

Legal Boundaries of Communication in Russia: Current Approaches to Research

¹Ludmila Stanislavovna Leontieva, ²Liliana Faybergovna Gaynullina
and ³Ekaterina Sergeevna Cherepanova

¹Kazan (Volga region) Federal University, Kazan, Russia

Kazan State University of Architecture and Engineering, Kazan, Russia

³Ural Federal University named after the first President of Russia B.N. Yeltsin, Ekaterinburg, Russia

Abstract: The right to the information and communication relationship, the features of its creation in Russia, the problems and mechanisms of its implementation in the social and political sector are analysed in the article. The relation between the concepts of the "right to communicate" and the "right to information" has been determined, the structural elements of the Russian legal system and the mechanism of its implementation in the context of the current political events and information law-making have been refined and analysed. Upon the empirical and statistical data evaluation the contradiction between the things in existence as the state of art in the political and communication sector and the tribute as the system of the information and communication relationship evolving on the basis of the laws and regulations which are relevant to the modern democratic society and regulate the information sector has been revealed.

Key words: Right to Communicate • Access to Information • Freedom of Speech • Citizen Participation
• Information and Communication Relationship • Public and Civil Discourse • Open Government

INTRODUCTION

The phenomenon of the information society is focused not only on the information as a given, but also on the possibility of the intensive information exchange, which is carried out when the agents concerned interact.

The communication and technical problems of implementing the social discourse where there are the political will of authorities and the people's trust in them are the administrative and technical, regulatory task. The decreased people's trust results in the disruption of the political and legal system. When trying to preserve the status quo, the authorities are guided by the authoritarian and force management methods and tightening the information and legal regime. However, as it is well known, one could rely on cannons, but is not able to sit on them. The constructive intensification of the society's activity requires the relevant political and legal norms for carrying out the communication acts, the right to seek and to receive, to produce and to disseminate information. Thus, the right to communicate contemplates the existence and implementation of the right to information. At the same time, outside the

communication and the social discourse the most reliable and relevant information loses its social significance, becoming a thing in itself and for itself.

MATERIALS AND METHODS

The work has been performed in the context of the social and communication approach using the general scientific methods of analysis and generalization.

Body: The social and communication approach used in this article is based on the methodology of J. Habermas and N. Luhmann, the concept of the French lawyer J. D'Arcy and the law theory of Mark van Hoecke.

It is worth emphasizing that, despite the contrast in the theoretical grounds for the society's interpretation, in the interpretation of the communication J. Habermas and N. Luhmann are too close. J. Habermas treats the communication as a social action. He develops his concept on the basis of the Weber's theory of the social action and the K.O.Apel's understanding of the communication act. In the terms of the presented issue the fact that the normative grounds of regulating the

social relationship are in a life-world of the social community is important. Therefore, it concerns the communication not only as a direct communication but also as joining "the intersubjective relationship" by the agents of the communication act [1, p: 128]. The life-world creates the conditions for the communication, ensuring the validity of claims for intelligibility, truth and significance to the participants of the communicative act.

Developing the system of the legal relationship regulation shows the structural differentiation of the life-world [1], and allows counting on the achievement of the communication objective—a consensus. The public consent does not appear as a particular fact in the contract, but rather has a transcendent meaning in the life-world, in other words, it is a certain essential norm under these social and communication circumstances. At the same time, "the more abstract the consent is, the more diverse the dissents which we could accept without are being forced" [2, p:180]. The condition for the genuine communication is its openness, which significantly supports the discourse of the public sector established in the times of the early capitalism. The communication appeals to the socially determined meanings embodied in the regulatory sector.

Mark Van Hoecke, the President of the European Academy of Legal Theory substantiates the pluralistic, communication approach to the analysis of the legal system, the role of the communication in creating and legitimating the law in his book "Law as Communication".

The authoritarian paradigm in the context of "order-execution" is replaced by the Belgian scientist for the law legitimation which depends on the "undistorted forms of the public communication and indirectly on the communication infrastructure of the private sector" [3, p.281]. The law is presented as the dialogue and polylogue of the agents empowered and bound by law, and the evolving legal relationship regulates the society by performing two basic functions: "a) structuring the political power, and b) creating and preserving the social relation" [3, p: 89].

The communication nature of law in the interpretation of Mark Van Hoecke is consonant with the N. Luhmann's concept of the communication nature of power. If in the J. Habermas' opinion the main function of power-is the communication function, then N. Luhmann defines the power itself as the communication means, the "symbolically generalized medium of communication" [4]. From the perspectives of the communication approach not only the power, but also the law acts as such medium, promoting the generalization of the semantic orientations,

securing the single meaning between the different agents in different situations, and not only in the form of the principle norms, target norms, but also the symbol- norms, *i.e., performing the symbolic generalization in the N. Luhmann's terminology*. If the power in the N. Luhmann's opinion-is the communication controlled by a code, then the law could be seen as the communication, which is regulated by a set of the generally valid rules and conventional norms. Thus, the law and the power are presented as the means of the human interaction, which regulate the social existence. It is standard relationship which basis is constituted by the information and communication conative component, various forms of the behaviour of the legal and political relationship agents. According to the communication nature of the phenomena under consideration, it is logical to assume that the current strategies and practices of the authorities should rely on the the human right to communicate formulated in the 70's of the XX century by the French explorer J. D'Arcy [5]. The vertical flow of information, *i.e.* its transmission by the mass media to the large audiences could not be seen as the complete communication, says J. D'Arcy. The development of the communication contemplates the horizontal, mutually beneficial exchange of information, *i.e.* the direct communication of the agents, which contributes to the participation in the joint implementation of the social needs, regardless of the geographical boundaries of their life. Therefore, the right to communicate - is the "legally guaranteed provision of the public intercommunication– *convivialite*" [6]. The main structural elements of the right to communicate in the concept of J. D'Arcy are: 1) The right of access to the means of communication as the recipient of the information and 2) the right of direct participation in the communication process, the ability of the consumer to be a creator and a disseminator of the information. The access, participation, communication-are the key terms in the concept of J. D'Arcy. If in the state the human rights are priori recognized, the emphasis in the development and implementation of this right is on the ability of the citizens to use the information technologies. In this case, the right to communicate could be defined as the right to the universal access to information.

In the context of the legal regulation of the information sector in Russia the concept of the right to information dominates. In equivalent to the structure of the right to communicate, the key terms are the access, participation and information. The right to access to the information is primarily interpreted as the information openness of the power in the legislation.

In the era of the Internet the most relevant way to openness - is the official department websites, at the same time the rules of classification of the information as the public one and its hosting are determined by the legislative officer. The monitoring analysis of performing these legal patterns shows the increased representation of the public authorities in the Internet. In 2013 the Federal Migration Service of the Russian Federation established itself as a leader (100%), the Federal Agency for Construction, Housing and Utilities was an outsider (17%). The mean value of the information transparency of the executive authorities' websites was 60%. Such data as the "records and statistics, the information on placing the orders for the delivery of goods, the services provision and the information on inspections" remain unable to access [7]. However, the comparison with the average indexes of 2008 (19.87%) shows the significant progress.

One aspect of the issue is the completeness of the official information posted on the Internet, the other one - is the people's trust in it. The trust is formed during the co-action, co-participation, joint discussion, decision and the implementation of the social issues. The importance of the communication legitimating the power is due to the evolution of the management paradigms, i.e. the refusal "from the forced management model, based on a strict *hierarchy* of the agent-object relationship, for the model in which the controlled agent and object are in the relationship of the *assistance*" [8, 970]. Therefore, the right to seek and to receive the information is supplemented by the citizens' authority to transmit, to disseminate and to produce the information. According to the constitutional freedom of speech, the possibility to participate in the information exchange of not only the occupational agents of the information activities (journalists, analysts, politicians, etc.), but all the users-consumers of the information should be noted. During the overall communication process, a new type of the social relationship - the information and communication one is being formed. The right to the total citizens' participation in the social communications is not only the possibility to obtain the information on demand or through the open access and its transmission, it is the possibility and the ability to interactively participate in all fields of life. The salutary influence of the "broad citizens' communication participation" on the field of law-making is emphasized in the monograph of Mark Van Hoecke. The public communications impart the property of the coherence, adaptability and communication legitimation to the law, as the author claims [3, p.326], which directly determines the legitimacy of the power. However, in the

field of the Russian politics there is the primacy of the executive power over the legislative one along with the imitation of the multiparty system, which allows the dominative agent to dispense with the broad civil participation in the public affairs. The democratic institutions and procedures are often used by the powerful policy actors in their own and corporate interests through the electoral fraud. For example, during the elections 2011 for the State Duma about 11% of votes in Moscow were received by the "United Russia" party through ballot-stuffing and "transfer" of the votes cast for another parties [9]. The public opinion reflects the view of these violations as a pathological standard for the Russian electoral process: only 10% and 25% of the respondents believe that there were no law violations during the parliamentary and presidential elections respectively [10, p.13]. Relatively low people's trust in the authorities' actions is the consequence of the "broken communication" in the system of "power-society." The protest sentiments of any degrees of the awareness now cover from 25% to 35% of the population [10, p.21]. The study of the Russian and foreign scientists [11] show that according to the social and demographic parameters the opposition protesters and the supporters of the authorities do not have any differences. Therefore, the burst of the protest activity is not associated with the financial crisis, is political in nature and based on the "information cascade effect" which promotes the mass self-organization of the participants.

The communication platform for the citizen participation, which, according to the concept of J. D'Arcy, develops the horizontal relations are mainly represented by the social media and such traditional forms of the public policy as the peaceful assemblies, meetings, demonstrations, marches, picketing, the right to those is enshrined in the Constitution of the Russian Federation (P.2., Article 31). However, the Russian trend in progressing the public events with the free opinion expression from the actions of the "Strategies 31" to the mass meetings on Manezh and Bolotnaya Square sensitize the authorities not to the development of the public and civil discourse, but to the tightening of the legislation in the context of the administrative ruling paradigms of force. In accordance with the Law No.65-FZ dated 8.06.2012 the solid penalties were introduced for the "simultaneous mass presence and (or) movement of citizens in the public places" (Code of Administrative Offences of the Russian Federation, Art.20.2) for participation in the "walks", "marches", "festivities", as well as the calls for participation in it.

These sanctions show the neglect of the civil intentions, the authorities' refusal from "hearing" the society and self-modernization in accordance with its requirements. The Soviet phenomenon of the "self-regulation" regulated by the state has again found itself to be required for the Russian authorities, as it is intended to put back the lost imperative handling of the social and information processes.

CONCLUSION

The analysis of implementing the right to communicate in modern Russia allows suggesting that the law-making innovations which are restrictive in nature have suspended the process of the Russia's accession to the Open Government Partnership, scheduled for 2013, as the activities in the context of the organization require the open citizens' participation in the politics and the public decision-making. Hence, the founder of the Open Knowledge Foundation I.Y. Pavlov, has assessed Russia as the «half opened» state, what is consistent with the results of the expert organization Open Knowledge Foundation research [12]. The "G8 Open Data Census" summary table demonstrates the lack of the hundred percentage transparency of the essential public information for all the "Great Eight" countries: the maximum index is in the USA (54 out of 60 impliable), the lowest one-is in Russia (30/60). Therefore, at the G-8 Summit (June 2013) the issue of the information freedom was one of the most urgent ones. In the final G-8 "Open Data Charter" the emphasis was put upon that the "open data have been still an unutilized resource of the great potential for promoting the stronger societies construction"[13].

The formula of the Open Government is: "Transparency + participation = accountability, efficiency, productivity," *i.e.*, the second term connects the implementation of the welfare state goals and objectives to the communication interactions. Therefore, the logical consequence of the right to access to the information ("transparency") is the right to participate in the process of not only vertical but also horizontal communication for the members of the Open Government Partnership.

Conclusions: When implementing the right to communicate in the modern Russian realities the major problems are concentrated at the horizontal level. Its solution is connected to the development of the institutions of the citizen participation and the "feedback" mechanisms, which could ensure the civil control. This objective requires the implementation of the following political and legal outnesses:

- The government intervention in the field of the information rights and freedoms should be minimum, limited to the range of the grounds listed in the Article 10 of the European Convention on Human Rights and Fundamental Freedoms. Moreover, in accordance with the pro rata principle (the proportionality one), addressed to the legislative officer and the courts, the restrictive conditions should not diminish the human rights and freedoms.
- The legal restrictions of the information freedoms, which comply with the requirements of the democratic participation, should be optimally combined with the motivating methods of the legal effects intended to the effective development of the public and civil communications.
- The judicial decisions should be legal, reasonable and fair. This type of the law enforcement expresses the social conventionality, is based on the humanistic, universally recognized principles of law-making and creates the socially comfortable situation to meet the social and communication expectations associated with the implementation of the human right to information and communication.

REFERENCES

1. Habermas, J., 1987. TCA Trade. Frankfurt on M., pp: 128.
2. Habermas, J., 1988. Postmetaphysical thinking. Philosophical essays. Frankfurt on M., pp: 180.
3. Van Hoecke M., 2012. Law as Communication. St. Petersburg.: «University Publishing Consortium» Publishing House, pp: 288.
4. Luhmann, N., 2012. Theory of Society. Stanford: Stanford University Press, pp: 488 .
5. D'Arcy J., 1980. Right to Communicate. Paris, pp: 286.
6. Terin, V.P., 2000. Mass Communication: Review of the Western Experience. M.: Moscow State Institute of International Relations, Date View 14.11.2013. www.gumer.info/bibliotek_Buks/Polit/Terin/07.php
7. Results of Monitoring the Official Websites of the Federal Executive Bodies, 2013/ Open Knowledge Foundation. Date View: 14.11.2013. www.svobodainfo.org/ru/node/2527
8. Nigomatullina, R.M. and E.M. Nikolayeva, 2013. Evolution of Management: From Classics of Modernity to Post-Nonclassical Paradigm. Middle-East Journal of Scientific Research 15(7). www.idosi.org/mejsr/mejsr15%287%2913/9.pdf
9. Field Experiment Estimate of Electoral Fraud in Russian Parliamentary Elections, 2012 Date View 14.11.2013. www.pnas.org/content/110/2/448.

10. The Russian Presidential Election 2012: Post-Electoral Analysis. M.: Levada-Centre, 2012. Date View 14.11.2013. www.levada.ru/sites/default/files/russianelections2012_0.pdf
11. Case Study of the Russian Protests. National Research University-Higher School of Economics, Date View 14.11.2013 www.opec.ru/1577945.html
12. G8 Open Data Census. Which G8 countries release essential public information as open data? Date View 14.11.2013 www.census.okfn.org/g8/
13. G8 Open Data Charter and Technical Annex. Published 18 June 2013. Date View 14.11.2013 www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex.