CERTAIN THEORETICAL AND LEGAL ASPECTS OF CITIZEN PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS

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Abstract. The article is devoted to the key principles of citizens’ participation in the management of public affairs. The connection between the right to participate in public administration and democracy is revealed. It is established that democracy obliges the state to create conditions for citizens to exercise their right to participate in all stages of socially significant decisions. The concept of «participatory democracy», which arose as a result of expanding the possibilities of a democratic state and legal regime and the transition to a human-centric concept of governance, is analyzed. It has been proven that in the phrase «participatory democracy» participation is understood much more broadly today than before. Thus, if the ancient Greek thinkers spoke only of political participation, then with the development of statehood and changing priorities in the activities of public institutions, it is already a question of public participation. The author identifies the basic principles of citizen participation in public administration, in particular: 1) the presence of a specific goal; 2) creating conditions for feedback; 3) alternative; 4) creating conditions for active public participation at the stage of preparation of management decisions; 5) involvement of the maximum number of participants in the discussion and adoption of the relevant management decision; 6) providing adequate open and complete information on public interaction; 7) openness and controllability of the process of public participation, the ability to formulate only realistic goals; 8) the use of quality methodological framework for the organization of the process and control over its results. The article examines the content of acts of international law on public participation in public administration, as well as the recommendations of the Council of Europe on ensuring the state’s proper level of citizens’ participation in public administration. The key principles of citizens’ participation in public administration are presented.

Keywords: public participation, public administration, public affairs management, electronic participation, good governance.

INTRODUCTION

One of the fundamental principles of democracy is to ensure public participation in the management of state affairs. Recently, the involvement of citizens in making socially significant decisions at both the state and local levels, both individually and collectively, offline and online, has become more important than ever.

The importance of ensuring the participation of citizens in public administration is emphasized by numerous international regulations and recommendations. These include

Before analyzing the legal regulation of citizens’ participation in public administration, it is appropriate to consider the theoretical foundations of such participation. Thus, the purpose of the article is to determine the basis of public participation in the management of state affairs, its role in a democratic society.

**MATERIALS AND METHODS**

Both philosophical, general scientific and special legal research methods were used. The study of the nature of public participation in public administration is impossible without an analysis of the meaningful connection between democracy and the right of citizens to participate in state affairs. The synthesis of scientific approaches to the understanding of democracy, highlighting the key features of a democratic state and legal regime allows us to outline the importance of community participation in public administration. For a thorough analysis of the nature of citizens’ participation in the management of public affairs, theoretical developments, practice materials and regulations in the field of public administration were used.

**RESULTS**

The formation and development of a democratic state governed by the rule of law is impossible without the inclusion citizens, i.e. individuals who are interested in solving certain issues of state and public life, in the governance process at the level of the authorities. The inextricable link between democracy as a whole and the right to participate in public administration as part of it, are explained by highlighting the key and indisputable features of a democratic political regime.

Firstly, democracy, meaning the power of the people, is considered to be the most favorable for the state state and legal regime, and at the same time it is a certain ideal, the maxim, which is sought by many modern states, including Ukraine. The basis of any democratic state and legal regime is the origin of state power from the people, the recognition of citizens as the greatest social value and priority in the activities of public institutions.

Secondly, a democratic state is dominated by fundamental values such as the rule of law, justice, equality, publicity and transparency. The power structures created in the state exist exclusively to protect the rights, freedoms and legitimate interests of citizens. Arbitrariness of power, illegal coercion, other violence, etc. are excluded.
Thirdly, and most importantly, since democracy involves the voluntary transfer of power from the people to authorized and approved entities, it cannot exist and develop fully without proper functioning and effective mechanisms for public participation in the management of public affairs. Democracy precludes a situation in which the only way for citizens to participate in public administration is to agree or disagree with the government’s decision. Instead, it obliges the state to create conditions for citizens to exercise their right to participate in all stages of socially significant decisions.

Thus, under a democratic state and legal regime, a citizen can be involved in defining the goals and objectives of the state, its institutions in certain areas, offer their own vision of state development, complain about illegal actions of government, other citizens, organizations, be present at discussions and resolving issues that directly affect him, as well as obtaining a solution based on the law and respect for human rights.

Despite the deep historical roots of democracy, its content has always been the subject of scientific debate. In ancient times, democracy was interpreted differently by Aristotle, Democritus, Plato, Socrates and other philosophers. They changed its characteristics, preferring the balance of law and authority, the concept of «majority power», the idea of «common good», but were unanimous in the mandatory involvement of the public (community) in the governance process in a democracy.

Today, scholars talk about the concept of «participatory democracy», which arose as a result of expanding the capabilities of a democratic state and legal regime and the transition to a human-centric concept of governance. In the phrase «participatory democracy», participation is understood much more broadly today than before. Thus, if the ancient Greek thinkers spoke only of political participation, then with the development of statehood and changing priorities in the activities of public institutions, it is already a question of community participation. At the same time, it should be noted that, in our opinion, participatory democracy should not be understood as a type or form of democracy, but as a new model of democracy, which arose as a result of increasing the role of public participation in governance.

Political participation is a multifaceted phenomenon, but in any interpretation it is inextricably linked to the political process in the country. Yes, the functions of political participation are as follows:

1) socialization of an individual;
2) expression of various group interests and requirements;
3) prevention and resolution of conflicts in society;
4) identification and involvement of public leaders and civil servants in management;
5) involvement of the population in the development and implementation of political decisions;
6) combating bureaucracy and overcoming the alienation of citizens from politics and government.

Political participation involves a group of political rights of citizens, defined by numerous regulations. One of the first acts of international law, which clearly established the list of political rights of citizens, was the International Covenant on Civil and Political Rights of 1966. Yes, Art. 25 of this act states:
«Every citizen should have the right and opportunity without any discrimination:
   a) to participate in the conduct of public affairs both directly and through the mediation of freely elected representatives;
   b) vote and be elected in truly periodic elections, which are held on the basis of universal and equal suffrage by secret ballot and ensuring the free will of voters;
   c) have access to civil service in their country on general terms of equality».

As we can see, the Act of International Law of 1966 does not mention the participation of citizens in public administration at all its stages, the involvement of the public not only in decision-making, but also in the development of public policy.

With the development of theory and practice of state administration, the fundamental transition from understanding the state as the highest institution of power, which decisions are not contested and always in accordance with the law, to its interpretation as the executor of the will of the people, in particular with the concept of «service state» should be based on the principles of:
1) the presence of a specific goal;
2) creating conditions for feedback;
3) alternative;
4) creating conditions for active community participation at the stage of preparation of management decisions;
5) involvement of the maximum number of participants in the discussion and adoption of the relevant management decision;
6) providing adequate open and complete information on public interaction;
7) openness and controllability of the process of public participation, the ability to formulate only realistic goals;
8) the use of quality methodological framework for the organization of the process and control over its results (Mamontova, 2018).

Community participation in the modern sense is designed to establish not only formal but also constructive, effective cooperation between citizens and the state, to oblige the state to take into account the views of its people. Participatory democracy, which emerged as the direct participation of the public in addressing the life of the individual community, is now becoming a large-scale and effective mechanism in practice. At the same time, participatory democracy does not exclude forms of representative democracy. The key goal should be a successful combination of different means of public influence on the implementation of state power (Yakymovych, 2019).

Thus, today’s actualization of the institution of direct participation of citizens in public administration is associated with the expansion of the content of democracy and requires the establishment of convenient and effective mechanisms for community involvement in the management of state affairs.

Before proceeding to the analysis of the peculiarities of the implementation of mechanisms for citizen participation in the management of state affairs, it is necessary to dwell on the contradictions of terminology used in various sources.

Thus, in the main national law of Ukraine – the Constitution of Ukraine – the term «participation in the management of public affairs» is used. At the same time, other laws
also use the terms «public participation», «citizens' participation», «public initiative» and so on. The science of administrative law has developed the term «participatory mechanism», which comes from the English word «to participate» («participate») and includes all forms of community participation in public administration. It should be noted that international regulations contain different concepts: public participation, citizens' participation, engaging in state affairs, participation in public administration, governing etc. Despite the reasonable advantage of unification of normative terminology used to denote a single phenomenon, in the case of the term «community participation» there are no law enforcement problems.

However, the situation is somewhat different with regard to the process in which such participation actually takes place. Common concepts of «administration of state affairs», «public administration», «public governing», «governance», are close to some extent, but cannot always be used as identical.

Thus, “administration of state affairs” is a broad concept and includes the management of all spheres of human life, and in this sense it coincides with the term «public administration», but the latter may also include such management, which is not necessarily implemented by the state (for example, management carried out by public organizations). «Public governing» arose in connection with the popularization of the concepts of «new public management» and «good governance», in which the role of the state is reduced to the «manager» of public life by analogy with business terminology. «Governance» comes from the word «government» and focuses on executive activities. In view of this, we prefer the concept of «public administration».

Considering public administration as a mechanism, system, it should be noted that an important role in it is given to the «human factor», i.e. human influence on state formation, its application of knowledge, experience, skills in the realization of their own capabilities. Studying the role of anthropocentrism («human factor») in the state mechanism, scientists point to the following:

1) anthropocentrism in public power (state system) is realized through the political rights of the citizen, the key of which is the right to participate in the management of public affairs;
2) the main legal means of realization of the human factor in the state mechanism are rights and discretionary powers (sometimes responsibilities);
3) anthropocentrism allows the mechanism of state power to be flexible, dynamic, adapted to current trends in society and at the same time (due to legal regulation) not to lose the key patterns of their own functioning.

Democratic public administration involves minimizing this factor in the activities of subjects of power. For example, today there is a tendency to limit the discretionary powers (discretion) of state representatives. At the same time, the individual is guaranteed the right to choose among the maximum number of opportunities to participate in public administration. At the very least, the citizen has the right to determine for himself whether he wishes to participate in governance at all, and if so, in what form.

Thus, the process of exercising the right to participate in public administration has certain features, which are explained by the transition from the acquisition of a person’s right to its proper use in the state mechanism.
Firstly, a citizen can participate in public administration only in active form. Thus, the fact of electing a person to a representative state body is not yet considered his participation in public administration. Citizens’ participation in governance always requires active action, even if they are involved in the governance process at the initiative of the subject of power.

Secondly, participation in public administration, although it involves citizens in this process at all stages, but takes place exclusively within the forms and mechanisms defined by law. For example, a citizen may lodge a complaint with a subject of power, as this is provided for by law, but cannot take part in a parliamentary vote because it is not available to all citizens.

Thirdly, the participation of citizens in the management of state affairs is possible: 1) on their own initiative; 2) at the initiative of the subject of power. However, the initiative of the latter does not mean coercion. Thus, the forms of participatory relations at the initiative of citizens conditionally include:

- citizens’ appeals, including electronic petitions;
- information requests of citizens;
- public (expert assessment);
- public hearings;
- participation in the activities of public authorities, etc.

Forms of participation in management at the initiative of the government include:

- informing;
- Ombudsmen;
- identification of public opinion;
- meetings and consultations with the population;
- public (expert) councils, etc.

Regardless of who is the initiator of the participation of citizens in public administration, the state is obliged to normatively and organizationally ensure the exercise of the right to such participation.

The study of the legal nature of public participation in public administration requires an analysis of the content of the provisions of fundamental acts of international law. As already mentioned, one of the first acts outlining the rights of citizens to participate in public administration of a political nature was the International Covenant on Civil and Political Rights adopted in 1966. In addition, the rights of citizens to participate in public administration are reflected in other acts of international law.

In particular, the basic principles of citizen participation in the management of public affairs are set out in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted in 1998. Although this act is limited in scope (concerning the environment), it establishes the necessary general conditions for public participation in making important decisions:

1) promote accountability and transparency of the decision-making process and strengthen public support for decisions;
2) the desirability of transparency in all branches of government;
3) the public should be informed about the procedures for participation in the decision-making process, have free access to these mechanisms and know how to use them;
4) to promote the dissemination of knowledge for a better understanding of the structure and stages of the management process by citizens, to encourage comprehensive public awareness;

5) the importance of using the media, electronic and other means of communication;

6) state bodies have information in the public interest;

7) effective judicial mechanisms should be available to the public, including organizations to ensure the protection of its interests and the rule of law, etc.

In order to maintain and enhance transparency in the activities of public bodies, the public should be informed about and involved in the management process at all stages where possible. States are committed to ensuring effective public access to information on ways and forms of public participation in public administration.

According to the provisions of the UN Convention against Corruption adopted in 2003, one of the most important conditions for preventing and combating corruption is public involvement in the governance process, their interest in reforming state institutions, and training programs that enable citizens to understand how they can influence public affairs value.

Convention law defines the responsibilities that member states voluntarily agree to abide by, but details of legal mechanisms are found mostly in acts of recommendation of international institutions, which determine the patterns of proper organization of a procedure in the state.

Among the international acts on public participation in public administration, special attention should be paid to the provisions of the Code of Best Practice for Public Participation in Decision-Making, adopted by the Conference of International Non-Governmental Organizations of the Council of Europe in 2009. The recommendations set out in the Code are aimed at strengthening the role of civil society in a democratic state, expanding the scope of interaction between citizens and public authorities.

The Code considers public participation as a lever for democratization of the state and emphasizes its importance not only in the decision-making stage, but also in policy development. Among the principles of public participation in public administration are:

1) free and accessible participation process based on agreed parameters;

2) trust and honesty in the interaction of actors and various sectors of society;

3) activities in the public interest require openness, responsibility, clarity, accountability from both non-governmental organizations and public authorities, ensuring transparency at all stages;

4) independence of participants in public-state cooperation.

Citizens’ participation in the management of public administration is considered at four main levels:

1. Access to information, which consists in the systematic and high-quality publication by state institutions of information on their activities.

2. Consultations. Authorities ask the public for their views on a particular issue, informing them about the current state of politics and governance. Public discussion includes the organization and holding of conferences, forums, public hearings, round tables, meetings, meetings (meetings) with the public; Internet conferencing, video conferencing, etc. Today,
The relevance of electronic public consultations is increasing. The responsibilities of public authorities include the elaboration and generalization of proposals and remarks expressed in citizens’ appeals on issues that require the study of public opinion.

The provisions of many pieces of legislation define the duty of the authorities to assist citizens in forming and disseminating their own opinion on a particular area of public policy. However, the analysis of the provisions of the legislation shows a more significant role of interaction with the state at the initiative of individuals. In the absence of an active position and a desire to participate in public governance, the existence of such forms of public participation loses its meaning.

3. Dialogue, which, unlike consultations, can be initiated by both citizens and representatives of the state. Dialogue can be unlimited and specific. Unrestricted dialogue is a two-way communication based on mutual interests and potentially common goals, in order to ensure a regular exchange of views. Its boundaries can range from open public hearings to specialized meetings between NGOs and public authorities. The range of issues for discussion is not limited, and the discussion is not directly related to the current political process.

A concrete dialogue is based on mutual interests in relation to a particular political process. Such a dialogue usually leads to the development of a joint recommendation, strategy or bill. A concrete dialogue is more effective because it consists of joint regular meetings and aims to develop key policy strategies and often leads to agreed results.

4. Partnership. In contrast to dialogue, cooperation, partnership involves a common setting of goals and decision-making on equal terms, and therefore a shared responsibility of the state and the public. Partnership is the highest level of participation in public administration.

Among the comprehensive tools and mechanisms for public participation in governance, the Code focuses on electronic participation. Thus, electronic tools provide ample opportunities to improve democratic practices and the participation of organized civil society. They can make a significant contribution to increasing the transparency, accountability and accountability of government institutions, as well as encouraging citizen participation, empowerment and the accessibility and openness of the democratic process. In order to reach their full potential, electronic tools must be used by all participants in the decision-making process, including public authorities at all levels and organized civil society.

Thus, today the issue of expanding the number of forms of citizen participation in public administration online is relevant, which is a consequence of the digitalization of the management process as a whole. In Ukraine, the main tool for e-participation is the e-petition. The special need for proper regulation and development of this tool of e-democracy is associated with the chosen course of digitalization of state-public relations (Luchenko & Belikova, 2019).

Interaction of citizens with the subjects of public administration online is gaining importance in society because of the convenience and speed of obtaining the necessary information and sending suggestions and comments on the work of a government. At the same time, developing e-democracy of participation, it is necessary to focus not only on the resource provision of the system, but also on indicators of the effectiveness of participatory relations.
DISCUSSIONS

To date, no comprehensive study of public participation in public administration has been conducted in Ukraine. The scientific works of Yu. Barabash (2021), M. Belikova (2019), A. Yemelyanova (2019), E. Mamontova (2018), N. Mishina (2020), D. Luchenko (2019), and others consider certain issues of citizens’ participation in the management of state affairs.

Examining the content of the right to public participation in the management of state affairs, N. Mishina defines the right to participate as a set of individual and collective rights exercised in a democratic society by persons involved in the administrative process (Mishyna, 2020). Without denying this understanding, we note that the right to participate in the management of public affairs should be interpreted as a set of opportunities for a citizen to be involved in the public administration process in various forms.

For the most part, scholars consider certain forms of citizens’ participation in public administration, proposing changes to the legislation on the legal regulation of mechanisms for their implementation. Today, the topic of e-participation as a kind of e-democracy is extremely relevant. It should be noted that this is only a form (external expression) of citizens’ participation in government, it should not be separated from forms of interaction between citizens and the state offline and opposed to them as more effective, because, in our opinion, if the state has effective mechanisms for public involvement into management of public affairs, all forms of such cooperation will be effective.

Researchers are studying the electronic petition as a special form of citizens’ appeal. In particular, the imperfection of Ukrainian national legislation on this issue and the positive experience of European countries prompted D. Luchenko and A. Emelyanov to thoroughly analyze the mechanism of submission and consideration of electronic petitions (Luchenko & Belikova, 2019), (Emelyanova, 2019). Scholars have formulated proposals for amendments to the legal regulation of electronic petitions in Ukraine, and D. Luchenko has also developed a draft Law of Ukraine “On Electronic Petitions” (Luchenko et al., 2021).

In summary, the institute of public participation in public administration needs further comprehensive in-depth study of the conditions for forming mechanisms to involve the public in solving state problems, types, forms and methods of citizen participation in all stages of management decisions, identifying shortcomings and regulatory issues in exercising the right to participate in public administration.

CONCLUSIONS

Examining the nature of public participation in public administration, the relationship of the right to participate in the management of public affairs with democracy as a value and at the same time the goal of a modern progressive state, we can note the following.

Firstly, the participation of citizens in the management of state affairs is a multifaceted concept that covers all the statutory opportunities of the public, the implementation of which affects the activities of the state. Understanding the participation of citizens in public administration cannot be reduced to political rights, such as electing and being elected to representative bodies of state power, creating political parties, and so on. In the era of
participatory democracy, the public’s ability to influence the process and outcome of public administration in the state is greatly expanded.

Today, a citizen can take part in the management of public affairs in many ways, both independently, on his own initiative and on the initiative of the subject of power, both individually and collectively, both offline and electronically. At the same time, a wide range of forms of public participation in public administration requires adequate legislative support. The first step towards strengthening the role of public opinion in a democracy should be to regulate the mechanisms of citizen participation in governance at the law level.

Secondly, the level of public confidence in the state as a whole plays a significant role in building relations between the active public and public authorities. The solution to the issue of low public trust in management structures can be not only the promotion of forms of participation in management (advertising, training, consulting, etc.), but also increasing the level of transparency of the state, minimizing administrative discretion (discretionary powers).

Thirdly, the participation of citizens in the management of public affairs must be in accordance with certain principles that directly affect the effectiveness of such participation:

1) the presence of a specific goal;
2) creation of conditions for constant convenient communication of the parties;
3) providing the opportunity to choose the form and method of participation in management;
4) creation of conditions for active participation of the public (convenience of ways of participation, transparency, openness in activity of public authorities);
5) involvement of the maximum number of participants in the discussion and adoption of the relevant management decision;
6) openness and controllability of the process of public participation, real and specific goals;
7) use of high-quality methodological base, including positive foreign experience for the organization of public participation in management.

REFERENCES


