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THE DIGITAL ASPECT OF THE APPLICATION OF ETHICAL STANDARDS

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Abstract

The growth of the digital economy entails the mechanization and algorithmization of the providing services process, ensuring and protecting the citizens' and legal entities' rights. This process changes approaches to legal regulation of public functions. It also transforms the requirements for government representatives and other bodies that exercise these public functions, especially in relation to the so-called "Free professions" (advocacy and notaries). These approaches are aimed at protecting the interests of all participants in this process in the context of the mechanization of procedures using the Internet environment. Security issues concern not only the technical aspect of communication and the speed of obtaining the requested information and control over the safety of public life. These issues are also related to the possibilities of round-the-clock monitoring of the public services performance, and also entail the possibility of round-the-clock monitoring of the representatives of law enforcement and human rights professions personal life (what leads to the question of the permissibility limit). And this, in turn, can lead to excessive pressure on these state and near-state bodies using electronic methods of searching and recording evidence. At the same time, the aim of digitalization is saving time while receiving public services, reduction of queues, etc., and, as a result, it makes the executors of public services (functions) hostages of citizens-consumers' digital opportunities, where one of the methods is to accuse them in unethical behavior or unprofessional performance of their duties.

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1. Introduction

For some types of professional activity, society shows increased moral requirements. Mostly, these are such professional areas in which the labor process itself requires the coordination of the actions of all its participants, in which activity is related to the right to control peoples' lives. In this connection, we are talking not only about the proper performance of their professional duties, but primarily about the level of morality.

2. Problem Statement

At the same time, the modern digital stage of our society's development, the translation of relationships into a digital form, preferable usage of means of telecommunications not only in routine but also with authorities, entails the transformation of requirements for government representatives and other bodies that exercise state functions, especially for so-called "Free professions" (advocacy and notaries).

Thus, on the one hand, the digital form provides communication and the speed of obtaining the requested information, control over the safety of public life, the evidence base formation, and on the other hand, round-the-clock control over deadlines and not only over public safety but also about personal the life of representatives of law enforcement and law professions (what leads to the question of the permissibility limit). It also leads to the excessive pressure on these state and near-state authorities using electronic methods of searching and fixing evidence (the recording function is now available on all phones, which is used by "unscrupulous" consumers), etc.

At the same time, the aim of digitalization is saving time while receiving public services, reduction of queues, etc., and, as a result, it makes the executors of public services (functions) hostages of citizens-consumers' digital opportunities, where one of the methods is to accuse them in unethical behavior or unprofessional performance of their duties. This once again forces professional communities to reform ethical codes to meet the challenges of the time (first of all, the degree of personal openness, the degree of transparency of professional activity, etc.).

3. Research Questions

The subject of the study is the regulators of the internal relations of individual organizations and institutions authorized to implement state functions, considering the use of digital technologies.

4. Purpose of the Study

The study aims to analyze the internal corporate (ethical) ways of controlling the digital public sphere, which are developed at the intersection of public and private interests based on the principles of corporate ethics.

5. Research Methods

The research methodology is represented by general scientific and scientific methods, such as analysis, deductive, dialectic, logical, formal-legal methods.

6. Findings

So, the professional activity of representatives of professions, which we took as an example: notaries, advocates, police (internal affairs bodies), does not lend itself to preliminary regulation, does not fully fit within the framework of official instructions. The specifics of the work of these professional groups are complicated by the interaction with people – objects of activity. And here moral responsibility is crucial.

The Institute of Free Professions occupies an intermediate position between the state and its executive bodies, on the one hand, and individuals and legal entities, on the other. This kind of activity is public law in nature or is carried out in the framework of the implementation of state functions. The proximity to the state and public services is symbolized by such professions as a notary and a lawyer, which carry out public law activities.

All representatives of free professions are united by the fact that, by advising, aiding and representing the interests of citizens, they provide important services to the population, acting independently, competently, and not being bound by instructions of third parties.

Compliance with ethical rules and restrictions is mandatory due to the status of a notary and a lawyer, the nature and amount of information they receive from individuals, due to the trustworthy nature of relationships with people who applied to them for legal assistance. This also applies to all other aspects of the life of individuals who carry out notarial or lawyer activity.

In the Constitution of the Russian Federation, the right to legal assistance is enshrined in Art. 48, in accordance with which it is supposed that interested parties can apply for qualified legal assistance, which is provided on a paid or free basis by special entities – lawyers.

An equally important role in ensuring and protecting the rights and freedoms of citizen (Murtazina, 2018) is played by the system of notaries (public authorities that carry out notarial acts, private notaries). According to paragraph 1 article 1 of the Fundamentals of the legislation of the Russian Federation on notaries (Schennikova, 2015) (hereinafter – the Fundamentals)

Notary in the Russian Federation is called upon to ensure the protection of rights in accordance with the Constitution of the Russian Federation, the Constitutions of the Republics of the Russian Federation, these Fundamentals, the legitimate interests of citizens and legal entities through the performance by notaries of notarial acts provided for by legislative acts on behalf of the Russian Federation. (p. 36)

The performance of the above functions is largely associated with the direct consolidation of moral principles in the legislation on notaries and advocacy.

It should be noted that the moral and legal foundations and traditions in the notary profession evolved as the notary institution developed and were completed in special acts adopted by the notary community itself, for example, professional codes and commandments. In particular, the modern principles of notarial ethics are based on the European Code of Notarial Ethics (Code Européen de Déontologie Notariale), which came into force in 1995, which is designed to combine the rules of notarial ethics with the needs of civil circulation.

On the territory of the Russian Federation, the Code of Professional Ethics of Notaries is currently in force (Soboleva, 2016), which is a direct action document and is mandatory for all notaries, and unlike the Code of Professional Ethics of Lawyers (Pilipenko, 2016), approved not by the community, but by a state body. The moral and ethical principles of notarial activity must include the principles of duty, personal responsibility of a notary, freedom, conscience, morality, etc., as well as the principle of morality. The manifestation and implementation of the latter in notarial activities is directly related to legal awareness and the implementation of the rule of law in everyday activities by notaries as part of the provision of qualified legal assistance to citizens in the field of civil law relations.

Thus, the current Fundamentals declare the unity of tasks, principles, content and procedures for the implementation of notarial acts performed by private notaries and notaries working in public notaries. Some of these norms are aimed at ensuring moral principles in the activities of notaries aimed at protecting a citizen who must be convinced that the notary entrusted to him will not be disclosed. And this trusting relationship between a notary and a private person should never be broken.

But the main principles of the notary's work are legality, indisputability and impartiality. If the notary has even the slightest doubt that the person who has contacted him is acting in bad faith, is trying to deceive the counterparty or is mistaken in his intentions, then the notary must refuse to perform the notarial action.

The law on advocacy also has norms on the moral and ethical aspects of its activities. In particular, as a duty of a lawyer in paragraph 1 of Art. 7 of the Law on the Bar (Stepashina, 2008) provides for honestly, reasonably and in good faith to uphold the rights and legitimate interests of the principal by all means not prohibited by the legislation of the Russian Federation. According to paragraph 2 part 2 Article 17 of the law (RF, 2001), the status of a lawyer may be terminated if the lawyer violates the norms of the code of professional ethics of a lawyer. Thus, the Code of Professional Ethics of the Lawyer, adopted by the All-Russian Congress of Lawyers in 2003, explicitly obliges the defense attorney to follow certain requirements: a defense attorney who has accepted, by appointment or by agreement, an order to exercise defense in a criminal case does not have the right to refuse protection, except as specified by law, and must fulfill the duties of a defense counsel, including, if necessary, preparing and filing a cassation appeal against a court verdict in relation to his client; the lawyer who accepted the defense order in the preliminary investigation stage in the order of appointment or by agreement shall not be entitled to refuse defense in the court of first instance without good reason.

As for the professional activities associated with social networks and the blogosphere, we must once again recall the following. Unfortunately, the network activity of citizens, including in our country, is an integral part of life associated with obtaining public services or the direct implementation of assigned labor duties. In addition, state and municipal organizations and institutions must have an official website, on which they must post news, as well as provide public services if it is possible. Since the lawyer is a priori a legal adviser for any person who may be affected by such posted information, it is impossible to call for a complete refusal to use social networks.

Regarding the professional aspect, such communicative opportunities should contribute to the professional growth of a specialist; in particular, information about conferences, seminars, and round tables is published exclusively on a social network. In addition, the Internet space allows you to expand

the number of people who can receive qualified legal assistance, for example – via Skype. On the other hand, the Internet is also used to search for potential clients by the lawyers themselves by posting information on his status, on the specialization of his activity, general provisions of material and procedural legislation in specialized areas, etc.

So, digitalization allows us to bring the producer (representative of the state) of services closer to their consumer. It reduced the distance between the state (authorities, organizations and institutions that implement the public services assigned to them) and the citizen (recipients of services).

However, the Internet environment is fraught with danger, and above all for representatives of these professions who have their own pages on the Internet or on a social network. Professional communities strive to protect themselves and consumers of services by reforming ethical standards, however, the complexity of such regulation is associated with a long-standing debate about attributing social networks to the sphere of professional activity.

So, if we take into account that the provision of services by notaries can be limited by the place (notary's office) and the working hours of this office, although with a few exceptions (including primarily oral consultation), then the activities of a lawyer less susceptible to such a framework. We can say that the work of a lawyer is round-the-clock. By the way, the work of representatives of the internal affairs bodies to ensure law and order can also be attributed to the round-the-clock schedule.

However, the very essence of the activities of representatives of these three professions varies: if a notary public and a policeman exercise their functions through direct contact (and then the mode and place of professional activity matter), then a lawyer can realize their tasks remotely, including using the Internet. In this connection, while for the notaries and police the Internet acts only as a source of informing citizens about the receipt of public services, for lawyers it can be used to implement professional activities.

As already mentioned, the ethical side of the professional activity of lawyers is regulated by the specified Law on the Bar and the Code of Professional Ethics of the Lawyer, as well as, in the context of our article, by the International Principles of Conduct of Lawyers in Social Networks published on the FPA website (Rozhkova & Kasyanova, 2016). In the last of these acts, six fundamental principles were singled out: independence, honesty, responsibility, confidentiality, maintaining public confidence, a certain line of behavior. In particular, the section on confidentiality emphasizes that “social networks are not a platform suitable for working with client data and other confidential information, unless they are absolutely sure that they can protect their data in accordance with professional, moral and legal obligations. And the section "Maintaining Public Confidence" begins with an indication that “practicing lawyers are encouraged to control their behavior on and off the network in the same way”. Of course, to call for a complete rejection of the use of social networks is senseless and wrong. Communicative opportunities should contribute to the professional growth of a lawyer but should not undermine his authority and the authority of the entire community.

In relation to representatives of internal affairs bodies (in particular, police), the basic principles of ethical behavior are laid down in the Federal Law “On Police” itself (Avrutin et al., 2011): “an employee of the internal affairs bodies should be constantly ready to come to the aid of those who need it unselfishly...” (p. 107). Etymologically, it seems that “constant readiness to fulfill one’s direct duties” is

tantamount to the provision of the Code of the Lawyer on “preserving the honor and dignity inherent in the legal profession in all circumstances”.

The Federal Law “On Service in the Internal Affairs Bodies of the Russian Federation...” (Mayurov & Konstantinov, 2013) also contains requirements for official behavior of an employee, which establish rules for directly procedural actions (“when conducting a search in a dwelling, seizure to prevent negligent treatment of objects and personal items of relevance or value to citizens ...”) and ending with the requirements for appearance (“...the employee is not recommended to grow a beard or long whiskers, to shave head, to wear jewelry except for a wedding ring”).

7. Conclusion

Thus, it is possible to differentiate these types of activities by the degree of use of the Internet environment (social networks and the blogosphere) for the direct implementation of professional duties as follows:

- police officers – use the Internet to collect information as a result of investigative actions;
- notaries – use the Internet to exchange requests and documents with individual organizations and institutions through specially established programs. The blogosphere is not used;
- advocacy – it is possible to use the blogosphere for consulting, forming a client base, etc.

According to the degree of influence of the content of social pages on the ethical requirements for professional activity, then all these professions, as well as others, representatives of the state (judges, prosecutors, etc.), directly depend on the content of social pages, since information posted on the network, even with limited access mode, this is already posted information. And this fact does not allow us to demand compliance with the rules on the protection of privacy (paragraph 2 of Article 1 of Article 152.2 of the Civil Code of the Russian Federation (RF, 2001)). Although the time of personal life in ethical standards is considered ambiguously: as directly private life or as part of the time of professional activity.

However, based on paragraph 1 of Article 4 of the Code of the lawyer, the requirements for the behavior of the lawyer apply not only to the sphere of his professional activity, but also to everyday life: “A lawyer must under all circumstances maintain the honor and dignity inherent in his profession”. The author, unfortunately, also stands on the point of view that data and related professions are subject to a round-the-clock regime for observing moral and ethical requirements in modern digital conditions.

This shade of regret in the author is precisely the technological structure of modern society, when the possibilities of video recording do not fully ensure the privacy of privacy. Indeed, for example, even the provisions of paragraphs 2, paragraph 1, Article 152.1 of the Civil Code of the Russian Federation does not allow anyone to “hide” from cameras and cameras in public places. And if about 15 years ago, technology and legislation provided this secret, then in the current decade of technology this cannot be done, and you have to apply to all representatives of the state that implement public services the provision of the specified paragraph 1 of Article 4 of the Code of Attorney: “under all circumstances, to preserve the honor and dignity inherent in his profession”, even at home, even with friends, even during off-duty hours.

Also, a shade of regret causes the following. Digitalization of society is conceived as a way to reduce the time spent on searching and purchasing goods of the first and not only necessity, as a way to reduce the time for receiving public services that do not require physical presence, while digitalization exacerbates the situation of people... However, instead of searching for the necessary goods and services, users spend time discussing the shortcomings of products, yet not received; Instead of searching for information on the procedure for obtaining services, they spend time discussing the shortcomings of the process of services which are not received yet, instead of the opportunity to prevent crime; they spend time tracking news about someone else's private life... In the future, one of the results of digitalization in the context of our topic will be complete transparency of personal data in the virtual space. And, unfortunately, the Internet, conceived to bring people who are far away, on the contrary, separates those who are close.

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