

Exercising Digital Rights in Procedural Law of Russian Federation

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ABSTRACT

In this paper, the issues of streamlining and developing law regulatory in the context of digitalization have been taken into consideration. Implementation of digital technologies in different spheres of society revealed the need of altering law regulatory and elaborating new law-enforcement practice. Nowadays, particular urgency has been acquired by ensuring legal guarantees of human rights and personal data security on the Internet. It requires streamlining the practice of gathering evidences of delinquent and criminal behavior and the mechanism of prosecution for criminal actions in virtual space. The author suggests the implementation of certain digital methods and ways in the law of criminal procedure to develop the methodology and tactics of investigating a crime, gathering evidences and presenting evidences in court.

Keywords: *digital methods and technologies in law, digital rights, exercising digital rights, streamline criminal proceedings, respect for the rights of criminal proceedings participants*

1. INTRODUCTION

The key feature of our modern reality are increasing volumes of information that causes a necessity to create informational infrastructure. This process means not just to digitize data but mainly to create a digital system that ensures effective operations in different spheres of society. One of the tasks of modern jurisprudence is the task of scientific inquiry and exploration of new processes and phenomena that appear in state-legal system under the influence of digitizing economics, law and government. The main regulations that determine law development strategy as a regulator of digital society operations are: Executive Order of President of Russian Federation No. 2 203 “On the 2017–2030 Strategy for the Development of an Information Society in the Russian Federation” and Russian Federation Government Order No. 1632-R 28.07.2017 on the Approval of the Program “Digital Economy of the Russian Federation”. [1,2]

1.1. Related Work

According to the Program, law has an instrumental role to play in digital economy development, and it can be proved by the fact that law regulation takes the 1st place among 5 basic directions of its development. There are actions to take “to form new regulatory environment that provide favorable legal framework for new technology advent and development, and to undertake economic activities connected with the use of digital economy”. Most of the actions need regulatory support.

Therefore, law was proposed to be considered not as an object but as a mean of digitizing. The Program implementation timetable includes set of law instruments used for digital economy development. These instruments are classic and include law regulations, state strategic planning enactments, legal concepts, principles and institutions, systems of legal incentives and restrictions (prohibitions), legal responsibilities and technical regulations.

To achieve the objectives of Program implementation there are some legal techniques such as legal experiment, legal monitoring, regulatory impact assessments, and actual impact assessment of regulation projects. These techniques in essence are not digital but classic. At the same time, the Program involves implementation of new digital technologies, i.e. digital capturing of separate legal facts, special “technological” assessment of regulation projects.

Legal enforcement for digital economy development in Russia is planned to be created by improving legal regulatory and establishing a legal regulatory mechanism of newly emerged public relations. Mastering legal regulatory of public relations in order to implement the Program implies signing a large number of regulations; create new legal rules in such spheres as civil, labor, administrative and criminal law. Consequently, the number of legal rules that ensure necessary regulatory and extend the range of new rules realization mechanisms, incl. using digital technologies, will increase. [3]

New digital reality creates a new law regulatory method of public relations and forges a new vision, a far more multivariate world-understanding. Public relations digitizing, reflected and regulated by the law, creates the condition for a new law enforcement practice. For example, for the last years new relations appeared in law regulatory which subjects are «digital identities». A person as a civil law subject has now such digital data as: username, e-mail (login), IP address that is based on a computer, which takes the data about all the actions in virtual space. This digital data allow a person make virtual deals and take other enforcement and sometimes tortious actions. In case of a law dispute, need of holding a real person liable or of taking other law enforcement actions, law enforcement agencies need to collect these digital data and, taking into consideration their current equipment level, this process can be technically challenging. Currently this process requires developing a certain legal mechanism, which allows linking all the data to identify a person as a subject of law. It means to point a person as a civil law subject to a legal connection with his or her digital identity. [3]

One more legal issue of the present is providing legal guarantees of human rights and personal data security on the Internet. This issue depends directly on identifying a person in virtual space, improving the mechanism of gathering illegal conduct evidences and methods of prosecution for illegal conduct in virtual reality.

In the last years law regulatory sphere shows new relations that participant is a robot. In this connection new methods of law regulatory in such public relations, which participant is a robot, are to be elaborated, including mechanism of legal personality recognition of non-typical participants: robots and providers as legal relation participants. It implies not only holding participant liable, but also defining the rights and responsibilities in different legal relations.

The problem of law regulatory of digitized information – databases – has become particularly acute at the current time. The wide usage of databases for a last few years caused the criminals and frauds to use these volumes of data for illegal purposes. Currently the exclusive right of government to create such database does not exist. Any commercial structure has a right to create its own database; however, its technical and legal security is today imperfect. [11]

Following the Program the government is actively making efforts to digitize governmental facilities, state and municipal services. These efforts broadens the scope for citizens and fully contributes to realization of their «digital rights». Creating the web sites of state and municipal institutions with feedback opportunity helps citizens digitally take part in society and state management, i.e. taking part in social surveys, monitoring studies, law-making processes (public discussions of regulation projects). On the one hand, opportunities listed above save time and ensure the accessibility; on the other hand, they let criminals use these information and information channels for illegal purposes. As we can see it, a new law

regulatory mechanism that ensures security of not only citizens' rights, but also the information of state and municipal facilities needs to be elaborated. [6]

Legal actions, taken by an individual or an entity in virtual space and aimed at emergence, change or stop of legal relations, realization of rights or performance of duties with law connection, need a special mechanism of technical and legal protection because the crime situation becomes worse, towards the actions taken in reality. For instance, conclusion of a real contract or transaction can be proved by personal participation (showing personal ID), written form of the document, personal signatures of the parties, by witnesses etc., that is absent in digital deals. That is why an essential issue arises to strengthen legal mechanisms that contribute to legal identity identification of the parties in these legal relations. The issues of informational security and law regulatory of virtual relations need an immediate solution, especially regarding property relations.

In the context of digitalization in the society the law regulatory sphere is changing, new connections appear within, its structure is considerably altering, old connections are been modified. It is important to point out that the current inability to regulate some of public relations is connected with not only the fact that these relations are very specific or law regulatory in this sphere is limited, but mainly with the lack of digital technologies in the state government, that bridge public law regulatory and its individual regulatory. It is possible to establish regulations and use law regulatory in certain cases, but at this time, it is impossible for the government, represented by state institutions, to control the process of following the regulations, due to the lack of technical feasibility of impartial legal control over the technologies, the processes of its implementation and newly appearing public relations.

Observation and analysis of law regulatory sphere dynamics showed us that at this moment the sphere tend to expand its boundaries and involve more and more public relations. It is interesting to take into consideration the foreign experience. In the opinion of Azer Jafarov, Deputy minister of justice of the Republic of Azerbaijan), soon new technologies can take place of human. He gave the details of the new system «Electronic court», elaborated in Azerbaijan, and described its functionality and prospects of its expansion. Right now in a personal account, citizens are able to file documents, receive electronic alerts, pay fees and monitor court cases. In addition, the automatic system of case management let citizens get the judgement in the same day or next day. The deputy minister gave an example, when a big company filed concurrently 300 lawsuits and in 15 minutes, the judgements were rendered. Moreover, to make this system work, it is enough to employ 4 judges, who take place of 270 judges and more than 300 court employees. [6]

The Program «Digital Economy of the Russian Federation» provides for the replacement of paper labor contract in labor relations with a digital one. Many business enterprises start working with biometrics. On the

one hand, it improves the reliability of identifying the subject of legal relations; on the other hand, more personal data of citizens get in digital datasets and databases that in return substantially increases the risk of illicit proliferation and usage of data in illegal purposes. [4]

Obviously, the law content under the influence of digitalization is changing, new regulations appear, some of the regulations are altering or been abolished. The specifics of these changes is closely linked to the transformation of law regulatory sphere. These new “digital” public relations necessitates establishment of legal regulations and its content, and emergence of new phenomena in the law, such as non-typical law subjects, legal relations objects and regulations of the relations, appeared, changed and stopped within digital identities. [10]

According to the Executive Order of President of Russian Federation No. 2 203 “On the 2017–2030 Strategy for the Development of an Information Society in the Russian Federation” and Russian Federation Government Order No. 1632-R 28.07.2017 on the Approval of the Program “Digital Economy of the Russian Federation” there have been a number of changes in civil law, and as a result the list of civil law rights subjects provided in the Article 128 of Russian Civil Law, include digital rights.

The concept of digital rights is stated in Article 141.1 “Digital rights” of Civil Code of the Russian Federation. According to the Part 1 of this Article, «Digital rights shall be deemed obligations and other rights, the content and conditions of which are determined in accordance with the rules of the information system that meets the criteria established by law. Exercise, disposal, including transfer, pledge, encumbrance of a digital right by other means or restriction of disposal of a digital right are possible only in the information system, without recourse to a third party».

This concept of digital rights, stated in Article 141.1 of the Civil Code of the Russian federation, can be treated in many ways. It can include almost any right, included in an informational system that meets all the requirements stated in the Law. Such a broad interpretation left gaps for the government; the issue of content of digital rights will be obviously managed further through enacting laws, legislations and other law regulatory means. [5]

The concept of “digital rights” has a quite strong understanding in foreign sources, where it characterizes human rights in digital space.

According to the official review of Russian Federation Government about the Federal Law project № 424632-7 “On amendments of Parts 1, 2 and 4 of Civil Code of the Russian Federation”: “As it is following from the concept of digital rights, these rights are actually the way of upholding classic property rights (rights in rem, obligation rights, corporate rights, exclusive rights), and of its announcement and transition from one owner to another. However these rights can be electronic, without establishing new types of legal relations subject”. Therefore, it can be said that digital rights of citizens should be treated as rights of upholding property rights virtually or, in other words, using digital technologies. [5]

Such interpretation leaves open the issue of: can the concept of digital rights be used in relation to exercising non-property rights by the means of digital rights subject. Obviously, yes, because new systems and programs are being implemented to let citizens exercise non-property rights, i.e. exercise of voting rights through E-voting system, implemented first 08.09.2019 at the Elections of the Moscow City Duma of the Seventh Convocation. The analysis of non-property rights exercising using digital technologies gives an opportunity to propose a more wide usage of these rights in procedural law. [9]

At present, the Ministry of Justice is actively engaged in civil law regulatory and digital technologies development in trial and notary spheres. New directions of necessary law regulatory are being observed, in particular, elaboration of an electronic system of legal facts fixation. At the same time, the deputy minister of justice noted that the perceived need of new legal institutions creation went false. Rather, it is more important to modernize already existing systems and elaborate documents, which accelerate information processing. For instance, it is necessary to solve the issue of digital evidences use permission and communication in the court via video conference call. “Standing trial” via mobile device though is at the moment impossible, because such connections are insecure now. However, dispute resolution with a seller of goods or services via online-platform became true today, since no certain amendments in procedural law are not required for this purpose. [8]

The beginning of planned transition to a new stage of economics development (digital economy) stimulated a new round of crime evolving in digital space. [8]

The new technical revolution with robotization – usage of quantum computers, DNA-computers, neural networks, mining farm (according to various estimates, able to fill approximately 40% of workplaces with robots in the next 10 years not only in industry and transportation, but also in services) – makes the issue of stopping upward mobility and youth employability acute, as never in the history. If the society does not find a way of solving the issue, the youth can react with the wave of nanotechnological crime. [7]

This is related to the fact that the turbulence, partly unfriendliness and rapidity of the future do not decrease, but increase the risks of criminal activity not only for certain countries or groups of people, but for every legitimate citizen, every family.

The combination of high effectiveness of such crimes with its relatively low cost and high accessibility not only for huge organized gangs, but also for small bands and even single criminals, under a low risk to be prosecuted, makes high-tech crime the most attractive crime branch of the 21st century.

It is not hard to see that victims (persons or legal entities) do not believe in police ability to find and prosecute high-tech criminals; the law enforcement agencies instead, trying to avoid unsolved criminal cases, seek under any circumstances not to admit reports or not to initiate criminal proceedings.

This situation causes negative impacts. Since victims do not make reports, law enforcers either do not find guilty criminals or try not to initiate criminal proceedings, no one certainly knows the extent, the dynamics and the structure of high-tech criminality.

Cross-border high-tech criminality irrevocably rejects information sovereignty approach. Criminals are well aware of unite cyberspace and world electromagnetic environment and consequently, with their disregard for the law, they have already acted out of any boundaries, using inter-state disputes, miscommunications and mutual accusations.

In this case, a necessary law regulatory instrument against cybercrime are specific actions in citizen and entrepreneurs security.

It means, an effective instrument against crime could be the implementation of digital technologies in criminal policy.

The main purpose of digital technologies implementation is determined, first of all, by reasonable duration of investigation a criminal case (Article 6.1. of Criminal Procedure Code of the Russian Federation).

Clause 4 of Article 6.1 of Criminal Procedure Code of the Russian Federation specifies that the circumstances, related to the work organization of investigation authorities, prosecutor's office and court, cannot be taken into consideration as a ground for exceeding reasonable duration of performing criminal proceedings.

2. CONCLUSION

The implementation of the proposals, regarding the streamlining of certain criminal proceedings, depends directly on the improvement of the forensic strategy system.

Thus, the task of forensic strategy will be connected with elaborating the tactics of performing certain investigation (pre-trial) proceedings and tactical operations in digital format.

Particularly, in order to decrease time loss for certain proceedings, digital technologies for such criminal proceedings as «Identification line-up» (Article 192 of Criminal Procedure Code of the Russian Federation) and «Presenting for an identification» (Article 193 of Criminal Procedure Code of the Russian Federation) can be implemented.

The implementation of digital technologies can significantly reduce the duration of pre-trial investigation in criminal procedure proving, when investigation proceedings take place in another region (Part 1, Article 152 of Criminal Procedure Code of the Russian Federation).

Widespread use of remote digital technologies in criminal proceedings listed above involving interested parties is a promising trend for improving law regulatory in criminal process.

In this regard, we consider it advisable to broaden the literal interpretation of Article 278.1 of Criminal

Procedure Code of the Russian Federation «The Specifics of an Examination of a Witness by Way of Using Videoconferencing Systems» disposition by including its exercising on:

- all stages of criminal proceedings;
- all participants of these proceedings;
- all types of preliminary investigation.

It is very important and mandatory that all criminal proceedings with the use of digital technologies must be conducted with ensuring credibility and admissibility of information obtained, providing security and safety of information, with respect to the rights and legitimate interests of all participants in certain criminal proceeding and following the court order.

Digitalization in criminal proceedings will be a good instrument to streamline types of proceeding, without causing particular risks for execution justice in criminal cases.

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