DOI: 10.22394/2070-8378-2017-19-2-32-36

Legal Mechanisms of E-democracy for Harmonization and Coordination of Relations Between Citizens, Organizations and the State

JAROSLAV V. ANTONOV, **Cand. Sci. (Law), Director of the Center for Development of E-democracy Mechanisms, Associate Professor at the Chair of Jurisprudence, Law department, North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration (199178, Russian Federation, Saint-Petersburg, Sredniy prospect, Vassilyevsky Island, 57/43). E-mail: antonovjv@gmail.com**

Abstract: The article dwells upon the issues of application of modern information and communication technologies for development and streamlining of the relations between citizens, government and organizations. Based on the assertion that the Internet plays an important role in strengthening representative democracy, as it allows introducing advisory elements into the democratic system, the author analyzes a number of international legal instruments of the Council of Europe adopted in recent years in the field of e-democracy, and gives practical examples of e-government and e-democracy performance in Russia and the CIS countries. The author draws attention to the fact that state projects enjoy considerably less popularity than non-profit projects for the development of public initiatives.

Based on the results of research conducted on the basis of the Center for Development of E-democracy Mechanisms at the Faculty of Law (RANEPA), the author reveals the problems of law enforcement and the numerous terminological conflicts associated with the field of information and communication technologies and other problems of the development of e-democracy in Russia. In conclusion, the author advances a number of proposals for systematization of the conceptual apparatus and for the harmonization of legislation in the sphere of e-democracy, which should promote its further development.

Keywords: e-democracy, e-government, e-voting, e-governance, information and communication technologies

ПРАВОВЫЕ МЕХАНИЗМЫ ЭЛЕКТРОННОЙ ДЕМОКРАТИИ ДЛЯ ГАРМОНИЗАЦИИ ОТНОШЕНИЙ МЕЖДУ ГРАЖДАНАМИ, ОРГАНИЗАЦИЯМИ И ГОСУДАРСТВОМ

ЯРОСЛАВ ВАЛЕРЬЕВИЧ АНТОНОВ, **кандидат юридических наук, директор Центра развития механизмов электронной демократии, доцент кафедры правоведения Северо-Западного института управления Российской академии народного хозяйства и государственной службы при Президенте Российской Федерации (199178, Российская Федерация, Санкт-Петербург, Средний пр. В.О., д. 57/43). E-mail: antonovjv@gmail.com**

Аннотация: В статье рассматриваются вопросы применения современных информационно-коммуникационных технологий для развития и упорядочивания отношений между гражданами, государством и организациями. Автор полагает, что Интернет может играть важную роль в укреплении представительной демократии, поскольку позволяет внедрять совещательные элементы в демократическую систему, и анализирует ряд принятых в последние годы международно-правовых документов Совета Европы в области электронной демократии, а также приводит практические примеры работы институтов электронного правительства и электронной демократии в России и в странах СНГ. На основе сделанных наблюдений автор обращает внимание, что государственные проекты пользуются заметно меньшей популярностью, чем некоммерческие проекты по развитию общественных инициатив.

Опираясь на результаты исследований, проведенных на базе ЦРМЭД, созданного с целью исследование правовых проблем развития электронной демократии, автор выявляет проблемы правоприменения и многочисленные терминологические коллизии, связанные со сферой информационно-коммуникационных технологий, и иные проблемы развития электронной демократии в России. В завершение статьи автор также выдвигает ряд предложений систематизации понятийного аппарата и по гармонизации законодательства в сфере электронной демократии, что, по мнению автора, должно способствовать ее успешному развитию в перспективе.

Ключевые слова: электронная демократия, электронное управление, электронное голосование, электронное правительство, информационно-коммуникационные технологии

Electronic democracy is intended to increase the level of participation, transparency, accountability and representation of the public opinion. It is important to note that, as part of the e-democracy system, the population means not just citizens and voters, but all stakeholders, including commercial and non-profit organizations that are also participants in democratic processes.

There exists a well-founded opinion that the Internet can play an important role in strengthening representative democracy [Grunwald A., Banse G., Coenen C., Hennen L., 2006], as it allows the introduction of deliberative elements in the democratic system.

The need to promote active participation of the public in the use of the Internet and free communication is enshrined in the **Recommendations by the Committee of Ministers of the Council of Europe**.

In 2009, the Special Committee on Electronic Democracy (CAHDE), having consolidated its international legal experience in the field of e-democracy, developed the relevant Recommendation CM / Rec (2009) 1. They can be considered as the first international legal document aimed at establishing standards in the field of e-democracy:

1) Effective integration of citizens and civil society structures into the system of democratic values, their engagement and involvement in democratic processes are important in effective governance for preventing conflicts in society, strengthening stability and promoting economic and social progress and cohesion at all levels [1].

2) It is necessary to maintain and improve democratic institutions and processes in the context of new opportunities and challenges related to the information society, considering that information and communication technologies (hereinafter referred to as ICT) are gradually promoting the dissemination of political information and political issues [2].

It should be noted that e-democracy, subject to proper implementation, promotes and ensures greater transparency, accountability, participation, openness, accessibility and social orientation. This provides opportunities for participation in political life, the principle of subsidiarity (the principle of best governance), social cohesion increases. Proper implementation in this case means sustainability (regular implementation in various practices and projects), reproducibility (the possibility of implementation in various practices and projects) and institutional support (creation of a regulatory and legal framework and infrastructure) [3].

The CE notes in the Recommendations the following **principal provisions**:

1) Electronic democracy requires information, dialogue, communication, discussion and the regular creation of open virtual public spaces, where citizens can come together to defend their civil interests;

2) Electronic democracy is an integral part of the information society, which presupposes the availability of traditional and innovative tools (for example, the possibility of simultaneous communication with an unlimited number of persons) that can be used in democratic processes [4].

A democratic e-voting procedure plays is an overriding concern in the implementation of e-democracy. Herein it is necessary to make the following accent. Electronic voting is usually considered as voting of citizens, and, as a rule, voting in elections or referendums. At the same time, modern trends in e-democracy allow talking about electronic voting as an instrument for identifying and fixing the opinion of all stakeholders, including business representatives. As an example, we can refer to the 'Russian Public Initiative' project [5], which implies personal electronic voting and at the same time does not exclude the possibility of lobbying certain economic interests of business, as well as interaction on this ground with public authorities. In addition, as an example in the Russian practice, we can cite public expertise and discussion of socially significant draft laws.

According to the Council of Europe, e-democracy can be defined as the use of ICT in 'democratic sectors' in the framework of political processes, local communities, regions, states and peoples [6].

The term 'democratic sectors' can be understood as the following elements: 1) government; 2) elected officers; 3) mass communication means, including electronic ones; 4) political parties and interest groups; 5) the structure of civil society; 6) international non-governmental organizations; 7) voters [Clift S.L., 2004].

In the opinion of a few scientists, the concept of 'E-government' is based on the influence of ICT on democratic traditions, institutions and processes that determine the procedures for the execution of power, the methods and the procedures for expressing the opinion of population, the procedures for making and implementing decisions [Riley C., 2010, P. 105]. Thus, a number of researchers believe that e-government covers the use of ICT in democratic processes, both within e-government and in e-democracy [Van Gompel R., Steyaert J., Kerschot H., 2007, P. 33].

Today, 'Electronic Government' in practice is used

1 Political message from the Committee of Ministers to the World Summit on the Information Society (WSIS) (Geneva, 10-12 December 2003) CM(2003)87 final 24 June 2003.

2 Recommendation Rec(2003)9 of the Committee of Ministers to member states on measures to promote the democratic and social contribution of digital broadcasting.

3 Ibid: http://www.coe.int/t/dgap/democracy/Activities/GGIS/CAHDE/2009/ RecCM2009_1_and_Accomp_Docs/Recommendation%20CM_Rec_2009_1E_FINAL_PDF.pdf

4 Ibid.

5 'Russian Public Initiative' official website: https://www.roi.ru/

6 Council of Europe, Directorate General of Democracy and Political Affairs, Directorate of Democratic Institutions, Project: "Good governance in the information society", Indicative Guide No. 5 Recommendation of Committee of Ministers to member states on e-democracy. 2009.

mainly as a concept that indicates the procedure for the provision of public services in electronic form. Typically, electronic services are characterized as client-oriented, i.e. considerably more convenient, allowing to save time and to minimize individual communication with public officials, and consequently, to prevent corruption manifestations. At the same time, the transparency and accountability of the provision of services is much greater, even though services are implemented in a free and potentially vulnerable Internet environment [Bekkers V., Thaens M.. 2002, P. 328-337; Van Audenhove L. et al, 2005, P. 8].

Thus, summing up [Wouters R., 2008, P. 4], it may be deduced that e-government is focused on the process of electronic service delivery, which is based on the ideas of electronic management [7].

Electronic governance, based on the stated above, can be understood as a system of relationships between public authorities, citizens and organizations on the basis of information and communication links on the implementation of democracy [Ovchinnikov V.A., Antonov J.V., 2013, P. 18-21].

The state authority should, at its own initiative, take the necessary measures to ensure the access of a wide range of citizens and other interested persons to information when such information is provided in order to promote transparency in public administration and efficiency, which will facilitate informed participation of citizens and other interested persons in matters representing public interest [8].

Transparency is an integral part of e-democracy. It is critical to make information accessible to the public, whereby, besides the official documents, the information on procedures and forthcoming events in the democratic life of the state. This is the so-called 'active transparency', while the freedom of information regarding official documents, implemented in many countries, can be referred to as 'passive transparency'. Protection of classified information, other secrets protected by law and information directly affecting the provision of state security, as well as information with limited access, are regulated by separate legal acts and should not be considered in the regard of 'active transparency'.

Public and civil institutions including the infrastructure of suppliers and users at all levels, as the main regulators of e-democracy should interact and cooperate in drafting and clarifying the rules and introducing new rules and restrictions regulating the implementation of e-democracy. This is necessary in order to determine type, level and content of legal regulation, which will be most effective in each specific case [9].

Legislative activity in this case should not be the prerogative of public authorities: all persons whose interests are affected by law should be able to participate in its development. New rules can be introduced as a means of 'formal laws', and based on collective agreements between all stakeholders or between the individual participants [10]. In this sense, it can be conceived of as self-regulation of the participants of these relations in the framework of the implementation of e-democracy.

Special mention should go to such practices of e-democracy as E-business, E-employment, E-procurement [11] (electronic trading), E-commerce [12], E-justice, E-initiative, which allow the representatives of business structures to realize their economic interests in cooperation with public authorities within the framework of a single system of electronic democracy. At the same time, the very nature of e-management presupposes the existence of innovative mechanisms that ensure maximum transparency, openness and accountability in the relations between business, citizens and public authorities.

Thus, the diversity of practices and projects for the development of e-democracy presupposes the existence of broad opportunities and a huge potential for interaction between society, state and business. The dynamics of the development of e-democracy allows us to conclude that its development depends not so much on the state as on the participation of citizens and civil society structures in its formation. So, for example, the most popular and demanded services of public initiatives are mostly non-profit projects developing independently of the state (e.g., change.org has more than 200 million participants worldwide). State projects do not gain that traction for a variety of reasons.

The Legal Issues of E-democracy in Russia

The Center for Development of E-democracy Mechanisms at the Faculty of Law has been established on June 1, 2016 at the North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration (RANEPA) and is currently the first academic project aimed at investigating the legal problems of the development of electronic democracy [13]. Based on the results of a number of studies, including the analysis of practices for the development of e-democracy

7 United Nations e-Government Survey: From e-Government to Connected Governance. New York: United Nations, 2008. P. 3.

8 Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents (Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies).

9 Recommendation of the Committee of Ministers of the Council of Europe: http://www.coe.int/t/dgap/democracy/Activities/GGIS/CAHDE/2009/ RecCM2009_1_and_Accomp_Docs/6647-0-ID8289 Recommendation%20on%20electronic%20 democracy.pdf

10 Ibid.

11 European Commission E-Practice community: http://www.epractice.eu/en/library?page=1

12 European Commission E-Practice community: http://www.epractice.eu/community/eprocurement

13 The Center for Development of E-democracy Mechanisms official website: https://sziu.ranepa.ru/sobytiya/novosti/centr-razvitiya-mehanizmov-elektronnoj-demokratii-pervye-rezultaty-raboty

in the countries of the Commonwealth of Independent States, as well as in other countries, the following most widespread problems of the development of e-democracy that hamper its full implementation can be singled out.

It should be noted that the relevant bodies and organizations involved in the creation of e-democracy projects do not fully understand what e-democracy is in modern social and technical conditions. Neither there is a common legislative approach to regulating e-democracy.

Thus, in the Republic of Moldova, within the framework of Resolution No. 255 of 09.03.2005 "On the National Strategy for the Creation of an Information Society 'Electronic Moldova'", the following definition of e-democracy is given: "E-democracy is the activity and interaction of citizens, public institutions and political organizations through information and communication technologies" [14]. However, this concept is actually an analogue of the concept of e-government and does not reflect the essential characteristics of e-democracy, previously described by the author [E.g.: Antonov J.V., 2016; Antonov J.V. 2017; Ovchinnikov V.A., Antonov J.V., 2013].

In the Russian Federation, legislation has not yet resolved the conflicts in terminology related to the field of information and communication technologies.

Thus, in accordance with Article 2 of the Federal Law of the Russian Federation of July 27, 2006 N 149-FZ, in the wording of 13.07.2015 «Information, Information Technologies and Information Protection», information technology is processes, methods of searching, collecting, storing, processing, providing, disseminating information and methods, and the modes of such processes and methods implementation.

The definition of the term of information and telecommunications technologies in the Russian legislation as of 2016 is lacking. The term in the Federal Law of the Russian Federation of July 27, 2010 N 210-FZ «On the Organization of Provision of State and Municipal Services», however, Art. No. 2 of this law, which discloses the basic concepts used in the law, does not define the terms of information and telecommunication technologies.

Nevertheless, Art. No. 2 of the Federal Law of the Russian Federation No. 149-FZ of July 27, 2006 «On Information, Information Technologies and Information Protection» contains the term of an information and telecommunications network, that is defined as a technological system designed to transmit information by communication lines and accessible by means of electronic data processing.

In the Decrees of the Government of the Russian Federation adopted in 2012-2013, after the entry into force of these laws, one can find the use of the term 'information and communication technologies' [15].

It is remarkable, that title of the Presidential Office for Information Technologies and the Development of Electronic Democracy comprises the term of 'information technology' in its legal definition given in Art. No. 2 of the Federal Law of the Russian Federation of July 27, 2006 N 149-FZ «On Information, Information Technologies and Information Protection».

In view of this legal uncertainty, we suggest to use the well-established concept of information and communication technologies, bearing in mind that it is used in almost all international documents, including agreements concluded by the Russian Federation. As an illustration, we can cite the «Agreement on Cooperation among the States Members of the Commonwealth of Independent States In the field of information security» (concluded in St. Petersburg on November 20, 2013).

In the Russian Federation, there is neither legal definition and principles for the development of e-democracy in legislation, nor the legal definition and principles of the development of the related concept of «open government». Therefore, in the organizational structure of public authorities there is disorder and duplication of functions, which in practice causes problems, including law enforcement.

Thus, in addition to the e-government website [16] (1), there exists an open government website [17] (2) with a corresponding ministry of the open government, the Presidential Administration for Information Technologies and the Development of E-democracy functions [18] (3) and a corresponding provision, which does not exactly define what the e-democracy is [19].

The European concept of 'open government' (the so-called version 3.0) [20]: the Open Government as a term is not defined on the relevant website. Moreover, a comprehensive exegesis and of these practices and projects together with the analysis of the provisions of the Presidential Administration for Information Technologies and the Development of E-democracy functions shows up a semantic duplication of a number of essential functions and tasks.

Based on the results of the research carried out by the The Center for Development of E-democracy Mechanisms

14 Regional commonwealth in the Field of Communications (in Russ.): http://rcc.org.ru/userdocs/inform/docs/Zakoni_stran_RSS/ Moldova/ Podzakonnie_akti_RM/17_P_RM_strategia_ru_Natsionalnaya_strategiya_E_Moldova.doc

15 E.g.: Decree of the Government of the Russian Federation No. 1050 of 16.10.2012 «On some issues of coordinating activities on the use of information and communication technologies in the activities of state bodies» // «Consultant Plus».

16 Electronic Government of Russian Federation official website: https://www.gosuslugi.ru/

17 Open Government of Russian Federation official website: http://open.gov.ru/opengov/

18 Presidential Executive Office official website: http://kremlin.ru/structure/administration/departments#department-1023

19 Ibid: http://kremlin.ru/events/president/news/16282

20 Best practice examples handbook in open government initiatives. Grundtvig learning partnership project open government in Europe, 2013-2015: http://opengoveu.eu

(North-West Institute of Management, RANEPA), it can be stated that these legal problems adversely affect the development of e-democracy in Russia, as well as the appropriateness of spending budget funds in a down economy.

Recommendations

In this sense, it is necessary from both legal and economic point of view to develop and adopt the corresponding Federal Law «On the Basics of the Development of Electronic Democracy Mechanisms in the Russian Federation» with the participation of the expert community and interested structures of civil society. The proposed Federal Law should define the term of 'e-democracy' (1) and the principles for its development (2), consolidate and define projects and practices that are integral parts of e-democracy in accordance with international practice (3), and determine the following related concepts (4): 'e-governance', 'e-government', 'e-elections', 'open government', 'e-voting' (in the context of e-democracy as distinguished from the automation of the voting process), information and communication technologies, and others.

References

Antonov J.V. Jelektronnaja demokratija kak konstitucionno-pravovoj fenomen [E-democracy as a Constitutional and Legal Phenomenon] (in Russ.). In: Gosudarstvennaja vlast' i mestnoe samoupravlenie [Public and Municipal Administration], 2016, No. 11. P. 13-17.

Antonov J.V. Problemy soderzhanija universal'nyh demokraticheskih prav v sisteme jelektronnoj demokratii [The Issues of the Content of Universal Democratic Rights in the System of E-democracy] (in Russ.). In: Rossijskaja justicija [Russian Justice], 2017. No. 3, P. 50-53.

Bekkers V., Thaens M. E-government op een kruispunt van wegen. Bestuurskunde, No. 8, 2002. P. 328-337.

Clift S.L. E-Government and Democracy – Representation and Citizen Engagement in the Information Age, 2004: http://www.publicus.net /articles/cliftegovdemocracy.pdf.

Grunwald A., Banse G., Coenen C., Hennen L. Netzöffentlichkeit und digitale Demokratie. Tendenzen politischer Kommunikation im Internet. In: Studien des Büros für Technikfolgen-Abschätzung beim deutschen Bundestag, Bd. 18, Berlin. 2006. P. 9-15.

Ovchinnikov V.A., Antonov J.V. Teoretiko-prakticheskie aspekty jelektronnoj demokratii i jelektronnogo golosovanija [Theoretical and practical aspects of e-democracy and e-voting] (in Russ.). In: Juridicheskij mir. M.: Jurist, 2013, No. 4. P. 18-21.

Riley C. The Changing Role of the Citizen in the E-governance and E-democracy equation: Commonwealth Centre for e-Governance. 2003. P.105.

Tuzzi A., Padovani C., Nesti G. Communication and E-democracy: Assessing European E-democracy Discources. In: Cammaerts B., Wouters R. E-democracy in Belgium and Canada: A virtual mirage? On Enhancing Citizen Participation through Information and Communication Technologies. Antwerpen / Montreal, September 2008. P. 4.

Van Audenhove L, Lievens B., Cammaerts B. E-democratie voor Vlaanderen. Stand van Zaken. Brussel: viWTA, Vlaams Parlement, 2005. P. 6.

Van Gompel R., Steyaert J., Kerschot H. E-democratie in Vlaanderen. Stakeholdersanalyse. Brussel: viWTA, Vlaams Parlement, 2007. P. 103.

Литература:

Антонов Я.В. Электронная демократия как конституционно-правовой феномен // Государственная власть и местное самоуправление. 2016. № 11. С. 13–17.

Антонов Я.В. Проблемы содержания универсальных демократических прав в системе электронной демократии // Российская юстиция. 2017. № 3. С. 50–53.

Антонов Я.В. Электронное голосование в системе электронной демократии: конституционно-правовое исследование. Диссертация на соискание ученой степени кандидата юридических наук / Российская академия народного хозяйства и государственной службы при Президенте РФ. Москва, 2015.

Овчинников В.А., Антонов Я.В. Теоретико-практические аспекты электронной демократии и электронного голосования // Общероссийский научно-практический журнал «Юридический мир». М.: Юрист. № 4. 2013. С. 18–21.

Clift S.L. E-Government and democracy – Representation and citizen engagement in the information age, 2004: http://www.publicus.net /articles/cliftegovdemocracy.pdf.

Grunwald A., Banse G., Coenen C., Hennen L. Netzöffentlichkeit und digitale Demokratie. Tendenzen politischer Kommunikation im Internet. In: Studien des Büros für Technikfolgen-Abschätzung beim deutschen Bundestag, Bd. 18, Berlin. 2006. P. 9–15.

Riley C. The Changing Role of the Citizen in the E-governance and E-democracy equation: Commonwealth Centre for e-Governance. 2003. P.105.

Tuzzi A., Padovani C., Nesti G. Communication and E-democracy: Assessing European E-democracy Discources. In: Cammaerts B., Wouters R. E-democracy in Belgium and Canada: A virtual mirage? On Enhancing Citizen Participation through Information and Communication Technologies. Antwerpen / Montreal, September 2008. P. 4.

Van Audenhove L, Lievens B., Cammaerts B. E-democratie voor Vlaanderen. Stand van Zaken. Brussel: viWTA, Vlaams Parlement. 2005. P. 6.

Van Gompel R., Steyaert J., Kerschot H. E-democratie in Vlaanderen. Stakeholdersanalyse. Brussel: viWTA, Vlaams Parlement. 2007. P. 103.