TECHNOLOGY AND COUNTER-TERRORISM:
Mapping the impact of biometric surveillance
and social media platforms on civic space

CASE STUDY

UKRAINE

This case study was researched and written by CEDEM, with ECNL's contribution being only editorial input and summarising for the purposes of the report. The Centre for Democracy and Rule of Law (CEDEM) is a think and act tank that has been working in the Ukrainian public sector since 2005, focusing on developing independent media, supporting public platforms and movements, and building the rule of law in Ukraine.

Notable uses of biometric technology

In Ukraine, there are several registers collecting biometric data, created under the Laws of Ukraine and Regulations of the government.[1] Specifically, they involve the Unified State Demographic Registry,[2] the national system of biometric verification and identification of the citizens of Ukraine, foreigners and stateless persons,[3] the database of fingerprints and investigation information, electronic systems of healthcare that allow data transfers, the register of patients, and a newly proposed DNA registry.[4] In most cases, our research has found that technical details of data protection are not disclosed, giving no opportunity to check the safety of the data. As regards the legal regulations on access to data, the laws limit the number of subjects capable of conducting operations with such data.[5]

In recent years, many local communities have installed video surveillance systems.[6] Their regulation is based on local decisions, which have no legal basis in State laws. For example, video cameras in Zaporizhzhya city were installed as a part of the project "Safe city."[7] This system was based on a 2019 decision of the local council.[8] However, none of the listed laws empowers the municipal authorities to install such systems, therefore the bylaws provided by local councils have no basis in domestic legislation.

[1] Law of Ukraine "On Legal Status Of Foreign Nationals And Stateless Persons", Resolution of The Cabinet of Ministers of Ukraine, On National System of Biometric Verification and Identification of Citizens of Ukraine, Foreigners and Stateless Persons. (2022, October 15). https://zakon.rada.gov.ua/laws/show/3773-17#Text

[2] Law of Ukraine "On the Unified State Demographic Register and Documents Certifying Citizenship of Ukraine, a Person's Identity or Special Status" (2022, September 24). https://zakon.rada.gov.ua/laws/show/5492-17#Text

[3] Resolution of The Cabinet of Ministers of Ukraine, Regulation on National System of Biometric Verification and Identification of Citizens of Ukraine, Foreigners and Stateless Persons.(2017, December 27). https://zakon.rada.gov.ua/laws/show/1073-2017-%D0%BF#Text

[4] Draft Law of Ukraine "On State Registration of Human Genomic Data" (2020, October 26). https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=4265&conv=9

[5] Law of Ukraine , On the protection of personal data. (20222, September 16). https://zakon.rada.gov.ua/laws/show/2297-17/conv#n54

[6] Anonymous (2019, February 8). Facial recognition program using video surveillance cameras is being tested in Kyiv. LB.ua. https://lb.ua/society/2019/02/08/419219_kieve_testiruyut_programmu.html, https://kyivcity.gov.ua/news/u_metro_vstanovlyat_dodatkovi_kameri_videosposterezhennya/, Anonymous. (2021, February 9). Additional CCTV cameras will be installed in the subway. Offical Portal of Kiev. Kyiv City Council. https://tvoemisto.tv/exclusive/shcho_miska_rada_znaie_pro_lvivyan_104891.html, Lekhova, M. (2021, February 22). Number and face recognition: what is this Vezha system, which will work in Vinnitsa. 20 minut. https://vn.20minut.ua/Podii/rozpiznavannya-nomeriv-i-oblich-scho-tse-za-sistema-vezha-yaka-zaprats-11226979.html

[7] https://safecity.zp.gov.ua/site

[8] Buryvak, V. (2019, April 8). On approval of the Regulation on the video surveillance system of the city of Zaporozhye. Decision of the city Council dated 27.03.2019. Zaporizhia City Council Offical site. https://zp.gov.ua/uk/documents/item/35456

On the national level, the large-scale initiative Diiais a unified portal of state services available through classical web and app interfaces.[9] While this application is not required to receive public services, it significantly eases the access thereof. It is operated under a governmental decree.[10] People can register and login to Diia via electronic signature, QR-code, and state id.gov.ua identification. The newest version enables registration via biometrical data stored in foreign passports.[11] Accusations of lack of security for such systems[12] were overturned by the Ombudsman.[13]

While our research has found no evidence that facial recognition was used to target activists, journalists, or political dissidents at this time, there are indications of possible use in the near future. For instance, the ex-deputy Minister of Internal Affairs of Ukraine declared that violent activists could be identified through cameras with facial recognition functions following Sternenko support protest.[14] The quality of cameras is still low, which will make it difficult to deploy facial recognition technologies in practice. Moreover, no steps were taken even with respect to the provided example, thus such declaration shall be perceived more as a threat than a real possibility of persecuting activists today.

Responses to the COVID-19 pandemic have also included processing biometric data. In particular, the Ministry for Digital Transformation has developed the application "Diy Vdoma" to track contamination cases and control the movements of people who tested positive for COVID-19.[15] Before its development, the office of the Ombudsman conducted consultations regarding personal data protection requirements.[16]. However, there is a risk that the office of the Ombudsman doesn't have any experts who would be able to verify that personal data is secure within the technically sophisticated systems. Although it does not directly affect the CSO sector, this technology pattern might be used to track individuals and groups.

At this time, most technologies used in Ukraine for counter-terrorism and/or based on biometric data processing seem to not have severe impacts on the rights of activists, journalists or human rights defenders. Nevertheless, the pitfalls in the technical and legal

[9] Diia, Online Public Services Website https://diia.gov.ua/

[10] Cabinet of Ministers of Ukraine Resolution, Issues of the Unified State Web Portal of Electronic Services and the Register of Administrative Services (2022 August 25). https://zakon.rada.gov.ua/laws/show/1137-2019-%D0%BF#Text

[11] Integrated electronic identification System https://id.gov.ua/

[12] Anonymous. (2020, April 8). Does the use of Dii vdoma threaten digital rights? Digital Security Lab. https://dslua.org/publications/chy-zahrozhuie-vykorystannia-diy-vdoma-tsyfrovym-pravam/

[13] Centre for Democracy and Rule of Law. (2020, June 19). "DIIA" Turned out to be Effective and Legal. https://cedem.org.ua/news/diya-perevirka/

[14] Anonymous. (2021, March 20). They want blood, – the Ministry of Internal Affairs responded to the protests over Sternenko. Channel 24. https://24tv.ua/hochut-krovi-mvs-vidreaguvali-protesti-cherez-naysvizhishi-novini_n1574449

[15] Press office of the Ministry. (2021, October 21). Updated rules for entering Ukraine - how the Vdoma app will now work. Ministry and Committee digital transformation Ukraine. https://thedigital.gov.ua/news/onovleni-pravila-vizdu-v-ukrainu-yak-teper-pratsyuvatime-zastosunok-vdoma

[16] https://ombudsman.gov.ua/ua/all-news/pr/u-sekretar%D1%96at%D1%96-upovnovazhenogo-v%D1%96dbulasya-robocha-zustr%D1%96ch-shhodo-obrobki-personalnix-danix-p%D1%96d-chas-funkcz%D1%96onuvannya-dodatku-d%D1%96j-vdoma/

functioning of the systems based on biometric data processing could be potentially abused by the local and State authorities, leading to hacking and data leaks. Moreover, wrongfully listing individuals on the terrorist watchlists, coupled with an inadequate legislative framework and absence of solid safeguards, could result in unwarranted prosecution and third-party interference.

Notable uses of online content moderation and social media surveillance

Russian platforms VKontakte, Odnoklassniki, and Mail.ru were banned for three years in 2017 by a decision of the State Council of Security and Defence.[17] In May 2020, those sanctions were prolonged.[18] Numerous experts consider such sanctions necessary to prevent Russian disinformation campaigns, especially during armed conflict. However, they also consider limitations to be unlawful and disproportionate.

In Ukraine, blocking and shadow-banning of accounts seems to be a relatively usual phenomenon, given waves of hatred and incitement to violence connected to the armed aggression of the Russian Federation. [19] Additionally, numerous accounts were blocked as a part of a campaign against coordinated inauthentic behaviour, as happened with accounts of the supporters of the political party European Solidarity.[20] Investigation by the news resource The Intercept revealed that a number of Ukrainian CSOs are on the Facebook list of Dangerous Organisations and Individuals, yet many of them are not actually conducting dangerous activities.[21] For example, they involve CSOssuch as Azov Battalion (purely for the uniform symbols), the National Corps, Freicorps, and Group Patriots of Ukraine, among others.[22]

[17] Decree of the president of the Ukraine No184/2020, Article 17. (2020, May 14). https://www.president.gov.ua/documents/1842020-33629

[18] Decree of the president of the Ukraine No184/2020, Article 17. (2020, May 14). https://www.president.gov.ua/documents/1842020-33629

[19] Romanyuk, A. & Snopok, O. (2021, July 18). Facebook systematically deletes entire networks of accounts, pages and groups. Why and how does this happen?. Civil Network OPORA. Detector Media Project. https://detector.media/infospace/article/190273/2021-07-18-feysbuk-systematychno-vydalyaie-tsili-merezhi-akauntiv-storinok-ta-grup-chomu-i-yak-tse-vidbuvaietsya/

[20] Romanyuk, A. & Snopok, O. (2021, July 18). Facebook systematically deletes entire networks of accounts, pages and groups. Why and how does this happen?. Civil Network OPORA. Detector Media Project. https://detector.media/infospace/article/190273/2021-07-18-feysbuk-systematychno-vydalyaie-tsili-merezhi-akauntiv-storinok-ta-grup-chomu-i-yak-tse-vidbuvaietsya/

[21] Biddle, S. (2022, February 24). Facebook allows Praise of Neo-nazi Ukrainian Battalion if it Fights Russian Invasion. The Intercept.com https://theintercept.com/2022/02/24/ukraine-facebook-azov-battalion-russia/?utm_campaign=theintercept&utm_medium=social&utm_source=twitter

[22] Shekhovtsov, A. (2020, February 24). Why Azoz should not be designated a foreign terrorist organization. Ukraine Alert. Altantic Council. https://www.atlanticcouncil.org/blogs/ukrainealert/why-azov-should-not-be-designated-a-foreign-terrorist-organization/

Relevant laws and legal precedents

There are few cases pertaining to regulating biometric data collection, and no decisions on biometric surveillance on behalf of the State. Although there were some cases concerning biometric data processing or surveillance,[23] they did not touch upon the issues of State surveillance systems. It is hard to establish the reason behind the absence of the court cases. Cases with suspicions of violating personal data processing rules are communicated to the Ombudsman for a review and opinion[24].

Data-sharing between private companies and the state

National law enforcement authorities can force platforms to disclose certain types of data based only on a court order or decision.[25] However, our research did not identify any relevant cases at this time. This seems to mitigate the risk of persecution or excessive intrusion of activists' privacy, indicating compliance with the international standards on personal data protection.

Unique aspects of the local surveillance landscape

There is a unique context pertaining to counter-terrorism and surveillance technologies, given the ongoing armed conflict in Ukraine. Center Myrotvorets , a CSO engaged in the study of evidence of crimes against national security of Ukraine, peace, security of mankind and international law, aims to provide information and advisory assistance to the executive authorities to establish peace in Ukraine.[26] In July 2017, the centre's management announced a separate facial recognition project called "Identigraf."[27] No data on its implementation is publicly available at this time. Although the NGO is a private entity, it has deep ties with the defence, intelligence, and military sectors. Indeed, the main users of the collected information are the Security Services of Ukraine, the General Staff of the Armed Forces, the Ministry of Internal Affairs of Ukraine, the State Border Guard Service, the State Penitentiary Service, as well as other government agencies and commercial entities. Accordingly, certain risks for activists exist in case the person is wrongfully put

[23] https://www.ombudsman.gov.ua/uk/kontrol-za-doderzhannyam-vimog-zakonodavstva-zpd/rezultati-perevirok/viyavleno-nepravilne-zastosuvannya-zakonodavstva-v-sferi-zahistu-personalnih-danih-pid-chas-funkcionuvannya-elektronnoyi-sistemi-ohoroni-zdorovya

[24] Anonymous. (n.d.). Incorrect Application of Legislation in the Field of Personal Data Protection During the Functioning of the Electronic Health Care System has been Identified. Secretariat of the Ukrainian Parliament Commissioner for Human Rights https://www.ombudsman.gov.ua/uk/kontrol-za-doderzhannyam-vimog-zakonodavstva-zpd/rezultati-perevirok

[25] Criminal Procedure Code of Ukraine (2022, October 1). https://zakon.rada.gov.ua/laws/show/4651-17#n480

[26] Myrotvorets Center. Disclaimer: this link leads to a website where images of corpses are immediately shown on homepage https://myrotvorets.center/

[27] Karatel, M. (2021, March 6) March 16, 2021 – launching NEUROIDENTIGRAF. https://identigraf.center/

on the list of the Myrotvorets.[28] Broad data disclosure can furthermore lead to illegal use of personal data, creating potentially putting the lives and health of activists, journalists and political dissidents at risk. It contradicts the rule of law and can create a chilling effect on freedom of speech in Ukraine, leading to self-censorship.

Relatedly, there are certain peculiarities regarding content moderation and the armed conflict. In particular, numerous publications and accounts were removed based on the misuse of the complaints portal via Russian-led bot campaigns (*e.g* 1[29], 2[30], 3[31], 4[32] and 5[33]).[34] Similar groups have also banned numerous public pages that posted hateful messages in their comments. This had already happened during the annexation of the Crimea in 2014, where Russia implemented a mass blockade of Ukrainian activists on Facebook using 'troll factories' and security agencies in order to gain an advantage for its propaganda, silence Crimeans who were reporting online on the invasion, and spread disinformation.[35] Hence, the environment is overloaded with foreign malicious activities. Given the platforms' lack of knowledge of local context, improper bans and/or removals have unfortunately occurred.

[28] Anonymous. (2016, May 20). IMI, Detector Media, NMPU and NSJU demand from the authorities to stop the harassment of journalists deployed by "Myrotvorets" and politicians. Detector Media Project. https://detector.media/community/article/115322/2016-05-20-imi-detektor-media-nmpu-ta-nszhu-vymagayut-vid-vlady-zupynyty-tskuvannya-zhurnalistiv-rozghornute-myrotvortsem-i-politykamy/

[29] Agwin, J. & Grassegger, H. (2017, June 28). Facebook's Secret Censorship Rules Protect White Men From Hate Speech But Not Black Children. ProPublica. https://www.propublica.org/articlefacebook-hate-speech-censorship-internal-documents-algorithms

[30] Helmus, T. et al. (2018). Russian Social Media Influence. Rand Corporation. https://www.rand.org/content/dam/rand/pubs/research_reports/RR2200/RR2237/RAND_RR2237.pdf

[31] Stop Facebook from unreasonable mass blocking of Ukrainian users. Change.org Petition. https://www.change.org/p/the-united-states-congress-stop-facebook-from-unreasonable-mass-blocking-of-ukrainian-users

[32] Anonymous. (2014, August 01). Why does Facebook block the accounts of Ukrainian bloggers? Euromaidan Press. https://euromaidanpress.com/2014/08/01/why-does-the-facebook-block-the-accounts-of-ukrainian-bloggers/

[33] Savytskyi, O. & Bednova, A. (2015, May 23). Чому у Facebook блокують відомих українців? DW Media Company. https://www.dw.com/uk/%D1%87%D0%BE%D0%BC%D1%83-%D1%83-facebook-%D0%B1%D0%BB%D0%BE%D0%BA%D1%83%D1%8E%D1%82%D1%8C-%D0%B2%D1%96%D0%B4%D0%BE%D0%BC%D0%B8%D1%85-%D1%83%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D1%86%D1%96%D0%B2/a-18468517

[34] Nimmo, B. & Agranovich, D. (2022, September 27).Removing Coordinated Inauthentic Behavior From China and Russia. Meta. https://about.fb.com/news/2022/09/removing-coordinated-inauthentic-behavior-from-china-and-russia/

[35] Inform Napalm. (2017, October 28). Russia blocked Ukrainian activists from Facebook during the annexation of Crimea. Inform Napalm.com. https://informnapalm.org/en/russia-blocked-ukrainian-activists-from-facebook-during-the-annexation-of-crimea/

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