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### **Digital Transformation and Digital Government. E-Government in Azerbaijan**

#### **Abstract**

In general, government is an extremely complex system to execute with precision and perfection. As a result, continuous efforts to reform and improve governance through legal frameworks and innovation are inevitable. In today's context, digital transformation should be recognized as a crucial element of true democracy and transparency. Enabled by advanced technological communication tools, digital transformation fosters active citizen participation, enhances the realization of human rights and freedoms, and diminishes bureaucratic barriers. Nevertheless, it also introduces new challenges and legal risks for both individuals and institutions. This study examines the dual nature of digital transformation in governance—its democratic potential and its legal implications.

**Keywords:** *digital transformation, e-government, democracy, transparency, legal challenges, public participation*

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### **Rəqəmsal transformasiya və rəqəmsal hökumət. Azərbaycanda elektron hökumət**

#### **Xülasə**

Ümumilikdə, hökumət dəqiq və qüsursuz şəkildə fəaliyyət göstərməsi baxımından son dərəcə mürəkkəb bir sistemdir. Buna görə də, hüquqi mexanizmlər və innovativ yanaşmalar vasitəsilə hökumətin islah edilməsi və təkmilləşdirilməsi daim zəruri olmuşdur. Müasir dövrdə rəqəmsal transformasiya saf demokratiya və şəffaflığın ayrılmaz bir elementi kimi qiymətləndirilməlidir. İnkişaf etmiş texnoloji kommunikasiya vasitələri vasitəsilə rəqəmsal transformasiya vətəndaşların hökumətə fəal iştirakını təşviq edir, insan hüquq və azadlıqlarından geniş şəkildə bəhrələnməyə imkan verir, və bürokratik maneələri aradan qaldırır. Bununla yanaşı, bu transformasiya hüquqi subyektlər üçün yeni çağırışlar və risklər də yaradır. Bu araşdırma, idarəetmədə rəqəmsal transformasiyanın həm demokratik potensialını, həm də hüquqi təsirlərini araşdırır.

**Açar sözlər:** *rəqəmsal transformasiya, e-hökumət, demokratiya, şəffaflıq, hüquqi çağırışlar, ictimai iştirak*

#### **Introduction**

Hereby, I will provide a brief legal analyze of separate concepts related to digital transformation and e-Government.

*E-government*

Conceptually, the formation of E-Government should serve to foster the interrelations of citizens with their Government either to meet their own demands (G2C) or to participate in governance (C2G); to boost a transparent and speedy development of economy (G2B and B2G); to facilitate the ruling

of government and addressing global threats like corruption (G2G). Obviously, I'll focus to research C2G and G2C branches (Landy, n.d.).

### **Research**

Hereby we should underline that the foremost duty of State in construction of e-Government is the ability to supply appropriate information technologies in nation-wide.

I assume that, a State providing need-based legal circumstances and wide-range practical opportunities to realize the rights and freedoms of people via a digital platform could be reviewed as a transparency-oriented State. Ideally constructed E-Government could help all three branches of *Trias Politica* (Hage, Waltermann, Akkermans, n.d.) treat its nationals in principle of equality, impartiality, legal certainty.

While the application of e-Government in terms of Legislative and Judiciary branches could be reviewed as in favor of nationals, conversely in the administrative branch, it will be balance or better public service and effective control mechanism.

#### *E-Government in Azerbaijan*

Azerbaijani Government adopted several legislative acts and State Programs in the field of e-Government starting 2010 (Sajó, Uitz, n.d.). State also created "E-Government Information System", "Digital Executive power", "ASAN Bridge", "ASAN Finance" etc. Digitalization is also provided in the judicial system of the Government via systems like E-Notariat and E-Court.

Nowadays, upon legislative acts of Azerbaijani government digital flourishing of economy and social-community is priority of Azerbaijani State (Law of the Republic of Azerbaijan on electronic signature and electronic document, 09 March 2004).

#### *Challenges*

Nevertheless, there are some practical and legal shortcomings in ensuring E-Government in Azerbaijan. As an example of practical ones we may emphasize the non-proportional allocation of technological infrastructure over the country, especially in regards to a suburban area. This fact, in turn, causes the discussion on an unequal chance of people to enjoy from their fundamental rights and freedoms. Moreover, as of today, not all population of the country bears the same educational level (in other words, a literacy rate) and capabilities to properly use IT and the benefits of e-Government.

In this logic, upon the UN's E-Government Development Index (EGDI) the evaluation of three components of EGDI (scope and quality of online services, an inherent human capital and development status of telecommunication Infrastructure) illustrates and "promotes access and inclusion of people" (Law of the Republic of Azerbaijan on personal data, 2010) to the Government. In accordance to the EGDI landscape, Denmark is considered the number one State where e-Government transition is in adorable level, while Azerbaijan stands in 83<sup>rd</sup> place in line of 193 Un Member States.

I would also underline the fact that, just few days ago (President of the Republic of Azerbaijan, 2010) (on November 24, 2022) the next presidential decree defined the Ministry of Digital Development and Transport as the principal governmental body to regulate public policy of in the field of E-Government. Probably, this decision will add benefit in the development of the e-Government system of Azerbaijan either in legal or technical aspects.

#### *Digital contracts and e-sign*

Discussion of E-government obviously pays the way to scrutinize the digital contracts.

We may outline two principal challenges in relation to digital contracts:

- Some electronic contracts like "clickwraps" and "browsewraps" contains obligations even before the bargain of product (in the form of acceptance of license terms) (President of the Republic of Azerbaijan, 2021).

This point mostly serves for data-selling businesses to protect their product from plagiarism. Meanwhile, I assume that this pattern could create a problem in legal platforms, especially while such digital contracts are considered legally binding. In this case judges may use their discretionary power to evaluate responsibilities raised from such situation.

In order to avoid such shortcomings, "e-signature" tool should be applied as a solution. Azerbaijan's appropriate legislation (President of the Republic of Azerbaijan, 2022) also emphasizes the e-sign (even without an authenticity or a certificate) as legal proof for certain rights and obligations, which may be a subject to (civil) court cases.

- Recently, I attended at negotiations of the relevant agreement between Azerbaijan and Japan, wherein each single suggestion, addition or amendment to the text of agreement was recorded in written and at the end of each negotiations round all discussions was formally approved (signed) by the Parties.

Whereas in digital contracts, in a contrary to “shrinkwrap” (United Nations, n.d.) contracts, the Sides sometimes are deprived of such vital opportunity of contracting process on browser-based faults. This could be neglected only by some digital contracting platforms.

#### *Challenges in preventing the dissemination of personal data*

Notwithstanding the comprehensive and innovative role of relevant national legislation on e-Government and son on, there are some challenges caused by or related to these laws and regulations.

It will be useful to analyze the law on personal data and to open up the collision within the related national legislation.

Thus, the basic principles of the collection of personal data are “legality, confidentiality and reconciliation of voluntariness with coercion” (Encyclopedia.pub, n.d.). These principles are collected under the umbrella of constitutional human and civil rights and freedoms.

The law indicates that personal data could be adjusted to some (common-used) information systems only with a written consent of the subject of this data in order to meet the information needs of society. If the data will be incorporated to such system from publicly open sources, an operator of the relevant system should notify the subject about it.

Simultaneously, the “Law on e-signature” prohibits Mediators and Centers, which are competent to issue e-signature, to use an information of the client (author of e-sign) out of their duties (*Article 35.1.*). Nevertheless, the law doesn’t precisely obliges these institutions to obey the “Law on personal data”.

### **Conclusion**

Therefore, we encounter with repeated violation these clauses due to the misuse of privileges of competent authorities emerged from the e-Government platform. In certain extend we may consider it as capitulation the rule of law.

For the greater certainty, all above-mentioned questionable thoughts find their answer in the citation from Andras Sajó and Renata Uitz:

*“It is hard to resist the government’s demand for personal data when better (more) social services or public security are promised in exchange”.*

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