European Proceedings of
Social and Behavioural Sciences
EpSBS

www.europeanproceedings.com
e-ISSN: 2357-1330

DOI: 10.15405/epsbs.2021.05.02.220

MSC 2020

International Scientific and Practical Conference «MAN. SOCIETY. COMMUNICATION»

BRANCH INTERPRETATION AND REGULATORY FUNCTION OF INFORMATION LAW

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Abstract

The problems of interpreting the information law as an independent branch seems relevant because of some factors: informational relations are at the center of social communication; legal framework is information resource; legal relations exist and are realized in an information form; information law has its own unique subject of legal regulation, method and system of unique principles; there is a number of regulatory sources that establish, regulate and provide informational relations and cannot be attributed to related branches of law. However, some jurists and law enforcers refuse information law in branch status and that is incorrectly. The branch interpretation of information law allows defining the information legislation more accurately, which is necessary for the legally competent formation of information legal relationship. The peculiarity of information relations in the communicative-social sphere in accordance with the principle of freedom to seek information and its circulation is that there is in an institution of secrecy and confidentiality in the information law. The state has the right to prohibit illegal information or restrict its circulation and is obliged to provide the necessary information and free access to significant resources for an individual and the society. It is manifested in the media activities. The assignment of information law to an independent branch will allow us to solve the main task – to make a competent and fuller interpretation of information law possible in order to build an effective communication system and harmony in the society.

Keywords: Branch of law, information law, method of information law, principles of information law, regulation of media, subject of information law

https://doi.org/10.15405/epsbs.2021.05.02.220
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Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

1. Introduction

There is a common opinion that the branch of law is an objective systemic formation that exists in the society and its own sources. Therefore, information law is an independent and self-contained branch of law because of a number of reasons: 1) information relations have an independent legislative framework; 2) own branch subject (public relations in the sphere of information circulation); 3) the object of information relations – information – has unique features and special legal markers; 4) unique special principles of information law; 5) a unique method. However, information law has complex relationships with other branches of law. It is possible to indicate the criteria that distinguish information law: 1) an institution of secrecy, 2) the prohibition of illegal information or the restriction of its circulation, 3) the state's interest in effective communication in society through spreading the necessary and mandatory information. It allows us to interpret more accurately the legislation, which is necessary for the legally competent construction of information relations.

Information law is a significant element of the legal system integrated into social and state spheres, in which one can distinguish "interconnected and interacting elements, such as legal understanding, law-making, sources, forms, system, regulation (including individual regulation)" (Vlasova, 2017, p. 88). However, the isolation of information legislation is not a sufficient basis for constructing a new branch. The system of legislation:

> the organic unity of regulatory legal acts, which exists due to the unity of the state's will and a combination of private and public law principles, as well as their differentiation both in terms of subject matter (main feature) and a complex criterion in which the subject and method of legal regulation come together. (Cherenkova, 2006, p. 13)

The branch of law is a key element of the legislative system, "an organic unity of law, which exists due to a combination of private law and public law principles, as well as their differentiation by branches and institutions in accordance with the subject and method of legal regulation" (Cherenkova, 2006, p. 12).

2. Problem Statement

Information law is often considered as a sub-branch of administrative law, but this idea does not reflect the construct of the key concept, because administrative legal relations are built according to the management model (Vedyashkin, 2017), though information legal relations are in the syntagm and do not imply anyone's government.

The fact that information law is still not an independent branch leads to some legal inaccuracies: 1) the idea of dialectical connections between the branches of law is incorrect; 2) the mechanisms of these connections are unclear; 3) due to misinterpretation, the practice of law enforcement is distorted; 4) collision reflexes appear in the regulation of QMS.

The introduction of information technologies at the level of artificial intelligence (Sukhodolov & Bychkova, 2018); the usage of Internet technologies against minors (Bastrykin, 2017); the appearance of digital relations in the sphere of politics and the judicial system; the beginning of the era of using and

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applying digital evidences in judicial practice (Grigoryev et al., 2019); the usage of information technology to provide the safety of individuals, society and the state are of particular importance in this matter (Pastukhov & Losavio, 2017).

3. Research Questions

The authors of the article investigate the specifics of the basic elements of information law, which determine its independence as a branch: a subject that provides information freedom and security; a method associated with the circulation of information; principles, which form the basic laws of information law; a system as a set of private elements.

4. Purpose of the Study

The authors' aim is to justify the concept of information law as a branch, the main purpose of which is to establish the practice of using more developed legal techniques and tactics based on a more competent interpretation of information law sources.

5. Research Methods

In this part, the authors were oriented on new scientific methods that admit formal-dogmatic, axiological methods and a civilizational approach (Petrov & Zyryanov, 2018); at the same time modern information law was considered as a phenomenon.

The assignment of information relations into a separate branch is based on a subject and method of regulation. The subject is public relations (Sidorova, 2016), and "it is proposed to judge from a purely functional purpose – in particular, social significance and the need to regulate a certain type of public relations that serve as the basis for formulating the relevant law" (Sidorova, 2016, p. 45), which form the source of information law.

The specifics of the information law subject is in the fact that it is not fully related to any of the branches. The subject is the sphere of information relations (Popov et al., 2010) or the information environment (Vorobyeva, 2007). More detailed notion is "relations which form during the informational processes: the processes of production, collection, processing, accumulation, storage, search, transmission, distribution and consumption of information" (Kostylev, 2010, p. 42). At the same time, in the scientific world there is no doubt that the only possible object of the law is information (Shokirov, 2017).

The subject of information law has a complex basis because information affects all aspects of our life, and everything that takes place in it is presented in an information form. The general subject of information law can be explained through the basic concepts stated in the definitions norms of the Federal Law (hereinafter – the Federal Law) dated July 27, 2006 No. 149-FL "On Information, Information Technologies and Information Security". These definitions are relations of search, consumption, transmission, production and circulation of information; application of information technology; information security. Each separate content part of information law (its institution) has a private, derivative of the general, subject of information perception and impact, this provides the social orientation of the legal relationship (Sidorova, 2016). Private elements of information law are formed by mechanisms of legal

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relations: 1) the freedom to create, collect, search and obtain information, some scientists consider it to be attributed to the fundamental law of an individual (Kochev & Ektumayev, 2017); 2) determining the legal personality of information; 3) providing free distribution of information, its processing, storage, transmission and exchange; 4) easy access to socially significant information; 5) information security and legal protection of information from unauthorized access; 6) providing resistance to informational crimes and offenses, including cybersecurity.

The main criteria to distinguish an information-legal norm from another: 1) the existence of an institution of secrecy; 2) the state right to prohibit antisocial information (the justification of Nazism, child pornography, etc.) or restrict its circulation (advertising of alcoholic products and the propaganda of homosexuality to minors, etc.) (Bastrykin, 2017); 3) the obligation of the state to provide mandatory information (about rights and benefits, safety measures, environmental conditions, etc.) and free access to information resources (legislative sources, the activities of authorities, etc.). The application of these criteria allows determining the legal relationship as informational. For example, the buying and selling agreement includes the exchange of mandatory information between parties, but there is no relationship of secrecy, so informational relations are not formed. There is a rule in electoral law, according to which meetings of election commissions should not be sheltered from public view, in the absence of observers and the media, and there is no informational relationship in this part. However, the media has the right to attend such meetings and fulfil the right to receive and distribute information – these relations are of information nature. Both the secrecy of voting, which is an element of electoral law, and the security of information communications that ensures the voting process are the subjects of information law.

Under paragraph 3 of article 55 of the Constitution of Russia, there are legal for restricting information rights and freedoms, and the state must take two consecutive steps: 1) to adopt a federal law, 2) to justify in law the need for information restrictions with the goals of protection and ensuring: the foundations of the constitutional order, morality, health, rights and the legitimate interests of others, the defense of the country, the security of the state (Pastukhov & Losavio, 2017). This list is comprehensive, which, of course, testifies in favor of the features and uniqueness of the information law subject.

These regulatory aspects formed the legal field of the state's information policy, in particular, the legal basis for mass media functioning, the main role of which is manifested in personal and social terms. In the personal term, the media is a source of information, a communication channel that allows determining identity, in the social term it functions as a public mind, collective memory, cumulative historical experience, which reproduces national mentality and allows setting and achieving goals, as well as predicting future. The media sources are also subject to these rules; however, they have a number of basic characteristics: mass character in relation to a category of persons, distribution from a single source, periodicity, simultaneous data transmission, stable and standard mechanism and method of distribution (sale, subscription, delivery, distribution, and broadcasting).

Such a multi-aspect phenomenon as media has formed a system based on: 1) the method of transmitting information (press, radio, television and the Internet); 2) the type of information transmitted (legal, news, entertainment, educational, sports, etc.); 3) the method of formation and establishment of the information resource (state public, private); 4) the region of information distribution (interstate, federal, regional, local); 5) the target audience (children's, sports, music media, etc.). For the media, the most

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general rules of operation are set forth in the law of the Russian Federation dated December 27, 1991 № 2124-1 “On the Mass Media”.

The need to be provided with information and free access to information resources is a significant criterion of information and legal relations. The latter means that the state has an obligation: 1) to inform society about the static situations and dynamic processes in the country, 2) to organize the work of the collective mind, 3) to orient the society towards achieving state-collective goals, 4) to ensure moral comfort, 5) to ensure security. Other spheres are possible.

The method of information law is also unique. As a general rule, the branch method is implemented through a legal relationship within the framework of a legal fact, subject and object, its content and legal consequences. The methods of an information legal relationship appearance are imperative or dispositive ones. The listed methods are subordinate to the task of ensuring parity of personal interests with public and state in information law. The above rule is unique and is provided solely by means of information law, based on the common characteristic of information – the flow provided by the dialogue, in which information, given its objectivity, logical sequence, and the presence of a common basis for judgment, cannot be the dictate of one knowledge or judgment over another. In fact, such a dictate can be established, but this phenomenon contradicts the principles of information law.

The information law system is an obligatory structural element, but we cannot observe any special differences in this matter, due to the traditional character of this element. Everything that is inherent in other branches of law is also characteristic of information law. We can only note the basic components that make up the system of information law, which are seen in two projections. The first one forms a mechanism for the functioning of information law and includes: 1) sources (regulatory framework), 2) the branch of the same name (a system of patterns and models, which explains the mechanism of information law and allows its interpretation), 3) information legal relationship (realization of rights and freedoms, fulfilment of obligations), 4) general practice (statistics, analytics, reviews, etc.), 5) science (knowledge about the patterns and trends of information law), 6) academic discipline (a system of generalized knowledge and the methodology for their transmission through educational process). The second projection is formed by the institutes of information law, which reflect the types of information, the mechanism of its receipt, storage and circulation (communication). For example, it is secrecy, media, advertising, the Internet, etc.

As it is noted in legal science, the subject and method do not fully determine the branch content (Sidorova, 2016), so there must be something else that ensures the uniqueness and independence of information law. This “something” is the principles of information law, focused on its social nature and ideas of freedom, justice and stability, which arose from universal experience, legal science and was proven. The principles of information law are the foundation of legal relations, their meaning is to express the truth and to be the guideline of the rule-making process. They are the main criterion for the truth of the rules, their justice, humanity and objectivity.

The principles of information law are consistent with general legal ones: they express the laws of legal existence; are open by science and tested in practice; are perceived by the subjects of information legal relations as values; have direct or indirect fixation in the sources of law; are historically stable due to scientific validity and subordination to formal logic; are consistent with reality, substantiated morally, closely interconnected; act as independent regulators and are used, when there are gaps in the law

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(Semukhin, 2017). Foreign researchers point to the presence of ethical standards, emphasizing that "information law ... will benefit from a consistent and comprehensive theory of information ethics" (Cannataci, 2009).

It is believed that the principles of information law form three blocks – the principles: securing the legal form of information; of accessibility, freedom and its openness; ensuring confidentiality (Minbaleev, 2015). Everyone has branch-specific uniqueness, sets common standards, and details general legal principles (Semukhin, 2017).

The most important special principle of information law is the principle of morality, in particular, the consolidation, provision and protection of universal foundations. The principle of federalism is implemented in accordance with the equal rights of the nation languages of Russia. Freedom of information relations as a principle of media activities involves freedom of access to information, freedom of its production and distribution (flow), completeness, reliability and timeliness of information. The strictly formalized principle of media activities is the mandatory presence of the legal form in the person of the founder, charter, editor-in-chief and special status of a journalist.

Finally, the uniqueness of information law lies in its law enforcement practice: 1) of undeniable importance in the digital world and 2) the need for professional lawyers, armed with knowledge of existing information technologies. The first factor is supported by the transformation of information technology into an independent sphere of the economics; entry into flow of digital crypto currency; information has its own cost criteria; the creation of artificial intelligence; the introduction of digital workflow; virtual environment embedded in the social, cultural and political spheres of our life; the existence of a universal instrument for information exchange – the Internet; the ability to process an unlimited amount of information, etc. The relevance of the second factor is obvious and not in dispute.

6. Findings

Thus, the existence of information law as an independent branch is determined by a number of factors: 1) the presence of a significant regulatory framework; 2) the complexity of informational legal relations caused by their integration in all spheres of public relations; 3) the determination of common branch characteristics inherent in any branch of law; 4) own (unique) branch: subject, method and principles of information law, its own structure and system.

7. Conclusion

The complexity and uniqueness of information law requires special knowledge and, accordingly, trained specialists. The main task of such specialists is to build effectively information and legal relations based on a competent interpretation of the rules, which govern such relations. This requires special knowledge and the basis for them is the resource of the multi-aspectuality of information and legal relations, which, in turn, are formed on the autonomy of information law with an independent branch status.

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