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LEGALTECH IN RUSSIAN LAW-MAKING: PROBLEMS OF TERMINOLOGY AND LEGAL DRAFTING METHODOLOGY

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Abstract: The research objective of the paper is to analyse and systematize modern digital technologies used in law-making, as well as to identify the consequences of digitalization of law-making for legal drafting methodology. It is stated that in humanitarian studies there is uncertainty in the use of the terms "digital technologies", "digitalization", "information technologies", "automation", "electronic technologies", "network technologies", "computer technologies", etc.; this circumstance interferes with

the formation of legislation on the use of the latest technologies in law-making. Analysing documents and scientific literature, the authors conclude that it is necessary to distinguish between information technology and digital technologies in the field of rulemaking. Such terminology will help create different legal regimes for different procedures intended for dealing with legal information.

Keywords: digitalization, Legaltech, digital technologies, information technologies, end-to-end digital technologies, law-making, legal drafting methodology.

INTRODUCTION

The concept of "digitalization" is currently one of the most frequently used, widely replicated, and at the same time very vague and ambiguous. It is used in various contexts; various meanings and sometimes contradictory plots are put in its content. Sometimes, focus is made on mismatched processes and trends (social, technical, cultural and other development). Nevertheless, in general terms, “digitalization” is usually understood as the process of converting into digital form any information about the surrounding reality, social processes, cultural and individual texts, events, and so on. The latter radically changes the form of life, the communication process in society, value and normative guidelines.

Today, the concept of "digitalization" in the humanities began to be used for denotation of a complex of economic, managerial, social and other processes associated with the use and widespread dissemination of digital, computer, information, electronic, network, telecommunication technologies in modern life. In the broadest sense, experts from UNCTAD (United Nations Conference on Trade and Development) define digitalization as a socio-economic transformation initiated by the mass adoption and assimilation of digital technologies, i.e. technologies for creation, processing, exchange and transmission of information.(1). In relation to the transformation of law in the context of the development of digitalization, lawyers define the latter as a process aimed at transforming a particular sphere of life (a branch of the national economy) by introducing digital technologies and innovative technological solutions into it.(2). At the same time, digitalization is changing many areas of professional and human activity,(3). including law-making, and all work with legal information.

MATERIALS AND METHODS

The regulatory framework of the study was made up of strategic planning documents in the field of digitalization, namely: the current National Program "Digital Economy of the Russian Federation" (federal project "Digital Technologies", approved on May 28, 2019), as well as the previous version of the document, i.e. the state program "Digital Economy "(2017). The theoretical basis of the research was the latest research of large Russian institutions in the field of digitalization of legal regulation - the works of the Institute of Legislation and Comparative Law under the Government of the Russian Federation (Chernogor N.N., 2019; Zaloilo M.V., 2019; Pashentsev D.A., 2019; Israelyan V.B., 2019, etc.) and Moscow State University named after O.E. Kutafin (Lipen S.V., 2019; Kornev A.V., 2019, etc.). Studies of the digital revolution and digitalization of

management became the basis for the review of end-to-end digital technologies (Kartskhia A.A., 2017, Kozhevina O.V., 2019)

The factual material, which became the foundation of the analysis, was studied on the basis of periodicals and news data of information and analytical media. The proposed study is the author's point of view and is an attempt to systematize and problematize research on the use of digital technologies in rulemaking. The study is based on such methods as system-structural analysis, which allows differentiation and systematization of modern technologies of law-making activity; formal legal method, with the help of which the normative legal acts governing relations with the use of digital technologies are analysed; comparative legal analysis to assess the experience of Legaltech distribution in Russia, Germany and the USA.

RESULTS AND DISCUSSION

Terminological problems of digitalization.

Representatives of technical specialties are justly annoyed by the use of the word "digit" by the humanities to denote any processes associated with the use of computers and the Internet. Digitalization has replaced automation, computerization, and informatization; however, these processes are often mixed into one whole in legal, political science, and economic research. Such ideas are sufficient for a significant part of the research, since it is not the technologies themselves that are studied, but the changes that they bring to various spheres of social life. Modern technologies have changed the world, significantly affecting the sphere of interests of "humanities": they are transforming the economy, power, politics, law, education, media environment, culture and psychology of modern society. It is these transformations, which are obvious in everyday life, that excite representatives of the social sciences who talk about the pros and cons of digitalization and use the concepts of "digital technology", "digitalization", "information technology", "automation", "electronic technologies", "network technologies", "computer technologies", etc. as almost synonymous.

In a sense, such a semantic (terminological) inaccuracy is a normal situation for humanitarian research in areas closely related to technical knowledge. But at the same time, the emerging terms should have conceptual uniqueness and a limited semantic framework, which would ensure uniformity of their use in certain fields of science or fields of activity, as well as a uniform understanding of the context by specialists in these areas. For example, the expressions "in electronic form", "electronic technologies", "electronic document", "electronic workbook", "electronic government", etc. have become widespread and practically universally recognized. This terminology is also a convention. In technical terms, the words "electronics", "electronic" are related to the material part of technology, to hardware and equipment. Electronics gives computers for the world. And then they begin to call “electronic” all the information that is stored in a computer memory (in digital form), for the use of which a computer and network technologies are required (electronic text, electronic journal, electronic library, email, etc.). In addition, now the word "electronic" is used as a synonym for "network" in the sense that “electronic” refers to everything that is carried out via the Internet (e-commerce, e-shop, e-business).

Therefore, in technical terms, electronic and digital government, electronic and digital law-making, electronic and digital government, electronic and digital services are

synonymous. Information (information and communication) technologies are now also understood, first of all, as the use of computer technology, and also computers and the Internet to search, store, process and transmit data.(5). However, for some studies of digitalization and its impact on socially significant processes, the use of such generalized and imprecise concepts will be insufficient. For example, in cases when it comes to the use of digital technologies in law-making.

Digitalization in law-making.

Attempts to formulate the concepts of digital, informational, computer, network, electronic, etc. technologies or to distinguish them were undertaken in several studies.(6). For example, scientists from the Moscow State Law Academy named after O.E. Kutafin believe that the informatization of activity is the use of computers, gadgets, programs, and the Internet. Digitalization involves the use of artificial intelligence, learning machines, other software, and computer technologies.(7). The authors point out that informatization refers to the achievements of the third industrial revolution, and digitalization to the fourth one; then they conclude that "... the term of "informatization" is acceptable to characterize the introduction of computer technologies into law-making activities".(4).

On the whole, one can agree with this position, but with some reservations. Indeed, speaking about digitalization of law-making or digital technologies in law-making, most authors mean information, computer technologies, and the use of the Internet in the process of creating and applying legal information. That is, digitalization and digital technologies are simply more fashionable and modern terms to denote the possibilities of working with legal information using a computer and the Internet. Usually, information (digital) technologies in law-making include the publication of adopted normative legal acts on the official websites of state bodies; posting plans for the preparation of normative legal acts on the Internet; the inclusion of normative documents in electronic reference systems; electronic law-making initiative; the creation of state information retrieval (automated) systems; public discussion of draft regulatory legal acts using Internet resources.(8).

In modern usage, the term "digital technology" is used in a narrow sense, that is, it is used to refer to the latest advances in digital technologies and end-to-end digital technologies. Indeed, in the broad sense of the word, digital transmission of information and digital machines have been known since the last century, it is on them that modern information and computer technologies are based. The current stage of development of IT technologies and the Internet is called the digital revolution and is associated with the "digitalization" of production, which is expressed in the creation of global industrial networks using artificial intelligence, the spread of the Internet of things, automatic identification services, collection and processing of global databases, cloud technologies, social networks, creating fundamentally new mechanisms of human-machine interaction.(9).

The manifestations of digitalization as the IV industrial revolution should include, first of all, the so-called end-to-end digital technologies, which affect various industries and most affect the development of the digital economy. The federal project "Digital Technologies", which is part of the National Program "Digital Economy of the Russian Federation",(10). end-to-end digital technologies include: Big Data, new production technologies, Industrial Internet of Things (IIoT), artificial intelligence (AI), wireless

communication technologies, robotics and sensor components, quantum technologies, systems distributed ledger, technologies of virtual (Virtual Reality, VR) and augmented (Augmented Reality, AR) realities.

Digitalization of law-making has not been singled out as a separate project within the framework of the national program “Digital Economy of the Russian Federation”. However, an idea of new technologies that can be applied within the framework of law-making can be obtained by analysing the materials of the federal project “Digital Public Administration” and other blocks of the national program. If e-government assumed electronic document flow and government services in electronic form, then digital government is associated with the use of technologies such as Big Data, cloud technologies, blockchain, predictive analytics, artificial intelligence and virtual reality.(11). With regard to the use of modern technologies in law-making, it seems reasonable to distinguish between information and digital technologies themselves, since we can talk about fundamentally different things. In the context of a new technological revolution, society and the legislator need a new "digital culture", which, among other things, is associated with the technical literacy of modern specialists.

This terminological distinction is conditional, but it will help us, methodologically and functionally, distinguish different procedures for working with legal information, both existing and possible in the future. Experts rightly emphasize that “... the law-making process itself, technologically and procedurally, is under the pressure of digitalization processes and requires a significant change in approaches. This is due to the development of big data technologies (bigdata), artificial intelligence, the deployment of private and public law on the network, as well as the formation of the so-called legaltech”.(12).

With this approach, information technologies should include the already known and developing technologies that ensure wide accessibility of legal information, transparency of the law-making process at all its stages, as well as public discussion of draft regulatory legal acts with the participation of the scientific community, politically active institutions of civil society, and the population in general. ... In this direction, the development and improvement of existing institutions is required, such as state information systems, electronic official publication of regulatory legal acts, electronic public initiatives, placement of draft regulatory legal acts on special Internet resources (not only draft documents of federal executive bodies), public discussion of draft regulatory legal acts, etc.

As for digital technologies themselves in law-making, the main thing here is artificial intelligence, which can provide fundamentally different possibilities for automating legal activities and analysing legal information. Digital technologies can give machine-readable regulation for the world, which will make possible the emergence of smart laws (self-executing laws by analogy with smart contracts), reduce the need to interpret legal norms, identify possible conflicts of legal norms at the legislative stage and, accordingly, prevent them.(13).

Professional legal activities.

One of the most famous manifestations of digitalization of legal activity is LegalTech (there is also terminological ambiguity regarding this concept). Generally, LegalTech means the use of information technology, online services, and special software to improve the efficiency of legal activities. There are quite a few developments

on the Russian market that help to optimize the legal business or (to a lesser degree) organize legal advice to the population. It is not so easy to give examples of services created specifically for law-making or for state law enforcement, but they are still there. For example, the company "Preferentum" creates automated information systems based on intelligent technologies for analysing arrays of unstructured information, both for commercial and government agencies. Among the company's projects are the developments and implementations of a legal monitoring system (AIS "Monitoring") and a legal examination system (AIS "Monitoring-M") for the Ministry of Internal Affairs of Russia (the system has been in operation since 2009.)(14).

Examples of programs in the LegalTech segment on the Russian market include: Preferentum Legal Expertise (a software package designed to reduce the time frame and improve the quality of verification of documents when coordinating and conducting expertise of draft regulations, contracts, agreements and other documents); Casebook (a service for monitoring court cases and monitoring the activities of counterparties); Caselook (a tool for searching and analysing judicial practice); Case.pro (legal process automation system); LawMatic (software for lawyers); Yurayt (a program for accounting of court cases and claim work); FreshDoc (online document builder); Jeffit (a service for keeping track of the current workload of lawyers), etc.

Foreign platforms widely use artificial intelligence and machine learning, so their functionality is wide and involves, among other things, verification and interpretation of complex legal texts (Luminance, Leverton, Contract room).(15). A few years ago, the media reported that a virtual legal assistant had been developed in the United States of America .(16). This is a program equipped with a question-and-answer system of artificial intelligence that uses natural language in order to understand the questions of lawyers and provide them with information on court cases and legislation of interest to them with the necessary links. The machine saves lawyers from having to look through a lot of materials in search of the most relevant cases. Marketing Manager of BGP Litigation,(17). Svetlana Zelenova believes that "... Legal IT will continue to develop in the field of statistics and analytics of data sets, which will significantly save the time of lawyers and give competitive advantages to those firms, which systems are very well structured and operate efficiently."

In 2017, the media reported that the Project Office of the Government of the Russian Federation proposed to Dmitry Medvedev a plan to transfer the regulatory and legal framework to digital technologies. It was about the creation of "electronic codes" based on the French model, generation of standard court decisions using artificial intelligence (AI) and the creation of an automated system for monitoring judicial practice.(18). At the first stage, the authors of the project proposed using the transition to digital technologies to identify outdated, non-working, as well as ineffective and ambiguous norms in the entire array of legal acts. Following the example of France, it was proposed to create at the second stage electronic codes of "unified regulatory documents, various parts of which are adopted by different levels of government in accordance with their competence." Moreover, in the future, electronic codes were to become the official place of publication of legal norms.9(19). At the third stage of the reform, it was planned to create an automated legal decision support system (DSS) based on AI [artificial intelligence], including services for the automated generation of documents for typical cases.

These measures were planned to be carried out in line with the state program "Digital Economy" in force at that time, the automation of law-making, the development

of a machine-readable language for rulemaking, and the use of artificial intelligence for analysing the content of regulatory legal acts are not separately mentioned in the modern version of the national program "Digital Economy of the Russian Federation". But we would like to hope that previous developments will be used in the implementation of other elements of the program. In any case, they give an idea of the actual digital technologies in law-making.

Decision support systems based on artificial intelligence, high-speed Internet, cloud technologies, etc., can become the future of LegalTech in law-making, judicial and law enforcement activities. At the moment, we can talk about the use of such technologies in jurisprudence (LegalTech): bots-lawyers and document designers; online lawyers and crowdfunding in litigation; online justice; lawyers having artificial intelligence. With all this, as experts note, “jurisprudence remains analogous”.(20). In terms of technological progress, a secondary technological shift is expected associated with the development of blockchain and other technologies, which will fundamentally change the economy, and, consequently, legal work. Lawyers began to understand the issues of artificial intelligence, but the blockchain and its capabilities remain beyond the understanding of the majority. But for now, lawyers should deal with those information technologies that are already known and are being introduced into practice. In any case, it is impossible to close our eyes to the fact that the future lies with digitalization and the massive dissemination of information technologies.

Digitalization and legal drafting methodology.

The development of LegalTech in Russia is largely constrained by the lack of adequate legal regulation of legal drafting methodology. Legal drafting methodology is important for the implementation of both digital and information technologies in law-making in general. Digitalization objectively imposes completely different requirements on the form and process of preparing a legal act, significantly formalizing the process of its creation. Perhaps now, under the pressure of information technology, it will finally be necessary to solve those questions about the methodological and practical significance of which scientists have been called for years.(21). Openness, legal acts should become clearer and more transparent. Legal information is losing its elitism, which means that it must acquire characteristics that make it accessible to the ordinary consumer of information. As experts rightly point out, "the rights, obligations, permissions, prohibitions, benefits, sanctions and other structures of legal acts addressed to the subjects of law should be unambiguously perceived by all participants in life situations regulated by law".(22).

“The legal drafting methodology, i.e. the way documents are written requires an upgrade. We need to learn to write easier and more clearly, and better structure the documents. If not only job descriptions, but also special software help in this, the chances of radically improving the quality of regulatory documents will increase," says Anton Vashkevich, managing partner of the legal technology company Simploer .(23). Secondly, the introduction of artificial intelligence into legal activity and the processing of information in digital form by machines impose much more stringent requirements on the organization of the system of legal acts, their form and content. It means that artificial intelligence used in the search for legal information and forecasting legal decisions needs much clearer and, most importantly, strictly enforced rules of legal drafting methodology than carriers of natural intelligence. In situations where the

search and analysis of information will be carried out by artificial intelligence, a low level of legal and technical quality of documents will complicate or make it impossible to adequately select and correctly interpret legal acts. And this is not a flaw in artificial intelligence; it is a problem of carriers of natural intelligence, who do not pay due attention to the property of formal definition of law and the parameters of the legal form of documents.

All of the above does not mean at all that we are in favour of "robotic law", in which norms are created and applied by artificial intelligence without human participation. On the contrary, according to the original idea, the benefit of artificial intelligence and digitalization in general is to provide support for decision-making, and not to oust human from this process. Technologies should help people; technical progress should be aimed at improving the quality of life and increasing the efficiency of people's activities. But the algorithmization of the rulemaking process allows using the full potential of informatization and end-to-end digital technologies to increase the efficiency of law-making and law enforcement. The high level of formalization and algorithmization of legal drafting methodology allows ensuring such objective properties of law as formal certainty, consistency and normativity, and also increases the level of freedom from gaps in law.

CONCLUSIONS

1. In humanitarian studies, there is uncertainty in the use of the terms “digital technologies”, “digitalization”, “information technologies”, “automation”, “electronic technologies”, “network technologies”, “computer technologies”, etc. On the one hand, this is normal practice for the humanities, where not the technologies themselves are investigated, but their impact on social processes. On the other hand, this situation complicates interdisciplinary research and prevents the creation of effective legislation in the field of the development and application of digital technologies.

2. In the modern language, a certain standard for the use of the term "digital technologies" has developed, in which this concept denotes the latest achievements in the field of digital technologies, as well as end-to-end digital technologies affecting various areas of human activity.

3. It is proposed to distinguish between information technology and digital technology itself in relation to law-making. Information technology will include such institutions as the electronic publication of legal acts, electronic banks of legal information, electronic discussion of draft laws, reference legal systems, electronic law-making initiative, etc. The use of artificial intelligence in law-making, in particular, LegalTech, should be attributed to digital technologies themselves; machine readable regulation; self-enforcing smart laws; blockchain and Big Data in legal activities of the future.

4. The use of Legaltech and other digital technologies in law-making in Russia is constrained by the lack of legal drafting methodology standards enshrined in legislation. Information and digital technologies themselves are changing the requirements for legal drafting methodology, which needs legal regulation.

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