

LEGAL ASPECTS OF LOCAL GOVERNMENT DIGITALIZATION

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The examination of the legislative foundations underpinning the digitalization of local governance, as with any other sector of public relations, should commence with an analysis of the legal norms embedded in the Constitution of Ukraine, which serves as the primary, self-executing law. It is within this foundational document that the basic principles and core tenets of the legal framework are established, providing the starting point for further elucidation and specification within specialized statutes.

In addressing the nuances of this topic, particular attention must be paid to Article 54 of the Constitution of Ukraine, which stipulates that «citizens are guaranteed the freedom of ... technical creativity, the protection of intellectual property, as well as their copyright, moral, and material interests that arise in connection with various forms of intellectual activity». Furthermore, the Constitution provides that «every citizen has the right to the results of their intellectual and creative activities; no one may use or disseminate them without their consent, except as provided by law» [1]. From this follows the constitutional principle that every citizen has a protected right to safeguard their intellectual property, including new technologies generated through intellectual effort, which may play a role in the digitalization processes within local government structures.

Regrettably, Chapter XI, «Local Government», does not include any reference to the application of digital technologies at the local level. The only provision remotely relevant is Article 146, which defers to statutory law for the regulation of other matters concerning the organization, formation, functioning, and accountability of local government bodies [1].

One of the primary laws governing local self-government is the Law of Ukraine «On Local Self-Government in Ukraine». An examination of this law reveals that, despite its adoption in 1997, it lacks provisions reflecting contemporary trends in the application of new technologies within municipal governance and addresses such issues only superficially. For instance, Article 33 stipulates that «the competencies of executive bodies of village, settlement, and city councils include the establishment and operation of local automated environmental information and analytical systems, which are part of the nationwide environmental automated information and analytical system to ensure access to environmental information» [2]. However, beyond noting this competency, the law provides no further guidance on its implementation. This example illustrates that while the legislature envisages the use of modern technologies by local government bodies, it does not provide details regarding the organization or procedures involved in their application. This necessitates the issuance of a bylaw in the form of

an instruction or order by the local government body to outline the procedures for creating and maintaining local automated environmental information and analytical systems.

Article 46 of the Law of Ukraine «On Local Self-Government in Ukraine» specifies that «a council session shall be convened to consider an electronic petition that has garnered the required number of signatures, within the period prescribed for its review» [2]. Beyond this, no further references to electronic petitions to local government bodies are found in the law. However, the procedure for submitting and reviewing electronic petitions, both to state authorities and local government bodies, is available in another statute – the Law of Ukraine «On Amendments to the Law of Ukraine ‘On Citizens' Appeals’ Concerning Electronic Appeals and Electronic Petitions» [3, Article 23-1]. Unfortunately, there is no cross-reference to this law in the Law of Ukraine «On Local Self-Government in Ukraine», which means that members of the territorial community, particularly those unfamiliar with the legislative framework, must independently search for these provisions across various regulatory acts to exercise their legal right to submit an electronic petition.

Particular attention should also be directed to the «Final and Transitional Provisions» of the Law of Ukraine «On Local Self-Government in Ukraine», which states that «during the quarantine period introduced by the Cabinet of Ministers of Ukraine to prevent the spread of COVID-19 within Ukraine, plenary meetings of local councils, meetings of the executive committees of village, settlement, and city councils, and standing deputy commissions may be held via videoconferencing or audioconferencing (remote meetings), except for matters requiring a secret ballot» [2].

This is a progressive provision that legally enables organizational and other activities of municipal authorities to be conducted online. Given that Article 19 of the Constitution stipulates that «local government bodies and their officials are required to act solely on the basis, within the scope, and in the manner provided by the Constitution and laws of Ukraine» [1], the absence of such a provision would have rendered decisions and actions taken remotely as illegitimate. Although the existing law includes basic norms governing the organization and conduct of remote meetings, we believe it would be advisable to establish these procedures in the main body of the law (rather than in its final and transitional provisions) as a dedicated article.

In addition to the laws analyzed above, several other legal acts regulate the issues we have raised. These include the following Ukrainian laws: «On Stimulating the Development of the Digital Economy in Ukraine», «On Information Protection in Information and Telecommunication Systems», «On Personal Data Protection», «On Amendments to Certain Legislative Acts of Ukraine Regarding the Recording of Employee Work Activity in Electronic Form», and «On Electronic Communications». Relevant governmental decrees include Cabinet of Ministers Order No. 67-r dated January 17, 2018, «On Approval of the Concept for the Development of the Digital Economy and Society of Ukraine for 2018–2020 and the Action Plan for Its Implementation»; Order No. 365-r dated February 17, 2021, «Some Issues of Digital Transformation»; Order No. 167-r dated March 3, 2021, «On Approval of the Concept for the Development of Digital Competencies and Approval of the Action Plan for Its

Implementation»; and Order No. 1353-r dated October 28, 2020, «On Approval of the Strategy for Digital Transformation in the Social Sphere», among others.

Despite this legislative array, the regulation of digital technologies in local governance and public administration more broadly remains fragmented and disorganized. Such an approach is counterproductive in the context of Ukraine's efforts toward legislative alignment with European standards and the nation's goal of becoming a «smart state».

Moreover, gaps in the law still persist. For instance, there is currently no clear legislation in Ukraine regarding ownership rights to creations generated by artificial intelligence (AI) – whether these belong to the program's developer, the user who directed the AI, or the AI itself.

As A. Klyan points out, AI-generated works are already a reality and have attracted considerable public interest, with some selling for significant sums at auctions. For example, a self-portrait created by the humanoid robot Sophia was auctioned for \$688,000 [4]. The question of who should receive such profits remains unresolved.

Klyan also highlights other relevant cases, such as *Naruto v. David John Slater*, which involved a dispute over copyright ownership of a selfie taken by a monkey named Naruto. The animal rights organization PETA filed the lawsuit on behalf of the monkey. However, both the lower and appellate courts ruled that, despite animal protection laws, animals do not have the right to claim protection of intellectual property rights; these rights are solely human. By analogy, intellectual property rights do not extend to AI [4]. In the UK, the rights to machine-generated works are attributed to the person who facilitated their creation.

Another unresolved issue is the accountability for the incorrect operation of AI or for the content generated by it, as in the case of tools like ChatGPT. Current legislation does not specify who should bear liability for damage caused by AI actions or outputs. Legal practice in Ukraine and the EU suggests that responsibility may lie with the AI's manufacturer, operator, owner, or user, depending on the circumstances [5].

Thus, an analysis of Ukrainian legislation on local government digitalization, along with a review of international experience, indicates both significant challenges and substantial opportunities in this area. Key steps required to accelerate digital transformation at the local level include updating the current legal framework to eliminate fragmentation and disorder. In doing so, essential factors such as high cybersecurity standards, robust technical infrastructure, and improved digital literacy among the local population must not be overlooked. A balanced integration of these factors is essential to achieving high levels of digitalization within local government.

The future development of digitalized local governance in Ukraine calls for the consolidated efforts of the government, local authorities, businesses, civil society, and international partners. The growth of digital services and technologies can serve as a catalyst for regional economic growth, enhanced municipal governance, and improved quality of life for communities.

Achieving successful digital transformation in local government will require changes not only on technological and legislative fronts but also in the mindset of local populations and the relationships among the state, local government, and communities.

Implementing these changes will enable Ukraine to develop robust digital municipal governance, opening new horizons for progress and prosperity in territorial communities.

References

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