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SECTORAL INTERPRETATION ON INFORMATION LAW

INTERPRETAÇÃO SETORIAL SOBRE A LEI DE INFORMAÇÃO*

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Abstract: Aim: The relevance of the topic of the article is determined by the sectoral law-self-sufficiency of the key concept of this work. The purpose of the article was to interpret the meaning of the informational law and define its subject and elements. Authors used a set of methods: philosophical; logical; formal-legal and general scientific. As a result, the authors claim that Information law is an independent branch of law, as it has the following features: information legal relations are at the center of public communication; the entire regulatory framework is an

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information resource; all legal relations, first of all, exist and are carried out in the informational form; information law has a unique subject of legal regulation, a method and a system of unique principles. The sectoral interpretation of information law makes it possible to interpret information legislation more accurately, which is necessary for the legally competent construction of information legal relations. Interpretation of norms, as indicated in the article, is a mechanism of understanding, explanation and interpretation necessary for assessing a legal fact and solving legal problems through dialogue with participants in information legal relations.

Keywords: Subject of information law. Method of information law. Principles of information law. Legal informing. Legal system of society.

Resumo: A relevância do tema do artigo é determinada pela lei setorial - a auto-suficiência do conceito chave deste trabalho. O objetivo do artigo era interpretar o significado da lei de informação e definir seu tema e elementos. Os autores utilizaram um conjunto de métodos: filosófico; lógico; formal-legal e científico em geral. Como resultado, os autores afirmam que a lei de informação é um ramo independente do direito, pois tem as seguintes características: as relações jurídicas de informação estão no centro da comunicação pública; todo o marco regulatório é um recurso de informação; todas as relações jurídicas, antes de tudo, existem e são realizadas na forma informativa; a lei de informação tem um tema único de regulamentação legal, um método e um sistema de princípios únicos. A interpretação setorial da lei de informação possibilita uma interpretação mais precisa da legislação de informação, que é necessária para a construção de relações jurídicas de informação legalmente competentes. A interpretação de normas, como indicado no artigo, é um mecanismo de compreensão, explicação e interpretação necessário para avaliar um fato jurídico e resolver problemas jurídicos através do diálogo com os participantes das relações jurídicas de informação.

Palavras-chave: Assunto da lei de informação. Método da lei de informação. Princípios da lei de informação. Lei de informação. Sistema legal da sociedade.

1. INTRODUCTION

In the theory of law, there is a solid opinion in the definition of the branch of law as:

– a system education;

– an objective phenomenon caused by national, historical, cultural and other social factors; dynamic, capable of changing its internal organization under the influence of external factors (Morozova, 2010, p. 201).

Information law should be considered an independent branch of law, and there are several arguments in favor of interpretation (Latin interpretatio – mediation) of information law as a branch of the same name:

1) information relations have an extensive regulatory framework;

2) information law has its own branch subject (public relations in the sphere of information turnover) with an internal structure;

3) the object of information relations - information - has unique properties and special legal features inherent in it;

4) special principles of information law are relevant only to the specified industry;

5) the uniqueness of the methods of this branch of law.

Criteria for attributing public relations to information law, as which the authors consider: 1) the existence of an institution of secrecy, 2) prohibition of illegal information or restriction of its circulation, 3) the obligation of the state to provide mandatory information.

Information law (as a branch of law and the most extensive element of the entire legal system, integrated into the social and state essence) "is part (element) of a social system in which such interrelated and interacting elements as legal understanding, law-making, sources, forms, system, regulation (including individual regulation) can be distinguished" (Vlasova, 2017, p. 88). The branch of law is a key element of a legal system that differs from the system of legislation. The system of law is "an organic unity of the norms of law due to the combination of private and public law principles, as well as their differentiation by branches and institutions in accordance with the subject and method of legal regulation" (Cherenkova, 2006, p. 12). The system of legislation is "an organic unity of normative legal acts conditioned by the unity of the state will and a combination of private and public law principles, as well as their differentiation both by subject matter (main division) and by a complex criterion that combines the subject and method of legal regulation" (Cherenkova, 2006, p. 13). The branch of information law assumes: 1) consistency, 2) consistency, 3) interdependence, 4) aimed at the settlement of homogeneous legal relations. The difference between the system of law and the system of legislation can be found by analyzing the basic elements of the system of the branch of information law: legal norms (mandatory rules of conduct established by the state), institutions of information law (regulating a narrow sphere of information relations), sub-sectors (regulating a separate sphere of information relations).

2. METHODOLOGY

The absence of information law in a number of independent branches generates a complex of legal inaccuracies. Firstly, the ideas about the dialectical connection of branches of law are not correct, secondly, the mechanisms of relations between branches of law remain unclear, and thirdly, the practice of applying legal norms is distorted due to their

misinterpretation. The above aspects indicate the existence of a problem of interpretation of information law as an independent branch of law, as well as the need for a thorough, special study of this problem based on the current legislation and theoretical developments of lawyers.

The authors resorted to a set of methods: philosophical (dialectical analysis of social relations and their metaphysical isolation); logical (analysis, synthesis, deduction and induction, construction of polysyllogism); formal-legal (analysis of incidents, industry analogy, system of legislation); general scientific.

Interpretation of norms is a mechanism of understanding, explanation and interpretation necessary for assessment of a legal fact and solving legal problems through, dialogue with participants in legal relations. According to A.F. Cherdantsev (1979), interpretation as mediated cognition; interpretation is a process subject to the laws of logic; interpretation is an objective process; is a dialectical process of cognition; is a subjective process of cognition. We have identified such methods of tokenization: linguistic, logical, systematic, historical and functional.

3. RESULTS

We adhere to the position that information law is an independent branch of law – such a conclusion follows from the analysis of its subject and method. "The subject shows which social relations are regulated by this branch of law, and the method - by what methods, means, techniques these social relations are regulated" (Morozova, 2010, p. 201).

The uniqueness of the subject of information law is that it is not repeated in full in any of the branches of law. On the subject of "information law can be defined as a branch of law, which is a set of norms regulating the relationship of subjects in the information environment" (Vorobyova, 2007, p. 23). Another point of view adds: "The information environment, in turn– is a sphere of social activity, which is an element of the social environment, due to the increasing role and specificity of the influence of information factors on the life of a person and society as a whole, in which any data is exchanged between any subjects using any media" (Vorobyova, 2007, p. 23). In particular, it does not contradict the above: "relations arising during the implementation of information processes – the processes of production, collection, processing, accumulation, storage, search, transmission, distribution and consumption of information" (Kopylov, 2015, p. 42).

The subject of information law is information relations using the entire set of traditional methods of legal regulation within one subject area. In particular, V.A. Kopylov (2015, p. 42) identifies several subjects of information law, considering the main ones to be "information relations, i.e. relations arising during the implementation of information processes — processes of production, collection, processing, accumulation, storage, search, transmission, dissemination and consumption of information".

The subject of information law has a complex basis. Therefore, the subject of information law can be disclosed through the basic concepts enshrined in the norms of the definitions of the Federal Law (hereinafter referred to as the Federal Law) "On Information, Information Technologies and Information Protection" dated 27.07.2006 No. 149-FZ (State Duma of the Federal Assembly of the Russian Federation, 2006). For each separate substantive part of information law there is its own particular subject of perception and impact. It is possible to judge about a common object for the whole group of the six phenomena of information law considered by us, where the common object of information law, as noted earlier, is "relations arising during the implementation of information processes – the processes of creation, collection, processing, accumulation, storage, search, dissemination and consumption of information" (Kostylev, 2010, p. 36).

Thus, the particular elements of one or another substantive part of information law are: a private subject, a private object, a method, principles, tasks to be solved, a carrier, subjects (persons and bodies). Informational legal relations are relations mediated by the norms of law regarding:

– the creation of information and the definition of informational legal personality;

– collecting, searching, receiving and acquiring information;

– processing, storage, transmission, exchange and dissemination of information;

– providing access to socially significant information;

– information consumption, information security and protection of specially protected by law and confidential information from unlawful influence;

– prevention and counteraction of information crimes and offenses.

4. DISCUSSION

The main criteria that make it possible to distinguish an information and legal norm from a similar one can be considered:

1) the presence of the institute of secrecy and other confidential information in the mechanism of information turnover;

2) the right of the state to ban illegal information or restrict its circulation;

3) the obligation of the state, following from the need to provide the necessary information and free access to significant information resources.

Secrecy, in our opinion – is a criterion that defines a legal relationship as informational (Kainov et al., 2021). One can give an example from the sphere of electoral law, where the principle of publicity prevails, in which even meetings of election commissions should not be held behind the scenes, in the absence of observers and the media. In this case, we cannot talk about the secret of counting votes, because such a secret is contrary to the law; the secret of voting is a mandatory phenomenon in compliance with the democratic election procedure. The secret of choice is the application of personal secrecy, a guaranteed kind of freedom of thought, etc. The authorship of a work of art, scientific discovery or invention can be based on different types of secrets: a secret of production (know-how), a trade secret, the author's right to a literary pseudonym, etc.

The next criterion that makes it possible to attribute the legal relationship specifically to information law is the prohibition of information as a method of implementing state functions, to ensure the safety of the state, the state structure, public and personal security, the preservation of morality, etc.

This state of affairs follows from the requirement of Part 3 of Article 55 of the Constitution of Russia, which establishes legal grounds for restricting information rights and freedoms. To do this, the state must take two consecutive steps: is to adopt a federal law, and the is to justify the need for restrictions in the law.: 1) protection of the foundations of the constitutional system, 2) protection of morality, 3) protection of health, 4) protection of the rights and legitimate interests of other persons, 5) ensuring the defense of the country, 6) ensuring the security of the state. This list is exhaustive, which testifies in favor of the specifics and uniqueness of the subject of information law.

The state has an obligation to notify society about static states and dynamic processes in the country to implement the regime of collective intelligence, orientation of society to achieve common state-collective goals (discussion of amendments to the constitution, preservation of historical memory, establishment of comfort of life (notification of the company about the presence of incentives for business or benefits to citizens), ensuring the security regime (compliance with the prohibition on concealment of

information about the environment). There may be other justifications for the above points.

The method of information law is also unique, which allows us to judge information law as an independent branch of law. As a general rule, the industry method is evaluated as "the order of occurrence of subjective rights and legal obligations; means of ensuring them; the nature of sanctions" (Morozova, 2010, p. 202), the main of which are considered imperative and dispositive. Legal relationship, having arisen dispositively, later acquires an imperative methodology of development, and vice versa.

In our opinion, in information legal relations, these methods are subordinated to the task of ensuring the parity of personal interests with public and state ones. The above rule of parity, but not the superiority of information relations, is of a unique nature and is provided exclusively by means of information law, based on the universal property of information – the turnover provided by dialogue, in which information, with its objectivity, logical sequence, and the presence of a common basis for judgment, cannot be dictated by one knowledge or judgment. Such a dictate can be established, but this provision contradicts the principles of information law.

The system of norms of information law is a mandatory structural element, but we cannot observe a special difference in this matter, due to the traditionality of this element. Everything that is inherent in other branches of law is also characteristic of information law.

The following judgment in favor of the branch affiliation of information law is a feature of the institute of its principles. The principles of information law, which are entirely focused on the social nature of law and its ideas (freedom, justice and stability), are the foundation of legal relations. The general meaning of the principles of information law is to express the truth and be a guideline for the rule-making process in the construction of legal norms, their implementation and evaluation of their effectiveness. The principles of information law are the main criterion for the truth of its norms, their justice, humanity and objectivity.

The principles of information law are characterized by the properties inherent in the principles of law:

– they express in a concentrated form the laws of legal existence discovered by science, tested in practice and perceived by all subjects of information legal relations as values;

– have a direct or indirect fixation in the sources of law (principles of law) or legal norms (principles of law) and thus differ from legal ideas that do not have a binding meaning;

– historically stable due to scientific validity and subordination to formal logic;

– subordinated and coordinated with other facets of being using a legal instrument;

– are morally justified and follow from religious doctrines preceding modern legal norms;

– they are closely interrelated when a violation of one principle automatically leads to a violation of others, which does not happen when a rule is violated in the absence of a set of offenses;

– act as independent regulators and are used when there are gaps in the law;

– they cannot be fully implemented in information law, but only implement a separate facet of the principle.

On the other hand, it is the principles of information law that are unique and are designed to establish uniform standards for all existing relations and to detail general legal and intersectoral principles within information law. Researchers refer to the special principles of information law as the principles:

– morality;

– equality of the languages of the peoples of the Russian Federation;

– free production and dissemination of information;

– giving information an organizational form;

– free access to information;

– freedom of circulation of mass media, ensuring its reliability and timeliness of provision;

– ensuring information openness in the activities of state bodies, courts and local self-government bodies;

– completeness of processing and efficiency of providing information;

– a ban on restricting information only under federal law;

– a ban on the dissemination of harmful and dangerous information for the development of the individual, society, and the state;

– privacy;

– the inadmissibility of establishing by regulatory legal acts any advantages of using some information technologies over others;

– ensuring information security.

Some authors refer to the principles of information law as the principles of "alienation" of information from its creator, the turnover of information, the information volume, the dissemination of information, the information object (information thing), the instantiation of information (Kostylev, 2010, p. 37). In our opinion, the listed categories should be attributed to the legal properties of information, namely, to the properties of the object of information legal relationship.

The next unique property of the principles of information law is the presence of its own principles in most industry institutes of information law. We can observe the enumeration in the law of the principles of legal regulation of relations in the field of information, information technology and information protection ; the principles of classifying information as a state secret and classifying this information; the principles of processing personal data ; the principles of inadmissibility of censorship and inadmissibility of abuse of freedom of the media are fixed in separate articles (Lapina et al., 2014; Manukyan, 2006).

The uniqueness of information law lies in the law enforcement practice of the analyzed relations. We will point out the important law enforcement and law-implementing aspects that actualize this industry in modern legal reality as needing autonomous functioning. This is facilitated by factors 1) the increasing importance of information relations in the digital world and 2) the need for professional lawyers specializing in information technology.

The above requires special knowledge, and not only legal knowledge, which can be acquired exclusively within an independently existing branch of law.

5. CONCLUSION

The interpretation of law is not possible without general legal knowledge, known to every lawyer, including categorical and conceptual apparatus, ideas about legal models and structures, patterns and other patterns. For example, when discussing the legal fact of the occurrence of information, the parties are aware of the legal properties of the information and the criteria of the legal fact, and further dialogue allows interpreting the details of the case to meet the needs.

Thus, the existence of information law as an independent branch of law is due to a number of factors:

1) the complexity of information legal relations caused by their integration into the entire spectrum of public relations;

2) information relations have an extensive regulatory framework;

3) information law has its own industry subject with an internal structure;

4) the object of information relations - information - has unique properties and special legal features inherent in it;

5) special principles of information law are relevant only to the specified industry;

6) uniqueness of methods;

7) the complexity, vastness and specificity of information law requires special knowledge and, accordingly, trained specialists.

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