Administrative and Legal Bases of Digital Transformation in the Field of Human Rights Protection in Ukraine

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- Abstract: This article is devoted to the study of the essence of administrative and legal principles of digital transformation in the field of human rights protection in Ukraine. The main domestic legal acts adopted in recent years in the field of research and legal relations, within which there are features of human rights protection in the digitalization of society, analyzed their main problems and possible ways to solve them.

1 INTRODUCTION

The establishment of Ukraine as a modern democratic, social and legal state obliges it in all ways to ensure the establishment of human rights as defined by the Constitution of Ukraine and international law (Constitution of Ukraine, 1996). In turn, the rapid development and use of digital technologies, their active deployments - tion in various areas of public life, increasingly stimulating modernization of the Ukrainian legal system, which primarily requires our state qualitatively renewed understanding and transformation of legal regulation and the implementation of constitutional rights human in the context of digital transformation. Given this, one of the priorities is to create a mechanism for quality assurance and protective mean - those human rights, which would correspond to modern realities.

This issue is especially relevant in the context of the COVID-19 pandemic, because, on the one hand, the state, taking precautions to spread the infection, is forced to significantly restrict human rights, and, on the other hand, there is a need to optimize human rights mechanisms, including in digital format. In turn, this necessitates a comprehensive, in-depth study of the administrative and legal foundations of

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the digital transformation in the field of human rights protection at the present stage and prospects for their development.

At the same time, revolutionary changes in one sphere of human life cannot but affect the transformation of other spheres. We focus on such topical issues as the development of the information society and technologies, which certainly influence the development of human rights theory and the formation of their future generations.

2 MANUSCRIPT PREPARATION

2.1 The Concept and Content of the Concept of "Digitalization"

Considering the main material of the study, it should be noted that the general mechanisms of human and civil rights and freedoms during the introduction of information and telecommunication technologies are characterized by casuistic tendencies of inconsistency of the current state with the model of good public governance (Podzigun, 2021). As a result, this situation distorts the mechanism of legal regulation of both new and existing legal relations.

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First of all, this is due to legal uncertainty, the lack of a unified approach to understanding the concept of "digital transformation" and the debatable use in the domestic scientific field of English terms "digitalization", "digitization" and "digital transformation".

According to V.S Kuybida, O.V. Karpenko and V.V. Namestnikova, digital transformation is defined as changes in the nature of man, his thinking, life and management caused by the use of digital technologies (Kuybida, et al., 2018).

One of the most complete definitions of this phenomenon is given in his study by V.B. Marchenko, who defines digital transformation as a process of state influence on society as a whole, its institutions, the apparatus state itself, economy and business in order to implement digital information and communication technologies. relations through both purely public law activities and public-private partnerships (Marchenko, 2019).

Analyzing the term "digital transformation", G.V. Podzigun states that "digital transformation" should be understood as the process of implementation of information and communication technologies in the most important spheres of society to ensure the proper functioning of man, society, state and their interaction with each other. These technologies, in her opinion, are the processes of informatization, computerization, robotics and digitalization, which form the specifics of public relations in the digital sphere of Ukraine (Podzigun, 2021).

It should be noted that the process of digital transformation of the Ukrainian state is a relatively new phenomenon, it has its direct manifestation in the absence of an appropriate regulatory framework and the predominance of bylaws in this area.

In particular, it should be noted that this process in modern science is defined by the term "digitalization". Digitalization is a common form and method of management, which has a very significant potential (tools) in the activities of public authorities and local governments and has all the necessary principles to achieve the goal - improving the system and model of community management; empowering the community in the context of the introduction of modern forms of democratic processes in all the diversity of manifestations of the information technology society. At the same time, digitalization requires modern legal support in order to prevent negative manifestations of illegal use of information and existing databases in the operational management of public authorities to violate the private and public law interests of society.

The issue of digitalization and its impact on social processes has become the subject of attention of the general scientific codes, conferences, seminars and more. One of such events dedicated to the legal aspects of the impact of digital transformation on the institution of human rights is the International Scientific and Practical Internet Conference, which took place on March 30, 2021 in Khmelnytsky. A number of works were devoted to a range of issues related to the transformation of these areas, their impact on society as a whole and the institution of human rights, in particular.

Thus, we will focus primarily on the characteristics of the legal field of digital transformation processes (digitalization) and their impact on the human rights institution.

Thus, the legal basis for the overall process of digital transformation of our country was the adoption in November 2017 of the Order of the Cabinet of Ministers of Ukraine "On approval of the Concept of e-democracy in Ukraine and action plan for its implementation" № 797-r. The concept provided for the formation of the foundations of various forms of e-democracy in two stages in order to increase citizen participation in state-building and public administration, and their main components of development were:

- e-parliament;
- e-voting;
- - e-mediation (pre-trial decision disputes);
 - e-referendums;
 - e-consultations;
 - e-petitions;
 - e-political campaigns;

- e-polls (On the approval of the Concept for the development of e-democracy in Ukraine and the plan of measures for its implementation: Order of the Cabinet of Ministers of Ukraine dated 08.11.2017).

To some extent, the legal consolidation of the digital transformation in the field of human rights has resulted in legislative changes to:

- Law of Ukraine "On Citizens' Appeals" № 393/96-BP dated 02.10.1996 in the part on electronic petition (Article 23).

- Code of Ukraine on Administrative Offenses № 80731-X of 07.12.1984 in terms of liability for illegal access to information in information (automated) systems, illegal production or distribution of copies of databases of information (automated) systems (Articles 212-6);

- Law of Ukraine "On Administrative Services" № 5203-VI dated 06.09.2012 in terms of granting the

right to apply for free information on administrative services and the procedure for their provision, which is ensured by providing them with free access to the Unified State Web Portal of Electronic Services, the functioning of telephone information and informing such entities through the media (Article 6), etc.

Taking into account the fact that judicial protection of human rights is the most effective and efficient, for the implementation and development of electronic justice as one of the key areas of digital transformation in Ukraine, the Strategy for reforming the judicial system, legal proceedings and related legal institutions for 2015-2020 was developed (Decree of the President of Ukraine No. 276/2015 from 20.05.2015, lost the rank of 15.06.2021) and the Strategy for the development of the system of justice and constitutional judiciary for 2021-2023 (Decree of the President of Ukraine No. 231/2021 dated 11.06.2021). According to the provisions of these strategies, the introduction and improvement of the ejustice system will contribute to the establishment of the rule of law, which is based on a high level of legal culture, the activities of all subjects of public relations based on the rule of law and the protection of human rights and freedoms, and in case of their violation, their fair restoration in reasonable terms.

manifestation of the Another digital transformation process in the field of human rights protection in Ukraine is the adoption by the Order of the Cabinet of Ministers of Ukraine No. 1353-r dated October 28, 2020, the Strategy for the digital transformation of the social sphere, determined by the specifics of the directions and tasks of complex digital transformation in the field of social protection of the population based on uniform approaches, standards and technologies by creating a unified information base of the social sphere, eliminating duplication of processes and functions of social protection institutions, standardizing and automating citizens' appeals in the social sphere, their centralized monitoring, as well as the transition of social protection institutions to electronic document management, etc.].

Not possible to mention that further intensive development process of digital transformation in 2019 established the Ministry of digital transformation of Ukraine, which provides development and implementation state policy in the areas of: digitization, digital development of the digital economy, digital innovation, e-government and e-democracy, information society development, informatization, etc. The main goal of the Ministry is to implement the project "Digital State", which will later unite all departments into a single convenient and effective online system "Action" ("State and I").

Considering the problem of administrative and legal principles of digital transformation in the field of human rights protection, it is appropriate to separate areas of legal relations, within which there are features of human rights protection in the context of digitalization of society.

As already mentioned, judicial protection of the rights, freedoms and interests of man and citizen has been and remains the most effective and efficient, and is a guarantee of the rule of law and is guaranteed by the Constitution of Ukraine. And given the realities of today, the concept of electronic justice (e-justice) is more relevant than ever.

One of the consequences of the use of information and communication technologies is the creation of the Cabinet of electronic services, which allows you to file a lawsuit in electronic form using the Unified Judicial Information and Telecommunication System in accordance with procedural codes (Code of Administrative Procedure of Ukraine, Civil Procedure Code of Ukraine, Commercial Procedure Code of Ukraine), updated in 2017.

In addition, the Order of the State Judicial Administration of Ukraine N_{2} 196 of 23.04.2020 provides that the parties in the case may participate in the hearing by videoconference and outside the court premises using their own technical means. However, this possibility is allowed only during quarantine restrictions. Also, it should be added that this normative legal act determines not so much the procedure for confirmation of persons, participants in cases, but so much the procedure for technical support of this process.

Thus, the above transformations have partially ensured the introduction of e-litigation in Ukraine, but, for example, videoconference hearings are still an additional way of participating in court hearings at the initiative of the parties, and the final decision is made by the presiding judge in court of the relevant technical capability (availability of equipment and the possibility of its use on a certain day and time) (Podzigun, 2021).

In turn, the risks of technical impossibility of participating in a video conference outside the courtroom, interruption of communication, etc. bears the participant in the case who submitted the relevant application. In addition, the main way to confirm a person, a participant in a case, is an electronic signature, and the decision on the possibility of confirming a person with the help of other documents is made by a judge, who allows limiting the right of access to court for persons who do not have such a signature.

Another effective element of the human rights protection mechanism is the right to send individual or collective written appeals or personally apply to state authorities, local self-government bodies and officials and officials of these bodies, who are obliged to consider the appeal and give a reasoned response within the time limit established by law. According to Art. 5 of the Law of Ukraine "On Citizens' Appeals" provides that a written appeal can be sent using the Internet, electronic communications (electronic appeal). In an electronic appeal, in addition to general requirements, an e-mail address must be indicated to which a response can be sent to the applicant, or information about other means of communication with him.

For example, on the official website of the Ministry of Digital Transformation, in the "Appeal" section, it is indicated that a person can submit an appeal by mail to the address of the Ministry or by submitting an electronic appeal in a certain form by filling in the necessary data - last name and first name, phone number, text of the appeal, electronic mail and a link to the page on social networks.

Another example is the ways citizens contact the Vinnitsa Regional State Administration, which are carried out by phone or by holding a personal reception, and the information portal of the Sumy City Council provides for citizens to apply exclusively in electronic form, by filling in information by last name and first name, telephone, e-mail, text of the appeal, address of residence, etc. (Podzigun, 2021).

A special form of collective appeal of citizens is electronic petitions, the characteristic features of which, according to the analysis of Article 23-1 of the above-mentioned law, are: a) the presence of a special addressee (the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and local authorities); b) an exceptional procedure for submission (by filling out a special form on the official website of the body to which it is addressed, or on the website of the public association collecting signatures); c) an electronic petition is subject to consideration, provided that at least 25,000 signatures are collected in support of it within no more than three months. For local petitions, the number and term of their meeting is established by the charter of the territorial community.

The statistics of the use of this digital transformation tool by the citizens of Ukraine demonstrates a growing potential. So, during the existence of the platform Unified Platform of Local Electronic Democracy (since 2018), 21676 local petitions were submitted using the toolkit, 4228 of which were supported; 31751 problems were brought up for general discussion, 25475 of which were solved.

However, such appeals are not even generally binding, so their creation is still more of an instrument of access to information than an effective instrument for the protection of human rights.

The latest technologies in all spheres of public life are becoming more widespread due to significant convenience for consumers, including online financial services. Accordingly, with the transition of customers to online, the algorithm of service provision changes somewhat.

It is important to add that the development of modern technologies and their implementation in all spheres of public life have changed the vector of development of society as a whole, and not only have become an effective tool for citizens to protect their existing rights, but also have led to the emergence of new, so-called information rights. Some scientists refer to these rights exclusively as information rights and technologies (Golovistikova, et al., 2008). In turn, D.M. Shebanits, among the rights of the fourth generation, distinguishes the right to use virtual information (Shebanits, 2015).

According to the author, the emergence of the fourth generation of human rights is associated with the processes of democratization, humanization, informatization, development of computer technology, with some research in science, medicine, biology, cybernetics, space (Shebanits, 2015).

The position of D.M. Shebanitsa on the further development of the theory of generations of human rights: "Obviously, the body of rights that need protection in today's integration environment will inevitably expand. Therefore, it seems that in the near future there will be the fifth, sixth, seventh generation of human rights (Shebanits, 2015).

However, humanity started talking about their existence in a pure form relatively recently, because they are considered the rights of the fourth generation of human rights, which is emphasized by A.B. Vengerov (Vengerov, 2000). Given this, there is a need for high-quality monitoring and protection, including the rights of the fourth generation.

For example, in Ukraine, this research is being carried out by the Human Rights Platform NGO, which in 2018, with the support of Counterpart International, is implementing a project to monitor human rights violations online, which includes both the process of tracking violations and their legal analysis. According to the December 2020 Human Rights Platform report, they identified the following violations:

- 1 (one) fact of violation of digital rights of a general nature in the form of restriction of access to the Internet, which applies to 240 web resources;

- 29 (twenty-nine) facts of violation of digital rights of an individual nature, which relate to the right to freedom of expression in the digital environment;

- 3 (three) potential threats to freedom of speech and the right to privacy on the Internet in Ukraine, as evidenced by 11 (eleven) cases of potential violations of digital rights identified during monitoring.

Analyzing the above monitoring results, we can conclude is that Ukraine already looming problem on creation quality mechanism for the protection of digital rights.

An interesting way to solve this problem is provided by O.S. Yeliseyeva and V.V. Lazarev, who propose to create an institute of the Commissioner of the Verkhovna Rada of Ukraine for the Protection of Digital Rights, which will also operate at the regional level. As an argument for their opinion, they cite the fact that despite the existence in Ukraine of the Institute of the Commissioner of the Verkhovna Rada of Ukraine, which has both general specialization and industry, annually in Ukraine recorded tens of thousands of violations of fundamental rights (Eliseeva, & Lazarev, 2021)

For modern Ukraine, the issue of digital transformation (digitalization) is one of the key issues in forming a quality management system both at the state level and at the level of territorial communities, which should ultimately have a positive impact on human and civil rights and freedoms provided by the state. However, these processes are not without a number of problematic issues:

1) The development of the information component in the management system requires significant financial resources, including - technical re-equipment of public authorities and local governments, the need to provide high-quality highspeed Internet regions (especially in rural areas), information education aimed at providing basic knowledge the specified sphere;

2) For the eighth year in a row, the hybrid war of the Russian Federation against our state has been going on in Ukraine, and one of the aspects of the hybrid war is its information component, information and psychological warfare, which is actively used by the latter. Threats in the information sphere can be one of the biggest challenges for our country at the moment. provocative messages were posted on these sites. However, information warfare includes not only hacker attacks on government sites - it is only part of a complex issue, given the wide range of forms and methods of information warfare. Further study of ways, methods, means and channels of realization of threats to national interests at the information level and their timely detection, prevention and neutralization is a very important scientific and practical problem in addressing information sovereignty and information security, citizens' rights and more.

2.2 Directions for Improving the Institution of Human Rights

However, it is necessary to highlight some shortcomings in these processes. Thus, the shortcomings include the lack of a systematic approach to the implementation and implementation of elements of digitalization in the local level, ie the level of the territorial community, in particular we see the lack of common basic policy documents for further development of local government in Ukraine. electronic resources.

Another aspect that should not be forgotten in the development of the information sphere and with it human rights is the further emergence of new human rights, which will be characterized by a complex nature, a kind of "hybrid". Given the pace of technology and public relations, the geopolitical nature of these changes, we estimate that in the next two decades we will face the formation of a fundamentally new generation of human rights, which will retain human characteristics, but will be hybrid combination

One of the first steps towards regulatory regulation in the field of artificial intelligence at the national level is the adoption of the Order of the Cabinet of Ministers of Ukraine "Concepts for the development of artificial intelligence in Ukraine" from 02.12.2020 № 1556-r. According to which, the introduction of information technology, part of which is artificial intelligence technology, is an integral part of the development of socio-economic, scientific and technical, defense, legal and other activities in areas of national importance.

At the same time, the Concept emphasizes that the lack of conceptual foundations of state policy in the field of artificial intelligence does not allow to create and develop a competitive environment in these areas. One of the problems facing Ukrainian society today is the lack or imperfection of legal regulation of artificial intelligence (including in the fields of education, economics, public administration, cybersecurity, defense), as well as the imperfection of legislation on personal data protection. Among the expected results of the Concept are a significant improvement in the quality of management decisions, improving the quality of administrative services provided to citizens and businesses, reducing corruption, the formation of service-oriented public policy.

Thus, their impact is twofold, as the Institute of Human Rights stimulates the widespread use of information technology for maximum volume and convenience of their quality, and the reverse effect of the development of information technology and artificial intelligence on the Institute of Human Rights is observed today.

3 CONCLUSIONS

Analyzing the above, we can conclude that in the modern world, the achievements of information and communication technologies are used in various spheres of public life. In the context of the rapid development of the sphere of digital transformation, the process of realizing the rights of citizens becomes important, because human rights and freedoms determine the content and direction of the state's activities, the latter, in turn, creates the appropriate conditions for their implementation in a digital society. However, for greater efficiency, it is necessary to use a systematic approach to the implementation and implementation of its elements, which primarily concerns clarifying the conceptual apparatus and creating basic program documents that will provide clear mechanisms and methods for protecting human rights in the era of digital transformation.

Particular attention should be paid to the digital transformation of public administration at the local level. For Ukraine, the digitalization of local government management processes - that is, at the level of the territorial community - should be a promising direction of development. Also, the existing program opportunities for digitalization in Ukraine as a tool for local governance need to be significantly expanded, as the digital transformation shows us the urgency of implementing an important modern trend - the transition from public control to public initiative.

It has been speculated that the fifth generation of human rights, hybrids, will develop in the next ten to twenty years. Its peculiarity is the spread of the concept of "human rights" in cyberspace and the further development of artificial intelligence, the interaction of these institutions will require expanding the institution of human rights, filling them with new content and forming international (regional) standards.

Today, all spheres of public activity need information support, and at the same time information activity itself needs clear legal regulation, first of all, from the standpoint of security. Thus, a wide range of problems of organizational and legal support for the functioning of the information field acquires important theoretical and practical significance. And if we take into account the European integration aspirations of Ukraine, there is a need to develop a joint with the European Union and Ukraine a special legal act, which would establish the limits of responsibility of specific actors for the use of information weapons and information warfare, provides forms and methods impact.

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