

# IMPLEMENTATION OF THE PRINCIPLES OF ADMINISTRATIVE PROCEDURE IN THE PROVISION OF DIGITAL PUBLIC SERVICES: EU EXPERIENCE AND UKRAINIAN PRACTICE

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**Abstract.** The article is devoted to the implementation of the principles of administrative procedure in the provision of digital public services, focusing on the experience of EU countries and Ukrainian practice. The *purpose* of the study is to analyse the application of administrative procedural principles in the provision of digital public services, to assess the effectiveness of their implementation and to draw lessons for improving digital public services. The *subject* of the study is the search for ways to improve Ukrainian legislation on the administrative procedure of providing digital government services in accordance with the standards of EU countries. *Methodology.* The study uses general and special methods of scientific cognition. The method of analysis and synthesis makes it possible to analyse EU legislation and standards, national legislation, data from international official ratings, scientific publications, strategies and expert reviews in order to identify specific features of digital governance systems in EU countries. The comparative legal method makes it possible to see the main trends in the development of digital government initiatives, to outline the main directions and vectors of their implementation, and also to highlight the Ukrainian context of digital transformation and e-government initiatives with EU countries and. The systems method allows for a comprehensive study of the principles of administrative procedure, such as transparency, accessibility, efficiency and user-centredness, in the provision of digital public services in the context of digital governance. The comparative analysis method highlights the specifics of legal regulation of digital innovations in public administration in EU countries as well as in Estonia, Germany and Poland. *Results.* It has been established that EU countries have made significant progress in integrating the principles of administrative procedures into the provision of digital services, which has led to increased efficiency, user satisfaction and trust in public services. Ukrainian practice shows progress in aligning with these principles, with notable progress in expanding the availability of e-services and increasing automation. However, challenges remain in relation to ethical and legal frameworks, data protection and copyright issues in the use of digital technologies. This study contributes to the understanding of best practices in this area and offers practical recommendations for the further development of digital public services in Ukraine.

**Key words:** administrative procedure, digital transformation, public services, automatic solutions, foreign experience, EU countries.

**JEL Classification:** D73, F31

## 1. Introduction

In the extremely difficult conditions of martial law, Ukraine continues on the path of digital transformation and improvement of public services for citizens, as well as the implementation of e-government initiatives. According to the international Open Data in Europe rating, Ukraine took

the 2nd place in the Open Data rating of 2022 (The official portal for European data, Open Data in Europe, 2022). Web accessibility of public administration websites is increasing (Web accessibility of websites of state authorities, 2023). The implementation of digital government initiatives is mainly focused on the introduction of effective

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digital services for citizens. Recently, the Ministry of Digital Transformation declared that the list of e-services for citizens in Ukraine has been significantly expanded. In particular, about 30 services are available in electronic form (The first ever Diia in DC summit: in the USA Mykhailo Fedorov presented the achievements of digital transformation of Ukraine, 2023), including those for citizens who suffered as a result of the war. For example, assigning the status of internally displaced persons, reporting damaged property, establishing the status of unemployed for people who lost their jobs as a result of the war.

A high degree of automation of public services is a significant advantage for citizens and corresponds to modern trends in the development of digital government. According to research by the Organisation for Economic Co-operation and Development (OECD), digital government is a new evolutionary stage in the development of e-government as a result of deepening digitalisation and improving digital technologies. Electronic government (e-government) refers to the use of information and communication technologies (ICT), particularly the Internet, by governments as a tool for better governance. Digital government integrates digital technologies into processes and uses them as an integral part of government activities. This approach does not allow all processes to be digitised, but rather to automate them and eliminate those that are unnecessary.

A fully digital government must be based on digital technologies (digital by design), guided by data in policy making and implementation (data-driven), act as a platform (government as platform), be open (open by default), human-centred (user-centred) and proactive (proactiveness) (Recommendation of the Council on Digital Government Strategies, 2014). Specific research has shown that digital government initiatives are developing in the following directions: 1) the development of digital procedures and virtual government services; 2) the use of digital technologies for timely and effective communication with society, strengthening the control of society through digital technologies; 3) the implementation of public administration based on partnership, openness and inclusiveness, which is provided by digital technologies (Embracing Innovation in Government Global Trends, 2020). Thus, government digital services become the centre of interaction between the government and citizens in the conditions of the development of digital technologies.

However, technologies do not stand still, but continue to develop rapidly. Today, technologies such as artificial intelligence, cloud technologies, big data, blockchain and NTF are having an unprecedented impact on the economy, education and

everyday life. According to cutting-edge research, governments can also use artificial intelligence to develop better policies and make better decisions, improve communication and interaction with citizens and residents, and improve the quality of public services (Artificial intelligence and its use in the public sector, 2019). Artificial intelligence technologies make it possible to significantly increase the automation of public services. Already today, a certain part of the public services of the Ukrainian government is provided fully automatically, based on the interaction of digital technologies, without the involvement of an official of the administrative body. However, in addition to its advantages, the use of automated solutions based on artificial intelligence technologies by the government in the field of public services also poses certain challenges. In particular, there is a need to create an ethical and fair legal framework for the use of digital technologies and the protection of personal data (for example, when using AI-based resources).

Therefore, the purpose of the study is to analyse the application of administrative procedural principles such as efficiency, presumption of legitimacy of a person's actions, officiality, guaranteeing a person's right to participate in administrative proceedings, effective remedies in the provision of digital public services, assess the effectiveness of their implementation and draw lessons for improving digital public services.

## **2. Legal Regulation of the Procedure for Providing Digital Public Services in Ukraine**

In Ukraine, several digital public services have been introduced, where the administrative procedure is fully automated, i.e., there is no provision for the involvement of an official of the administrative body in the consideration of the case. The decision is made on the basis of the interaction of electronic communication systems and data from public registers. The service in question is the automatic registration of a natural person as an entrepreneur (registration of a sole proprietorship). In many such cases, the provision of digital public services, which involve automatic decision-making based on the information provided by the applicant and data from registers, without the participation of an official, is considered an effective and quick way of solving citizens' administrative cases and one of the ways of fighting corruption.

In Ukraine, digital transformation, including public services, received a special legal regulation, separate from the general regulation of the sphere of administrative procedures. As a result, electronic public services and the procedure for their provision are regulated by separate procedures that apply only to a specific service. Since the Law of Ukraine "On Administrative Procedure" will come into force

in Ukraine only at the end of 2023 (2022), the general legal acts for the whole field of e-services in the public sphere are the Law of Ukraine "On Peculiarities of Providing Public (Electronic Public) Services" (2021) and the Resolution of the Cabinet of Ministers of Ukraine of 5 August 2022 No. 868 "On Approval of the Procedure for the Provision of Electronic Public Services in Automatic Mode" (2022).

Certain types of electronic public services are regulated by special regulations. In particular, the state registration of an individual entrepreneur in automatic mode is regulated by a separate Order of the Ministry of Digital Transformation of 14 July 2022 No. 2933/5/66 "On Approval of the Procedure for the Provision of Electronic Public Services in the Field of State Registration of Legal Entities and Individual Entrepreneurs in Automatic Mode" (2022). Thus, the regulatory and legal regulation of digital public services in automatic mode is a complex system of acts that aims to establish the legal framework and methods of applying digital technologies for the provision of public services, but does not take into account the general standards of administrative procedure and does not provide general guarantees of the rights of participants in the administrative procedure.

In accordance with Article 1 of the Law of Ukraine "On Peculiarities of Providing Public (Electronic Public) Services" (2021), the automatic mode of provision of electronic public service is provision of electronic public service by means of software of information and telecommunication systems without additional processing by the subject of provision of electronic public service in real time or with a suspensive condition on the basis of a request (appeal, request) of the subject of the request, including one submitted in electronic form using information and telecommunication systems (using the Unified State Web Portal of Electronic Services (Issues of the Unified State Web Portal of Electronic Services and the Unified State Portal of Administrative Services, 2019)). This means that the electronic public service is provided automatically, without the participation of an official of the administrative body responsible for solving the given set of problems. Thus, the provision of electronic services in automatic mode involves the automatic processing of data and, consequently, an administrative decision.

It is equally important to comply with European standards for the protection of personal data in the provision of automated public services. It is important to emphasise that legislation, both international and national, requires that such data processing be carried out in accordance with the principles and standards in this field. Therefore, in accordance with the requirements of the Resolution

of the Cabinet of Ministers of Ukraine of 5 August 2022, No. 868 "On Approval of the Procedure for the Provision of Electronic Public Services in Automatic Mode" (2022), the processing of personal data of the applicants necessary for receiving electronic public services in automatic mode is carried out in compliance with the requirements of legislation in the field of personal data protection.

The problem remains that the provisions of the Law of Ukraine "On Protection of Personal Data" (2010), adopted in 2010, largely fall short of current EU standards in the field of personal data protection. The General Data Protection Regulation in the EU, GDPR, was adopted in 2016 and came into force in 2018 (Regulation (EU) 2016/679 of the European Parliament and of the Council, 2016). This law affects the work of all public institutions, non-governmental organisations and companies in the EU. It requires that any processing of personal data must be legal and lawful. Individuals should be aware that their personal data are being collected, used, discussed or otherwise processed, and to what extent personal data are or will be processed. The principle of transparency requires that all information and notices relating to the processing of such personal data be accessible and understandable, using clear and simple language.

The new edition of the Law of Ukraine "On the Protection of Personal Data", which is intended to bring Ukrainian legislation in the field of personal data protection in line with EU standards, has not yet been adopted. As a result, there is a high risk of violation of the rights of individuals in the area of personal data during the automatic processing of data related to the provision of automated electronic public services.

### **3. Responsibility of the Administrative Body for the Provision of Digital Public Services**

An important aspect of the legal regulation of automatic electronic public services is the establishment of a clear responsibility of the administrative body, which is competent to resolve a specific case, for the content of the decision made automatically. At the same time, in the case of a negative decision based on automatic data processing in the provision of a public service, the person should be guaranteed the right to appeal and be provided with information on the possibilities of appeal and ways of protecting his or her rights. Cases in which a negative decision was issued as a result of a technical error, such as incorrect information in databases, etc. also need to be resolved. However, the current Ukrainian legislation does not contain clear legal regulations on the distribution of responsibility for the content of automatic decisions

in the provision of administrative services. Consider, for example, the digitalised procedure for the state registration of a natural person as an entrepreneur.

In accordance with the provisions of the Law of Ukraine "On Peculiarities of Provision of Public (Electronic Public) Services" (2021), the state registration of a natural person by an entrepreneur is carried out without the participation of the state registrar, in automatic mode. The procedure includes: identification and authentication of a person by means of an integrated electronic identification system, an electronic signature based on a qualified electronic signature certificate; creation by the applicant through the "Diia" portal. After the application and documents (in the cases provided for by the law) have been prepared via the Diia portal and electronically signed, the package of documents is blocked for processing and transferred to the Single State Register for state registration. The software of the Unified State Register performs 1) state registration in automatic mode without the participation of the state registrar by making a corresponding entry in the Unified State Register; 2) automatic generation of an access code to the results of providing an electronic public service from the state registration with subsequent sending to the Diia portal to ensure appropriate access for the applicant.

The regulation of the legal consequences of the adoption of a negative decision is carried out in accordance with clause 13 of the Order of the Ministry of Digital Transformation of 14 July 2022 No. 2933/S/66 "On Approval of the Procedure for the Provision of Electronic Public Services in the Field of State Registration of Legal Entities and Individual Entrepreneurs in Automatic Mode" (2022). In accordance with the said provision, the act of registration in the Unified State Register carried out in automatic mode shall be considered the act of the technical administrator of the Unified State Register and shall be subject to appeal to the court or to the Ministry of Justice of Ukraine in the manner prescribed by law, including in case of detection of an error in the information of the Unified State Register of the State Register of the incorrect transfer of information from the submitted application to it.

It is obvious that through the prism of the principle of ensuring effective means of protection of a person in administrative proceedings, it is insufficient. It is appropriate to make a legal distinction between the legal consequences of a negative decision based on the results of the automatic electronic service and the corresponding procedure. Thus, if it is a question of an error related to the incorrect transfer of information from the submitted application to the registers, then the principle of officiality should apply, on the basis of which the administrative body can indepen-

dently remedy the indicated deficiencies. In this case, a negative decision on the person shall not be taken.

Analysing the General Procedure for the Provision of Electronic Public Services, approved by Resolution of the Cabinet of Ministers of Ukraine of 5 August 2022 No. 868 (2022), it is concluded that this act also does not fully regulate the relevant legal norms regarding the determination of legal consequences of negative decisions as a result of the automatic provision of electronic public services. Thus, in accordance with the provisions of the abovementioned Law, it is established that the formation of applications (appeals, requests) through the "Diia" portal shall be terminated if the information specified in the application: 1) is not provided in full; 2) does not meet the requirements of arithmetic and format-logical control; 3) does not correspond to the information obtained through the "Diia" portal from information and communication systems, the owners of which are the competent state authorities or local self-government bodies (hereinafter – information and communication systems). However, the legal consequences for the person are not indicated. It is also noted that the subjects of the application are responsible for the authenticity of the information contained in the applications (appeals, requests).

Thus, the legal regulation of automatic electronic public services is imperfect, as it does not contain clear guarantees of individual rights during the implementation of an administrative procedure in automatic mode. There is a need to ensure the submission of additional documents, the correction of errors and the provision of effective protection methods. At the level of general legislation in the field of digital public services, it is important to determine the cases in which it is not allowed to consider a case on the basis of automatic data processing (for example, in atypical cases or in the presence of discretionary powers of an administrative body).

The legal regulation of digital public services should clearly establish the following guarantees of human rights when making automated decisions: 1) decisions made in the course of providing automated public services that violate the rights of an individual or are negative for him or her must have a legal basis; 2) automation cannot influence the outcome of the decision; 3) a person should be guaranteed the right to appropriate remedies if an automatic decision violates his/her rights, freedoms or interests; 4) in cases where it is necessary, a person's right to be heard should be guaranteed; 5) proactive services should also be regulated by a special provision of the law, and a person should be able to refuse such services to ensure respect for his/her dignity.

#### 4. Digital Public Service Provision in EU Countries

In contrast to Ukraine's experience, the countries of the European Union have established clear and understandable rules of administrative procedure based on legally established requirements. In the conditions of digitalisation, the rules of administrative procedure in the EU countries have been reviewed and adapted to the new digital requirements. To this end, in recent years in many EU member states (and not only) general acts (codes or laws) on administrative procedure have been updated specifically in the direction of ensuring electronic administration (Shkolyk, 2020: 244).

In this respect, the experience of Estonia, which is considered a trendsetter in digital innovation in public administration, is useful. In order to clearly regulate automatic administrative procedures, a draft law on amendments to the Law "On Administrative Procedure" was prepared in 2020 in this country. The draft law establishes the general legal basis for the automatic administrative procedure, as well as for issuing an automatic administrative act or taking an action without the intervention of an official or an employee acting on behalf of an administrative body. In June 2022, the draft was submitted to the Parliament. This draft law contains the following main provisions (The Law "On Amendments to the Law 'On Administrative Procedures' and Amendments to Other Related Laws", 2022) on the automation of administrative procedures. In particular, 1) automation is in the interests of both the individual and society, as it reduces and facilitates administration time; 2) the legal provision that is the basis for the decision does not provide for the right of discretion or such a right is defined in detail; 3) the legal provision that is the basis for the decision does not contain an undefined legal concept or its content is unambiguous and generally known; 4) there is sufficient information, there is no need to listen to opinions and objections; 5) the decision-making procedure is predictable and understandable for the person; 6) the rights and interests of third parties and interested parties are not violated. This draft law also clearly establishes the legal prescription regarding the responsibility of the administrative body for the content of the administrative act issued automatically.

As far as the German experience is concerned, according to the Digital Economy and Society Index (DESI 2019), Germany is one of the countries that have successfully implemented the digitalisation reform and the creation of a digital government. The basis for the digitalisation of the German government was laid down in Article 91c of the Basic Law, which stipulates that the Federal Government and the

Länder may cooperate in the planning, creation and use of the information technology system necessary for the performance of their tasks. This provision has been further developed by the E-Government Act, which includes access to electronic information, online payments via SEPA Direct Debit, e-filing, online publication of regulations, open data and the replacement of the written form by the public e-mail service (De-Mail) and access to the Internet via eID (electronic identification) (Mergel, 2021: 331). At present, a considerable number of regulatory legal acts in Germany, which maintain the requirement for paper documents, handwritten signatures, etc., do not allow for the digitisation of public services. To solve this problem, the German government has adopted the concept of digital reform of public services, according to which 575 public services will be provided electronically by the end of 2022. Another project is the National Portal Network, which will provide access to the sixteen administrative websites of the Länder and their municipalities, ensuring interaction between the three levels of government and equal access to all digital services. For authentication in the portal network, user accounts will be created for citizens and business users to access digital government services (Mergel, 2019).

In Poland, the introduction of digital government and the provision of public services in electronic form began after the COVID19 pandemic. Whereas in 2006 only a few public services were available electronically, in recent years almost all public services have been made available electronically on the Electronic Platform of Public Administration Services, including: 1) personal data (obtaining an ID card, checking data in the Identification Data Register (online service), obtaining data from the Identification Data Register, extracts from permanent residence, obtaining a driver's license, etc.); 2) transport (registration and registration of vehicles, payment of fines online, appeal against fines, etc.); 3) family and marriage (obtaining a copy of a civil status record (birth, marriage, death) (online service), obtaining a certificate of marital status (online service), photographing (photocopying) a paper civil status record), registering a child for kindergarten, obtaining a child's birth certificate (online service), changing a surname, etc.); 4) real estate and construction (obtaining a permit to build a house, obtaining a permit to cut down trees, obtaining an extract of immovable and movable property, encumbrance of immovable property, etc.); 5) benefits and material support (obtaining a disability pension, receiving an electricity subsidy, gaining support for the care of a sick child, getting support for the care of a sick child, etc.). The significant rate of development of electronic public services has contributed to transparency and accountability in the public sector.

According to the E-Government Development Index 2020 (EDGI), Poland ranked 24th out of 193 countries in the world (EDGI, 2020), and according to the DESI Index for 2021, Poland ranked 24th out of 27 EU countries in the criterion of digitalisation of public life (DESI, 2021). This shows that the countries of the European Union are characterised by improved information systems and advanced digitalisation of public services, which promotes cooperation with civil society and is an important component of the development of e-government.

## 5. Conclusions

The results of the study allowed to identify the main areas of improvement of the national legislation on legal support of digital public services in Ukraine. Urgent steps in this area should be the

consolidation of guarantees of a person's rights during the adoption of automatic decisions: in particular, regarding the clear formulation of legal grounds for negative decisions for a person, guaranteeing the right to appropriate means of protection if an automatic decision violates his rights, freedoms or interests; in cases where it is necessary, the right of a person to be heard must be guaranteed.

At the level of general legislation in the field of electronic public services, it is important to determine the cases in which it is not allowed to consider a case based on automatic data processing (for example, in atypical cases or in the presence of discretionary powers of an administrative body). An important area for improving the legislation on automatic digital services is to bring the rules on the processing of personal data, which are widely used in the provision of automatic public services, into line with European standards.

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