

DIGITALIZATION OF LEGAL RELATIONS AND TRANSFORMATION OF THE FORMA AND METHODS OF PUBLIC ADMINISTRATION IN A DIGITAL REALITY

A DIGITALIZAÇÃO DAS RELAÇÕES JURÍDICAS E A TRANSFORMAÇÃO DAS FORMAS E MÉTODOS DA ADMINISTRAÇÃO PÚBLICA SOB A REALIDADE DIGITAL

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Received: 10 Apr 2023

Accepted: 08 Jul 2023

Published: 15 Jul 2023

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Abstract: Amid the ongoing search for the optimal model of the organization of public authority at all levels, of increasing relevance is legal regulation of the mechanisms and forms of applying digitalization in the system of state and municipal administration. Under active discussion are also the issues of implementing information and communications technology in criminal proceedings and especially in criminal procedural evidence. The goal of the study is to investigate the concept, content, and nature of law digitalization processes taking place in today's world. With the advent of digital identity under an online name in the digital space, smart robots (electronic persons), the use of robotics, and such atypical objects of legal regulation as virtual things that exist only within the operation of computer programs and have no material prototypes (e.g., cryptocurrencies), new social relations with new subjects regulated by law have emerged. This has resulted in the transformation of the sphere of legal regulation. The leading method at the basis of solving the research problem is a comparative-legal study of law digitalization processes. The paper classifies and analyzes the processes of law digitalization and the contemporary social processes closely associated with it. The main directions of digitalization of legal relations and the transformation of forms and methods of public administration in digital reality are examined. The authors see the use of new information technology as a chance to return to the forms and means of direct democracy that have already been tried in history: the accusatory process, the people's prosecution, free evidence, popular justice, customary law, etc. All these legal phenomena are being transformed in a new context.

Keywords: Legal system. Digitalization of law. Information. Public administration. Electronic services. Public authority. Digital reality. Digital law.

Resumo: Como a busca por um modelo ideal de organização da autoridade pública em todos os níveis continua, a questão da regulamentação legal dos mecanismos e formas de aplicação da digitalização no sistema de administração estadual e municipal torna-se relevante. Os problemas da implementação de tecnologias de informação e comunicação em processos criminais e, especialmente, em provas processuais criminais são ativamente discutidos. O objetivo do artigo é investigar o conceito, o conteúdo e a natureza dos processos de digitalização da lei que estão ocorrendo no mundo moderno. Com o surgimento da "identidade digital" sob um nome de rede no espaço virtual, "robôs inteligentes" (pessoas eletrônicas), o uso da robótica, objetos atípicos de regulamentação jurídica - coisas virtuais que existem apenas no processo de programas de computador e não têm protótipos materiais (por exemplo, criptomoeda), novas relações sociais com novos assuntos regulamentados por lei, o que implicou a transformação da esfera da regulamentação jurídica. O principal método usado para resolver o problema foi um estudo jurídico comparativo dos processos de digitalização do direito. O artigo classifica e analisa os processos de digitalização do direito e os processos sociais da modernidade intimamente relacionados, examina as principais direções da digitalização das relações jurídicas e a transformação das formas e métodos da administração pública sob as condições da realidade digital. Os autores veem no uso de novas tecnologias de informação uma nova chance de retornar às formas e aos meios de democracia direta que já foram testados na história: processo acusatório, acusação popular, prova livre, justiça popular, direito consuetudinário etc. É claro que todos esses fenômenos jurídicos estão sendo transformados em um novo contexto.

Palavras-chave: Sistema jurídico. Digitalização do direito. Informações. Administração pública. Serviços eletrônicos. Poder público. Realidade digital. Direito digital.

1. Introduction

The Internet as a technology has become the basis for numerous changes in various spheres of people's lives. For law, it is (at least at present) a tool, a shell, which, firstly, simplifies (accelerates) those legal relations that were previously regulated by law. Secondly, given the changing speed of life and people's interaction with each other and the increasing volume of information, the Internet is a source of new forms of legal relations (Alekseev, 1975; Martin, 1995). Amid the ongoing search for the optimal model of the organization of public authority at all levels, of increasing relevance is legal regulation of the mechanisms and forms of applying digitalization in the system of state and municipal administration (Komlev, 2020). Real assurance of digital human rights calls for a state mechanism for their protection and necessitates the search for an optimal legal compromise between the possibility of access to information by law enforcement agencies and the right of citizens to privacy (Martin, 1995).

Russian scholars express different views on the place and role of digitalization in the law and formulate their own definitions of the concept of digital law (Grudtsyna, 2022a, 2022b). For instance, V.E. Volkov (2022, p. 24), the author of the textbook "Digital Law. The General Part", defines digital law in a broad sense, understanding it as a new direction of legal regulation, a legal mechanism that ensures the development of a digital society. In a narrow sense, according

to Volkov (2022, p. 24), digital law is a complex inter-branch legal institution that combines the norms of the main branches of law regulating relations associated with the search, receipt, transfer, production, and distribution of digital data, as well as with the use of digital information technologies.

It is important to understand how the concept and content of the term "digital law" have changed, at least over the past 25-30 years (not only in Russia but worldwide). Apart from that, it should be noted that Russian legal science, in our view, lags in the field of digital law and digitalization by several decades. Our development in this area can be called catch-up. The term "digital law", as rightly noted by M.A. Rozhkova (2020), is not new. For example, in the early 2000s, digital law was understood as a rather narrow (compared to modern development and use) category and the concept of Internet law (Martin, 1995). In foreign jurisprudence (Ambrogi, 2004, p. 139), Internet law was initially considered, as suggested by Rozhkova (2020),

not as an **independent branch** of law *but* as a set of multidirectional legal norms and institutions belonging to different branches (areas) of law and regulating relations that are in any way related to the Internet.

A.Y. Minin (2021) believes it important to distinguish digital law from other spheres of theory and practice: cyberlaw, computer law (Iu.M. Baturin), Internet law (I.M. Rassolov), network law (L.V. Goloskokov), and other new sciences (network science), which do not fit into the framework of the existing branches of law but are significant as new concepts of the general theory of law. The authors of the Russian textbook "Digital Law" edited by V.V. Blazheev and M.A. Egorova (2023) describe digital law as a system of generally binding, formally defined rules of conduct guaranteed by the state, which develops in or through the use of digital technologies and regulates relations arising from the use of digital data and digital or information technologies. The authors argue that digital law is a complex branch of Russian law (Blazheev & Egorova, 2023). This position is difficult to agree with. What is the essence and content of a complex branch of law or its difference from a complex branch of legislation? Below we present a brief overview of scientific positions and our argumentation of the answer to this difficult question (Andreev, 2008, p. 51).

2. METHODS

Digital technology is currently changing lives at a rapid pace and affecting all areas of society. Modern management has developed a few different methods and techniques for collecting primary data. The most common of these are input-output analysis, process diagram, systematic data mining, observation, experimentation, and survey (Belykh & Egorova, 2020, p. 36). To ensure effective management, managers constantly exchange information with their subordinates, colleagues, and superiors. This process (the process of communication) is embedded in all types of management activities. Communication ensures the exchange of information between subjects and objects of management, regulates information flows, and improves the interpersonal interaction of specialists in the process of information exchange. At present, the main types of communication are:

- 1) external communication networks: the state, various regulatory bodies, etc.
- 2) intra-organizational communication networks, which in turn are subdivided into inter-level communication, horizontal communication between different units, "manager – subordinate" communication, communication between the manager and the working group, informal communication, etc. (Syrykh, 2005).

The development and use of digital technology are prerequisites for the development of an innovative economy and its entry into international markets.

3. RESULTS

Summarizing the above, we can draw the following conclusions.

1. Communication is the process of transmitting relevant messages through specific channels from the source of information (sender) to the recipient to change their knowledge, attitudes, behavior, etc.
2. Information and communications form the basis of self-management, around which other management functions constantly revolve

In a concentrated form, the idea of the state as an analog of the platform server is that the state, having abandoned the idea of providing single point services through the state (departmental) information systems and databases, will start to comprehensively address people's life situations based on a single array of data and algorithms for work with them developed jointly by federal executive authorities.

It is hard to overlook, much less ignore, the obvious – the development of information technology and its increasing use in law, excessive rationalization and technologization of legal procedures, and overestimation of the significance of formalizing properties of normative systems result in the loss of the human-dimensional nature of law. This translates into the neglect of the proposition that law, in a concrete and immediate sense, is intended to secure not only and not so much a legal or abstract state, but the living people who inhabit it, the source of power and sovereignty, the individual, shaping them as an individual and ensuring an existence consistent with their dignity.

As part of the theoretical and legal analysis, there is a valid question: what is the essence of the state that functions as the analog of a platform server with the continuous operation – without shutting down or rebooting, hosting a large volume of information (large volume of data) through the functioning of a system of processors and the use of algorithms of artificial intelligence?

The essence of the state, as is well recognized, is its main quality, its property that remains constant throughout its evolutionary dynamics, defines its goals, and acts as a source of development. The state as a platform in the digital society is positioned, first and foremost, in its institutional functional dynamics. For this very reason, in the era of digitalization, firstly, it is important to remember and constantly keep in mind that the state has not only a social but also an individual-personal dimension. Secondly, the subjects of power relations are the holders of special (competence) statuses enshrined by the norms of public law because of their special importance for the development of society. Public statuses of the subjects of state power in the system of institutions normatively enshrine:

- 1) the function of the citizen as a personifier of power, which is important for society in the given historical period (the state is a societal (in the terminology of the American sociologist A.G. Keller and the Russian legal scholar L.S. Mamut) function of society);
- 2) the prestige of this function in the hierarchy of social values (the human substratum of the state – the civil service system – plays a significant role in the image of the platform state).

4. DISCUSSION

The topic of digital transformation of particular legal institutions, procedures, and the state and the law as a whole has recently become fashionable in legal science. There is an active discussion of the issues of implementing information and communications technologies in

criminal proceedings and especially in criminal-procedural evidence. Criminalists and specialists in criminal proceedings have a prevailing view of digitalization as a means of optimizing and improving the efficiency of the existing investigative nature of the criminal procedural system.

Admittedly, a similar technocratic approach prevails in other branches of legal knowledge based on the classical normativist and legal-positivist methodology, whose custodian is the theory of state and law. The classical methodology of Russian legal science can explain and justify the current law, yet it is unable to discover anything new that goes beyond the legal positivism model. This is why the current strategic developments on the continuation of judicial reform in Russia are limited to proposals for partial changes to the existing criminal law and criminal procedure model rather than aiming to change the type of state legal organization of countering crime.

That being noted, experience convincingly shows that the existing state-legal organization of protection of the population and businesses from modern high-tech crime (cybercrime) is ineffective. Criminal justice itself has become an obstacle to economic growth due to its prosecutorial bias. In this, it is important to understand that creating a proper state-legal system for countering crime does not boil down to protecting the interests of entrepreneurs and the digitalization of investigative procedures, but lies in the creation of a fundamentally new legal organization for protecting the public from crime, especially the growing cybercrime.

Strategically expedient would be a different approach, specifically: to first bring the judicial reform to completion and thereby finish the transition from an investigative to an adversarial type of proceedings in the 21st century and then carry out the digital transformation of its institutions using a platform-based organization of public services. However, an obstacle to this course of action is the dominant legal doctrine, which has a long tradition and heavily influences the legal consciousness. In this connection, it is important to convince the scientific community to move to a new type of legal understanding in the field of combating crime (mainly cybercrime and economic crime as the most characteristic of the digital society and economy).

This new, post-non-classical type of legal understanding is being developed in several areas of modern philosophy of law, which does have some Russian-speaking representatives.

Humanity is the defining characteristic of the concept of the state as a platform. It is a model of a service state ("state for me") in which the needs of citizens and businesses are served through the development of the state's proactive provision of online services. It is seen as an element of the future model of legal regulation: The focus of the state as a platform is the human being in the new digital reality. Hence, ensuring that the results of administration and service

delivery are as human-centered as possible, "the client determines the process". It is in connection with the digitalization of modern society and various segments of social life that the concept of the platform state was introduced into the discourse. This term has been making its way into the discourse since 2017, courtesy of experts from a group created within the Center for Strategic Research in the Russian Federation. An analog of the platform state is the hyper-state for the digital economy.

The manager is constantly faced with assessing the quality of the information received by them to identify the feasibility of its further collection. If the information is necessary and important, then any costs are appropriate, but if it is only desirable, then the costs of collecting information should be compared with the profit from owning this additional information (Ambrogi, 2004).

Information is collected at various stages of the development of management decisions. The variety of necessary information has led to different approaches to its classification. Especially relevant is the classification of information based on the time of receipt. Under this classification, information is divided into primary and secondary. Secondary information is the data that has been collected and studied previously, either by the firm in preparation for other decisions or by any other organization. Secondary data is relatively cheaper to obtain and can often provide all the information the researcher needs or be an important and useful basis for it. Sources of secondary information include regulations, reference books, etc. The information obtained through the selection of secondary data must be carefully verified (Lukicheva, 2008). Primary data, in turn, are either unpublished information or data that the researcher obtains specifically for the purpose of making a particular decision. When collecting primary data, it is necessary to determine the total amount of information needed, its structure and the ratio of primary and secondary information, the timing and scope of primary information, and the sources and methods of obtaining information.

5. CONCLUSION

In the context of globalization, the national sphere of legal regulation is heavily influenced by the norms of international and supranational law (Komlev, 2020). We see the use of new information technology as a new chance to return to the forms and means of direct democracy that have already been tried in history: the accusatory process, the people's

prosecution, free evidence, popular justice, customary law, etc. All these legal phenomena are being transformed in a new context (Babaeva et al., 2022).

It is important to achieve the orientation of the organizational and legal system of crime control on the end user of this system – everyone who uses the resources, i.e., the services of the state as a platform, and everyone who is inside the ecosystem, participants in the process (Ambrogi, 2004). Emphasis is placed on the human-dimensional nature in the understanding of all legal and state: the subjects of legal relations are people and not the state (government agencies), i.e., the judge, prosecutor, defendant, police officer, etc. The legal-informational environment is an ecosystem for the cohabitation of users of the state's digital platform.

6. RECOMMENDATIONS

The most critical task in today's organization is developing an optimal business-to-business communication structure. In practice, office-business communication is carried out through speech and based on nonverbal means of communication (e.g., writing). The most common communication techniques currently used in organizations include the organization and conduct of business meetings and gatherings, making phone calls, speaking to an audience, etc. The authors of the platform-state concept find it important to show "how the civil service itself should change during the digital transformation of public service delivery and the process of licensing, control, and supervisory activities and managerial decision-making" (Minin, 2021, p. 46).

Many researchers argue that the information environment demonstrates the emergence of a digital identity (digital anonymous person with only a nickname), which leads to the disintegration of the person: it doubles, triples, and became plural and in this state ceases to be a person (Lotz, 2018). In this relation, problems arise with both the self-identification of the individual and with their relation to the legal reality and conscious involvement in social and legal relations. This ultimately complicates the development and formation of legal identity and the development and acquisition of legal qualities (a set of rights, freedoms, and duties and their dependence) required for a legal person (*Homo juridicus*) as an active participant in constitutional relations, citizen, and member of the legal civil society. Only *Homo juridicus* can perform socially responsible activities, develop a constitutionally oriented legal consciousness, master constitutional legal thinking, and experience a sense of citizenship and constitutional patriotism (Grudtsina et al., 2022).

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