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REFUSAL OF DIGITAL PERSONAL IDENTIFICATION IN RUSSIA WITHIN THE CONTEXT OF CONSTITUTIONAL RIGHTS AND FREEDOMS

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Abstract: The modern legal policy of Russia regarding the use of electronic means of personal identification is rather authoritarian. Its natural result is that the Russian society does not fully share the initiative of the public authorities to digitize personal data due to various concerns. First, such concerns include insufficient security of data warehouses, as well as imperative government intervention in privacy and the use of personal data without the consent of their owners. Citizens who disagree with the authoritarian legal policy are making attempts to abandon accounting in personal identification systems. To find out whether such a refusal is possible in practice is the purpose of this paper.

Keywords: digitalization, digital identity identifier, legal policy, digitization, UEC (universal electronic card), INIPA (insurance number of an individual personal account), TIN (taxpayer identification number).

INTRODUCTION

The digital age mainly evokes pleasant associations for a modern person: fast information retrieval through virtual search engines; transferring a salary to a bank card and using SMS on replenishment of an account; remote technologies in education and work; ordering goods from anywhere in the world and much more. However, along with the benefits, digitalization brings maximum transparency of actions to a person's life: it has become almost impossible to hide any information about oneself. The scientific world has already developed a term that describes this problem called "digital transparency of a person." This problem has many manifestations and aspects; we will focus on two main ones.

The first aspect has to do with "transparency" for private actors who have access to numerous machine data. Such entities may be individuals or organizations not related to the state. Almost all electronic platforms require the upload of personal data to the network, which is accessed by attackers. Technologies at the present stage open up scope for wiretapping of telephone conversations and audio messages and, consequently, for violation of constitutional rights and freedoms. The image recognition programs, in particular, for face recognition make it possible to track almost all human movements, at least within the framework of megacities equipped with a large number of video cameras. If we would have the necessary access, the comparison of data from official databases and from social networks makes it possible to identify a personality and invade his or her privacy.

In the context of the effect caused by digitalization on human rights, we would like to give an example of the dangerous use of digital technologies without their proper legal regulation and government control. It will be about the technology of image recognition, in particular, of human faces. FindFace technology was developed by the Russian startup NTECHLAB. The development was launched in open access and in 2016 was used as a public search engine that allows for face recognition and personal identification from information posted on the network. A flash mob was launched at the Dvach forum to persecute girls who were filming intimate videos or working as prostitutes. The girls were found on VKontakte by their faces through the FINDFACE.RU website. Then, compromising screenshots were sent to their husbands, relatives, classmates, colleagues, and friends. The girls were bullied, extorted money and forced to quit their jobs. The evil worked like a viral advertisement: many people learned about the FindFace "face recognition" service(1). Two years later, the resource was removed from public access, and the startup was overbought.

Another example is the increased incidence of user data theft. These thefts are associated with the activities of information brokers or data brokers being companies specializing in the collection and sale of personal data. Data brokers are especially popular in the United States, where there is no dedicated personal data protection law. Companies compile a dossier on a person from various sources, reflecting in it the level of income, food preferences, frequently used sites, circle of acquaintances on social networks, etc., and then transmit this information to interested organizations. One

illustrative example is the activities of a Singapore bank, which services monitored banking transactions, inferred customer tastes and sent an individual proposal to customers. For example, a bank's client paid at lunchtime with a bank card in an Italian restaurant next to a street where the bank is. The bank and the restaurant have entered into a partnership agreement. Knowing that the client prefers Italian food, the bank sends an SMS notification with a special offer at this establishment.

The second aspect is related to the active interference of the state in the private life of citizens. Also, technologies for recognizing facial expressions, gestures, speech, and images make it easier for law enforcement agencies, for which it becomes easier to find violators. Depending on the imagination of the leaders of the state, anything can be attributed to violations, from terrorism and an unauthorized rally to "strange desires," as the Strugatskys, being fantasy authors, aptly put it.(2). So, the news appeared in the news space that in Moscow, violators of the self-isolation regime will be monitored using video tracking systems with a face identification function. (3) In this work, the authors focused on the second aspect of "digital human transparency", or on the activities of the state. The authors will try to answer the question whether it is possible to abandon digitalization in Russia.

The normative base of the study was the Constitution of the Russian Federation, as well as specialized laws of the Russian Federation that regulate the registration of citizens, in particular: the Federal Law dated 01.04.1996 No. 27-FZ "On individual (personified) accounting in the mandatory pension insurance system"; the Federal Law dated 01.04.1996 No. 27-FZ "On individual (personified) accounting in the compulsory pension insurance system." In addition, the study is based on the laws of the Russian Federation, which prescribe the conditions for admission to the civil and public service and which, without an alternative, oblige citizens to comply with the above laws on the registration of citizens: the Federal Law dated July 27, 2004 No. 79-FZ "On the State Civil Service of the Russian Federation" and the Federal Law dated 02.03.2007 No. 25-FZ "On Municipal Service in the Russian Federation".

The paper also examines the law enforcement practice of the Supreme Court and the Constitutional Court of the Russian Federation, as well as the decisions of the regional courts of Russian cities, adopted on the research topic. The theoretical basis of the research was the latest research in the field of prospects for the use of artificial intelligence and digitalization (Mamychev A.Yu., Miroshnichenko O.I., 2019; Mamychev A.Yu., 2019). The factual material, on which the analysis was grounded, was studied based on periodicals and news data of information and analytical media. The proposed study is the authors' point of view and is an attempt by the authors to answer the question of whether it is possible to individually reject from digital personal identifiers in Russia.

METHODS

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RESULTS

Given the lack of trust in the country's leadership, it is logical that citizens seek to minimize the active role of the state in their lives. Whole communities have appeared in Russia advocating the refusal to use personal data in state electronic systems and the cancellation of documents used in this case: INIPA, TIN, bank cards. Refusing from these documents, citizens do not intend to refuse social guarantees provided by the state, i.e. pensions, all kinds of benefits, as well as the salary received from official employers. The expectations of citizens who have expressed a desire to abandon their documents are not groundless, since Article 7 of the Constitution proclaims Russia a social state which guarantees measures of social protection. Article 7 does not impose any conditions; therefore, limiting its action in the absence of a clear explanation under Article 55 of the Constitution can be interpreted as an infringement of the rights of citizens and a contradiction to the Constitution.

Mistrust in the modern system of registration of citizens is strong among believing citizens of Russia. In the wake of discontent, Patriarch of Moscow and All Russia Kirill in 2014 turned to the President of Russia with a request to amend legislative acts that would allow the use of traditional identity documents, as well as paper-based accounting systems. The President treated the fear with understanding and expressed the idea that "... any forms of forcing people to use electronic personal identifiers, automated means of collecting, processing and recording personal data, and personal confidential information are unacceptable".(4) At the same time, he noted that "it seems inappropriate to completely abandon the new generation of documents containing electronic media. In addition, citizens of the Russian Federation, who consider it convenient to use new generation documents containing electronic media, should also have the right to choose."(5). Do citizens have the right to choose now?

In practice, a total transfer to a digital field is imposed on the population without providing an alternative, and those who disagree with such a policy are deprived of the constitutionally guaranteed right to social security and official employment. In Russia, a

system of individual (personified) accounting has been introduced, in which an individual personal account is set up being an electronic document containing information about a registered person, which are stored in the information resources of the Pension Fund of the Russian Federation(6). In turn, the number of this individual personal account, i.e. the insurance number of an individual personal account (INIPA) is designed to process information about an individual in the electronic accounting system, as well as to identify and authenticate information about an individual when providing state and municipal services and performing state and municipal functions(7).

The insurance number of an individual personal account as a significant identifier of an individual, already without reference to municipal and state services, is mentioned in the decision of the Supreme Court on the issue of invalidating certain articles of the Regulations on the Federal State Information System "Unified system of identification and authentication in the infrastructure ensuring information and technological interaction of information systems used to provide state and municipal services in electronic form". The policy of using insurance numbers of individual personal accounts as personal identifiers is manifested in the impossibility of exercising one's rights and performing legally significant actions without providing the specified document.

Thus, the significance of an insurance number of an individual personal account was reflected in labor relations. New edition of Article 65 of the Labor Code regulates the list of mandatory documents for concluding an employment contract; among these documents is an insurance number of an individual personal account. Thus, a person who wants to leave the electronic accounting system will not be able to conclude an employment contract and the employer will refuse him or her to conclude an agreement on formal grounds. The employer's decision will have to be challenged in court. To conclude a service contract in accordance with Art. 26 of the Federal Law "On the State Civil Service of the Russian Federation", a citizen entering the civil service also presents to the employer the Insurance number of the individual personal account and the Taxpayer identification number(8). According to Art. 16 of the Federal Law "On Municipal Service in the Russian Federation", a citizen also presents his/her Insurance number of the individual personal account and the Taxpayer identification number for admission to the municipal service(9).

The insurance number of an individual personal account is also required when submitting documents in all state social programs: Maternity capital, Housing for young families, the so-called new Putin benefits, etc. The regulations of these programs do not provide for the absence of an Insurance number of an individual personal account for their participants. Pension accounting is also impossible without the availability of an Insurance number of an individual personal account. This thesis is confirmed by judicial practice. So, in its decision on the cancellation of an Insurance number of an individual personal account and pension accounting without this document, the Krasnoyarsk Railway Court recognized the fact that, according to the norms of the current legislation, no pension is accrued if a personal account number is absent. An applicant who does not want to receive a pension on documents that contradict her religious beliefs was forced not to receive her pension at all.(10)

Thus, we can say that an Insurance number of an individual personal account is meant as a document of paramount importance, which is used to authenticate a person. The desire of some people to reject from this document may be understandable, but does the legislator leave room for rejecting from it? Citizens who decide to abandon their Insurance numbers of an individual personal account should contact regional

offices of the Pension Fund. The Pension Fund responds with a refusal to such an application; citizens claim their right through the courts. An analysis of judicial practice shows that the courts do not satisfy claims for the annulment of individual personal account numbers because this procedure is not provided for by law. At the same time, even minor citizens are not exempt from establishing their personal account numbers. Thus, the Oktyabrsky District Court of Yekaterinburg refused to annul the insurance number of an individual personal account of a minor on the basis that personal account numbers are assigned to all citizens, regardless of their age(11).

The courts also state that in the event of a conflict with religious beliefs, the Insurance number of an individual personal account can be changed; however, this shows the inattention of the judges to the subject of the dispute to some extent: the plaintiffs do not want to change the number of their personal account; the question is precisely about the cancellation of the number and the removal of the citizen's data from systems.

The judicial practice considered in this article is associated with claims of citizens who fear total control by the state. All the cases we have considered of going to court are also based on the contradiction between religious beliefs and the system imposed by the state. In particular, citizens oppose the assignment of a second name to them. The courts refute such concerns with the phrase "An insurance number of an individual personal account is of a technological nature and is used only for storing and processing information in the personalized accounting database"(12). However, the courts do not stipulate that an Insurance number of an individual personal account is used for identification and authentication of a person. In fact, the system stores a digital code by which a person is identified. It is against what the protesters are fighting: against equating a proper name with a numerical value.

Despite the fact that the mandatory use of a digital code, or a taxpayer identification number (TIN) is not as strictly regulated as in the case of an Insurance number of an individual personal account, the issue of the need to assign a number to this document is also a subject of disputes. In particular, citizens oppose the storage and use of information about a person's private life without their consent. In 2003, the Constitutional Court received a complaint about the norms allowing the assignment of a taxpayer identification number without the taxpayer's consent, which do not comply with the Constitution of the Russian Federation, in particular Articles 17 (parts 1 and 2), 24 (part 1) and 28 (13) The Constitutional Court did not accept the case for consideration, since it considered that the case was not within its competence: the procedure for canceling or changing the Taxpayer Identification Number is regulated in the Order of the Ministry of the Russian Federation for Taxes and Duties. Verification of compliance with the Constitution of legal acts of ministries and departments is not within the competence of the Court. It is noteworthy that the Armavir City Court, to which the applicants initially filed a complaint, recognized the fact of violation of constitutional rights and freedoms, but refused to satisfy the demand. For the applicants, the circle has been closed.

For 10 years now, there has been talk in Russia about the introduction of a single document. At first, attempts were made to introduce a universal electronic card (UEC) which is a plastic card that combines identification and payment means. A universal electronic card is a physical medium containing information about the user in visual (graphic) and electronic (machine-readable) forms fixed on it and providing access to information about the user by the card. It was assumed that the card will be used to

certify the user's rights to receive state and municipal services, as well as to perform legally significant actions in electronic form (in accordance with Article 22 of the Federal Law "On the organization of the provision of state and municipal services" dated 27.07.2010 No. 210-FZ(14)). Universal electronic cards were introduced from 01.01.2013, and the issue and releasing these cards were discontinued from 01.01.2017.

On July 17, 2019, the work on the creation of a single document resumed again. The Government of the Russian Federation held a meeting on the introduction of an electronic identity card for citizens of the Russian Federation within the framework of the national program "Digital Economy of the Russian Federation". D. A. Medvedev, the Prime Minister of the Russian Federation, said: "An e-passport is a common thing in many countries; it has proven itself well both in terms of convenience and reliability. Such a document simplifies interaction with government agencies and obtaining government and commercial services." At the end of the meeting, M.A. Akimov, at that time the Deputy Prime Minister of the Government of the Russian Federation, said during a briefing that the issuance of old-style passports would be completed within 2022.

According to the Deputy Prime Minister of the Government, those people who have paper passports in their hands and do not want to change them (this is customary, convenient, or simply due to some other convictions) and will want to continue using these passports, will continue to use them. This card will be issued for a period of 10 years; it will contain, in addition to standard passport data, a driver's license, Insurance number of an individual personal account, and Taxpayer identification number.(15) In 2020, it was planned to start issuing the first electronic identity cards; a draft Decree of the President of the Russian Federation "On Amendments to the Decree of the President of the Russian Federation dated March 13, 1997 No. 232 "On the main document proving the identity of a citizen of the Russian Federation on the territory of the Russian Federation" was prepared, which states that from March 1, 2020, this experiment is planned to be carried out on the territory of Moscow(16).

However, there are fears that the possibility of choice for citizens when issuing electronic passports will be implemented in the same way as in relation to the Insurance number of an individual personal account. Is the practice of using a single document so widespread abroad? For example, Great Britain destroyed all identification cards and electronic databases related to personal information of citizens in 2011(17). UK nationals are not required to have any form of electronic accounting; a regular paper passport and license are used as identification. It is noteworthy that the information on the invalidity of ID cards is posted in the section "Government and Democracy", which underlines the importance of citizens' opinion for the state.

Both the Bundestag and the German Constitutional Court have spoken out against the introduction of a single document of a universal personal identifier. However, in Germany, an electronic ID is still valid. This card is issued voluntarily and allows German citizens to get access to public services, contains an electronic signature, operates along with a hard copy and cannot be combined with other electronic services(18). Citizens of the United States of America also do not use a single identity document. Citizens use various documents for identification in the United States: a birth certificate, a driver's license, a passport (obtaining it is mandatory only when traveling abroad), an ID card, a certificate of US citizenship. None of the listed documents combine information about any other document, i.e. they are not universal. The most popular identification document is a driver's license, the issuance rules for which differ in each state. Issuances

of documents, the rules in respect of which are regulated by the Federation, are not welcomed by citizens due to distrust in the storage of personal information and the general traditional attitude towards the federal government.

In March 2018, the Supreme Court of India began considering a complaint from residents about violation of rights in connection with the mandatory provision of ID cards when receiving social services (including benefits) and illegal collection of biometric data. The Supreme Court stated that the Government cannot restrict citizens from entering school, opening a bank account and obtaining a mobile phone number. Thus, we see that both the introduction of the identification code as such and of a single universal electronic document is a subject of heated debate in the world. The government is still disingenuous when it says that the introduction of these documents is an established practice in the world. Reliability of this service is also a big question. So, on January 3, 2018, there was the news that the national database of India, which stores information on more than 1.2 billion Indians, was hacked.(19). After several incidents of data breaches, confidence in the storage of information was undermined.

For authoritarian regimes, the introduction of a single identification card is not a problem. So, in Malaysia in September 2001 under the MSC Malaysia program, and from that moment on, every Malaysian citizen over 12 years old is required to have an electronic identity card with them. Former Prime Minister of the State, Dr. Mahathir Mohamad, was the initiator of the national MSC Malaysia ID card program. The goal of the program is to make Malaysia a leading information state by the end of 2020. At the start of printing a personal identification card, Malaysia became the first state to use an innovative solution, which is an ID card with a citizen's photo and biometric information (fingerprint) on an embedded computer chip. At the moment, in addition to the function of identity and birth certificate, MyKad serves as a driver's license, bank card, public key, and can also be used to work with an electronic wallet. In total, MyKad can be used in over 30 applications, including loyalty programs, healthcare, transportation, etc. There are several types of national cards in Malaysia: MyKid for Malaysian citizens under the age of 12, including newborns; MyPR for permanent residents of Malaysia; MyTentera for the personnel of the Armed Forces of Malaysia; MyPolis for Royal Malaysia Police personnel(20).

CONCLUSION

As a conclusion, it should be noted that when it comes to the legal regulation of digital phenomena and technologies, they usually talk about the legal status of new digital developments directly. First, we are talking about artificial intelligence and robotic systems,(21) or new financial technologies(22), etc. All these problems require careful study and reflection, of course. However, these problems do not have a significant impact on the daily life of society in Russia. On the contrary undeservedly little attention is paid, in our opinion, to the fact that practically every citizen of Russia has to deal with the introduction of digital technologies every day, and not always on their own, but the legislator does not provide for the possibility of abandoning electronic practice. The authoritarian legal digitalization policy runs counter to the values enshrined in the Constitution. Especially sad is the fact that in the presence of positive foreign practice, the country's leadership chooses the path of development of authoritarian regimes. In our opinion, the development of norms regulating the possibility of abandoning electronic documentation is the best state practice to

guarantee the rights and freedoms of citizens.

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