

Legal Tech Development Online Conference (St. Petersburg, April 20, 2020)

ABSTRACT

The review highlights the main issues raised by the participants of the conference held on April 20, 2020 in the online conference mode due to the self-isolation conditions applied in the framework of the COVID-19 pandemic. The conference discussed the impact of digital technologies on public relations, prospects and the need to change the legal regulation of such relations, the experience of developing digitalization of public administration in China, as well as the contents of the term Legal Tech and Law Tech and the problems related with artificial intelligence.

Keywords: Legal Tech, Law Tech, artificial intelligence, digital rights, legal regulation, legal personality of the robot

The Development of Legal Tech conference was held online on April 20, 2020, with the participation of the Statutory Court of St. Petersburg. The conference was dedicated to the development of regulation of digital technologies which are becoming increasingly widespread and necessary in certain conditions, as the situation with the COVID-19 virus pandemic has shown. The Conference was attended by Dmitry Aleksandrovich Lisovitsky¹, Nikolay Viktorovich Razuvaev², Aleksandr Evgenievich Molotnikov³ and Marina Aleksandrovna Rozhkiva⁴.

Dmitry Aleksandrovich Lisovitsky made a report on Digital Information: Challenges and Opportunities. He noted that since law is a regulator of social, primarily economic, relations, in particular, property relations and relations arising in the labor sphere, it is necessary to highlight such present features of these relations as the deepening division of labor, as well as their development in the context of scientific and technological progress, which includes digital information. According to D. A. Lisovitsky, people are trying to predict how the development of technology will affect the processes taking place in the society.

There are various futurological forecasts: from a catastrophic decline in employment and complete subordination of humans to artificial intelligence to more positive assumptions about the rationalization of labor relations, man's transition mainly to intellectual, creative work. However, these studies do not provide grounds for reliable conclusions about changes in basic social relations, including the social nature of labor as a commodity. Thus, it is too early to talk about the qualitative impact of digital information on law as a regulator of public relations.

For example, if we consider the question of whether the essence of constitutional rights and freedoms will change, then today it may be concluded that such changes should not be expected, but subjective rights may be technically adapted to socio-economic and political conditions of their exercise. This means, for example, the remote exercise of rights, which can already be seen in the example of the right to access to health care which is now actively developing within the framework of telemedicine; or electoral rights, the possibility of their exercise with the help of electronic and remote technologies being actively discussed now and being already being implemented to some extent. That is, the essential content of the right does not change, but new tools appear for its implementation.

Thus, Dmitry Aleksandrovich concludes that one can agree with Chairman of the Constitutional Court of the RF V. D. Zorkin that "digital rights are, in fact, the concretization (through law and law enforcement, including judicial acts) of universal human rights guaranteed by the international law and constitutions of states"⁵. Law is certainly facing new issues, for example, the issue of the legal personality of robots, electronic persons, but at the moment this is still theoretical reasoning that has no real support in practice.

In the sphere of law enforcement, the digitalization of the society has not yet led to a wide update of theoretical and legal tools, to a change in the structure of law, although there are also debatable issues, for example, smart contracts, their legal nature being discussed by experts.

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⁵ *Zorkin V. D.* Law in the digital world [Pravo v tsifrovom mire. Razmyshleniya na polyakh Peterburgskogo mezh-dunarodnogo yuridicheskogo foruma]. Rossiyskaya gazeta, 2018. May 29. (In rus)

The report of *Nikolay Viktorovich Razuvaev* "The law of the digital age: new paradigms of regulation and cognition" touches upon such issues as the need to study the digital society as a whole within the framework of an complex area that integrates the achievements of all social and human sciences.

In a digital society, the most important resource is intellectual capital defined as a set of intangible goods produced by a person (knowledge, professional and other skills, as well as the results of intellectual activity, rights to them and means of individualization). The source of intellectual capital is the human personality in all the fullness of its manifestations and aspirations whose creative abilities become the most important value, including the economic one, and the main subject of legal regulation.

According to N. V. Razuvaev, the relations that prevailed only in the sphere of property turnover for a long time, including the equality of all participants, become the basis of political power, leading to the transformation of the state and law, to a change in their social essence, structure and form. The state previously characterized by relative isolation from the civil society (and in some cases opposed to it) is now turning into one of the institutions of the latter built on the principles of self-organization inherent in the civil society as a whole. It is the predominance of horizontal relations over vertical hierarchical ones that should be considered the major feature of the emerging postmodern state which is a form of organization of power in an information society.

This circumstance was deeply and comprehensively covered in the works of J. Habermas and his followers who developed the concept of deliberative democracy being the main tool for making political decisions in a digital society. It should be noted that the formation of institutions of deliberative democracy which is a set of mechanisms of decision-making on fundamentally important issues based on a dialogue and coordination of the communicative actions of the participants is the result of the investment of intellectual capital in the political sphere leading to its accumulation and growth.

The guarantee of the effectiveness of the implementation of democratic procedures in the modern conditions is the use of digital technologies. It is no coincidence that in developed democracies the leading trend now is the digitalization of the political and administrative spheres, the use of technological opportunities to increase the citizens' participation in decision-making based on a broad dialogue and consensus building. The actively developing technologies include the so-called "electronic government" and other institutions of digital democracy characterized by a high degree of interactivity and openness to the demands of citizens shaping the agenda.

Despite all technical innovations, the basis of the rule of law in a digital society is still the sovereign human personality whose legally significant actions proceed from the awareness of their own freedom and at the same time the recognition of the freedom and inalienable rights of other people. The recognition of this fact involves reasonable conservatism that characterizes the "legal way of thinking". In a digital society, ensuring personal freedom, creating the most favorable conditions for its self-actualization should be the main goal of legal regulation, and the nature of communications determined by the personal qualities of the participants preconditions any areas of legal regulation. The recognition of the uniqueness of a person as a basic subject of law is seen as an effective means of countering the dehumanization of the society being one of the most important challenges of the digital age.

The conditions of the digital society require a radical turn of legal science making it capable of responding to the demands of the rapidly changing legal reality. The major prerequisite for such a turn is the convergence of the general theory of law and sectoral legal disciplines ensuring the similarity of their positions on topical problems of science and practice.

Thus, the digitalization of the society as a megatrend of the modern world needs to be comprehended, and this task has a high degree of relevance both for social theory and jurisprudence. According to N. V. Razuvaev, the main principles on which the study of the processes of digitalization of law should be based include:

- synthesis of the general legal theory and industry doctrines;
- development of cooperation between scientists and practicing lawyers whose developments are of significant value in solving specific issues;
- expansion of international cooperation in order to search for universal legal instruments in the context of globalization of communications.

Aleksandr Evgenievich Molotnikov shared information about China's experience in regulating the digitalization tools used. A. E. Molotnikov drew attention to the fact that, in general, the following pattern of technology development is observed: first, a technical solution appears, technology develops, and then it starts influencing human relations, which leads to the need to change legal regulation. An interesting feature of the current stage of development of the society (including in China) is that when we talk about technology, we forget that technologies are now directly related to law, but if technologies are

global, then the law is local. It has not yet been possible to create a universal legal model that could be applied to various legal orders.

Thus, the technologies are the same, but the consequences of their application and regulation are completely different in different countries. For example, the regulatory system in China is directly related to ethical aspects. One of the key problems is what ethical principles will form the basis for the application of technological inventions, artificial intelligence, big data arrays, and scientific experiments with the human genome. And this is the key aspect related to legal regulation.

There are two main positions regarding China's digital development: first, that China is turning into a digital concentration camp, and second, that this is a kind of digital future in store of all of us, and it will not affect the fundamental human rights and freedoms. But there are several aspects to consider. As for the position of creating a digital concentration camp in China, for example, the credit rating system in China is generally negatively perceived by the Western public, while the Chinese themselves are indifferent to it, they do not see anything wrong with it, given that this is a technology that allows analyzing the person's behavior and assign a certain category to the person in order to receive certain services, but a negative public opinion has been formed in the Western society around this mechanism over the recent years.

At this stage, we are at the level where we often talk about technological phenomena that are to appear, but have not yet appeared. For example, artificial intelligence today is just a development related with neural networks, which allows a program to learn by analyzing a huge array of information, to make some decisions based on the data obtained. However, this is not an intellect that can make independent decisions and control certain processes independently of the human. Even in China, a lot of developments are still at the basic level. We can gather large amounts of data, but we cannot analyze it at a level sufficient to achieve the desired goals. We have not yet reached the stage in the development of technologies when they lead to the emergence of new systems of relationships that require the creation of special or new methods of legal regulation.

China is currently undergoing a large-scale reform of civil legislation and other branches of law. They have a very sound approach to it, and regulations are already emerging that will have an impact on the use of the gathered databases. And in some time, it will be already possible to analyze which way of regulating technological solutions China will take. We will be also able to see which model of legal regulation will prevail in the international space, whether it will be the West European approach or the Chinese or some other model.

During the discussion of the content of the concepts of Legal Tech and Law Tech, *Marina Aleksandrova Rozhkova* noted that at the moment the technical solutions included in the concept of Legal Tech are, for example, the legal framework that we have been using for a long time, these are programs, technologies which allow lawyers to perform professional acts. When referring to legal bases using certain algorithms, we can provide ourselves with the necessary professional information. Thus, Legal Tech is not some complicated concept, but ordinary programs, electronic services that allow us to carry out professional legal activities. For example, legal databases offer both selection of judicial practice, publications on a specific topic and the possibility to draw up an agreement, etc. Law Tech is the other side of the coin. If we say that Legal Tech helps lawyers, then Law Tech is the programs, solutions that allow the end users, that is, consumers of legal services, to receive certain legal advice or access to legal information, these are reference legal systems, tools to calculate the stamp duty, etc.

When we enter a request in legal bases, we understand that the search for an answer to our request is not carried out manually, but by means of a program. This is where the field for the use of artificial intelligence comes in to simplify the task of lawyers and users of legal services.

What is artificial intelligence? If we look at the existing regulatory acts, the Concept of artificial intelligence⁶, we will find a rather complex definition in them which is hard to correlate with our idea of a legal framework, for example. Another difficulty in defining the concept of artificial intelligence lies in the fact that owing to the literature in large segments, the prevailing idea of artificial intelligence is that of a kind of robot provided with certain knowledge that will come, connect the neural network and solve

⁶ This refers to the draft Concept of development of regulation in the field of artificial intelligence and robotics technologies until 2024, developed by the Ministry of Economic Development of Russia jointly with the Skolkovo Foundation, Sberbank PJSC, MTS PJSC, the Analytical Center under the Government of the Russian Federation, the National Association of participants of the robotics market, the Center for Strategic Research Foundation, Yandex LLC, Mail.ru Group and representatives of other organizations and submitted for consideration by the Normative Regulation working group of Digital Economy ANCO on April 17, 2020 [Electronic resource]. URL: https://www.economy.gov.ru/material/news/rabochaya_gruppa_ano_cifrovaya_ekonomika_odobrila_razrabotannyi_minekonomrazvitiya_proekt_konceptcii_razvitiya_regulirovaniya_v_sfere_iskusstvennogo_intellekta.html (accessed on: 07.05.2020). — Editor's note.

any problem. Even the European Parliament in 2017 proposed to introduce a new entity into the legislation: an electronic personality which implied artificial intelligence and the most advanced robots.

It should be said that this initiative was largely based on the idea that in practice robots replace people in some kinds of work, which entails job cuts and a decrease in the tax base. That is, there is a fiscal interest of the state in regulating the use of robots, as well as the fact that to some extent robots pose a threat to the life of people, and the harm they can cause needs to be understood and legally regulated. Accordingly, this threat should have been assessed by experts in order to work out the decisions in which the robot itself would be responsible for its actions. The reality of such a threat was exemplified by robot Sophia which received the citizenship of Saudi Arabia in 2017 and thereby received legal personality.

In reality artificial intelligence in a simplified description is a computer program, its main elements being: a database; the “solver”, actually — a program that allows solving the questions posed to it without human intervention; and an intelligent interface that allows the person to communicate with artificial intelligence.

An example is the situation with Amazon: the Amazon HR department conducted a recruitment campaign for the development of the technical sphere, IT specialists, using artificial intelligence according to a certain algorithm. It appeared during the CV selection process that the program rejects all women’s applications. According to the results of the audit, it was established that the database provided for the artificial intelligence was the database of summaries of programmers over the recent ten years, when this work was mostly done by men. Artificial intelligence based on the algorithm embedded in it and the database provided for training selected questionnaires. The program was suspended, and Amazon had to make a public apology for the mistake. As you can see, it is practically impossible to create an ideal algorithm initially, since it is extremely difficult to take account of all the nuances. This is one of the main problems of using artificial intelligence.

Since this is a program, it can be embedded by the robot itself. At the same time, we often imagine robots as humanoids, but in fact robots and intelligent robots (robots of the last generation) can have absolutely any appearance, and the task for which they were created is determined by the goals set for them by the man. Today, a robot is a physical shell for artificial intelligence controlled by it, there is no reason to say that a robot is a subject of law. Information is initially put into it by the man, the algorithm of work is created by the man, the goal is set by the man. It is so early to say that this robot-object is provided with authorities, functions and powers similar to human ones that it is even strange that this issue was brought up for such a wide discussion in Europe.

Today there is no reason to say that a robot can have legal personality.

But many questions arise in connection with the use and development of artificial intelligence. In particular, these are issues of the subject of responsibility for causing harm: who should be responsible for the negative consequences arising from the use of artificial intelligence — the person who pressed the button, the developer, the owner of this object? Many issues are related to the emergence of intellectual property rights as a result of the use of artificial intelligence. There is definitely no reason to say that robots have these rights, but there is still a question whether they it is the owner or the developer of the robot that has them.

Today artificial intelligence is an auxiliary tool. For example, an experiment was conducted in South America of making judgments using artificial intelligence in the framework of the consideration of cases of administrative offenses. In 90% of cases, lawyers agreed with the decisions made by artificial intelligence. But these were really elementary cases that require the application of laws without evaluating the facts. As soon as we move into the plane of civil law cases where there are a lot of evaluation categories, subjective moments, where we are forced to apply an analogy of right, an analogy of law, then in such cases the use of artificial intelligence is impossible. At the same time, in this case artificial intelligence can be a good assistant to lawyers in the selection of judicial practice, literature.

As Marina Aleksandrovna summed up, it appears that at the moment the legal regulation of intelligence is not yet very developed, but it is too early to say that relations with the use of artificial intelligence urgently need legal regulation. At the same time, since many questions arise in connection with the use of artificial intelligence technologies, these issues should be already discussed by the professional community, so that when we reach the appropriate level of technologies requiring special regulation, we will not be at a loss and will resolve issues in accordance with ready-made legislative decisions.

In conclusion, the conference participants thanked the organizers for the opportunity to exchange views and expressed their hope for continuing the discussion of the topical problem of using digital technologies in law.