

Yanis Yansons¹

Organizational and Legal Mechanism of Public Administration of Functioning and Development of Electronic Consultations

1. Introduction

While digital transformations are properly developed and penetrate all new spheres of social existence, the issues of public administration have not been left out. With the development of information and communication technologies (ICT), this area has received additional tools that allow the civil society to interact with public authorities and local governments at a new quality level. Modern means of communication have broken the monopoly of mass media as of communication channels between the public and the authorities. The realization of the right of Ukrainian citizens to partake in managing state affairs, which is guaranteed by Article 38 of the Constitution of Ukraine², has intensified due to the emergence of e-democracy tools. These tools, if used properly, can restore public confidence in democratic institutions, increase efficiency of fight against corruption, etc.

¹ Ph.D. in Technical Science, Doctoral Student at the Department of the Parliamentary and Political Management, National Academy for Public Administration under the President of Ukraine, yan.yansons@gmail.com, <https://orcid.org/0000-0002-9161-1493>.

² The Constitution of Ukraine. (1996). *Revision on January 01, 2020*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian].

The EU e-democracy concept papers state that the goal of e-democracy is “not to create an alternative democratic system, but to promote, ensure and increase transparency, accountability, efficiency, engagement, discussion, inclusiveness, etc. of the current classical democracy”³.

The European Parliament’s report states that “e-democracy refers to the use of ICT to create channels for public consultations and participation (e.g. e-parliament, e-initiatives, e-voting, e-petitions, e-consultations)”⁴.

These channels of public participation in the administration of public affairs are reflected in national laws of Ukraine. One of the basic documents regulating the evolution of e-democracy at the national level is the Concept of E-democracy Development in Ukraine. It states that “the most common tools of e-democracy used today in Ukraine at both national and local levels are e-appeals, e-petitions, e-consultations, participation budgets (public budgets)”⁵.

According to the UN e-government development global assessments based on such indicators as e-government development index (EGDI), e-participation index (EPI), which indirectly characterize the dynamics of e-government governance and e-democracy as part of it, Ukraine ranks 69th (EGDI index) and 46th (EPI index)⁶. This emphasizes the fact that according to international experts the level of e-democracy’s development in Ukraine continues to show positive dynamics. In addition, the analysis of the components included in these indices and influencing the final scores reflects a certain imbalance between the increased level of

³ Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy). Retrieved from: <https://wcd.coe.int/ViewDoc.jsp?id=1410627>.

⁴ Report on e-democracy in the European Union: potential and challenges (2016/2008(INI)). (2017). *Committee on Constitutional Affairs Rapporteur: Ramón Jáuregui Atondo*, p. 14.

⁵ Concept of e-democracy development in Ukraine. *Order of the Cabinet of Ministers of Ukraine, November 8, 2017 N^o 797-r*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/797-2017-%D1%80> [in Ukrainian].

⁶ United Nations E-Government Survey 2020: Digital Government in the Decade of Action for Sustainable Development. With addendum on COVID-19 Response. (2020). United Nations. Retrieved from: [https://publicadministration.un.org/egovkb/Portals/egovkb/Documents/un/2020-Survey/2020%20UN%20E-Government%20Survey%20\(Full%20Report\).pdf](https://publicadministration.un.org/egovkb/Portals/egovkb/Documents/un/2020-Survey/2020%20UN%20E-Government%20Survey%20(Full%20Report).pdf).

e-services provided by public authorities and the level of implementation of e-democracy tools, which are the basis to implement democratic principles in public governance. This highlights the need to increase the effectiveness of e-democracy through scientifically sound approaches to improve the organizational and legal mechanism of public administration of e-democracy tools' functioning and development.

The purpose of this article is to assess the state of organizational and legal mechanism of public administration of e-consultations as well as to provide scientific-theoretical justification of recommendations to Ukrainian authorities to improve it given the best international and national experience and peculiarities of our country.

2. Legislative basis for the use of e-consultations

Based on the Concept of E-democracy Development in Ukraine, the most common e-democracy tools are e-consultations and open budget.

Ukrainian national legislation in the field of e-democracy was based on regulations and documents of a recommendatory nature of the European Union's institutions. Annex 1 "General Instruments and Policies for e-Democracy" to the Recommendations of the Committee of Ministers of the Council of Europe contains definitions of e-democracy tools, including e-consultations and e-discussions. The term e-consultations is defined as "gathering the views of designated persons or general public on a specific political issue without a decision-maker's obligation"⁷. It is clarified that there are different forms of consultations, namely: formal and informal, i.e. regulated and not regulated by the state.

E-discussion – is a "discussion of issues of concern to citizens, among citizens, public authorities and others via the use of ICT and other e-democracy tools in order to facilitate discussion and participation of citizens in democracy"⁸.

⁷ Indicative Guide No. 1 to Recommendation Rec(2009)1 of the Committee of Ministers to member states on e-democracy Generic tools and policies for an electronic democracy. (2009). *The Council of Europe's Ad Hoc Committee on e-democracy*. Retrieved from: https://www.coe.int/t/dgap/democracy/Source/EDemocracy/CAHDE_IV/CAHDE%20indicative%20guide%20no%201%20only_23Feb09.pdf.

⁸ Ibid.

The difference between e-discussions and e-consultations is that the public can initiate a bottom-up discussion on important issues. E-debates are considered a starting point for other democratic initiatives. In addition, public participation is enshrined in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

In the Concept for Development of E-Democracy, the concept of “e-consultations” is defined as “a form of public consultations which involves, in particular, the publication of draft acts of public authorities or issues that need to be addressed in order to receive proposals and comments”⁹. In addition, this document contains the general purpose of using e-consultations that is to increase citizens’ participation in decision-making.

The regulation of public consultations at the national level is reflected in a number of laws and regulations. Thus, the Regulations of the Cabinet of Ministers of Ukraine No. 950¹⁰ provide for public representatives’ participation in the decision-making process. The Laws of Ukraine “On the Cabinet of Ministers of Ukraine”, “On the Rules of Procedure of the Verkhovna Rada (Parliament) of Ukraine”, “On the Principles of State Regulatory Policy in the Sphere of Economic Activity”, “On the Principles of Domestic and Foreign Policy”, “On Public Associations”, Decree of the President of Ukraine “On the Regulations on the Procedure for Preparation and Submission of Draft Acts of the President of Ukraine” define the approaches to involve the civil society in state decision-making procedures as well as general principles of public consultations.

In addition, conceptual and strategic documents such as the National Strategy for the Promotion of Civil Society Development in Ukraine for 2016–2020 and the National Strategy for Human Rights for 2015–2020 contain provisions on “ensuring effective procedures for public involvement in processes of policy formation and implementation” as well as

⁹ Concept of e-democracy development in Ukraine. *Order of the Cabinet of Ministers of Ukraine, November 8, 2017* № 797-r. Retrieved from: <https://zakon.rada.gov.ua/laws/show/797-2017-%D1%80> [in Ukrainian].

¹⁰ On approval of the Regulations of the Cabinet of Ministers of Ukraine. *Order of the Cabinet of Ministers of Ukraine, July 18, 2007 (revision on November 15, 2020)* № 950. Retrieved from: <https://zakon.rada.gov.ua/laws/show/950-2007-%D0%BF> [in Ukrainian].

the information on mechanisms of cooperation of public authorities with the civil society.

3. Organizational and legal mechanism of e-consultations

The procedure for holding consultations is determined by the Resolution of the Cabinet of Ministers of Ukraine of November 3, 2010 No. 996 “On ensuring public participation in the formation and implementation of public policy”¹¹ (the Resolution). This Resolution clarifies the procedures for electronic consultations.

According to the Resolution, “Public consultations are held in order to involve citizens in the management of public affairs, to provide them with free access to information on the activities of executive bodies, as well as to ensure transparency, openness and transparency of these bodies.

Public consultations should help to establish a systematic dialogue between the executive authorities and the public, to improve quality of preparation of decisions on important issues of state and public life based on public opinion, and to create conditions for citizens’ participation in drafting such decisions”¹².

Since e-consultations is only one form of public consultations that uses the ICT’s potential, they serve the above purposes. At the same time, e-consultations expand public participation in managing public affairs through remoteness, inclusiveness and other types of involvement of civil society institutions’ (CSI) representatives.

In contrast to central (local) executive bodies at the level of local self-government bodies, electronic consultations are regulated by methods developed in accordance with the Resolution and approved by the concerned orders of local self-government bodies.

Direct conducting of electronic consultations is regulated by the Resolution¹³. At the same time, according to the author, increasing the

¹¹ On ensuring civil society participation in the formation and implementation of public policy. *Order of the Cabinet of Ministers of Ukraine, November 03, 2010 (revision on May 07, 2019) № 996*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF> [in Ukrainian].

¹² Ibid.

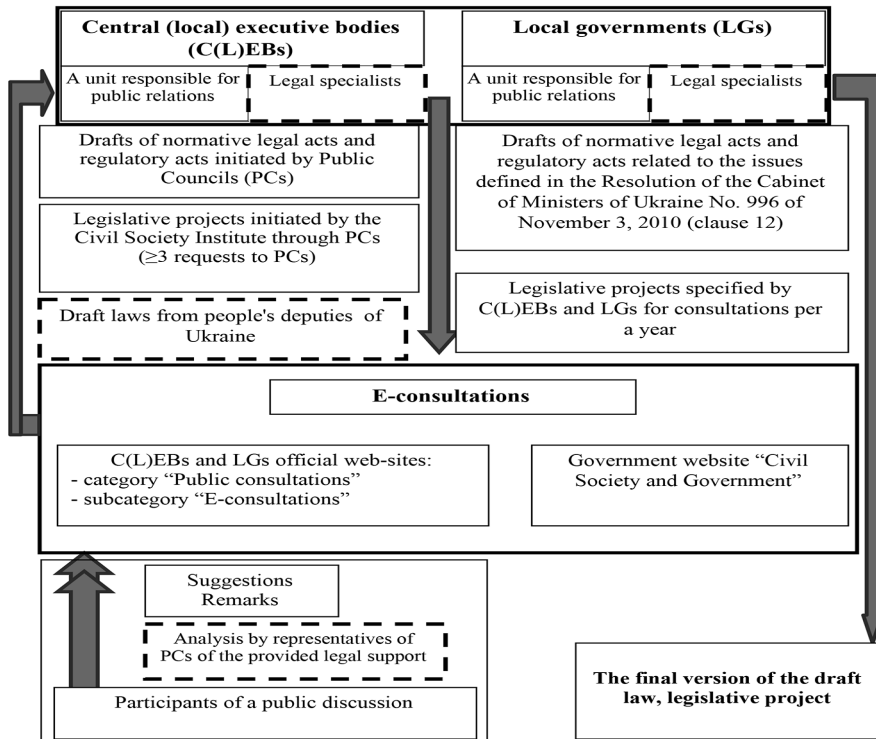
¹³ On ensuring civil society participation in the formation and implementation of

efficiency of the electronic consultation tool is possible in the presence of the Law on Electronic Consultations or the Law on Public Consultations, which should regulate “electronic consultations”.

Another aspect of improving the legislation in the area under consideration is the need to take into account the issues of electronic consultations in conceptual and strategic documents at the national level, such as the National Strategy for Civil Society Development in Ukraine 2021–2024 and the National Human Rights Strategy 2021–2025.

The organizational model of electronic public consultations is shown in figure 1.

Fig. 1. Organizational model of e-consultations



Source: designed by the author

public policy. *Order of the Cabinet of Ministers of Ukraine, November 03, 2010 (revision on May 07, 2019) N^o 996*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF> [in Ukrainian].

The analysis of the organizational and legal mechanism to ensure the functioning of electronic consultations has allowed to identify the existing shortcomings, namely:

- decreased efficiency of e-consultations' use due to low quality of their implementation. This is reflected in the organizational and staffing structures of proper units which should provide a full cycle of electronic consultations. Thus, the same specialists dealing with hotlines, appeals' (petitions) processing and public events do results' analysis, reporting on consultations are carried out by. This reduces the level of objective response to suggestions and comments in the process of their submission;
- inadequate attention to tools of e-consultation's implementation is traced in the reluctance of the subjects of power to achieve public participation in public affairs' management which is one of the principles of e-democracy. In practice, it is seen in a non-unified structure of the official websites of C(L)EBs and LGs; sometimes in the absence of necessary information, inconvenience and/or untimely placement on proper resources;
- the existing legislation does not provide for the obligatory public discussion of draft laws submitted for consideration by the People's Deputies of the Verkhovna Rada of Ukraine;
- no liability is provided for violation of the requirements of the Procedure for e-consultations (deadlines for publishing the information on consultations, their content, etc.);
- there is no motivation of representatives of executive bodies and local self-governments to conduct e-consultations at a high quality level;
- low efficiency of mechanisms for informing the public about measures in regard to electronic consultations;
- lack of a mechanism for mandatory justification of the grounds for disregarding the proposals from CSIs, PCs and other entities involved in e-consultations.

4. Procedure for conducting e-consultations

Greater efficiency of e-democracy development is possible by improving the organizational and legal mechanism of tool e-consultation. According

to the author, the development of this tool of e-democracy is possible in the following areas (indicated in Figure 1 by a dotted line):

- inclusion of legal specialists on implementing e-democracy tools in a public relations unit;
- legal obligation to conduct e-consultations on draft laws initiated by deputies of the Verkhovna Rada of Ukraine;
- involvement of PCs representatives to provide legal support to citizens, civil society organizations in order to implement the right to participate in the country’s socio-political life through the use of tool of e-consultations.

A schematic representation of the procedure for conducting e-consultations is presented in Figure 2.

Fig. 2. The procedure for conducting an e-consultation

Subjects of influence	Stages of e-consultation*	E-consultation procedures	Proposals to improve the procedure for e-consultation
C(L)EBs LGs	Initiation of e-consultation	Publication of an information notice on conducting an e-consultation	<div style="border: 1px dashed black; padding: 5px;">Expanding mandatory channels for informing the public about e-consultation's initiation</div> <div style="border: 1px dashed black; padding: 5px;">Providing legal assistance to the public in the formation of proposals, comments</div>
Citizens Civil society organisations Public councils C(L)EBs	E-consultation	<div style="border: 1px solid black; padding: 5px;">Collection of proposals, comments on e-consultation</div> <div style="border: 1px solid black; padding: 5px;">Processing of proposals, comments on issues submitted for e-consultation</div>	<div style="border: 1px dashed black; padding: 5px;">Publication of the received proposals in during the e-consultation</div> <div style="border: 1px dashed black; padding: 5px;">Monitoring, analysis of justification for consideration/non-consideration of proposals, comments received during the e-consultation</div>
C(L)EBs LGs	Completion of e-consultation	Preparation and publication of a report on the e-consultation	<div style="border: 1px dashed black; padding: 5px;">Establishing an appeal mechanism for representatives of CSIs in case their proposals and comments received during an e-consultation are not included</div> <div style="border: 1px dashed black; padding: 5px;">To introduce in the Administrative and Criminal Codes of Ukraine a liability for violation of the regulations for e-consultations</div>

* according to the Order of the Cabinet of Ministers of Ukraine № 996 “On ensuring civil society participation in the formation and implementation of public policy”

Source: designed by the author.

Based on the results of the study of the e-consultations' mechanism, it was found that the following components of the e-consultation procedure need to be improved:

- publicity of the e-consultations' process, which often remains a "black box" for the civil society, should be raised. Even in case an executive authority representatives properly treat e-consultations, the civil society has limited information on what proposals, comments have already been submitted, whether they have been rejected or not, for what reason they have been rejected. This, if published in the process of e-consultations, would enable the CSIs representatives to respond to situations in a timely manner as well to finalize (modify) proposals for them to be taken into account.
- low legal quality of proposals from CSIs that demonstrates insufficient public legal education. PCs that exist under the central (regional, local) executive bodies (C(RL)EBs), except for doing statistical functions during e-consultations, can partake in the initiative of legalization of proposals from CSIs.
- lack of appeal mechanism as to the disregard of proposals from C(L)EBs and LGs regarding a draft normative legal acts and regulatory acts which is submitted for consideration in the e-consultation form.

According to the author, in order to improve the quality of e-consultations amidst the lack of sufficient public representatives' legal literacy and motivating factors within government bodies, public councils should provide legal support for CSIs' initiatives. The essence of improving the work of public council representatives on this issue is as follows:

From the moment of publication of information about an e-consultation

- initiation of mechanisms for dissemination of information on which an e-consultation is conducted;
- providing legal assistance to civil society institutions for the purpose of high-quality implementation of e-consultation;
- providing assistance in the proper preparing execution and form of proposals, comments (clarity, justification, etc.).

During the e-consultation

- work with the initiators to highlight the essence of the proposals, comments that are planned for submission;

- analysis of the feasibility of creating new proposals and appeals in the presence of similar ones;
- monitoring of submitted proposals, appeals;
- if possible, modification of unaccounted proposals and remarks in order to eliminate grounds for disregard.

After completing the e-consultation

- analysis of submitted proposals, appeals;
- tracking the reasons for their disregard;
- performance of the functions of an arbitrator between CSIs and initiators of consultations in order to correct the unaccounted proposals, comments;
- generalization of shortcomings to consider them in the future.

E-consultations, as a component of e-democracy, are fully covered by its principles; therefore, the author believes, it is obviously needed to ensure their openness and transparency, which will prevent data manipulation and increase confidence in the executive branch. In technical terms, the reflection of the process of e-consultations is a thorough duplication on an executive body's official website of all proposals and comments received during the consultation process. The availability of an online interface for submitting such proposals and comments will improve the quality of the participants' communication of their own position on the issues under consideration. In addition, the public reflection of the e-consultation process will allow stakeholders to find out what proposals and comments have already been submitted, thus not creating an unnecessary burden on the initiators of the consultation.

As of the end of 2020, only a little more than half of the official web resources of C(L)EBs had the rubric "Electronic public consultations"¹⁴.

Recommendations for improving the mechanism of e-consultations

The author has developed the following recommendations to central authorities, local governments, public councils and civil society insti-

¹⁴ The data were obtained based on the results of the analysis of official web resources provided on the portal of the Cabinet of Ministers of Ukraine – <http://kmu.gov.ua/catalog>.

tutions to improve the organizational, legal and informational (technical) mechanisms of e-consultations' public management, formation and implementation:

- new versions of the National Strategy for the Development of Civil Society in Ukraine for 2021 – 2024 and the National Strategy for Human Rights for 2021–2025 should oblige the interaction between government and public, including via e-consultations;
- the Strategy for Development of Information Society in Ukraine until 2025 should include the issues of development of e-democracy in terms of e-consultations to improve the interaction between public authorities and the public;
- to adopt the Law on Public Consultations with a separate paragraph devoted to issues of e-consultations;
- the list of obligatory projects subject to public discussion (in the form of e-consultations) should include the bills submitted for consideration by People's Deputies of the Verkhovna Rada of Ukraine;
- the improved e-consultations' mechanism adaptation to the CSIs' requirements should be incorporated into law on a permanent basis;
- to expand the current legal framework by the mechanism of obligatory substantiation by C(L)EBs and GSs representatives of their grounds for disregarding the proposals, comments of the CSIs, public councils and other parties to e-consultations;
- to develop and legislate an appeal mechanism for non-consideration of C(L)EBs and GSs' proposals regarding the draft normative legal acts and regulatory acts submitted for consideration in the form of an e-consultation.
- to improve the organizational and staffing structure of C(L)EBs and GSs' units, other subjects of e-consultations to ensure they are staffed by specialists whose area of responsibility will be determined by public consultations only;
- to introduce the short-term national information campaigns with involved state media with the purpose of advance information of the public on the most important e-consultations regarding the draft normative legal acts specified in paragraph 12 of the Procedure for Public Consultations on Formation and Implementation of Public Policy;

- to amend the Procedure for Public Consultations on Formation and Implementation of Public Policy by the procedure that an initiating body of the e-consultation should publish on its official website the online process of submitting proposals and comments received;
- to impose administrative sanctions for non-compliance with the laws regarding proper use of e-democracy tools, the Procedure for conducting e-consultations (deadlines for publication of information on consultations, their content, etc.);
- to provide budget funding for accredited civil society institutions to conduct information work with stakeholders on the effectiveness of e-democracy tools, provide them with expert assistance in the process of preparation and submission of proposals, comments in the framework of participation in e-consultations.

6. Conclusions

1. A set of basic normative legal acts on the formation and implementation of e-consultations as part of public consultations has been analyzed and systematized, and a set of positive and negative factors influencing the effective use of e-democracy tools has been identified.
2. The analysis and generalization of the best international practices and experience of ECT realization has been carried out, and the directions of national legislation's perfection to increase efficiency of e-democracy tools' application have been offered.
3. The organizational and legal mechanism for the implementation of e-consultations in Ukraine in terms of interaction of executive authorities with the public has been improved, which, in contrast to the existing mechanism, provides for the inclusion into executive authorities' units responsible for e-consultations a legal specialist; the obligation to submit bills submitted by people's deputies of the Verkhovna Rada for public discussion via e-consultations; engaging the public councils in preparation and conduct of e-consultations, monitoring and evaluation of the executive authorities' compliance with the findings of the e-consultations' results; introduction of ad-

ministrative liability for the executive authorities' non-compliance with the legislation in the field of e-consultations.

4. The shortcomings inherent in the national organizational and legal mechanism of public management of the functioning and development of e - consultations have been highlighted.
5. The recommendations to central and local executive bodies, local self-government bodies, public councils, civil society institutions and civil society organizations to improve current organizational and legal mechanism of public administration of e-consultations' functioning and development have been scientifically grounded; these recommendations are designed to develop new and amend current Ukrainian legislation, to include e-consultations in some strategic and conceptual documents, to empower the public, civil society institutions and public councils in terms of improving the implementation of e-consultation tools, ensuring administrative and criminal liability for violations of legislation in the field of e-consultations' application, etc.

Further research will be aimed at studying the information-analytical mechanisms of public administration of e-democracy's development in Ukraine.

References

Concept of e-democracy development in Ukraine. *Order of the Cabinet of Ministers of Ukraine, November 8, 2017 N° 797-r*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/797-2017-%D1%80> [in Ukrainian].

Indicative Guide No.1 to Recommendation Rec(2009) 1 of the Committee of Ministers to member states on e-democracy Generic tools and policies for an electronic democracy. (2009). *The Council of Europe's Ad Hoc Committee on e-democracy (CAHDE)*. Retrieved from: https://www.coe.int/t/dgap/democracy/Source/EDemocracy/CAHDE_IV/CAHDE%20indicative%20guide%20no%201%20Only_23Feb09.pdf.

On approval of the Regulations of the Cabinet of Ministers of Ukraine. *Order of the Cabinet of Ministers of Ukraine, July 18, 2007 (revision on*

November 15, 2020) № 950. Retrieved from: <https://zakon.rada.gov.ua/laws/show/950-2007-%D0%BF> [in Ukrainian].

On ensuring civil society participation in the formation and implementation of public policy. *Order of the Cabinet of Ministers of Ukraine, November 03, 2010 (revision on May 07, 2019) № 996*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/996-2010-%D0%BF> [in Ukrainian].

Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy). Retrieved from: <https://wcd.coe.int/ViewDoc.jsp?id=1410627>.

Report on e-democracy in the European Union: potential and challenges (2016/2008(INI)). (2017). *Committee on Constitutional Affairs Rapporteur: Ramón Jáuregui Atondo*, p. 14.

The Constitution of Ukraine. (1996). *Revision on January 01, 2020*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian].

United Nations E-Government Survey 2020: Digital Government in the Decade of Action for Sustainable Development. With addendum on COVID-19 Response. (2020). United Nations. Retrieved from: [https://publicadministration.un.org/egovkb/Portals/egovkb/Documents/un/2020-Survey/2020%20UN%20E-Government%20Survey%20\(Full%20Report\).pdf](https://publicadministration.un.org/egovkb/Portals/egovkb/Documents/un/2020-Survey/2020%20UN%20E-Government%20Survey%20(Full%20Report).pdf).

Summary

The paper presents the results of analysis of the status of organizational and legal mechanism of public administration of electronic consultations (e-consultations) as well as scientific and theoretical substantiation of recommendations to Ukrainian authorities on their improvement.

The study of national and international laws in regard to functioning of the mechanism of e-consultations has been conducted to determine positive and negative factors influencing its application.

Ways to improve specified mechanism regarding the structure of units of central (regional, local) executive bodies and local governments, legal normative acts concerning e-consultations and participation of public councils in the process of e-consultations have been offered.

The main shortcomings of the organizational and legal mechanism of public administration of national e-consultations have been identified, including: low

quality of e-consultations; unwillingness of the subjects of power to allow the civil society to have a real impact on state affairs, lack of responsibility for ignoring the law in regard to organization and conduct of e-consultations, distrust of the authorities and “digital inequality” etc.

Based on the analysis of international experience in implementing the tool of e-consultations, ways to improve the procedure for its implementation in Ukraine, changes to national laws and recommendations to central (regional, local) executive bodies and local governments, public councils and the civil society to improve the organizational and legal mechanism managing tool of e-consultations implementation, operation and development.

Keywords: e-democracy, e-democracy tools, e-consultation, public participation, civil society