

Digital Identity: Definition, Functions and Comparative Analysis of Ukrainian and European Union Legislation

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Digital Identity: Definition, Functions and Comparative Analysis of Ukrainian and European Union Legislation

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The world community's shift from an industrial society to an information society has significantly affected all types of citizens' political activities. More and more forms of political activity are being carried out while employing information and communication technologies. Due to their importance in developing e-democracy and ensuring citizens' political rights and freedoms, digital forms of political activity are receiving constitutional and legislative foundations. As a part of e-democracy, digital identity is integral to constitutional mechanisms for the implementation of political rights. This research represents the different approaches to the definition of 'digital identity' as part of e-democracy and contains a comparison between Ukrainian and European Union legislation in this area. Although legal interest in this issue has been growing, it must be considered that e-democracy systems also incur requirements from the technological, sociological, and political sectors. By considering them, this article reveals perspectives on the Ukrainian legislation development in the field of digital identity as part of e-democracy. It concludes that Ukraine has the relevant legal acts defining the above-mentioned issues, but some issues are required to be harmonized with the European Union legislation.

Keywords: digital identity, e-democracy, e-government, e-participation.

Skaitmeninė tapatybė: apibrėžtis, funkcijos ir Ukrainos bei Europos Sąjungos teisės aktų lyginamoji analizė

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Pasaulio bendruomenės perėjimas nuo pramoninės prie informacinės visuomenės turėjo reikšmingą poveikį piliečių visų rūšių politinei veiklai. Vis daugiau politinės veiklos formų vykdoma naudojant informacines ir ryšių technologijas. Dėl jų svarbos plėtojant e. demokratiją ir užtikrinant piliečių politines teises ir laisves skaitmeninės politinės veiklos formos įgyja konstitucinį ir teisinį pagrindą. Kaip elektroninės demokratijos dalis, skaitmeninė tapatybė yra neatsiejama nuo konstitucinių mechanizmų, skirtų politinėms teisėms įgyvendinti. Tyrime pateikiamas skirtingas požiūris į skaitmeninės

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tapatybės apibrėžtį e. demokratijos kontekste bei lyginami Ukrainos ir Europos Sąjungos teisės aktai šioje srityje. Nors teisinis susidomėjimas šiuo klausimu didėja, e. demokratijos sistemoms taip pat keliami technologiniai, sociologiniai ir politiniai reikalavimai. Atsižvelgiant į tai, straipsnyje atskleidžiamos Ukrainos teisės aktų skaitmeninės tapatybės, kaip e. demokratijos dalies, plėtros perspektyvos. Daroma išvada, kad Ukraina jau turi atitinkamus teisės aktus minėtais klausimais, tačiau tam tikrus aspektus būtina derinti su Europos Sąjungos teisės aktais.

Pagrindiniai žodžiai: skaitmeninė tapatybė; e. demokratija; e. valdžia; e. dalyvavimas.

Introduction

Electronic democracy has become a new reality in the era of information. A diverse range of government services has successfully implemented and adopted various information technology tools. Additionally, these technologies support constitutional rights by providing opportunities for citizens to participate in public affairs, such as online counselling, e-participation, online surveys, online support, online research communities, interactive e-learning, public dialogue on online forums, online chats, online group decision-making, etc. Ukraine has become a state denoted by rapid digital growth in the last decade. The development of digital legislation has supported this growth. For instance, the Law of Ukraine “On the National Program of Informatization” defined the concept of ‘e-democracy’ (Verkhovna Rada of Ukraine, 2022). It is defined as a form of social relations in which citizens and organizations are involved in state-building and governance, as well as in local self-government, through the widespread use of information and communication technologies in democratic processes. Thus, e-democracy is defined through the involvement of citizens, which is essentially the observance of their constitutional rights. It is commonly accepted on the international level by the Human Rights Council in the United Nations, which decided to continue its consideration of the promotion, protection and enjoyment of human rights, including the right to freedom of expression, on the Internet and in the framework of use of other technologies, as well as in terms how the Internet can be an important tool for the development and for exercising human rights, in accordance with its program of work. For instance, digital identity is supported by Estonia and Sweden. The European Union (hereinafter – EU) has also announced legislative development of digital rights, which concerns citizen participation in public affairs. In September 2020, the President of the European Commission, Ursula von der Leyen announced that the Commission would publish proposals for a European digital identity, which will be available to all citizens and businesses of the EU (European Commission, n.d.). This last example is of importance for Ukraine as an EU candidate because it is relevant for consideration given Ukraine’s orientation towards EU membership. Digital identity is no exception in this sense.

Scientists such as Callum Mole, Ed Chelstri, Peter Foster, Tim Hobson, Robert Sentonze, Roberto Reale, Claire Sullivan, and others have devoted their work to the subject of digital identity. That is why this issue is a critical element for electronic democracy development and is the main subject of this article.

Aim. The aim of this research is to analyze the legislative framework of digital identity in Ukraine and in the EU, focusing on the definitions, regulations, and the potential integration of Ukrainian legislation in its pursuit to align with EU standards.

Tasks. The tasks of this research include examining the concept of digital identity in the context of e-democracy, analyzing Ukrainian and EU legislation on digital identity, and identifying steps Ukraine can take to align its legal framework with EU standards.

Object. The object of this research is the legislative framework governing digital identity as a fundamental component of electronic democracy in Ukraine and the EU.

Methods. This research employs a combination of legal analysis and the comparative method to examine the similarities and differences between the Ukrainian and EU legislation on the digital identity.

Relevance of the topic. The relevance of this topic lies in the rapid digital transformation in Ukraine and its aspiration to align with the EU standards as a candidate country. Digital identity plays a central role in e-democracy by enabling citizen participation, protecting constitutional rights, and fostering transparency in governance. This study offers a perspective by connecting the legislative framework of the digital identity with the broader development of e-democracy in Ukraine and its path toward EU integration.

Originality of the work. This research builds upon the author's previous studies on the interplay between electronic democracy and citizens' constitutional rights, particularly in the context of political rights. It continues to explore how digital identity, as a key component of e-democracy, contributes to the realization and protection of these rights.

1. Digital Identity: Definition, Advantages and Disadvantages

Claire Sullivan suggests understanding digital identity as the identification data of a person that is stored and transmitted in the digital form (Sullivan, 2013). Digital identity is denoted by such characteristics as uniqueness since it consists of information belonging to a specific person, verification of data by relevant state authorities, and the availability of information protection. The three main functions which digital identity should encompass can be defined as the following: identification, authentication, and authorization (Sullivan, 2013). Due to these three functions, digital identity may be applied to various e-democracy tools: electronic ballot or election, consultations, initiatives, petitions, agitation, and surveys (Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy)). Reasonably, the list is not exhaustive, as with the development of information and communication technologies, citizen involvement in the implementation of their political rights is constantly evolving, and new tools are therefore being introduced.

Digital identity is denoted by both advantages and disadvantages. Advantages refer to the opportunity for citizens to participate in numerous e-democracy tools where digital identity is of major importance. For instance, digital identity can help to authenticate the identity of voters or ensure that each person can only vote once in an online election. Also, with the help of digital identity, the government may authenticate the signatory of an e-petition, thereby ensuring that the petition is not being signed multiple times by the same person. Also, it concerns participation in public consultations and allows citizens to sign documents and contracts online with the same legal validity as that provided by physical signatures. In general, digital identity can enable citizens to access a range of government services online, such as renewing passports, paying taxes, and applying for permits.

Meanwhile, the disadvantages of digital identity concern data protection issues. Digital identity refers to the collection of personal data and information that is associated with an individual's online presence, including their digital persona, online behavior, and digital footprints. Although digital identity and personal data are not the same things, personal data constitute the fundamental framework of digital identity (for natural persons). Digital identity encompasses various types of personal data, such as usernames, passwords, biometric data, and other identifiable information that can be used to establish and verify an individual's online identity. As a result, some personal data can become part of digital identity. For example, Regulation (EU) 2016/679 defines personal data as any information relating to an identified or identifiable natural person ('data subject'), and an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier – such as

the name, identification number, location data, online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person (Regulation (EU) 2016/679 of the European Parliament and of the Council, 2016). Digital identity is becoming the basic tool by which the relationship between individuals and public agencies can be reshaped. When such platforms involve voting, it is necessary to ensure that a given set of requirements should be adopted. Guaranteeing at the same time certainty (and legal admissibility) of the voter's identity, public verifiability (through transparency and/or audit trails), security, and secrecy is the core of electronic voting. A number of cryptographic techniques have been proposed in an attempt to resolve this issue (Centonze and Reale, 2021).

Roberta Centonze and Roberto Reale, in their work dedicated to digital identity, also emphasize the challenges faced by citizens who use digital identity in the public state services. The authors note that, by using digital identity, users risk not having control over the amount of information they disclose, especially with regard to their personal data, which is the structure of digital identity (Centonze and Reale, 2021). Therefore, the personal data that make up a digital identity can vary depending on the specific features and functions of a particular e-democracy tool. However, the issue of preserving personal data is an important condition for ensuring the constitutional right of citizens to participate in the management of state affairs. The level of protection of personal data that makes up a digital identity directly affects the activity of citizens in its application. Therefore, it can be emphasized that the prevalence of citizens using their digital identity in aspects of realizing their political rights depends on a proper balance between ensuring the right to privacy and the freedom of expression. As Yuliia Razmytaieva rightly notes, easy accessibility and the lifespan of information can lead to self-censorship and abstaining from activity, primarily from public activity. Self-censorship has a negative impact on the right to freedom of expression. Refusal to participate in important societal processes creates a problem with the realization of 'participation rights' which, in turn, negatively affects democracy (Yuliia Razmetaieva, 2021).

Government has to tackle all difficulties which rise from data processing. First of all, data protection requires numerous challenges for legislation, which have to be relevant to constitutional rights. The European Court of Human Rights defines this point in *Szabó and Vissy v. Hungary* case. According to the materials, applicants filed a constitutional complaint, arguing in essence that the sweeping prerogatives under national law infringed their constitutional right to privacy. They emphasized that the legislation on secret surveillance measures for national security purposes provided fewer safeguards for the protection of the right to privacy than the provision on secret surveillance linked to the investigation of particular crimes. At the same time, the court remarked on the necessity of general supervision for data processing issues, due to the significance of this control impossible to be overestimated in view of the magnitude of the pool of information retrievable by the authorities applying (Case of Szabó and Vissy v. Hungary, 2016).

2. International and EU Legislation

International legislation also features relevant acts in this field. For example, the resolution "The Right to Privacy in the Digital Age" stressed the importance of full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information and democratic participation (United Nations, 2013). Additionally, Resolution No. 20141 "The Right to Privacy in the Digital Age" adopted by the General Assembly on 18 December 2013 noted that surveillance of digital communications must be consistent with international human rights obligations and must be

conducted on the basis of a legal framework, which must be publicly accessible, clear, precise, comprehensive, and non-discriminatory. It also noted that any interference with the right to privacy must not be arbitrary or unlawful, bearing in mind what is reasonable to the pursuance of legitimate aims, and recalling that States that are parties to the International Covenant on Civil and Political Rights must undertake the necessary steps to adopt laws or other measures as may be necessary to give effect to the rights recognized in the Covenant (United Nation, 2014). As follows, digital identity requires an appropriate legislative regulation with the constitutional right to privacy.

It should be considered that, according to the European Commission plan, the EU is going to make a great improvement in digital identity legislation, which can be used for both online and offline public and private services across the EU (European Commission, n.d.). “Regulation of the European Parliament and the Council amending Regulation (EU) No. 910/2014 concerns the establishing a framework for a European Digital Identity”. This draft suggests the concept of the European Digital Identity framework, as a material and/or immaterial unit, including European Digital Identity Wallets or ID cards following Regulation 2019/1157, containing person identification data, and which is used for authentication for an online or offline service (European Union, 2021). The document came into effect on 20 May 2024 (European Parliament, 2024). We may presume that such kind of approach to the definition may unify the implementation of those issues among other EU countries. Moreover, the European Commission prepared the “Commission Recommendation of 3.6.2021 on a common Union Toolbox for a coordinated approach towards a European Digital Identity Framework” (European Commission, 2021). One of the significant points, which is most important for electronic democracy development from this project, is that this tool may allow access to all EU citizens to public services across the EU by using means of electronic identification (eID) issued in their home country.

3. Ukrainian Legislation

As for Ukraine, Ukrainian legislation does not define the digital identity. However, the Agreement between Ukraine and the EU on Mutual Recognition of Qualified Electronic Trust Services and Implementation of the Legislation of the EU in the Field of Electronic Identification is part of the Ukrainian legislation (Verkhovna Rada of Ukraine, 2022). At the same time, the Ukrainian legislation contains the definition of digital identification in 16 different legal acts (Verkhovna Rada of Ukraine, n.d.). The common feature for each of them contains the provision that digital identification is the procedure for using person identification data in the electronic form, which uniquely identifies an individual, a legal entity, or a representative of a legal entity. Also, the order of the Ministry of Digital Transformation No. 130 dated December 5, 2022 “On Approval of the Requirements for Electronic Identification Tools, Levels of Trust in Electronic Identification Tools for their Use in the Field of E-Government” defines organizational, methodological, technical, and technological conditions for the use of electronic identification tools in the field of e-government (Ministry of Digital Transformation of Ukraine, 2022). This concept is implemented by the *Diia*, a web portal and a brand of e-governance in Ukraine (*Diia*. Government services online, n.d.). Launched in 2020, the *Diia* app allows Ukrainian citizens to use digital documents on their smartphones for identification and sharing purposes instead of physical ones. *Diia* is a practice tool, which contains the process of digital identification. Moreover, according to studies conducted by the Ministry of Digital Transformation of Ukraine in 2022, one important aspect of digitalization is the use of electronic democracy tools: e-petitions, e-appeals, e-consultations, and participation budget, as a form of citizen participation in which citizens are involved in the process of deciding how public money is about to be spent (Ministry of Digital Transformation of Ukraine, n.d.).

These tools should be available on the websites of all local self-government bodies in the region or through official chatbots. While the public sector is adopting digital communication and engagement tools, not all communities have implemented them to the same degree. The rating among Ukrainian regions shows the relevant results. Ternopil Oblast has the highest grade of implementing e-democracy tools, with a score of 0.989, followed by Vinnytsia Oblast with 0.711 and Volyn Oblast with 0.613. The region with the lowest presence of e-democracy tools is Mykolaiv, with a score of only 0.123. On average, local self-government bodies have the highest number of e-appeal tools, which are available in 77% of all territorial communities in Ukraine, followed by e-petitions which are available in 66.1% of communities. However, there is a problem with the availability of e-consultations for communication between government representatives and residents, with only 11.1% of communities having access to this tool. In 2022, an increase was recorded in these e-tools, with a growth rate of +17.8% for e-appeals, +6.7% for petitions, +3.2% for e-consultations, and +1.7% for the participation budget in territorial communities throughout Ukraine (Ministry of Digital Transformation of Ukraine, n.d.). It should be noted that all these digital tools consist of a digital identification process with personal data. Also, it must be noted that the full-scale Russian invasion of Ukraine in 2022 influenced the e-democracy development in Ukraine by halting a number of ongoing processes.

As a result, ‘person identification data’ is a common description for the definition of digital identity in the EU and the definition of digital identification in the Ukrainian legislation. However, these two concepts are distinct, and digital identity is associated with the process of digital identification of a person. *Digital identity* is a certain *set of data*, while *digital identification* is the *process* by which this *data is collected*. For instance, Regulation (EU) No 910/2014 defines electronic identification as the process of using a person’s identification data in the electronic form that unambiguously represents either a physical or a legal person, or a physical person representing a legal person (European Parliament and the Council, 2014). Even though the Ukrainian legislation and the state authority are represented by the digital identification process, harmonization legislation with the EU legislation is an obligatory process for becoming a member of the EU. It apparently refers to the digital identity issue.

Conclusions

1. Digital identity is important for citizens’ participation in the e-democracy process, especially if it refers to constitutional rights. The use of digital identity allows users of various tools of e-democracy, such as electronic voting, consultations, initiatives, petitions, surveys etc., to implement their political rights. Although digital identity and digital identification are distinct concepts, they are both necessary for the effective use of e-democracy tools. Digital identity includes personal data associated with an individual’s online presence, while digital identification verifies their identity. Appropriate use of personal data is the most important task for all states.
2. As for the Ukrainian and the EU legislation, we may indicate that legislation unification and development are future steps that shall be taken by Ukraine due to the process of entering the EU. Some general legislative improvements can support the development of digital identity. First of all, establishing a legal framework for digital identity: clear laws and regulations that would govern digital identity, including rules for data protection, user privacy, and cybersecurity. The purpose and scope of digital identity should be defined to ensure that it meets the needs of citizens and other stakeholders. Secondly, a digital identity tool for constitutional rights requires the development of technical standards: governments should establish technical standards for digital identity, including requirements for interoperability, security, and usability. All these standards shall be relevant to the

international law. Also, digital identities must be legally recognized and accepted by all relevant stakeholders, including government agencies, financial institutions, and other service providers. Thirdly, governments must ensure that digital identity solutions are accessible to all citizens, including marginalized groups, without reinforcing the already existing inequalities. Governments must establish accountability mechanisms to ensure that digital identity systems are transparent and secure, and respect user privacy.

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