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ПУБЛІЧНО-ПРАВОВИЙ ДИСКУРС У КОНТЕКСТІ ЄВРОІНТЕГРАЦІЇ ТА ГЛОБАЛІЗАЦІЇ



Natalia Smirnova*

PhD researcher

National University “Odessa Law Academy”
(Odessa, Ukraine).

<https://orcid.org/0000-0002-3815-1803>

***Natalia Smirnova**, PhD researcher, National University “Odessa Law Academy”
(2, Akademichna St., Odessa, Ukraine).

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E-GOVERNMENT AND SOCIAL MEDIA IN UKRAINE: GLOBAL CHALLENGES FOR LEGAL REGULATIONS

ЕЛЕКТРОННИЙ УРЯД ТА СОЦІАЛЬНІ МЕДІА В УКРАЇНІ: ГЛОБАЛЬНІ ВИКЛИКИ ДЛЯ ПРАВОВОГО РЕГУЛЮВАННЯ

ABSTRACT

The present paper is focused on the major challenges to the legal regulation of e-government functioning giving the modern trend of wide application of social

media in performing different e-government functions. The current developments in the field of e-government in Ukraine and its legal frameworks are used as an empirical base for the research. However, due to the global nature of social media, the challenges in question can be viewed as the global, or at least the supranational ones. The most important impact factor for reconsidering the e-government legal regulations is the need to utilize the existing social media. Hence, it erects the issue of adaptation of certain internal administrative procedures to the existing ICT solutions and way of functioning with very limited government's abilities to influence upon them. One of the most important fields of usage of social media on e-governance is providing the transparency and the public information access. To that end different models of web-solutions and respective regulations are reviewed. Besides the separate attention is paid to the cross-border nature of social media, which becomes the issue in respect of their application by public authorities. This is gaining great importance in case of Ukraine, considering critical cyber-security threats revealed within the frameworks of conflict between Ukraine and Russia. Finally, the other challenge for national e-governments is the need to utilize mobile applications for providing administrative services, which also rises considerable security concerns due to involvement of an extensive number of stake-holders. As a result of these processes, there is a need to transform and rethink the current legal framework in order to provide proper balance between security and efficiency and economy of public services delivered via ICT.

The key words: information technology, WWW, governance, public information, administrative services, ICT, social media, e-government.

Introduction

The widespread using of WWW and other SN's (social networks tools), by its nature, has erased both social and territorial boundaries between users. This wave has affected the governments of different countries. Since the government aims to provide services to citizens and to inform, social platforms helped strengthen and simplify communication between government agencies and citizens, businesses, non-profit organizations and others.

Premising the platforms used, government establishes unique ways of communicating with citizens. In addition, the stimulation of the using of new ICT's finds a mutual response between two sides. There is no supply without demand. Accordingly, the government is simply forced to keep up to date, introducing new and new technologies. At the result race for modernity was the emergence of such definitions as e-government and e-democracy.

"E-democracy is a dimension of e-government" (Abu-Shanab, 2015). For my point of view, it would be simpler to define the relationship of these concepts as means and ends. So, e-government is the main tool on

the road to e-democracy. For example, citizens can exercise their right to participate in political processes more efficiently thanks to some electronic participation tools and thereby increase the efficiency of the process itself. In Ukraine for the last years attempts underway to create electronic systems that would at the same time allow each citizen to vote from home (or anywhere else, via a smartphone) and be protected from fraud. The advantage of such system is that there is no time gap between voting and vote counting. Accordingly, the probability of falsification decreases and the human factor is excluded.

Information technology is set of devices that can be used to turn data into information and to transmit it over long distances. Mass media are the physical devices most often identified as information technologies and the network that is probably the most famous is called the Internet.

This area of research is gaining new momentum, since ICT is a tool for both e-government and e-democracy. There is no clear distinction between the concepts.

“a way for government to use the most innovative information and communication technologies, particularly web-based Internet applications to provide citizens and businesses with more convenient access to government information and services to improve the quality of the services and to provide greater opportunities to participate the democratic institutions and processes” (Fang, 2002).

Such direction in democratic processes as a whole changes the perception of citizens about democracy and government. Consciousness and awareness in decision-making plays an important role. Moreover, as a result, confidence in democratic processes should increase. This naturally comes with understanding and raising the level of awareness of citizens, what is the main task of the correct work of media services.

The major spheres of governance, that are believed to gain benefits from utilisation of SN, typically include:

- Regulations, where governments through citizen's engagement (comments and suggestions) can define the need of regulations from the government.
- Collaboration through which governments can enhance their internal and external interaction by utilizing web 2.0 available services.
- Citizen's monitoring the delivery and quality of governmental services using web 2.0 available services such as wikis, blogs and mash-up maps (Khasawneh, Abu-Shanab, 2013, p. 12-13).

However, one of the SN's features is their traditional marked-based standardisation, both with respect to technologies and user-rules. The main peculiarities of such marked-based standardisation for respective ICT solutions can be described as followed:

- Solutions intended as a standard can be developed by anyone. Coordination through competition between solutions in the market, leading often (but not always) to one de-facto standard;
- Coordination takes place during diffusion – different standards are developed and compete with each other;
- Main actors driving the standardisation process are predominantly private. Individual market actors influencing the outcome of the market competition with their actions;
- Inclusiveness in standard development varies, some standard development venues are open; access to others is restricted (Wiegmann, de Vries, Blind, 2017).

The issue draws a significant difference towards regulation of such guise of e-Government. Whereas more traditional e-Government solutions based on dedicated web sites or specific ICT solutions are subjects to comprehensive legal regulation, in the case with SN state actors have to admit or adapt the rules created by the market. Hence, we come to the situation where e-government's regulative environment is influenced by private actors developing and administrating SN.

Methodology

The present paper analyses utilises basic theoretical foundations of application of social media to performing functions of e-governance. In this context social media are viewed as a perceived second generation of Web development and design that facilitates communications and secures information sharing, interoperability and collaboration on the WWW (Harris, Rea, 2009).

Hence, the whole concept departs from the growing of the SN role in the modern society and economy, which also makes them the one of backbones of the concept of the citizen-centric e-government services. The citizen-centrings factor has a great influence upon the overall methodological approach that is based on general ideas of media freedom.

The basic concepts about e-government and e-democracy, which was used, became theories about eight different types of partnership in an e-government system (as G2G, C2G, G2B and others) and how to realize

participation stages with ICT. Moreover, we try to explain how works such principles as performance expectancy (PE) or social influence (SI) when government choose the platform to inform consumers. It is name of the functional models of communication between ICT and e-government.

The analysis is also grounded upon the classification of functions of e-government that performance can benefit or can be enhanced through the usage of social media.

The part of practical basis for the study was the #trial_in_simple program, the essence of which was the expert evaluation of the results of a all-Ukrainian survey of courts employees (Proekt “Sud liudskoïu movoiu”).

In addition, the work touches on cross-border nature of the media. The empirical source for the issue is the CompuServe Resonance Case. It was important to touch on the topic of the transnationally in the context of justice and media, because of developing digital technologies out of local borders of the State.

1. Access to Public Information and web solutions

In modern conditions, traditional management mechanisms are no functional enough for effective management. According to the definition formulated by SAGA (Germany), *electronic government* covers all aspects of management processes (decision making), including the provision of services to the extent that these processes are based on ICT (SAGA: standards and Architectures for e-government Applications).

Based on what has been said before, we are already defining e-government not only as a phenomenon that simplifies communication processes between government and citizens, but also involves interaction of a different level, such as across government agencies communication (G2G). Thus, the most capacious concept of electronic governance will cover citizen participation, political parties and organizations (including non-profit G2N), parliamentary, managerial and Judicial functions.

The principle of openness and fair legal proceedings has universally recognized in democratic society and enshrined in international standards. According to p. 1 Art. 6 of the Convention on Human Rights, a public hearing is an important element of a fair trial, and the judgment must be announced publicly (Universal Declaration of Human Rights).

The publicity and openness of the judiciary stems from the general obligation of a legal democratic state to transparently cover the activities of

government bodies. In Ukraine these relations are governed by the Law on the Procedure for Covering Activities of Bodies of State Power and Local Self-Government by Mass Media in Ukraine, which extends its influence to the judicial authorities. According to the provisions of this legislative act, state authorities, including courts, has obliged to provide the media with full information about activities via the relevant information services, to provide journalists with free access to such information, not to interfere into their professional activities. The exception may be the provisions of the Law on State Secret.

Thus, Mass Media can conduct their own investigations and analysis of the activities of state bodies and courts, as well as evaluate and comment on them.

The flip side to this is the risks that direct journalistic reporting from courts pose and other government bodies. This is due to the fact that journalists, as intermediaries, when reproducing information, no without a human subjective factor. The question is whether a person who is not related to legal activity can correctly comment on the events that occur during the administration on justice?

Unfortunately, difference between the right to a fair trial and the right to the open trial becomes the real problem due to the social media reporting. Social media poses new challenges to an open trial and the administration of justice that force us to rethink the relation between openness and fairness (Lamprini, Buckhard, 2019).

In particular, public relations serve as a lever of control from arbitrary decision-making and corruption. It also increases the level of public confidence to the system that operates in the state. At the legislative level in Ukraine, provisions on the apparatus of court has fixed, the competence of which includes issues of documentary and information-technical support, as well as the implementation of information content on the websites of the courts, which is a source of official information can't be distorted.

In Ukrainian law there are also two similar concepts that characterize the justice of the court. This is publicity and openness. At the legislative level they are similar, but carry a different semantic load. "Publicity" is the provision by the court for persons whose interests relate to the case, the right to know about the place, time and date of the hearing, also unhindered access to the results of the case and the opportunity to represent their interests in court. This principle is reflected in the Law of Ukraine "On the Judicial System and the Status of Judges". "*Openness*" implies access to

the same court session, but only of persons whose interests do not concern this business. Journalists, as individuals who are not directly related to the case, fall under this principle. Despite the fact that access to the court session is open and they can use various gadgets for their activities without obtaining a separate permit, the court must provide permission to conduct live broadcasts from the courtroom.

Also, such principle is limited only in the event of closed court session (one particularly straightforward example are the cases connected with the Law of Ukraine “On State Secrets”).

With the creation and entry into force of the Law of Ukraine “On Access to Judicial Decisions”, it was legislated that everyone has the right to access judicial decisions. All court decisions must be in public domain and published in electronic form from the date of their adoption and signing. In Ukraine, the USRJD (Unified State Register of Judicial Decisions) operates for this purpose, and the State Judicial Administration is responsible for its correct work. After court decision reaches the USRJD, it will be available on the official website of the Judicial Authority of Ukraine.

The court.gov.ua platform has become such an ICT, which today is the most successful embodiment of the principle of “Open Justice”. It is also high-quality tool of e-democracy, which embodies several models of interaction between the state and various structures. First of all, it is G2G service application as the way to delivery information between the government agencies. Another model that is implemented through this tool is G2C, as information delivery to citizens.

In Ukraine, the concept of open courts got its movement recently, because before that courts didn’t consider all possibilities that can provide media for work. “Open Justice” as a concept is an essentially disputed. Theoretically, it should play the role of a bridge that will connect the government structure and ordinary citizens, which social expectations are determined by mass media and communication technologies.

Unfortunately, new technologies lead to new difficulties. In particular, the approach to the selection of journalists has changed. Previously, only professional journalists had access to the media. With the development of social media, more and more people can practice the job of journalist, if even not professionally, and take the increasingly active part in the processes of sharing information. With the advent of social networks, every citizen has the opportunity to comment, record and criticize. Because of the above, our requirements and expectations from public structures are variable,

they are constantly growing. We want to receive information in real time, directly from first hand and in various forms such as text, pictures, videos and the opinions of other inhabitants on social networks.

Offering new opportunities, these new technologies at the same time place great responsibility on media executives and news reporters, as well as governments whose regulatory policies should not impede media pluralism. In addition, the practical implementation of these standards should be based on a reasonable balance between generally recognized norms and features of the history, culture and mentality of the people of each country.

Since the concept for the country is quite new, there is no judicial practice regarding the objectivity of broadcasts from government and court institutions at this point.

What are the benefits of the open justice/open trial concept? The lay people will learn more about the trial and thus, the transparency of the trial increases the credibility of the judicial system as whole.

The negative side of such event could be spam. There are comments and reactions that ordinary people can easily spread on open social networks such as Facebook or Twitter, thereby imposing subjectivity on facts and distorting them.

In total, social networks are very important communication aspect, which unites various strata of the population. Information is spreading faster and isn't tied to the State borders.

In recent years, as number of Internet users have expanded and virtual social networks have penetrated into the real life, the activity of the expert's community has shifted towards social networks. Because of networks, the teams that are responsible for the communication aspect can monitor the information, conducting informational activities of the courts, improving communication with journalists and other target audiences to the correct informational background of the courts.

Studies based on various data for 2018 and 2019 years showed that the most influential have become such social platforms as Facebook, YouTube and Instagram. Currently, more than half of Ukrainians (55%) are users of some social networks, many uses several at once. The largest number of users accounted for Facebook (45%), the next become YouTube (22%) and Instagram (19%).

It should be noted that 86% of Facebook users in Ukraine use this network as a source of socio-political information ("Sotsialni merezhi"

berezen 2019 roku, Research & Breanding Group, spilno z ahentstvom kryzovyykh komunikatsii “NET”).

Based on the above statistics, we can evaluate the level of trust to different SN applications. Accordingly, to predict the level of trust to the posted information.

2. Cross-border challenges of the social media

Before the advent of cyberspace and social networks, active participation in the public sphere was possible only for a small part of the population. With the development of ICT, the situation was changed. Less self-confident or wealthy people can openly express their views incognito or openly by their choice.

From this research we understand that another great feature of the WWW became disintermediation as a great promise of the global web makes information accessible directly for everyone (Gellman, 1996). That means that the Internet has essentially relieved us from needs to depend on the circumstances that attends to the information. Or, if this applies immediately to the public authorities – a person can receive the Information directly from the source.

In the context of issue of the justice, it's reasonable to share the problematic nuances associated with ICT development. One of the features of the WWW is that it has transnational character. The notion is more famous in the global judicial practice as cross-border nature. The CompuServe Case became an excellent example in the World Practice about the appropriating of applying domestic laws to a WWW.

Without going into details, since the outcome is the most important part, which consist of the resonance of the case, the servers of the CompuServe were located in Germany, as the result, were subject to the jurisdiction of this country. The question was the decision fair inherently? How commensurate losses from the domestic law of Germany with losses outside the jurisdiction?

Thus, such a property as network availability entails the need for some localization, since the absence of borders for the WWW limits the possibilities of a fair trial. So, an example of such localization was the Decision of the National Security and Defence Council of Ukraine of April 28, 2017 “On the application of the personal special economic and other restrictive measures (sanctions)” President of Ukraine Decree, Decision №133/2017 of 05.15.2017.

The fact that users from Ukraine had limited access to such social networks as VKontakte or Odnoklasniki caused a lot of controversy and dissatisfaction, primarily the citizens of the country of the jurisdiction. However, this became an example of localizing access to WWW using domestic law.

With regard to Social Media, domestic law could not influence media outside of jurisdiction. Consequently, no matter how the information could regard events or events taking place in Ukraine distorted, they could not subject to the influence of the domestic law of the Ukraine, since they subjected to the jurisdiction of another country.

It is important to note that there is still no universal platform or legislative assistance that would help fully resolve geopolitical disputes about unequal approach to resolving conflicts related to the WWW.

3. E-Governance and mobile applications (The “Diia” case)

E-government includes all activity categories of the government structures, which are formed by information and communication technologies. Furthermore, it is also the ability of the government to fully utilize the potential of ICT to improve interconnectivity between well-known structural controls, such as G2G, G2C, G2B etc. It was a natural sequence of integration processes of ICT into modern life.

The emergence of the concept of e-government has become a decisive breakthrough in public administration in Ukraine in recent years. This led not only to the emergence of new programs, technologies and concepts, but also to the legislative development in this field. The basic objective is to cut the government costs for the implementation of public services, as well as to increase transparency.

Evidently, these are not the only benefits that ICT could provide. After all, it is not only about municipal sites and the provision of public services online. It's related to the level of trust of government actions and to the bureaucracy in general.

The Cabinet of Ministers of Ukraine approved the launch of a pilot project that would make it possible to use electronic drivers' licenses, obliged to be carried with a person, i.e. in a smartphone. This is not an analogue of a driver's license – it is its digital version, which is fully consistent with the information that is registered in the system of the Ministry of Internal Affairs. In addition, the drivers' licence could be used as identification for air and railway passengers. Since the corresponding

decision of the governments has already been put on a plan, the next issue is a technical implementation (Plan roboty Ministerstva tsyfrovoy transformatsii na 2020 rik).

However, the matter of the legislative support of the existing initiative doesn't end, since the bill has remained at the development stage. Another drawback is the issue of personal data protection and the technological equipment of traffic police officers. Does the state have the means to ensure this step?

Nevertheless, at this stage, the application "State and I" (DIIA) is already available to citizens, which has made it possible to implement this project. This mobile application was launched for the trial period on December 16, 2019 ("State and I").

At this Stage, a unified web-portal of electronic services and mobile application has already been created, reorganization and simplification of access to electronic services is underway. On the official web-portal, services, such as registration of personal entrepreneurial services and an electronic user account are available. In the near future, registration of PLC (Private limited company) and the registration of a child will become available. And in the application, not only drivers' licence would available, but also a digital passport.

Of course, there is a question about the protection of personal data. This is not only a technical issue, but also a legislative one. As of March 2020, a draft law of Ukraine on amendments to the law of Ukraine on the protection of information in information and telecommunication systems (regarding the compliance of the information system with information protection requirements) has already been submitted (Proekt zakonu pro vnesennia zmin do Zakonu Ukrainy "Pro zakhyst informatsii v informatsiino-telekomunikatsiynykh systemakh" (shchodo pidtverdzhenia vidpovidnosti informatsiinoi systemy vymoham iz zakhystu informatsii) No. 2043, 2019).

The goal of the Ukrainian state in the future is to provide a 100 percent inclusion of public services in electronic form. It will be the united system of all government departments, which allow citizens to quickly and conveniently receive administrative services (Ministerstvo ta komitet tsyfrovoy transformatsii Ukrainy). This is an extremely important step for Ukraine, since digitalization is the way to eradicate corruption and save time. In the future, it is planned to expand the range of services that can be implemented using this mobile application (G2B and G2C).

In addition, the government considers that the country is at the boundary between the generations, one of which is distrustful to emerging technological implementations. For this purpose educational programs have been created that not only explain why such applications are needed, but also how to use them (Dyvys i vchys).

Conclusion

Social media and mobile application have extensively growing impact upon public administration and its key foundations. The cross-border nature of the Internet has been challenging the legal system for last years. It gave the impetus to the development and improvement of the legal system at all, not only in Ukraine. It's difficult to say that the results meet the requirements if international standards. Nevertheless, the sphere of regulation of information flows in the country has significantly improved.

Political influence in Ukraine poses problems for the development of online media. Blocking, filtering and centring on the one hand serve as an instrument of control, and on the other hand it contradicts the principles of media freedom. Speaking about this, I would like to emphasize that the objective, comprehensive and timely coverage of events and processes taking place in the Ukraine or in the world is the fundamental goal of the functioning of modern Media.

Being the basis of management, the Information today occupies a very important place in our everyday life as citizens. But the wise using of ICT not only from the layman, but also from government agencies will greatly facilitate life and give a new round in the development of citizens' consciousness regarding the management system.

Unfortunately, not only legal difficulties (need to create a functional law, but also technical ones) stand on the way of creating unified platforms designed to implement participation stages (means to involve, inform, empower). The platform should be unified and publicly accessible, the process of registration and identification understandable to citizens. Moreover, regions and areas that don't have access to the Internet or due to the lack of gadgets should be able to exercise their right in especially equipped and intended public areas. So, we need not only to work out the details of the transition to electronic platforms for the implementation of participation stages of citizens in e-democracy, but also exteriorize the plans.

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АНОТАЦІЯ

Смірнова Н.Р. Електронний уряд та соціальні медіа в Україні: глобальні виклики для правового регулювання. – Стаття.

Цю статтю присвячено розглядові основних викликів для правового забезпечення функціонування електронного уряду, що обумовлені сучасною тенденцією широкого застосування соціальних медіа у виконанні різних функцій елект-

ронного уряду. Сучасні розробки у галузі електронного урядування в Україні та її правові рамки використовуються як емпірична база для дослідження. Однак через глобальний характер соціальних медіа виклики, про які йдеться, можуть розглядатися як глобальні або, принаймні, наднаціональні. Найважливішим фактором впливу для перегляду правових норм електронного уряду є необхідність використання існуючих соціальних медіа. Отже, воно ставить питання адаптації певних внутрішніх адміністративних процедур до існуючих рішень ІТС та способу функціонування з дуже обмеженими можливостями уряду впливати на них. Однією з найважливіших сфер використання соціальних медіа для електронного урядування є забезпечення прозорості та доступу до публічної інформації. З цієї метою переглядаються різні моделі веб-рішень та відповідні правила. Крім того, окрема увага приділяється транскордонному характеру соціальних медіа, що стає проблемою їх застосування державними органами. Це набуває великого значення для України, враховуючи критичні загрози кібербезпеці, виявлені у рамках конфлікту між Україною та Росією. Нарешті, іншим викликом для національних електронних урядів є необхідність використання мобільних додатків для надання адміністративних послуг, що також викликає значні проблеми у сфері безпеки через залучення великої кількості зацікавлених сторін. У результаті виникає необхідність трансформувати та переосмислити діючу законодавчу базу з метою забезпечення належного балансу між безпекою і ефективністю та економією державних послуг, що надаються за допомогою ІКТ.

Ключові слова: інформаційні технології, www, управління, публічна інформація, адміністративні послуги, ІКТ, соціальні медіа, електронний уряд.

АННОТАЦИЯ

Смирнова Н.Р. Электронное правительство и социальные медиа в Украине: глобальные вызовы для правового регулирования. – Статья.

Данная статья посвящена рассмотрению основных вызовов для правового обеспечения функционирования электронного правительства, обусловленные современной тенденцией широкого применения социальных медиа в выполнении различных функций электронного правительства. Современные разработки в области электронного управления в Украине и его правовые рамки используются как эмпирическая база для исследования. Однако из-за глобального характера социальных медиа вызовы, о которых идет речь, могут рассматриваться как глобальные или, по крайней мере, наднациональные. Важнейшим фактором влияния на пересмотр правовых норм об электронном правительстве является необходимость использования существующих социальных медиа. Таким образом, оно ставит вопрос адаптации определенных внутренних административных процедур к существующим решениям ИТС и способа функционирования с очень ограниченными возможностями правительства влиять на них. Одной из важнейших сфер использования социальных медиа для электронного управления является обеспечение прозрачности и доступа к публичной информации. С этой целью рассматриваются различные модели веб-решений и соответствующие

правила. Кроме того, особое внимание уделяется трансграничному характеру социальных медиа, что становится проблемой их применения государственными органами. Это приобретает большое значение для Украины, учитывая критические угрозы кибербезопасности, обнаруженные в рамках конфликта между Украиной и Россией. Наконец, другим вызовом для национальных электронных правительств является необходимость использования мобильных приложений для предоставления административных услуг, что также вызывает значительные проблемы в сфере безопасности путем привлечения большого количества заинтересованных сторон. В результате возникает необходимость трансформировать и переосмыслить действующую законодательную базу с целью обеспечения надлежащего баланса между безопасностью и эффективностью и экономией государственных услуг с помощью ИКТ.

Ключевые слова: информационные технологии, www, управление, публичная информация, административные услуги, ИКТ, социальные медиа, электронное правительство.

