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Constitutional right to the Internet and digital governance in Georgia*

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Summary. E-government uses information and telecommunication technologies to make public services available electronically to various stakeholders. It also aims to improve democratisation and leads to the construction of an information society. Such projects – aimed at modernising public administration activities are also undertaken in Georgia. The related issues of access to and use of the internet have been elevated to the status of one of the fundamental rights. Indeed, a provision establishing the right to access and use the internet was introduced in the Georgian Constitution in 2017. At the same time, a number of initiatives have been taken to support and develop e-government, such as the introduction of the possibility to use the electronic apostille clause or the implementation of numerous e-service portals. The benefits have undoubtedly been that the automation of processes has reduced the likelihood of ‘human error’ and the scope for the use of broad discretionary powers by public officials has become much narrower. In this context, the reduction of corruption and abuse by officials is undoubtedly one of the many benefits of the larger-scale implementation of digitalisation in Georgia.

Konstytucyjne prawo do internetu i administracja cyfrowa w Gruzji

Słowa kluczowe: e-administracja w Gruzji, konstytucyjne prawo do Internetu

Streszczenie. Administracja elektroniczna wykorzystuje technologie informatyczne i telekomunikacyjne w celu udostępnienia różnym interesariuszom drogą elektroniczną usług publicznych. Ma ona na celu również poprawę demokratyzacji i prowadzi do zbudowania społeczeństwa informacyjnego. Tego rodzaju przedsięwzięcia – mające na celu unowocześnienie działań administracji publicznej – są również podejmowane w Gruzji. Wiążące się z tym kwestie związane z dostępem i korzystaniem z Internetu zostały podniesione do rangi jednego z podstawowych praw. W Gruzjińskiej Konstytucji bowiem w 2017 r. wprowadzono przepis ustanawiający prawo dostępu i korzystania z Internetu.

* This publication has been prepared based on materials collected during a research internship in September 2022 at Ilia State University, Alte University and Georgian-American University in Tbilisi and searches carried out in the libraries of these universities, as well as on the basis of consultations with academics at the mentioned research centres.

Jednocześnie podjęto szereg inicjatyw wspierających i rozwijających e-administracji, choćby poprzez wprowadzenie możliwości korzystania z elektronicznej klauzuli apostille czy wdrożenia licznych portali e-usług. Korzyściami było niewątpliwie to, że automatyzacja procesów zmniejszyła prawdopodobieństwo popełnienia „błędu ludzkiego”, a zakres korzystania z szerokich uprawnień uznaniowych przez urzędników publicznych stał się znacznie węższy. W tym kontekście ograniczenie korupcji i nadużyć ze strony urzędników to niewątpliwie jeden z wielu benefitów wdrożenia na większą skalę cyfryzacji w Gruzji.

Public administration reforms in Georgia in the context of digitisation

Georgia is a young democracy. Since the collapse of the Soviet Union, the country has gone through a long and turbulent road of political and systemic change¹. The Georgian Rose Revolution of 2003 helped identify key economic challenges and public sector reforms and paved the way for a more efficient public sector. Starting in 2003, a series of reforms in Georgia's public administration and government system were announced, launched and implemented. In 2008, this process was interrupted by war and aggression from Russia. During this time, brutal hacking attacks took place. As a result, in addition to territory, cyberspace was seized and all important government electronic services and websites were shut down².

Three years later, in 2011, Georgia joined the Open Government Partnership (OGP) project and began to electronically implement an action plan for the introduction of digital services, as reflected in the country's e-services development index.

In early 2019, the Georgian government declared the development of a universal platform for digital municipal services as one of its priorities. Although the country's capital Tbilisi and several major cities in Georgia had long provided e-services to citizens and businesses modern digital technologies remained out of reach in rural areas. At the time, the Covid-19 pandemic revealed and strengthened the role of digital administration. This became the impetus for the launch of a project to digitise 17 different municipal services covering, among other things, the submission of applications for various permits and services such as waste management, social and health care. The digitisation of public services in Georgia was part of a larger Regional and Urban Infrastructure Development project, co-financed by

¹ See more extensively R. Czachor, *Local government reforms in the democratisation process of Georgia, Local communities as sites of change. Theory and Practice*, Polkowice 2015, pp. 176 et seq.

² See more extensively on public administration reforms in Georgia K. Tskhadadze, *Development of the administrative law in Georgia*, "Administrativne Prawo i Process" 2019, no. 2 (25), pp. 29 and n.; K. Tskhadadze, *Good Governance – Constitutional Guarantees of The Basic Right Within the Framework of the Constitutional Reform Implemented in Georgia*, "Constitutional Law Review" 2018, Vol. 10, Iss. 11, pages. 42–47.

SDC, the World Bank and the Government of Georgia, with a total budget of CHF 5609000³.

The fundamental right to access and use the internet

The Internet has been around since the 1960s. It has been a revolutionising factor in the sphere of human communication. It is recognised as one of the most powerful instruments of the 21st century for accessing information and facilitating the active participation of citizens in building democratic societies. The Internet stimulates economic, social and political development and contributes to the progress of humanity as a whole. The universal right of access to the Internet, is an expression of the position that this access contributes to the exercise and enjoyment of citizens' rights to freedom of expression and opinion-formation and other fundamental human rights. The realisation of this right boils down to the state's obligation to provide broad access to the internet and not to unreasonably restrict an individual's access to the internet.

It is obvious that the spread of digital services in the area of administration directly depends primarily on the availability of Internet access. On the other hand, no less important are the skills of the population in this area, which immediately brings to mind a certain degree of exclusion of older people from those who can use e-services. Younger generations are more likely to use the Internet. It is estimated that 94.6% of 15 to 24-year-olds use the internet daily or almost daily, while only 83% of Georgians aged 60 or older use it daily or almost daily. According to the National Statistical Office, although mobile internet usage in regions outside the capital is relatively high, 84.5% of Georgians living in rural areas use the internet daily, compared to 92.2% of urban residents. Fibre optic infrastructure is under-developed in regions outside the capital, which affects the quality of connections. Development is hampered by the perceived low revenue potential of infrastructure construction projects, as well as the complicated bureaucratic requirements for obtaining permission to start construction work⁴.

According to paragraph 4, added to Article 17 of the Constitution of Georgia in 2018, every citizen of Georgia is guaranteed the right to access and freely use the internet ("everyone has the right to access and freely use the internet")⁵.

³ <https://www.fdfa.admin.ch/countries/georgia/en/home/news/news.html/content/countries/georgia/en/meta/news/2021/august/stepping-up-efforts-for-e-governance-in-georgia> [accessed 29.06.2023].

⁴ <https://freedomhouse.org/country/georgia/freedom-net/2019> [accessed 27.06.2023].

⁵ <https://matsne.gov.ge/en/document/view/30346?publication=36> [accessed 30.06.2023].

Furthermore, paragraph 7 of the same article stipulates the need to guarantee the financial and institutional independence of the body established to protect the rights of consumers and entrepreneurs in electronic communications. According to this provision,

[...] the institutional and financial independence of the national regulatory authority – established to protect media pluralism and the exercise of freedom of expression in the mass media, to prevent the monopolisation of the mass media or the means of disseminating information, and to protect the rights of consumers and entrepreneurs in the media field of broadcasting and electronic communications – shall be guaranteed by law⁶.

The provision of Article 17(4) of the Constitution of Georgia identifies two protected areas. One is ‘access to the Internet’ and the other is the ‘right to use the Internet freely’. The right to free access to the internet can be seen as the state’s obligation to facilitate the development of the internet through the implementation of appropriate standards and economic measures. According to a 2021 Caucasus Research Resource Centre (CRRC) survey, 66% of respondents in Georgia use the internet every day. What’s more, this number is increasing every year⁷.

E-government services in Georgia

E-government services, also referred to as digital services, are a type of service provided by an administration to its citizens via the internet through government websites. E-services provide citizens with the opportunity to interact with various government departments and divisions (including municipal services) via the internet. Their aim is to ensure better, more effective and efficient service delivery and to facilitate access to different types of services not only for citizens⁸.

E-government services have the advantage of reducing operational costs and providing direct communication between citizens, businesses and public government organisations. Implemented in Georgia, the project called ‘Electronic Services for Citizens’ aimed to develop and implement online services for issuing passports, identity and residence cards, marriages, divorces.

⁶ <https://idfi.ge/public/upload/Analysis/EnG-idfi%20-%20web-compressed.pdf> [accessed 30.06.2023].

⁷ <https://gnomonwise.ug.edu.ge/public/storage/publications/November2022/jvxeLDN0Y9Nun2jknlFX.pdf> [accessed 30.06.2023].

⁸ For more on the digitisation of investment processes in Georgia, see L. Staniszewska, *Digitization of the construction process in Polish and Georgian Law*, “Dyskurs Prawniczy i Administracyjny” 2022, No. 2, pp. 73 et seq.

E-ID card in Georgia

It has been more than a decade since the Ministry of Justice of Georgia initiated the issuance of a new identity card in Georgia. As a result of this initiative, the new ID card has been issued in Georgia since 1 August 2011. The ID card is the primary electronic identity document that proves a person's citizenship and identity. The ID card is a technologically advanced electronic identity document that is highly secure and therefore difficult to counterfeit. It contains electronic information in the form of an electronic copy of the data visualised on the card. The ID card is also equipped with online authentication capabilities and a digital signature, both of which can be used by the ID card reader as the holder wishes. All e-government services that relate to the submission of applications require such authentication and digital signature.

Portal for electronic services

A coordinated approach to digital investment has led to the creation of the Georgian Government Gateway data sharing infrastructure. A government cloud-based infrastructure has been established, which provides services to other public and private sector institutions. The government uses a number of infrastructure systems for its digital platforms, such as a document management system and human resource management systems. In addition, a digital signature infrastructure is in place (certification authority, e-ID card), the implementation of which was dictated by reducing manipulation of official document flows, reducing opportunities for corruption and increasing trust in government⁹.

My Gov

The Unified Electronic Services Portal www.my.gov.ge was launched by the government in 2012 as an innovative service delivery and e-governance tool. Public demand for this one-stop marketplace, where all services are available at the click of a button, has shown slow but steady growth in recent years, mainly due to systemic reforms of public services in Georgia and a growing number of internet users in both urban and rural areas. The aim of creating a unified digital portal was to consolidate the digital infrastructure based on European principles of free and fair competition, to maximise access to services via the internet and the electronic

⁹ <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://thedocs.worldbank.org/en/doc/bd555a478d4a4a63acc0739084838b20-0350062022/original/GovTech-Case-Studies-Georgia-Promoting-Digital-Transformation-through-GovTech.pdf> [accessed 28.06.2023].

ID card and to deliver them in a flexible and transparent way, with time and additional cost savings.

The Unified Electronic Services Portal www.my.gov.ge holds a leading position among Georgia's online resources as one of the most visited government websites. In 2020 alone, the use of services available on the site increased by 40 per cent and the number of daily visits reached 30,000.

The secret to this success is that www.my.gov.ge provides citizens and businesses with much-needed access to electronic services, covering a range of areas from applying for ID cards and passports to renewing company documents or land titles.

Newly added services, including an innovative way of verifying official documents through e-Apostille, have been integrated into the web portal with support from the United Nations Programme. The UNDP support is part of a wider UK-funded programme that is helping Georgia to accelerate public administration reform at all levels of government. During the pandemic, this support focused on promoting electronic service delivery for citizens and civil servants, helping the public sector to adapt to new realities¹⁰.

Other e-service portals in Georgia

In addition to www.my.gov.ge, there are several other websites in Georgia that also offer important e-services. These include:

- www.rs.ge (Revenue Service) – through which all natural and legal persons complete tax returns and reporting, registration as a taxpayer, customs declaration, obtaining a resident certificate (for tax payments) and so on.
- www.tas.ge – which operates on the territory of the Georgian capital and provides the possibility to submit an application and receive all construction documents (building permit, construction project approval, etc.).
- www.ms.gov.ge (Municipal Services Development Agency) – which provides various online municipal services for all municipalities in Georgia. In addition, the website provides the possibility to apply for a plot development plan (so far this service is only available in Tbilisi).

To help introduce new electronic services and improve the delivery of digital services, UNDP is working with two state agencies within the Ministry of Justice – the Digital Management Agency, which operates www.my.gov.ge, and the Public Service Delivery Agency (PSDA), which has the mandate to provide qualified electronic services and civil registry management.

¹⁰ *Cases in Public Administration*, Ilia State University, p. 36.

Georgia's progress in creating innovative and user-friendly services demonstrates that digital tools can address many of the challenges faced by citizens, businesses and civil servants, ensuring services are delivered anywhere, anytime.

Cyber security

The development of digital tools brings with it increased risks to data privacy and personal information. Cyber security, public education and data protection are also areas where more effective solutions will be needed, especially as Georgia updates its national information security law and introduces new approaches to data protection.

To help Georgia better protect its electronic data, the UNDP and the UK have helped the PSDA (Public Service Delivery Agency) analyse potential cyber threats and make its prevention systems more resilient. The agency is also developing standards for data collection and management, which will be extended to all public agencies in Georgia.

In addition, with the help of the UNDP, Sweden and the UK, the Digital Governance Agency (DGA) has launched an educational website offering online training to civil servants, academics and students on cyber and information security, cyber hygiene, risk management and information security auditing.

As far as e-government is concerned, we can mention the multitude of websites providing electronic services as challenges, in particular a large part of them are scattered on different websites and are not consolidated in a single web portal, which would simplify their use.

Digital apostille

The apostille amounts to an authentication of a document drawn up in a particular country, allowing it to be used legally in another country. Documents bearing a digital apostille are recognised by every member of the Hague Convention of 5 October 1961 on the territory of 119 countries. So far, however, the e-Apostille clause has only been implemented in 18 of the 119 countries. Namely, in Spain, Belgium, Austria, Estonia, USA, Argentina, Bahrain, Bolivia, Chile, Colombia, Latvia, New Zealand, Moldova, Slovenia, Venezuela, Dominica and Brazil. This clause allows Georgian citizens to electronically send documents bearing an apostille to the host country. It allows documents issued by public authorities, such as birth certificates, court orders or any other document issued by a public authority, to be recognised in other countries after receiving the digital clause, thanks to a new innovative service, e-Apostille, implemented by the Public Service Development

Agency of Georgia. It will ensure that documents bearing this clause will have the force of law abroad¹¹.

Conclusions

Over the last few years, a comprehensive legal framework to support digital transformation has been developed in Georgia. These are inspired by and aligned with EU regulations. During this time, privacy and security arrangements have also been implemented to protect sensitive and personal data. In addition, the Georgia Innovation and Technology Agency was established to stimulate innovation and digital transformation. Today, more than 600 records and information systems are part of the Unified State Information Registry. In a measurable way, it can be estimated that digital public service reforms have helped reduce manual transactions by 25-30 per cent, facilitating access to services and improving their quality. The next step is expected to be to increase the use of disruptive technologies in public administration, such as artificial intelligence, machine learning and the big data sets needed to analyse large amounts of data to make a variety of decisions including administrative decisions, issued by public administrations¹². The automation of processes has reduced the likelihood of 'human error' and the scope for the exercise of broad discretionary powers by public officials has become much narrower. In this context, the reduction of corruption and abuse by officials is undoubtedly one of the benefits of the larger-scale implementation of digitalisation in Georgia.

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¹¹ <https://agenda.ge/en/news/2020/3059> [accessed 30.06.2023].

¹² <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://thedocs.worldbank.org/en/doc/bd555a478d4a4a63acc0739084838b20-0350062022/original/GovTech-Case-Studies-Georgia-Promoting-Digital-Transformation-through-GovTech.pdf> [accessed 28.06.2023].