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Electronic Form of People’s Participation in Administrative Rulemaking in the United State and Georgia

In the United States and Georgia, in order to increase the role of the people in the administrative decision-making process, the administrative organs use the electronic means of people’s participation in administrative rulemaking.

Accordingly, in the United States and Georgia the notice concerning administrative rulemaking is published in a documentary form as well as on the website of the administrative organ. However, unlike the United States, the General Administrative Code of Georgia does not provide for the possibility of submitting an opinion on administrative rulemaking electronically.

The present article analyzes the importance and peculiarities of the electronic publication of the notice and electronic submission of opinions – electronic rulemaking, examines the advantages and disadvantages of electronic rulemaking and proposes the ways to improve it.

Key words: *Electronic publication of the notice, electronic submission of opinions, electronic rulemaking, administrative rulemaking, electronic record.*

1. Introduction

It is worth mentioning that in addition to the documentary form of publishing the notice and submitting the comment, administrative authorities utilize electronic means to improve public participation in administrative rulemaking. Exploring electronic means¹ for publication of the notice and submission of the opinions concerning administrative rulemaking is one of the most important achievements of modern electronic government, which is enshrined in both the United States and Georgian legislation.

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¹ *Johnson S. M., Beyond the Usual Suspects: ACUS, Rulemaking 2.0, and a Vision for Broader, More Informed, and More Transparent Rulemaking, Administrative Law Review, Vol. 65, Winter, 2013, 91, Electronic rulemaking in the United States dates back to the Clinton presidency. In 2003, a special website regulatiuons.gov was launched, which provides access to administrative rulemaking records via the Internet. After the launch of this website, individual websites have been developed by several agencies, Coglianesse C., Kilmartin H., Mendelson E., Transparency and Public participation in the Federal Rulemaking Process: Recommendations for the New Administration, Annual Review of Administrative Law Report, George Washington Law Review, Vol. 77, June, 2009, 939-940, information inflation indicates that civilization has entered a new phase of development. A person can write a letter to millions of people... Accordingly, this type of correspondence has influenced cultural evolution, Paul G. L., Baron J. R., Information Inflation: Can the Legal System Adapt? Richmond Journal of Law and Technology, Spring, Vol. 13, 2007, 67.*

In the United States in 2000 the federal government created a new website, *Regulations.gov*, and set up a federal electronic record management system to store data concerning rulemaking on a single central online address. As a result of the reform, individuals no longer have to go to the agency and get acquainted with the records there. Simultaneously, people have more confidence that the submitted comments will be included in the rulemaking record.² It should be noted that, like in the United States, the General Administrative Code of Georgia was amended in 2009, according to which the administrative organ can publish a draft of normative administrative-legal act electronically.³ However, unlike the United States, the General Administrative Code of Georgia does not provide for the possibility of submitting an opinion electronically. However, in practice the opinion can be submitted electronically through the website of the Legislative Herald of Georgia – *matsne.gov.ge* or through the website of the administrative organ.

The first two chapters of this article analyzes the electronic publication of the notice in the United States and in Georgia, also peculiarities of electronic submission of opinions in the United States and Georgia. The next two chapters highlight the advantages and disadvantages of electronic rulemaking⁴ followed by the discussion about the ways of improving electronic rulemaking. Conclusion summarizes the results of the research and proposes recommendations.

2. Electronic Publication of the Notice

The United States Electronic Government Act of 2002 stipulates that regulatory governance should be “citizen-centered” as well as “transparent,” making it accountable to administrative agencies. Consequently, people need to be allowed⁵ to access the agency’s records via the Internet.⁶

Therefore, in order to place the draft regulations on the website and to facilitate the acceptance of people's comments, a central system⁷ of federal data⁸ has been created⁹ in the United States, in the

² *Field A. B.*, Comments on a truly “Top Task:” Rulemaking and its Accessibility on Agency Websites, Environmental Law Institute and Vanderbilt University Law School Environmental Law and Policy Annual Review Article and Response, Environmental Law Reporter News and Analysis, Vol. 44, August, 2014, 10668.

³ General Administrative Code of Georgia, 25/06/19, article 106², Section 1, Legislative Herald of Georgia, № 33, 09/11/2009.

⁴ The electronic publication of the notice and the electronic submission of opinions is meant.

⁵ In the United States, eelectronic rulemaking includes three interrelated elements: the electronic record of the federal record management system, which is an electronic repository of rulemaking documents; “the space protected by the password, on which the agencies have access and the website: *Regulations.gov*. through which the persons outside the agency have access to the materials and can provide their comments on the proposed project, *Farina C.R.*, Achieving the Potential: The Future of Federal Rulemaking (2009) Report of the Committee on the Status and Future of Federal E-Rulemaking, Administrative Law Review, Vol. 62, Winter, 2010, 282.

⁶ *Farina C., Cardie C., Bruce T. R., Wagner E.*, Better Inputs for Better Outcomes: using the interference to improve e-Rulemaking, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 13-15, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [12.10.2011].

form of *Regulations.gov*, on which the agencies will publish information about the proposed project. This website simultaneously is a forum where people can submit comments and familiarize themselves with the comments provided by others. 90% of the agencies¹⁰ will post information about the regulations on this website.¹¹

⁷ Initially, federal e-rulemaking was an *ad hoc* process. Individual agencies have developed systems for their own purposes. They had an independent server with their own website. The revolution in e-rulemaking began during the Bush administration, when e-rulemaking was incorporated into the 2002 e-Government Strategy. Later that year, Congress passed the e-Government Act, according to which the Office of the Management and Budget selected the Environmental Protection Agency as the leading agency for the Bush Administration's e-governance initiative. Since then the system has developed rapidly and in 2003 the website *Regulations.gov* was formed. The Management and Budget Office requested that all documents related to the administrative rulemaking of all agencies be uploaded on this website in the Electronic System of Federal Records and that the individual website be removed in favor of a centralized system, *Jones G. D.*, Electronic Rulemaking in the New Age of Openness: Proposing a Voluntary Two-Tier Registration System for Regulations.Gov, *Administrative Law Review*, fall, 2010, Vol. 62, 1270.

⁸ Federal data management system, which is available on the website: *www.regulations.gov* allows citizens to search for materials and provide their views on regulation... the federal management system represents safe and reliable platform which gives departments and agencies right to post all documents related to administrative rulemaking on the website for public discussion and in order to receive comments. *www.regulations.gov* allows people to quickly search for materials, for example: to find all the regulations published on a particular day, or the regulations according to the subject matter or find documents by the keyword. One of the most innovative features of the Federal Data Management System is that each agency can transform the system so that it adapts the system to its regulatory procedures, maintains its own procedures, and controls the information contained in the system, *Morales O., Moses J.*, Environmental Agency eRulemaking Initiative, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 2, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [12.10.2011].

⁹ *Law H. K., Lau G. T.*, E-Rulemaking: Needs from ICT Perspectives, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg. O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 11, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [12.10.2011].

¹⁰ The decision (which was against the creation of a unified centralized system) enacted because it was impossible for all agencies to reach an agreement on information standards and practices, *Farina C. R.*, Achieving the Potential: The Future of Federal Rulemaking (2009) Report of the Committee on the status and Future of Federal E-Rulemaking, *Administrative Law Review*, Vol. 62, Winter, 2010, 283.

¹¹ The decision to create a single centralized system made it necessary to establish a database and a website that would serve all agencies. As a result, all agreed on the general system and the introduction of new, different applications has been severely restricted by the Office of the Management and Budget, which does not allow agencies to have individual electronic systems, as well as introduce a new electronic means for administrative rulemaking (defined as "duplicated and support system"), *Ibid* 283, Some scientists believe that it is very difficult, if not impossible, for a unified centralized model to adapt to the activities of all agencies involved in rulemaking. Therefore, one universal website, no matter how well organized, cannot fully convey the activities of the agency and the specific information concerning regulation ...Accordingly, the current closed, exclusive, and single-template "Technical Architecture" with standards set by the Office of Management and Budget which contradicts "duplicate and auxiliary systems," prevents the creation of additional components and web presentations by agencies or interested individuals or groups. However, agencies that are characterized by rulemaking and want to develop in this direction do not have the necessary funds to do so, because they pay the necessary funds for the functioning of the unified system.

In addition to the website, an important place is occupied by the federal records management system, which is accessible only to employees of the agency, and where agencies are responsible for conducting electronic recording of materials related to the rulemaking.¹²

The functioning of the website established for electronic rulemaking in the United States has been gradually improved, which was facilitated by the Executive Order №13563, adopted by the President Obama's administration. Order instructs agencies to provide timely electronic access to the rulemaking record on *Regulations.gov.*, including scientific and technical information, which should be made public and easily downloaded from the website.¹³ Along with the government website, several non-governmental websites should be singled out. Website "Regulation Room"¹⁴ is an electronic rulemaking pilot program funded by the Department of Transportation and Cornell University and aims to strengthen *Regulations.gov.*¹⁵

It should be noted that there is no unified database¹⁶ in Georgia similar to the central database operating in the United States, where administrative-legal acts adopted by administrative organs of

Consequently, the needs of neither consumers nor many agencies are adequately addressed, which hinders innovation, Ibid 285., Agencies involved in rulemaking should provide detailed information on their website and use the web tools to enhance the quality of people's participation. Such an innovative approach to administrative rulemaking by agencies should be encouraged and not prohibited, Ibid 287-288.

¹² Johnson S. M., Beyond the Usual Suspects: ACUS, Rulemaking 2.0, and a Vision for Broader, More Informed, and More Transparent Rulemaking, *Administrative Law Review*, Vol. 65, Winter, 2013, 91.

¹³ Dooling B. C. E., Legal Issues in E-Rulemaking, *Administrative Law Review*, Vol. 63, Fall, 2011, 896-897.

¹⁴ The regulation room was used in the Transportation Department's rulemaking which was related to the Department's proposal on the rights of aircraft users. For this rulemaking the Department of Transportation submitted a preliminary notice on administrative rulemaking to the Cornell University electronic rulemaking initiative group. Prior to the official publication of the notice, students and faculty members of the Cornell University e-rulemaking initiative group shared various topics of the proposed project and published a brief description of each topic on the Regulation Room website. Members of the Cornell University Initiative Group also published additional hyperlinks and other secondary sources that were used during the regulation making. The members of the group then got involved in the search for individuals who would be interested in rulemaking and called on them through social media and other means to engage in the rulemaking. When, the notice of administrative rulemaking was published in the Federal Register and it was also possible to see it on *Regulations.gov* and on the website of the Department of Transportation, the notice mentioned that Cornell University's e-rulemaking initiative group was organizing a pilot program to address the rulemaking, Johnson S. M., Beyond the Usual Suspects: ACUS, Rulemaking 2.0, and a Vision for Broader, More Informed, and More Transparent Rulemaking, *Administrative Law Review*, Vol. 65, Winter, 2013, 107.

¹⁵ Coglianese C., Enhancing Public Access to Online Information, *Michigan Journal of Environmental and Administrative Law*, Vol. 2, Fall, 2012, 22-23.

¹⁶ A central database similar to the US's central system operates in Europe. In particular, the website of the European Commission, "Your Voice" functions in the same way as the American *Regulations.gov*. It was created for the same purposes as the American website. The main page of the European Commission's website contains current regulatory offers (so-called "consultations"), on which people can submit opinions. A separate page on the same website sorts these offers by regulatory field so that they are easy to find. After clicking on the specific consultation, the user will be taken to a page that contains basic information about the offer, as well as links and instructions on how to submit feedback (known as a "contribution"). While other consultations require contributions using e-mail ... or filling out detailed questionnaires. These questionnaires contain important information about the individual aspects of the proposed regulation and

Georgia would be posted. Nor is any NGO involved in promoting electronic rulemaking. However, it should be noted that the General Administrative Code of Georgia provides for an interesting form of dissemination of information on administrative rulemaking by electronic means.

The first paragraph of Article 106² of the General Administrative Code establishes the rules for publishing the draft of normative administrative-legal act in an electronic form, according to which the draft of normative administrative-legal act may be posted on the website of the collegial administrative organ. In addition, in accordance with Article 106² (2) of the General Administrative Code, the notice of the commencement of administrative proceedings shall be published together with the draft normative administrative-legal act.¹⁷

Therefore, the General Administrative Code provides for the publication of a notice on administrative rulemaking via the Internet, however, nothing is said about the submission of the opinions on the draft normative administrative-legal act in electronic form. However, in practice drafts of normative acts are published on the website of the Legislative Herald (where it is possible to leave comments), which does not preclude the publication of these acts on the website of the administrative organ itself. The rules for electronic submission of opinions in Georgia and the United States will be discussed in detail in the forthcoming chapter.

3. Electronic Submission of Opinions

Unlike the United States¹⁸ there is no special law in Georgia that would in detail regulate the use of the Internet in administrative rulemaking, including the electronic submission of opinions. However, there is a practice in Georgia of submitting opinions electronically through the Legislative Herald and the website of the administrative organ.

To facilitate the process of submitting opinions in the United States, agencies have been using the Internet since the 1990s. Some agencies have introduced such a system¹⁹ that it is possible to

then present a series of questions on each aspect. However, unlike *Regulation.gov*, a special feature of “Your Voice” is that it distinguishes between individuals who represent themselves and organizations that defend special interests. Individuals cannot register in the system, although they can leave personal information about themselves. A different rule applies to lobbyists and other organizations where they have to register their organizations in the register of interests. They must register the organization in one of the following ways: “Professional Consultations” or a law firm, corporate lobbying associations or trade unions, non-governmental organizations, or other general categories. Registration requires the submission of detailed information about the organization ... The procedure is voluntary and a person who does not wish to register can choose a contribution on behalf of a private person, *Jones G. D.*, *Electronic Rulemaking in the New Age of Openness: Proposing a Voluntary Two-Tier Registration System for Regulations.Gov*, *Administrative Law Review*, Vol. 62, Fall, 2010, 1275-1277.

¹⁷ General Administrative Code of Georgia, 25/06/19, article 106², Section 2, Legislative Herald of Georgia, № 33, 09/11/2009.

¹⁸ To the extent practicable, agencies shall accept submissions under section 553(c) of administrative procedure act, title 5, by electronic means, e-government act of 2002, Sec. 206 (c).

¹⁹ Agencies run the data record system and organize it in a way that citizens can search for general issues, special norms, and then submit opinions that are directly included in the comment book, *Schlosberg D.*, *Zavestovski S.*, *Shulman S. W.*, *Democracy and E-Rulemaking: Web-Based Technologies, Participation, and*

submit all kinds of opinions through the Internet, to publish the received comments,²⁰ and then to submit additional opinions, through which the citizens will respond to the initial opinions.²¹

In the United States, the process of annulment of opinions is used electronically, which allows all participants in the administrative rulemaking to respond to comments made by other participants.²² However, the opinions submitted in electronic form are immediately available to those interested. Search for comments is not related to costs and they are prepared for analysis.²³

In addition, within the framework of the project rulemaking 2.0,²⁴ submission of comments is improved with the help of particular non-governmental organizations. The Regulation Room, which is a pilot program of rulemaking and was implemented within the framework of the Cornell University Electronic Regulation Initiative (in coordination with the United States Department of Transportation), is a clear example of this.²⁵

The regulation room website²⁶ is not a government website and the project is not overseen by the federal government.²⁷ Through the "Regulation Room," persons who enter the website of the Regulatory Room can provide comments on the part or on the whole regulation.²⁸

the Potential for Deliberation, *Journal of Information Technology and Politics*, Vol. 4 (1), 2007, 39, <http://people.umass.edu/stu/eRulemaking/JITP4-1_Democracy.pdf> [10.09.2010].

²⁰ For example, the website *regulations.gov* that has been actively used since 2003, have links attached, where the documents intended for the submission of opinions are placed according to the issue and date, *Benjamin S. M.*, Evaluating Rulemaking Public Participation and Political Institutions, *Duke Law Journal*, Vol. 55, March, 2006, 899.

²¹ *O' Looney J.*, Electronic Policy and Rule Making, Draft 7/2000, <<http://www.law.upenn.edu/academics/institutes/regulation/erulemaking/papersandreports.html>> [10.09.2010].

²² *Herz M.*, "Rulemaking," *Developments in Administrative Law and Regulatory Practice*, *Lubbers J. S. (ed.)*, 2002-2003, (copyright 2004, ABA section of administrative law and regulatory practice) <https://www.law.upenn.edu/institutes/regulation/erulemaking/papers_reports/Herz_E_Rulemaking.pdf> [10.09.2010].

²³ *Coglianesse C.*, The Internet and Public Participation in Rulemaking, Paper prepared for conference on Democracy in Digital Age, Yale Law School, April, 2003, 6 <<http://www.hks.harvard.edu/m-rcbg/research/rpp/RPP-2003-05.pdf>> [30.10.2012].

²⁴ After the inauguration, President Obama issued a memorandum urging federal agencies to use Web 2.0 and other information technologies ... In December 2009, the Office of Management and Budget developed a directive that gave agencies four months to develop an "open government plan." Accordingly, the Department of Transport introduced a project called the Regulation Room, for which it received the White House Award for leadership in such projects. The aim of this project is to create an experimental electronic platform for public participation and people's education, *Farina C. R., Newhart M. J., Cardie C., Cosley D.*, Rulemaking 2.0, Symposium: What Change Will Come: The Obama Administration and the Future of the Administrative State Articles, *University of Miami Law Review*, Vol. 65, Winter, 2011, 396.

²⁵ *Johnson S. M.*, Beyond the Usual Suspects: ACUS, Rulemaking 2.0, and a Vision for Broader, More Informed, and More Transparent Rulemaking, *Administrative Law Review*, № 65, Winter, 2013, 108.

²⁶ The platform envisages the use of social media and other modern means in the research process to ensure the "live" participation of the people in federal rulemaking... The regulation room is a system that combines human and auxiliary computer tools... connecting a website with a private university allows to experiment with website design and free choice of methods, which would be difficult on an official state website, *Farina C. R., Newhart M. J., Cardie C., Cosley D.*, Rulemaking 2.0, Symposium: What Change Will Come: The Obama Administration and the Future of the Administrative State Articles, *University of Miami Law Review*, Vol. 65, Winter, 2011, 397.

In addition to providing a document, in which the rule of writing an effective comment is explained to the persons who want to submit the opinions, the Cornell Electronic-rulemaking Initiative Group sets out the opinions that constitute the “recommended” opinions presented during the rulemaking process ... As a rule, comments that are substantiated are recommended. Those comments are recommended comments that formulate the reasons for the study of the issue at hand, contain information, provide alternatives, and show that the author of the opinion has analyzed all the aspects of the research topic.²⁹

Despite the fact that in Georgia the possibility of submitting opinions electronically is not regulated by law, in practice there is a website of the Legislative Herald, *matsne.gov.ge*, where users can leave comments on the draft normative act.

After entering the website of the Legislative Herald and clicking on the column “new normative documents,” the classification of normative acts according to color is displayed. In green color are the acts in force, the blue color is used for the acts that have to enter into force and the red color is used for invalid acts. Customers can search by blue color for the acts which have to enter into force to leave comment on the draft normative acts.

It should be noted that the normative acts that have to enter into force are often draft resolutions of the municipal councils of different municipalities and decrees of the ministers. When the normative act is opened, a hint is provided for leaving a comment, which, if clicked, will require the person to log in and become a registered user in order to leave the comment.

After registration, the user can leave a comment about the draft normative act. In addition, in the upper left corner of the opened page there is a hint about the ability of users to read previously left comments called “comments on the document.” Clicking on this box opens a window where you can see sorted comments submitted with regard to the document. Comments are classified by number, most recent comments, and ratings. However, it should be noted that in most cases the document is not accompanied by comments. It is obvious that users are passive when leaving comments because they do not have information about this possibility.

In addition to the website of the Legislative Herald, it is possible to leave electronic comments on the website of the administrative organ itself. However, there is no legislative act that regulates this issue in detail and it is up to the decision of the administrative organ to determine whether the procedure for submitting opinions will be in electronic form on its website.

²⁷ *Johnson S. M.*, Beyond the Usual Suspects: ACUS, Rulemaking 2.0, and a Vision for Broader, More Informed, and More Transparent Rulemaking, *Administrative Law Review*, Vol. 65, Winter, 2013, 108.

²⁸ As part of the pilot e-rulemaking, the Cornell University Electronic Rulemaking Initiative Group has been acting as a moderator on the website, checking for inappropriate content, as well as asking questions and answering comments from authors, *Ibid*, 107. The members of the Cornell University Electronic Rulemaking Initiative Group also tried to attract interested parties to participate in the process of opinion submission. This process took a lot of time. Accordingly, students and professors from the Cornell University have been actively working on this. In the end of the comments submission period, the members of the Cornell University E-rulemaking Initiative Group presented a brief description of the submitted opinions. Once the description has been verified, it has been included as an opinion in the rulemaking record, *Ibid*, 108-109.

²⁹ *Ibid*, 108.

Therefore, it would be desirable for the legislature to define a centralized model for the electronic submission of opinions in Georgia. The experience of the United States and Europe³⁰ proves that the focus should be on a centralized website that is more productive and less costly.

It should be noted that along with the establishment of an electronic form for publishing the notice and submitting an opinion there is controversy among scientists how productive is to publish notice electronically and submit opinions electronically. Some scholars believe that submitting opinions electronically will allow citizens to participate in the process of rulemaking. The process of administrative rulemaking becomes interactive and the interested persons respond appropriately to the opinions submitted by both the agency and other interested persons.³¹ However, below I will discuss how to use information technology in the regulatory process or how to change the process of administrative rulemaking as a result of the use of new technologies.³²

4. Advantages of Electronic Publication of the Notice and Electronic Submission of Opinions

Administrative law scholars and supporters of the reforming of government activities argue that the use of information technology can significantly increase people's participation in the development of regulatory policy,³³ because the e-governance, is such activity³⁴ which is aimed at increasing the efficiency and effectiveness of public administration based on the use of information and communication technologies.³⁵

Scientists point out that electronic rulemaking³⁶ or the use of new electronic technologies makes it possible to transform the previously separate process into a process in which citizens can participate regularly.³⁷

³⁰ See, *supra* note, 16.

³¹ Benjamin S. M., Evaluating Rulemaking Public Participation and Political Institutions, Duke Law Journal, Vol. 55, March, 2006, 902.

³² Coglianese C., Citizen Participation in Rulemaking: Past, Present and Future, Thirty-Fifth Annual Administrative Law Issue The Role of the Internet in Agency Decision making, Duke Law Journal, Vol. 55, March, 2006, 968.

³³ The alleged users of the Internet are both members of the Congress who want to check the implementation of the legislation, as well as the agency's managers and ordinary employees, Otis R. D., Miles-McLean S. C., Federal Government Inter-Branch Integrated Regulatory Information System, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 5, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010].

³⁴ Internet technology can improve the process of management in terms of providing information to citizens and receiving information from them, Adler M., Administrative Justice in Context, Hart Publishing, Oxford and Portland, Oregon, 2010, 55.

³⁵ Milosz M., Tykwinska-Rutkowska D., The Concept of "E-Administration" and the Regulatory Framework for Electronic Administration in Polish Law, Computer and Telecommunications Law Review, Vol. 14 (4), 2008, 100.

³⁶ The purpose of e-rulemaking is to provide access to information processed by the government electronically, which will facilitate the control of standing and proposed regulations, Kartz B., Hurwitz R., Lin J. J., Uzuner O., Better Policy Through Natural Language Information Access, <<http://www.law.upenn>

Electronic rulemaking focuses not only on the right of the people to participate in administrative rulemaking, but also on its practical implementation. The computer program sets the agenda for people's participation, particularly, who, when, and how many times can express their opinion and what rules are used to conduct the dialogue.³⁸

A survey of agency representatives in the United States revealed what agency officials think about electronic rulemaking. Part of the respondents positively assessed electronic rulemaking and noted that electronic rulemaking is a real opportunity for people to enhance the submission of comments and to ensure easy access to the record.³⁹

The only problem the agency representatives identified was the inability to fully use electronic means and the continuation of the parallel procedure of documenting administrative proceedings along with electronic rulemaking.⁴⁰

Representatives of the agency also noted that the existence of an electronic record will help to easily manage the received opinions, because instead of handing copies of the opinions to the interested persons, agency representatives are instructing interested parties to read the opinions on the website: *Regulation.gov*.⁴¹

Representatives of the agency, who are supporters of electronic rulemaking, indicate that in addition to the older generation, the Internet will involve the Millennium Generation in administrative rulemaking. It is true that the electronic rulemaking's record is not a blog, because a person needs to open a link called: a notice of the proposed rulemaking... in order to transfer to the main theme. However, according to the statement of agency's representatives, it is possible to post a blog on the website, which will be linked to the electronic rulemaking record, and will be presented in the form of a "podcast file" for further download.⁴²

edu/academics/institutes/regulation/erulemaking/papersandreports.html> [10.09.2010], the goals of e-rulemaking are the same for all agencies. The first goal of e-rulemaking is to reduce document production and agency costs. The second goal is to increase the quality of participatory democracy. The third goal of e-rulemaking is to increase "deliberation," which not only promotes a democratic discussion of the issue, but also improves the quality of political decision-making, *Figueiredo J. H.*, E-Rulemaking: Bringing Data to Theory at the Federal Communications Commission, *Duke Law Journal*, Thirty-Fifth Annual Administrative Law Issue, The Role of the Internet in Agency Decision-making Articles, Vol. 55, March, 2006, 974-975.

³⁷ *Coglianesse C.*, Citizen Participation in Rulemaking: Past, Present and Future, Thirty-Fifth Annual Administrative Law Issue The Role of the Internet in Agency Decision-making, *Duke Law Journal*, Vol. 55, March, 2006, 943.

³⁸ *Noveck B. S.*, Public Participation in Electronic Rulemaking: Electronic Democracy or Notice-and-Spam? *Administrative and Regulatory Law News*, Vol. 30, Fall, 2004, 8.

³⁹ *Lubbers J. S.*, A Survey of Federal Agency Rulemakers' Attitudes about E-Rulemaking, *Administrative Law Review*, Vol. 62, Spring, 2010, 471.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*, 472.

Along with the other positive aspects listed above, it should also be noted that the use of information technology will not only make the process of citizen participation real, but will also help citizens to realize their potential to participate.⁴³

In addition, according to the researchers who support the electronic form of publication of the notice and submission of comments, electronic rulemaking is a revolutionary achievement on the path to citizen-centered governance and ensures the transformation of the regulation development process, which improves regulatory governance as well as enhances public participation in administrative rulemaking.⁴⁴

Therefore, people's involvement in administrative rulemaking through the Internet can ensure better public participation in the process of rule development⁴⁵ as publication of the notice and submission of comments through the Internet will increase the civic responsibility of the public.⁴⁶ At the same time, electronic rulemaking will allow citizens to get acquainted with the position submitted by various persons,⁴⁷ including those with whom they disagree.⁴⁸

In addition, electronic rulemaking can facilitate the relationship between the citizen and the administration and ensure the storage of information reflecting the communication with the agency, which will be much easier for people to access.⁴⁹

It is true that there is little empirical evidence to evaluate the effectiveness of electronic rulemaking today.⁵⁰ However, some researchers believe that the active involvement of citizens in the

⁴³ Noveck B. S., The Electronic Revolution in Rulemaking, *Emory Law Journal*, Vol. 53, Spring, 2004, 516.

⁴⁴ Law H. K., Lau G. T., E-Rulemaking: Needs from ICT Perspectives, eRulemaking Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 11, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010].

⁴⁵ Electronic rulemaking provides, not only the active participation of stakeholders in the process of administrative rulemaking, but also makes it available for everyone...Ten years ago, a person had to hire one of Washington's law firms to obtain full information about administrative rulemaking. It is easy to assume that the written opinions submitted to the agency after ten years will be a rare form of public-agency relations, *Lubbers J. S.*, The Transformation of the U.S. Rulemaking Process-For Better or Worse, *Ohio Northern University Law Review*, Vol. 34, 2008, 479.

⁴⁶ *Carlitz R. D., Gunn R. W.*, Once in a Lifetime: Opportunities for Civic Engagement, Pittsburgh, PA 15219, February, 2003, <http://www.info-ren.org/publications/cof/cof_0210.html> [10.09.2010].

⁴⁷ Online dialogue in terms of improving people's participation in administrative rulemaking can be much more productive than public hearings, *Brandon B. H., Carlitz R. D.*, Online Rulemaking and Other Tools for Strengthening our Civil Infrastructure, *Administrative Law Review*, Vol. 54, Fall, 2002, 1470.

⁴⁸ A study found that three-quarters of respondents surveyed mentioned they had read other people's comments and then changed their position. This indicates that the conversion of the administrative rulemaking process in an online regime has made it more deliberate...the study also found that citizens participating in administrative rulemaking expressed a desire to enhance people's participation and influence in administrative rulemaking, *Schlosberg D., Zavestoski S., Shulman S. W.*, Democracy and E-Rulemaking: Web-Based Technologies, Participation, and the Potential for Deliberation, *Journal of Information Technology and Politics*, Vol. 4 (1), 2007, 39, <http://people.umass.edu/stu/eRulemaking/JITP4-1_Democracy.pdf> [10.09.2010].

⁴⁹ *Coglianesi C.*, Information Technology and Regulatory Policy: New Directions for Digital Government Research, *Social Science Computer Review*, Vol. 22 (1), Spring, 2004, 85-91.

government decision-making process through the Internet may be of particular importance for the development of administrative rulemaking.⁵¹

Consequently, researchers supporting electronic rulemaking point out that the effective use of information technology ensures the achievement of important goals such as: improving the quality of regulatory decisions and increasing the legitimacy of administrative rulemaking.⁵²

Simultaneously, some scientists do not consider that the main achievement of electronic rulemaking is the transparency of administrative rulemaking or increase in the volume of information obtained. According to them, the purpose of introducing the publication of the notice and submission of opinions via the Internet, is to provide the scientists and policy makers with a clear idea about the process of administrative rulemaking.⁵³

Before the current regulatory process can be transformed, it is important to consider the goals that can lead to such a transformation. Therefore, the study of electronic rulemaking should take into account the disadvantages that accompany the electronic form of publishing a notice and submitting an opinion.

5. Disadvantages of Electronic Publication of the Notice and Electronic Submission of Opinions

There are many disadvantages to using the Internet.⁵⁴ It is true that agencies can use the Internet for publishing notice and submitting opinions, but dependence on it creates problems. Technology increases people's participation in administrative rulemaking, but at the same time, opponents of the agency are given a better opportunity to use a strategy that will hinder the decision-making process of the agency.⁵⁵

In addition, because there is no universal access to the Internet, agencies that are overly dependent on the Internet as a key tool in increasing the role of people's participation in the

⁵⁰ In particular, to what extent does this kind of administrative rulemaking ensures the participation of the people and the increase in the quality of the regulation, as well as how the citizens evaluate the efficiency of electronic rulemaking compared to the traditional administrative rulemaking, *Fountain J. E.*, Prospects for improving the Regulatory Process Using E-Rulemaking, *Communications of the ACM*, Vol. 46, № 1, January, 2003, 63.

⁵¹ *Coglianesi C.*, The Internet and Citizen Participation in Rulemaking, *I/S: A Journal of Law and Policy for the Information Society*, Vol. 1, Winter, 2005, 33.

⁵² *Coglianesi C.*, Information Technology and Regulatory Policy: New Directions for Digital Government Research, *Social Science Computer Review*, Vol. 22 (1), Spring, 2004, 85-91.

⁵³ *Benjamin S. M.*, Evaluating Rulemaking Public Participation and Political Institutions, *Duke Law Journal*, Vol. 55, March, 2006, 936.

⁵⁴ There is a danger that the development of technology will lead to a weakening of documentary (especially manuscript) opinions. However, some believe that the failure of electronic comment procedure will prolong the benefits of documentary commenting, *Shulman S. W.*, the Internet Still Might (But Probably Won't Change everything), *I/S: A Journal of Law and Policy for the Information Society*, Vol. 1, Winter, 2004/2005, 128.

⁵⁵ *Johnson S. M.*, The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information through the Internet, *Administrative Law Review*, Vol. 50, Spring, 1998, 329-330.

rulemaking are violating the participatory right of individuals who do not have access to the Internet. For example, women, minorities and the poor.⁵⁶

Also, the introduction of electronic rulemaking will result in the active involvement of the people in the process of administrative rulemaking. This may be reflected only in the quantitative increase in the number of persons involved in administrative rulemaking, thus, in the increase in the number of opinions provided by the people on the draft act rather than in the increase of opinion quality.⁵⁷

It is true, that submitting identical opinions, reduces the agency's costs as the computer program automatically finds similar opinions and blocks them in such a way that the agency employee no longer needs to read the opinion, however, the situation changes when the opinions are identical, but are not completed in accordance with the form presented on the website (for example, a person did not fill the form provided, but composed the text himself and sent it by e-mail). In such a case, it is expected that the computer program does not consider these views to be identical despite the absolute similarity of their content; the agency will then have to hire a person⁵⁸ who will separate different and identical comments from each other. This, of course, is associated with additional⁵⁹ costs.⁶⁰ In addition to the increase in the volume of submitted opinions, the lack of a flexible data retrieval system reduces the effectiveness of electronic rulemaking. A more complex and less researched issue is how to separate the opinions of experts and stakeholders.⁶¹

However, the representatives of agency mention that as a result of the comments received, there is no increase in useful information or arguments.⁶² It is true that electronic rulemaking brings better

⁵⁶ Ibid, 329-330.

⁵⁷ Benjamin S. M., Evaluating Rulemaking Public Participation and Political Institutions, Duke Law Journal, Vol. 55, March, 2006, 904.

⁵⁸ In order to study the submitted information regarding the draft regulation, the agency needs a person who will read and process the received materials. Therefore, the agency should in detail study the opinions that the computer program does not record as similar opinions, even though their content is identical and they develop the same idea. Opinions presented in this way only increase the volume of information already submitted and nothing changes in terms of receiving new information. Therefore, the costs associated with processing of the submitted opinions increase, *ibid*, 909.

⁵⁹ It is difficult to separate the result of electronic rulemaking from the process of rulemaking, because the use of more means delays the decision-making process. However, the electronic and documentary production of records makes the process of administrative rulemaking more expensive, *Lubbers J. S.*, A Survey of Federal Agency Rulemakers' Attitudes about E-Rulemaking, *Administrative Law Review*, Vol. 62, Spring, 2010, 473-474.

⁶⁰ Benjamin S. M., Evaluating Rulemaking Public Participation and Political Institutions, Duke Law Journal, Vol. 55, March, 2006, 904.

⁶¹ Parker R. W., The Next Generation of e-Rulemaking: A User's Perspective, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 17, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010].

⁶² Official records and people's comments submitted for posting on the website require approval from the agency before it becomes available electronically. Consequently, opinions are filtered without any explanation ... So the agencies maintain control over the information submitted, *Shkabatur J.*, Transparency

coordination, but the problem is to place specific information in an electronic record in a place accessible to all, as this can jeopardize the disclosure of other people's secrets.⁶³

They also point out that many of the issues that initially raised doubts concerning the effectiveness of electronic rulemaking, such as the problem of the authenticity of comments, the spread of viruses, have not been eliminated and are of constant concern. In addition, because there is a danger *Regulation.gov* will be disconnected, opinions in a parallel regime are submitted in a documentary form. Consequently, until the electronic rulemaking system is strengthened and the production of materials continues in a documented manner, it will be impossible to assess the full potential of electronic rulemaking.⁶⁴

6. The Ways of Improving Electronic Publication of the Notice and Electronic Submission of Opinions

Researchers believe that in order to increase people's involvement in administrative rulemaking as a result of the use of information technology, it is necessary to develop a guide-book⁶⁵ to administrative rulemaking, as well as the improvement of the performance of the website on which information about administrative rulemaking should be placed.⁶⁶

In addition, as the submission of opinions via electronic means will increase the amount of information received, replacement of traditional administrative rulemaking with electronic rulemaking requires the commencement of the use of appropriate electronic tools, through which the systematization of opinions presented by the people, collecting and evaluating of various documents,⁶⁷ as well as the discovery of duplication and inconsistency will be possible.⁶⁸

with (out) Accountability: Open Government in the United States, *Yale Law and Policy Review*, Vol. 31, Fall, 2012, 97.

⁶³ *Lubbers J. S.*, A Survey of Federal Agency Rulemakers' Attitudes about E-Rulemaking, *Administrative Law Review*, Vol. 62, Spring, 2010, 473-474.

⁶⁴ *Ibid*, 472.

⁶⁵ Scientists believe that it is desirable to indicate the specific issues on which the agency wants to receive opinions in the notice of administrative rulemaking, also in the notice or on the training website, which will be attached to the main page, should be given the standard text on effective ways of compiling opinions to avoid restriction of freedom of expression of particular individuals, *Reitz J. C.*, E-Government, *American Journal of Comparative Law*, Vol. 54, Fall, 2006, 747.

⁶⁶ *Farina C., Cardie C., Bruce T. R., Wagner E.*, Better Inputs for Better Outcomes: using the interference to improve e-Rulemaking, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 13, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010].

⁶⁷ To better manage websites, many agencies have set up a Web Council or similar workgroup. They also developed various internal standards and created guidelines for websites design, *Coglianesi C.*, Enhancing Public Access to Online Information, *Michigan Journal of Environmental and Administrative Law*, Vol. 2, Fall, 2012, 39.

⁶⁸ A methodology is currently being sought to improve the systematization of opinion submitted by the people. New technological methods are being developed to ensure the recovery of information, the discovery of the similar comments, the summing up of texts and the solution of other tasks, *Law K. H., Lau*

It will be desirable for the administrative organ to hire a person who will study the submitted comments⁶⁹ and compile a table of issues to be discussed.⁷⁰ In addition, to improve electronic rulemaking⁷¹ citizens need to be given access to the materials on the website of the administrative organ. Also it would be good to find a way⁷² to enable stakeholders to start participate in administrative rulemaking from the beginning of the regulation making until its appeal to the court.⁷³

In addition, some scientists believe that with the improvement of information technology, it is necessary to transform electronic rulemaking through regulatory elections, which involves conducting

G. T., E-Rulemaking: Needs from ICT Perspectives, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 11, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010].

⁶⁹ In some cases, agencies may delegate the authority to analyze opinions to private contractors, *Coglianesse C.*, E-Rulemaking: Information Technology and the Regulatory Process, *Administrative Law Review*, Vol. 56, Spring, 2004, 377.

⁷⁰ The table presents a graphical representation of the information in the electronic data management system concerning the dynamics of administrative rulemaking, *Carlitz R. D.*, Information Renaissance, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 10, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010], It would be desirable if a similar table is published for public review... in any case, it is clear that comment management is the next step in the research of electronic rulemaking, *Parker R. W.*, The Next Generation of e-Rulemaking: A User's Perspective, eRulemakings Federal Docket Management System, eRulemaking at Crossroads, A collection of White Papers prepared for Dg.O 2006, The 7th Annual International Conference on Digital Government Research, San-Diego, California, May 24, 2006, 17, <<http://people.umass.edu/stu/eRulemaking/Crossroads.pdf>> [10.09.2010].

⁷¹ Shane has come up with the idea of creating "deliberative groups" across the country that will have access to the software to negotiate online. These groups will then be invited to make recommendations on the Agency's agenda. In 2001, the Environmental Protection Agency adopted a method proposed by Shane and announced a ten-day national public online dialogue across the country to demonstrate the involvement of the population in policy development. For each day of the dialogue session, the Environmental Protection Agency posted a new key issue on the website, where several participants were appointed who would serve as a discussion leaders. It is true that the method was successful, but the experiment showed that the participants in the dialogue were public servants, and only 10 messages a day were received from users, among which ordinary citizens were a small number, *Coglianesse C.*, Citizen Participation in Rulemaking: Past, Present and Future, Thirty-Fifth Annual Administrative Law Issue The Role of the Internet in Agency Decisionmaking, *Duke Law Journal*, Vol. 55, March, 2006, 960-962, a study by Thomas Bairley and Stuart Schulman found that electronic rulemaking is a good way to reduce the barrier of public participation, but it cannot improve the quality of information exchange, *Brandon B. H.*, An Update on the E-Government Act and Electronic Rulemaking, *Administrative and Regulatory Law News*, 29, Fall, 2003, 8.

⁷² Proper visualization of electronic tools will improve the process of submitting opinions on the website. Such tools include tools that help to map public interests, compile diagrams of people's views, quantitatively analyze the materials submitted, *Noveck B. S.*, Public Participation in Electronic Rulemaking: Electronic Democracy or Notice-and-Spam? *Administrative and Regulatory Law News*, Vol. 30, Fall, 2004, 9.

⁷³ *Lubbers J. S.*, The Transformation of the U.S. Rulemaking Process-For Better or Worse, *Ohio Northern University Law Review*, Vol. 34, 2008, 479.

electronic elections⁷⁴ to explore the views of the people on the proposed project. It may also be used simulations⁷⁵ for submitting the opinions, but because electronic rulemaking today is in its embryonic stage of development, in both the United States and Georgia, more will be learned⁷⁶ about this process in the future.⁷⁷

For now, it is clear that the active participation of people through the electronic means is valuable for a particular category of rulemaking although, for most of the cases of rulemaking, on the contrary, it is ineffective and unsatisfactory. Therefore, it is important to identify the areas of rulemaking, where people's participation in electronic form will result in positive outcome.⁷⁸

The results of electronic rulemaking depend on how it is realized and used. In order to achieve a positive result from electronic rulemaking ... the authors of rulemaking must carefully introduce any new technology in the process administrative rule making.⁷⁹ Therefore, it will be interesting to see how by the use of electronic means the process of administrative rulemaking transforms⁸⁰ in the United States⁸¹ and Georgia.

⁷⁴ *Coglianesi C.*, the Internet and Citizen Participation in Rulemaking, I/S: A Journal of Law and Policy for the Information Society, Vol. 1, Winter, 2005, 44.

⁷⁵ Agencies can offer public access to a simulation program based on the agency's model. Members of the public will be able to change the settings and then engage in various simulations to develop regulation. Such an approach will allow agencies to receive public opinion on an important issues when developing a new regulation, *Ibid*, 33.

⁷⁶ However, it is the future perspective how online communication will improve the decision-making process, *Furlong S. R., Kerwin M. C.*, Interest Group Participation in Rule Making: A Decade of Change, Economics of Administrative Law, *Rose-Ackerman S. (ed.)*, Edward Elgar Publishing, Inc., An Elgar Reference Collection, Chentelham, UK, Northhampton, MA, USA, 2007, 332.

⁷⁷ Internet technology, which is used to collect and synthesize public comments, must be systematically tested to achieve results, *Shulman S.*, Citizen Agenda –Setting: The Electronic Collection and Synthesis of Public Commentary in the Regulatory Rulemaking Process, Environmental Science and Policy Program, University-Olin Hall, <<http://www.digitalgovernment.org/library/library/dgo2001/MEDIA/DRAKE.PDF>> [10.09.2010].

⁷⁸ In this sense, the rulemaking conducted in the framework of 2.0. which aims to improve electronic rulemaking, can be a successful initiative, *Herz M.*, Chair's Message, Administrative and Regulatory Law News, Vol. 37, Summer, 2012, 2.

⁷⁹ *Coglianesi C., Shapiro S., Balla S. J.*, Unifying Rulemaking Information: Recommendations for the New Federal Docket Management System, Administrative Law Review, Vol. 57, Spring, 2005, 629.

⁸⁰ Because the original electronic rulemaking was limited to provide people's more, efficient and transparent participation in administrative rulemaking federal agencies and the United States Administrative Conference have developed a reform plan to improve electronic rulemaking. The United States Administrative Conference has issued "recommendations about the comments regarding rulemaking" to highlight the best practices available for improving people's participation. For the effectiveness of public opinion, the United States Administrative Conference has determined that the federal government should publish a document on the *Regulations.gov* website that explains what kind of comments are most useful and should provide examples of the best comments. The United States Administrative Conference has also indicated that the period for submitting opinions on significant rulemaking should be at least 60 days. In addition, agencies must publish on the website all opinions submitted electronically or in a documentary form in a timely manner and make full use of the period set for replying to comments, or utilize other means to strengthen the response of the people to the comments submitted, *Johnson S. M.*, Beyond the Usual

7. Conclusion

The study showed that the electronic publication of the notice and the electronic submission of opinion on a normative administrative-legal act is developed in the United States while in Georgia it is at the embryonic stage of development. It is true that the possibility of leaving a comment on the draft normative act on the website of the Legislative Herald is a step forward, but the passivity of users in terms of leaving comments indicates that it is necessary to carry out a number of reforms in Georgia.

It is desirable to pass a law on e-government in Georgia, which will define in detail the forms and methods of internet communication between administrative organs and the public.

In addition to electronic publication of the notice, it is necessary to enshrine in the relevant articles of the General Administrative Code of Georgia the procedure of electronic submission of opinions by interested persons. Also to ensure people's efficient electronic participation in administrative rulemaking, it is necessary to establish a centralized electronic system, which will be accessible to all administrative organs. Administrative organs will be able to post a notice of administrative rulemaking on this website, publish the draft normative administrative-legal act, as well as the results of the research conducted in connection with the rulemaking.

It is necessary to equip the centralized electronic system with all possible electronic means, which will ensure the identification of the submitted opinions and the administrative organ's easy access to the opinions for their further processing.

At the same time, in order to enable access to administrative rulemaking, it is necessary to maintain the procedure of publication of the notice and submission of the opinion in a documentary form before the full transition to electronic rulemaking.

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⁸¹ *Coglianesse C.*, The Internet and Public Participation in Rulemaking, Paper prepared for conference on Democracy in Digital Age, Yale Law School, April, 2003, 6, <<http://www.hks.harvard.edu/m-rcbg/research/rpp/RPP-2003-05.pdf>> [30.10.2012].

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