



EU INTEGRATION PERSPECTIVES OF THE CANDIDATE COUNTRIES

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PROBLEMS AND PROSPECTS FOR ENSURING DIGITAL HUMAN RIGHTS IN TERMS OF UKRAINE'S EUROPEAN INTEGRATION

Ukraine demonstrated its intent to accede to the European Union as early as the 1990s. The process of rapprochement has been ongoing since 1993, when Ukraine and the EU concluded a written agreement establishing the composition, as well as the mutual immunities and privileges, of their delegations to facilitate further cooperation. Naturally, the state's foreign policy trajectory between 2004 and 2013, which was oriented toward deepening Russian-Ukrainian relations, resulted in a prolonged, latent pause in the European integration processes. Today, however, the aspirations of Ukrainian society to become a part of a civilized European community, founded on democratic values, the rule of law, and human rights have become more evident than ever. In 2022, Ukraine was granted EU candidate status, which necessitates intensified efforts to harmonize Ukrainian legislation with Community law (EU law), particularly in the field of guaranteeing and protecting human rights.

A distinctive feature of Ukraine's European integration is that it is accompanied by rapid digitalization. This necessitates accounting for the latest developments, which we are witnessing firsthand, within the processes of rapprochement with the EU. Specifically, the expanding use of information and communication technologies in both private life and public governance generates the emergence of new human rights designed to mitigate the adverse effects of digitalization. Their recognition and legislative enshrinement constitute one of Ukraine's obligations on its path to EU membership, which stems from the provisions of Title III and Chapter 14 of Title V of the Association Agreement of March 21, 2014, even if not explicitly stated therein (Association Agreement..., 2014). To elucidate the specific features of the process of harmonizing Ukrainian legislation with the regulatory framework of the European Union in the field

of guaranteeing and protecting digital human rights, let us outline the content and characteristic features of this concept.

First and foremost, it is important that the international community has not formulated a definition of digital rights. Furthermore, this concerns not only normative regulation - even within the doctrine of international human rights law, there is no consensus regarding the characteristic features, structural elements, and, in some instances, the legal nature of this category. It is worth noting that scholarly perspectives on the essence of digital rights can be divided into two distinct schools of thought. The former conceptualizes them as a separate, independent group of fourth-generation human rights that emerged with the development of information and communication technologies and can be exercised exclusively within the digital space (Zakharchuk, 2025; Byelov, Peresh & Pokorba, 2024; Tarasenko, 2024). Proponents of the latter approach see no need to single out digital rights as a distinct category, since they merely reflect already recognized, normatively enshrined entitlements with one distinguishing feature: a specific environment for their exercise (Pangrazio & Sefton-Green, 2021; Kartashov, 2024). Drawing on these theories, L. Tarasenko classifies digital rights into two categories: absolute (reflecting the first approach) and relative (which can be exercised both online and offline) (Tarasenko, 2024, p. 127). Evidently, both approaches are sufficiently well-founded, which gives rise to certain challenges in interpreting the legal nature of digital rights.

The authors of this article are largely proponents of the first theory, given that the integration of information technologies into numerous spheres of public life has precipitated irreversible social changes. In light of these transformations, human needs and capabilities, as well as values and worldviews, are undergoing fundamental shifts. As a result, new, previously unknown rights are emerging, designed to protect those interests that have found themselves in a sort of legal vacuum due to the inadequacy or ineffectiveness of existing legal mechanisms. After all, the world is not strictly bound by legal norms; it continuously evolves and transforms irrespective of whether normative regulation is sufficient. Thus, the global community has come to recognize the right to be forgotten, the right to online anonymity, the right to a digital identity, and a range of other rights known today as "digital". At the same time, it would be unjustified to deny the expansion of the scope of existing fundamental human rights and their adaptation to the digital environment. In this context, it is worth mentioning freedom of expression, the right to privacy and secrecy of correspondence, the right to the protection of personal data, and so forth. Although the aforementioned rights crystallized decades ago, today we can clearly identify their digital dimension, driven by the "new" environment or method of their exercise.

In analyzing the concept of digital human rights, it is worth highlighting the significant role of the Council of Europe and the European Union in the process of their regulation. In our previous works, we have already emphasized the special contribution of jurisprudence, which propelled fourth-generation rights to widespread prominence and laid the foundation for their international recognition and normative enshrinement.

It is difficult to dispute the assertion that it is judicial practice that responds most promptly and effectively to the challenges of the modern era. Through the judicial interpretation of the Court of Justice of the European Union and the European Court of Human Rights, the initial security guarantees in the digital space emerged. Furthermore, this interpretation established the scope of specific digital rights, the requirements for the lawfulness of state interference in their exercise, the criteria for proportionality, and the balancing of interests in cases of conflict with fundamental rights, among other aspects (Karvatska, Labyk & Stroich, 2024, p. 430-431). In this article, we aim to outline in greater detail specifically the status and scope of the legislative regulation of digital rights within the European Union.

First and foremost, it should be noted that the foundations of the contemporary normative regulation of rights related to human activity in the digital environment within the EU legal system were laid more than thirty years ago. A significant catalyst for the subsequent development of legal norms in this sphere was the adoption of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of January 28, 1981 (Convention 108). This was the first international instrument to establish clear obligations for State Parties to define, within their domestic legislation, safeguards for the security of every individual's personal data in connection with its automatic processing by both public and private entities. The Convention enshrined the principles of personal data processing, the prohibition of the automatic processing of special categories of data (specifically, concerning an individual's health, racial origin, sex life, or religious or political beliefs) in the absence of adequate safeguards, the rights of the data subject, and the criteria for restricting the established guarantees (Convention 108, 1981). In fact, it was this specific international treaty that provided the impetus for the adoption of supranational acts on analogous issues.

Thus, on October 24, 1995, Directive 95/46/EC of the European Parliament and of the Council "on the protection of individuals with regard to the processing of personal data and on the free movement of such data" was adopted. The text of the Directive contains direct references to Convention 108, as well as the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, which served as the basis for its adoption. One of the prerequisites was also the rapid growth in the scale of cross-border data flows within the European Union, which necessitated additional guarantees and control mechanisms regarding the movement of personal data to ensure the rights of individuals to non-interference in their private lives, as guaranteed by both European and universal international instruments. Notably, certain provisions of Directive 95/46/EC literally repeat the norms of Convention 108 while simultaneously elaborating upon them. Specifically, the rights of the data subject were expanded in the context of access to information about oneself, the right to object to its processing, as well as the right to opt-out of a decision made by an authorized entity based solely on automated data processing. Furthermore, significant attention was paid to the obligations and liability of the data controller (Directive 95/46/EC, 1995).

Directive 97/66/EC of the European Parliament and of the Council "concerning the processing of personal data and the protection of privacy in the telecommunications sector" of December 15, 1997, effectively supplemented the provisions of Directive 95/46/EC within the field of telecommunications and communications. It should be noted that a notable innovation was the extension of its provisions not only to natural persons but also to legal persons. In general, Directive 97/66/EC was designed to regulate relations in the sphere of telephone communications within the Community, which had become widespread at the time of its adoption. It established general boundaries regarding the scope of data processing by telecommunications service providers, safeguards for the protection of subscriber and user information, possibilities for accessing it in specifically defined cases, and so forth (Directive 97/66/EC, 1997). Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), which repealed Directive 97/66/EC, extended its scope not only to the sphere of telephone communications but also to the Internet, thereby adding a new dimension to an individual's right to privacy (Directive 2002/58/EC, 2002).

The examined acts marked the initial phase of the recognition and legal regulation of digital rights. Evidently, they were predominantly dedicated to the pressing issues of the time regarding the protection of individual privacy, particularly in the context of safeguarding personal data, as well as the confidentiality of telephone calls, electronic correspondence, and other available forms of communication. Subsequently, following the adoption of the General Data Protection Regulation (GDPR) in 2016, a significant portion of these acts was repealed.

The entry into force of Regulation (EU) 2016/679 served as a starting point on the path to recognizing the digital human rights known to us today. It demonstrated the undeniable need to regulate new social relations resulting from the continuous processes of digitalization and digital transformation. Because the existing normative acts were unable to fully encompass the digital sphere, users actively engaged in the digital environment faced numerous risks associated with the lack of adequate safeguards for ensuring and protecting their rights specifically in cyberspace. It should be noted that a direct enshrinement of the concept of "digital rights" cannot be found in the GDPR; however, unlike the aforementioned documents, it already clearly outlines or even explicitly names some of them. An example is the "right to erasure ('right to be forgotten')", the content of which is elaborated in Article 17 of the Regulation under the same title. Furthermore, this act enshrines the classic right to the protection of personal data, the right to rectification in the event of inaccuracies, the right to restriction of processing of relevant information, the right to data portability, and also lays the groundwork for recognizing the right to explanation of algorithmic decisions (Regulation (EU) 2016/679, 2016; Labyk, 2025, p. 212).

Turning to the analysis of the most recent acts, it is first and foremost worth mentioning the European Declaration on Digital Rights and Principles for the Digital

Decade (2023/C 23/01) of January 23, 2023. This document demonstrated the recognition by the supranational entity of the fact that digitalization has become an integral part of societal life; therefore, the entire community must make joint efforts to properly guarantee and protect human rights in the digital environment. The Declaration proclaimed the human-centric principle as fundamental in the digital sphere, requiring that the process of digital transformation in the European Union be based on the recognition of universal rights and European values, benefiting both society as a whole and each of its members. Importantly, the Declaration defines the right to access affordable and high-quality internet connectivity on the basis of equality and non-discrimination, the right to education, vocational training, and the continuous improvement of digital skills, the right to access public services online, the right to freedom of expression online, the right to access information, the protection of personal data, and a range of other rights, the exercise of which is tied to the digital environment. Special attention is given to universal access to artificial intelligence technologies and safeguards for individuals' rights in connection with algorithmic decision-making (European Declaration on Digital Rights..., 2023). Thus, the Declaration emerged as a crucial sectoral instrument directly dedicated to digital rights, laying the foundations for the further refinement of their normative regulation.

It should be noted that over the past few years, the European Union has developed a rather extensive system of legal acts in this sphere. Among these, it is worth mentioning the Digital Services Act and the Digital Markets Act, the European Electronic Communications Code, the European Cybersecurity Strategy, the Audiovisual Media Services Directive, and the Open Internet Regulation (Regulation (EU) 2015/2120, 2015; Regulation (EU) 2022/1925, 2022; Regulation (EU) 2022/2065, 2022). The aforementioned acts are designed to regulate the operation of digital platforms, electronic communications, and access to digital services and the Internet as a whole, as well as to ensure protection against cyber fraud and other threats within the digital environment.

Lastly, it is worth noting Regulation (EU) 2024/1689 on artificial intelligence (the AI Act). To date, it most comprehensively regulates the sphere of utilizing machine learning systems and algorithmic decision-making. Regulation 2024/1689 contains provisions concerning prohibited AI practices, criteria for classifying high-risk systems and the requirements applicable to them, as well as obligations regarding the assurance of safety, transparency, provision of information, and the quality of algorithmic systems, along with the monitoring of their operation. Furthermore, it provides for the establishment of an EU database for high-risk AI systems, among other things. However, in the context of the issues examined, the section entitled "Remedies" holds the greatest value for us. This section provides for a range of rights guaranteed by EU Member States to every individual in connection with the use of artificial intelligence systems. Specifically, its provisions enshrine the right to lodge a complaint and the right to an explanation of individual decision-making by high-risk algorithmic systems (Regulation (EU) 2024/1689, 2024). The latter, among others, can be considered a digital right in its

purest form, as its emergence is directly linked to the deployment and active use of AI not only by private entities but also by state authorities or local self-government bodies.

Turning to the analysis of Ukraine's experience, it should be noted that the category of digital rights as such remains unknown to Ukrainian legislation: in none of the current regulatory acts can we find either a definition or, indeed, the term itself. Nevertheless, certain documents contain such concepts as "digital things," "digital content," or "digital environment" (Tarasenko, 2024, p. 126). Undoubtedly, it would be unfair to deny Ukraine's substantial progress in the context of implementing information and communication technologies within the sphere of public administration. A striking example is the functioning of the "Diia" web portal (and mobile application), through which every citizen can access a wide range of public services without leaving their home. Ukraine became the first country in the world to grant digital documents the same legal standing as paper ones. As of 2026, the country ranks first in the world for fixed broadband stability, and 97% of its territory is covered by 4G (Interfax-Ukraine, 2026). These and many other examples attest to the continuous processes of digital transformation designed to make the state more accessible to its citizens, reduce protracted bureaucratic procedures, and ensure a qualitatively new level of interaction between society and governing institutions.

At the same time, the insufficiency of regulatory framework can significantly diminish the successes of implementing such initiatives, as the absence of guarantees and adequate mechanisms for the protection of digital rights may lead to abuses by public officials or the private sector, service inefficiency, or a refusal to use them. Overall, the legal regulation of this sphere currently remains fragmented and inadequate in light of new challenges. Thus, the existing normative acts regulate only specific narrow fields. For instance, the Law of Ukraine "On Personal Data Protection" № 2297-VI of June 1, 2010, is dedicated to the processing and protection of individuals' personal data. Despite the fact that its provisions were quite progressive at the time of its adoption, in today's reality, gaps in the regulation of certain relations in this sphere are evident. This is evidenced by the vast number of changes and amendments made to its provisions since 2010. For example, Law No. 2297-VI bypasses the issue of data protection for legal persons, unlike the aforementioned acts of the European Union. Furthermore, despite enshrining the right to protection against automated decision-making that carries legal consequences for the data subject, the Law does not establish adequate mechanisms for the exercise of this right. The terminology used in this regulatory act also requires harmonization with EU law (Law № 2297-VI, 2010). Other legislative acts, such as the Civil Code of Ukraine of January 16, 2003, or the Law of Ukraine "On Information" No. 2657-XII of October 2, 1992, also limit themselves to guaranteeing traditional rights that effectively extend their scope to the digital space (for example, the right to freedom of expression, the right to information, the right to protection of privacy, and the confidentiality of correspondence, etc.). More progressive in this field is the Law of Ukraine "On Electronic Identification and Electronic Trust Services" № 2155-VIII of October 5, 2017, which enshrines a number of individual rights related to electronic identification, specifically the right to

receive relevant services and freely use their results, the sole control over the use of the digital identity wallet, the right to appeal the decisions of the service provider, and the right to compensation for damages (Law № 2155-VIII, 2017). Despite the obvious progress in the digital sphere, domestic legislation lacks the normative regulation of a significant number of digital human rights that are already being actively implemented by European Union member states. These include the right to digital identity, the right to anonymity in the digital space, the right to be forgotten, the right to access high-quality Internet, the right to an explanation of algorithmic decisions, the right to a secure digital environment, and others.

It is worth noting that the practice of Ukrainian courts also indicates the need for corresponding amendments. Thus, in the ruling of the Lviv Court of Appeal of December 10, 2020, in case No. 464/2809/19, which overturned the decision of the court of first instance, the court left without consideration a statement of claim by an individual against Google LLC regarding the removal of inaccurate information about themselves. Notably, the claimant cited the right to be forgotten guaranteed by the GDPR to substantiate their claims. While the court recognized a subject's possibility to demand the erasure of certain information about themselves, it refused to consider the plaintiff's application due to the lack of an adequate procedure for identifying the responsible parties (Resolution of the Lviv Court of Appeal, 2020). In this case, the gap in regulatory framework is evident, as a result of which the individual was unable to effectively exercise their right while entering into relations that are not regulated by domestic legislation.

In addition to the inability to protect one's rights, the insufficiency of regulatory framework also results in a lack of understanding of important legal concepts. In particular, in the ruling of the Zhovtnevyi District Court of Dnipropetrovsk of May 25, 2023, in case No. 2-10231/11, we can observe a substitution of terms. Thus, the applicant refers to the "right to be forgotten," yet from the context of the claims, an error in the understanding of this right becomes evident, as the applicant interprets it as the right to be released from liability due to the expiration of the limitation period for initiating legal proceedings (Decision of the Zhovtnevy District Court of Dnipropetrovsk, 2023).

Summarizing all the above, it should be noted that the rapid development of information and communication technologies has brought about irreversible social changes that require the enshrinement of new, specific human rights (the right to be forgotten, anonymity, digital identity, explanation of algorithmic decisions, etc.). Their recognition at both the doctrinal and legislative levels is the first essential step toward their effective protection. Despite our state's leading positions in the sphere of providing e-government services and the high level of internet coverage, the domestic regulatory framework remains fragmented. It predominantly relies on outdated norms that regulate traditional rights in the digital environment, rather than creating a comprehensive mechanism for the protection of emerging digital rights. The European Union has already established a robust legal framework based on the principle of human-centricity. Ukraine's attainment of EU candidate status requires not merely sporadic changes but the

systemic implementation of European directives and regulations into national legislation. Guaranteeing digital human rights must become one of the priority vectors of Ukraine's state policy.

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