Prospects for the Development of Legal Regulation of Digitalization

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Abstract. It is quite natural and indisputable that the regulation of the digital environment should preserve and protect the rights of citizens to be informed, express their opinion, etc. However, the protection of the rights and freedoms of man and citizen is not the provision of maximum individual freedom of people and economic agents in an environment absolutely free from regulation. The beneficiaries of this understanding of the approach to protecting fundamental rights and freedoms are a very small number of citizens and economic agents, and most of the citizens (as well as economic agents, by the way) remain outside the legal regulation and protection. We consider “digital” problems and measures to solve them, based on the understanding that in the Russian Federation the priority in regulating relations and rights in the digital environment are, first of all, the rights and legitimate interests of every citizen.

1 Introduction

Today, citizens, society as a whole, business and government must realize that, along with the land area, air and water space, the environment of our life and activity is the information (digital) space [1]. At the same time, today we do not have a code that, by analogy with the Rules of the road, land, air and maritime codes, would regulate relations and activities in the digital space. The vagueness of its virtual boundaries and the uncertainty in the applicable jurisdiction (collectively referred to as the cross-border nature of cyberspace) should not lead to the erroneous conclusion that it is impossible to legally regulate relations in the digital space.

In the modern discussion about the problems of observance of human rights in the context of digitalization, two aspects can be distinguished. On the one hand, the rights of citizens that have already become “traditional” (“analogue”) are violated and limited in the processes of digitalization [2]. On the other hand, there is a “transfer” of these rights to the digital space, where derivative “digital rights” 3 arise - special digital “projections” of the general rights of citizens. At the same time, “digital rights” also suffer from chaotic, mosaic, imposed digitalization. Our principled position is that the personality of a Russian citizen, his sovereignty, dignity and inviolability of private life ensure and protect the provisions on the fundamental rights and freedoms of man and citizen specified in the Constitution of the Russian Federation, as well as in international legal acts ratified by the Russian Federation. In the digital space, these fundamental rights and freedoms have

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corresponding digital “refractions”: the right to protect digital identity, the right to access or refuse access to digital technologies, the right to protect the mental integrity of a person and protection from manipulation, the right to protect biometric and other personal data, the right to be forgotten and so on. In their totality, “digital” rights form the “digital sovereignty” of the individual, which is based on the understanding that a person is not equal to the “digital vector”, that is, a set of digital coefficients calculated by digital platforms and placed in one register or another [16]. The above rights and freedoms, the sovereignty of the individual, including their digital aspects, are now in the zone of direct risks associated with the uncontrolled and ultra-fast development of the digital environment.

2 Research Methodology

An analysis of Russian and foreign digitalization practices and the challenges to human rights and freedoms associated with them form the main content of the first part of the report. However, first of all, it is necessary to identify an extremely serious problem, which is undeservedly spoken about in the public field today [3]. This is the problem of the contradiction between the “ideology of digitalization”, the “discourse of digitalization” and the value, ideological foundations of our constitutional system [15]. Moreover, the discourse of total digitalization in terms of its value orientations, understanding of man, his nature and purpose is in irreconcilable contradiction with the value foundations of Russian culture. Thus, the ideology of mass, “carpet” digitalization, at an accelerated pace, in the form in which it is promoted by enthusiasts and preachers of “digits”, is not only an attempt to legitimize what is happening in this area, but also an independent threat to civil and constitutional consciousness our society [4]. Here it is necessary to make a reservation that today’s digitalization and the “ideology” accompanying it are the core and driving force of the global scientific and technological and socio-political process - the so-called “NBICS-revolution”, actively promoted by the “evangelists” of the new world order. The issue of digitalization is today at the forefront of public attention, however, without proper understanding that it is closely connected with the entire spectrum of “big challenges” of our time (nanotechnology, biotechnology, genetic experiments, cognitive technologies, the transformation of social technologies, etc.), as well as related with them ethical and legal issues [5]. The global nature and power of digitalization (more broadly [14]: the NBICS revolution), often seeming, but impressive, the effectiveness of its “achievements” in certain areas of human and social life create the prerequisites for the establishment in the public consciousness and the consciousness of the elites of a complex of utopian ideas: - about the possibility of total calculability, quantitative reduction of the phenomena of private and public life of a person; - about the possibility of complete predictability and actual lack of alternatives to social development trends; – about the possibility of total control of the conditions and parameters of human and social life.

The rapid development of information, telecommunications, bio-, nano- and other technologies, which has become a distinctive feature of modernity, determines the vectors for the development of social relations and determines the modification of their regulators, among which a special place is given to law. In many states, the task of digitalization is coming to the fore. The National Program “Digital Economy” is being implemented in Russia. The digital agenda is proclaimed in international organizations [13]. The development of new technologies requires the creation of an effective system of legal regulation of relations related to them. In this regard, it is necessary to comprehend and scientifically substantiate the necessary changes and transformations in various spheres of life, including legal ones.
3 Results and Discussions

The problems associated with the digitalization of the legal sphere have become a separate area of research at the present stage [6]. Practically every citizen is faced with manifestations of this process, which finds expression in the electronic provision of public services, in the use of digital signatures that are becoming more widespread, in the emergence of Internet platforms for drafting such legal documents as requests, simple forms of contracts, claims declarations, testaments [12]. For professionals, the analysis and systematization of court decisions have become of great importance. The developed Strategy for the Development of the Information Society in the Russian Federation for 2017-2030 set a global goal - the formation of a knowledge society in Russia, i.e. a society in which the acquisition, preservation, production and dissemination of reliable information, taking into account the strategic national priorities of the country, is of paramount importance for the development of the citizen, the economy and the state1. Despite the fact that the introduction of the concept of “information society”, which is directly related to the process of digitalization of various spheres of life, was carried out in the second half of the 1960s. in reports to the Japanese government by the Computer Usage Engineering Institute, the Economic Planning Agency, and the Industrial Structure Council, the main research is in the 21st century [7].

Of course, modern digital technologies are a useful and strategically important thing. They allow you to bring the management of the state, the economy and the development of territories to a completely new technological level. However, now in Russia, new digital technologies are being introduced recklessly, without proper justification, in a hurry, often forcibly, using the “carpet bombing” method [11]. The digitalization of public administration and the urban environment has already taken on the character of a typical bureaucratic campaign, reminiscent of the memorable “perestroika and acceleration” of the mid-1980s, with slogans, noise categories, as well as formal “reporting from the field” [8]. A whole range of topical, if not burning, problems for the realization of citizens’ rights is due to the fact that the introduction of the so-called “digit” in the commercial sector of the economy is characterized by low social responsibility of business, gray extra-legal schemes for collecting and reselling data, and increasing user discrimination [17]. The main disadvantage of such an “avalanche” of state and private digitalization is that it is carried out without attention to the law and protection of key constitutional rights of citizens, without predicting possible social risks and without scenario modeling of the consequences of digitalization for the future of people. It should be noted that digital, as well as scientific and technological, development is a necessary condition for ensuring the sovereignty of the country, the competitiveness of our economy [9]. However, all this cannot and should not be achieved by belittling the dignity of citizens, the possibility of them exercising the fullness of constitutionally guaranteed rights and freedoms.

The adoption of these ideas (which in sum can be described as radical technological determinism) as the guiding principles of social development programming means a radical dehumanization of project thinking and project activity (for example: refusal to search for the correspondence of social development goals to the structure of a human personality (existence), removal of a person, its classical and traditional semantic and life attitudes for the decision-making about the goals of social development and its methods) [10]. The “image of the future”, corresponding to the global “ideology of digitalization”, penetrating from the outside into our society and the consciousness of the elite in the format of propaganda, futurology, programs of the Davos Forum and the World Bank, individual “international standards”, etc., can be stated by the following set of formulas: , freedom and human rights are supposedly historically transient values, “social constructs”. Their emergence is due to socio-economic and technological development, which at a certain
stage of history may require the rejection of these values (or already requires). At the same time, the most important question is how does the ideology of digitalization correlate with our values and our constitutional sense of justice? - is not even set by digitizers and is not considered as important.

4 Conclusions

Currently, in the digital space around the world and in Russia, there is a massive, total collection of personal data of citizens, including biometric ones. The collection of personal data is carried out both by private digital platforms (social networks, search engines, advertising systems, mobile operators, Internet access providers, online media, instant messengers) and government agencies. Often, data collection is done in a non-contact mode, imperceptibly, without the consent and even without the knowledge of a person (this is especially true for urban video surveillance, data collection from mobile communication devices, Internet access logs, visits to websites and search engines). We can say that data is collected by everyone who can reach them, despite the requirements of Federal Law No. 152-FZ “On Personal Data”:

- data is collected by digital platforms and government agencies not to solve a specific problem, but “in general”;
- data are merged into single, gigantic databases with the most complete “profiles” of citizens;
- data is not deleted after a specific task is completed, but is stored “forever”. The data is collected for the so-called “profiling” of citizens, which is a systematic and targeted process of collecting, capturing and classifying data relating to individuals (or social groups). Automated algorithmic profiling in the era of big data allows you to create detailed and accurate profiles for each citizen based on data mining collected from various sources. The classification of citizens by means of artificial intelligence algorithms is based on the identification of groups of people with common characteristics. These characteristics are provided to digital services by citizens themselves, and they can also be collected and calculated through non-contact or even covert surveillance of citizens. Data-driven decisions can affect entire groups of people, but they can also affect individuals within those groups. One example of this is price discrimination against individual users based on age, habits, or wealth. In other cases, predictions based on generalizations of profiles affect the entire group and distinguish it from the rest of society. An example is the “general area credit score” adopted by lending companies, which encourages companies to provide loan products to people living in the area in a way that has nothing to do with their individual circumstances but is based on the area’s aggregate score. Currently, the bulk of the circulation of digital user data and other big data (biometrics, geodata, data on transport, production, movement of individuals and masses of people, financial transactions of citizens and legal entities, private purchases, communications) collected by both private and by state digital players, is essentially taking place in a legal gray area.

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