of public consultations, namely, the implementation of the principles of good governance through the involvement of interested parties in decision-making to balance public and private interests, the introduction of modern standards for the preparation of decisions, and the advantages of conducting public consultations are highlighted, among in which there is an opportunity to study (clarify) the needs and interests of various interested parties, as well as to receive ideas, proposals, innovative approaches for solving problematic issues in various spheres of public policy and solving issues of local importance, which contributes to the improvement of the quality of decisions, their legitimation and support, etc. [13].

The draft law on public consultations systematizes the procedure for conducting them, supplementing the existing theoretical and methodological support with the stage of drawing up a plan for conducting public consultations, which precedes the formation and publication of the consultation document. The draft law also specifies the information resources on which the consultation document, proposals received during public consultations, the report on the results of public consultations and the revised draft of the regulatory act must be published. Such resources are an online platform for interaction with citizens and institutions of civil society and the official website of the subject of power that conducts public consultations.

Before the second reading in the Verkhovna Rada of Ukraine, the draft Law on Public Consultations will undergo some amendments, but already today it is a kind of guarantee that the instrument of public policy development – public consultations – indispensable for democratic countries will have a separate legal regulation that will increase the level of public involvement in public and local affairs and to policy making and implementation at all levels, including local, regional and national.

Conclusions. Despite the lack of a universal definition of the concept of «public consultation» in foreign and domestic literature, we can find the same understanding of this concept both in international documents and in domestic scientific research. According to it, public consultations are an important tool of democratic governance based on the right of citizens to directly participate in the decision-making of state and local issues.

The absence of a law on public consultations inhibits their mandatory holding in Ukraine both at the national and local levels of policy making. The draft law approved in the first reading complements and systematizes theoretical knowledge and international standards for conducting public consultations. Its final adoption will be an important step towards the establishment of

deliberative democracy in Ukraine and the adaptation of the public administration system to progressive European and global requirements.

Prospects for further research consist in studying the practical experience of conducting public consultations in Ukraine and identifying, on its basis, prospects for improving their theoretical and legal basis.

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