Artículo de investigación

Political and socio-economic factors of weakening the idea of the rule of law in a risk society

Политические и социально-экономические факторы ослабления идеи права в обществе риска

Factores políticos y socioeconómicos de debilitar la idea del estado de derecho en una sociedad de riesgo

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Abstract

The purpose of the article is to analyze why the idea of the rule of law does not coincide with social and legal practice and what kind of deformations of the individual and public legal consciousness this engenders. Methods: The authors used systemic and dialectical approaches when identifying the indicators of legal consciousness deformation associated with the extremes of the absence or exaltation of the idea of the rule of law. Results: The authors identified cultural, political, socio-economic factors weakening the idea of the rule of law in a risk society. The peculiarity of the formation of legal consciousness in a risk society is that it

Аннотация

Цель статьи – проанализировать, почему идея верховенства закона не совпадает с социальной и правовой практикой и какие деформации индивидуального и общественного правосознания это порождает. При выявлении признаков деформации правосознания, связанных с крайностями отсутствия или превознесения идеи верховенства права были использованы системный и диалектический подходы. Результаты: определены духовные, политические, социально-экономические факторы ослабления идеи верховенства закона в обществе риска. Особенность

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experiences the influence of two groups of factors. The first is social instability caused by the consequences of globalization, technization, commercialization, the lag of legal regulation of risk from the avalanche-like spread and escalation of risks; the formal and relative nature of the differences in legal and illegal behavior. Conclusion: The identified factors limit the possibility of legal consciousness in the creative understanding of the legal order, which is an additional risk factor.

Key Words: Legal consciousness, legal idea, the rule of law, risk society.

формирования правосознания в обществе риска заключается в том, что оно испытывает влияние двух групп факторов. Первая – социальная нестабильность, обусловленная последствиями глобализации, технизации, коммерциализации, отставанием правового регулирования риска от лавинообразного распространения и эскалации рисков; формальным и относительным характером различий правового и неправового поведения. Выводы: Выявленные социально-экономические и технические факторы ограничивают возможности правосознания в творческом осмыслении правового порядка, что является дополнительным фактором риска.

Ключевые слова: Правосознание, правовая идея, верховенство закона, общество риска.

Resumen

El propósito del artículo es analizar por qué la idea del estado de derecho no coincide con la práctica social y legal y qué tipo de deformaciones de la conciencia jurídica individual y pública engendra. Métodos: los autores utilizaron enfoques sistémicos y dialécticos al identificar los indicadores de deformación de la conciencia jurídica asociados con los extremos de la ausencia o exaltación de la idea del estado de derecho. Resultados: Los autores identificaron factores culturales, políticos, socioeconómicos que debilitan la idea del estado de derecho en una sociedad de riesgo. La peculiaridad de la formación de la conciencia jurídica en una sociedad de riesgo es que experimenta la influencia de dos grupos de factores. El primero es la inestabilidad social causada por las consecuencias de la globalización, la tecnificación, la comercialización, el retraso de la regulación legal del riesgo por la propagación de avalanchas y la escalada de riesgos; La naturaleza formal y relativa de las diferencias en el comportamiento legal e ilegal. Conclusión: los factores identificados limitan la posibilidad de la conciencia jurídica en la comprensión creativa del orden legal, que es un factor de riesgo adicional.

Palabras clave: Conciencia jurídica, idea jurídica, Estado de derecho, sociedad del riesgo.

Introduction

A significant transformation of society includes changes in management and technology of social control over the activities of law enforcement agencies and individuals (Brownsword, 2019) which base on the use of rather abstractly formulated risk factors and indicators. An individual is positioned as a set of specific indicators and part of a specific group formed by certain factors.

Risk is a “label” (closer to “instead of fitting to the general rule of universalism,” the category that any right is oriented to, which is fairness), indicating groups as riskogenic, risk-oriented, or at risk to be affected (and in the concept of Foucault (1988) and the recent practice of Soviet totalitarianism – “curing”). Consequently, efforts to minimize risk (a special case of which is “treatment”) are aimed not at specific individuals, but at groups identified by this particular state or society, and sometimes even by a closed group (for example, a sect) with an accepted set of risk factors and indicators, which may call into question the idea of the rule of law (Pozdyaeva, 2011).

Despite globalization and economic growth that could affect legal behavior (Sprague, 2015; Brar, 2018), unlimited (due to the ignorance regarding the interests of the majority), deep (due to penetration even into those areas where it is prohibited by law – in the form of corruption and the activities of officially non-profit organizations) commercialization shifts motivation from an ethical and religious to a selfish-pragmatic position. The gap between the richest and poorest worlds is only widening: in 2014 it was estimated that the combined wealth

of the 85 richest people in the world is equal to the combined wealth of the poorest in the world 3.5 billion people (Jacobs, 2015, p. 3), and next year the number of richest people was reduced up to 80. An additional significant career restriction or advantage is a class affiliation.

When analyzing the socio-economic situation of executives in the 100 largest companies, researchers revealed that 68% of Danes, 77% of the French and 63% of American CEOs (general, executive directors) were born in the upper or upper middle class. "The closer to the top of the business hierarchy, the more important it is to have the support of a wealthy family"; approximately two-thirds of senior executives are recruited from social groups that make up only 20% of society (Ellersgaard, Larsen, & Munk, 2015, pp. 1052-1053). A similar conclusion was made in the same year with regard to Great Britain: working ability and education are significant elevators of social mobility, but among men "background origin matters more than the desire for education" (Tampubolon & Savage, 2012, pp. 125-126). Thus, the second significant source of social inequality is gender. Advantages in economic education, profession, industry, work experience, number of hours worked do not help to receive equal income, and in the most profitable social positions the differences in wages are even more significant. Moreover, if a person with the average income has a choice – whether to use specific information resources or technologies in general, the right to choose how and to what extent to use them is often limited.

The *purpose of the study* is to identify how faith in the rule of law diverges from social and legal practice and what negative consequences this has on legal consciousness.

Theoretical framework

The everyday life of legal entities in the risk society is associated with ensuring security of electronic commerce, transactions in the field of contract law, protection against crime and negligence, and maintaining data confidentiality. Mass fears undermine the security guarantees associated with the main institutions of the nation-state. Beck emphasized that modern risk contrasts with the "old" risks of terror (civil and world wars) (Beck, 2009). It is difficult to avoid the simultaneous and therefore perceived as an unfair extension of the rights of some when there is an infringement of the rights of others, especially when risk factors are politicized. We use the concept of "power strategy" to show how the concept of risk is used in games of power and control in society and to analyze the production of risk and subjectivity (Foucault, 1988).

Methodology

When analyzing legal consciousness deformations associated with the extremes of the absence or exaltation of the idea of the rule of law, we considered how they are determined by contemporary social processes, concepts and theoretical principles in the social and humanitarian disciplines presented in the literature on risks, a systematic approach was used.

Based on the dialectical approach, we consider the interaction of different aspects and components of legal awareness and conflicting trends, indicating the need for independence in making legally significant decisions, on the one hand, and an increase in the number of deformations, exposure to risks of legal awareness and irresponsibility, on the other hand.

Results

aAny innovations inevitably encounter problems with the technical implementation of the original idea: this or that law may already be enacted or an agreement on non-disclosure of personal data may be entered, but the data unknown to the administrator of the institution's website can still be downloaded on the Internet or displayed when the search engine requests it. For example, the VKontakte social network itself does not sell personal data, however, the owners of numerous applications that access this data when they request "you must provide access to your page to send postcards to friends" are engaged in this (Tumbinskaya, 2017). On the other hand, the illusion of lack of control leads to the primitivization of communication, sensible discussions are drowning in meaningless debates and insults.

In addition to the above-mentioned issues, there are risks of deliberate illegal access to information resources, technologies, their damage or deletion, which harms other users and the resources themselves (their owners), the receipt of not only personal, but also other closed (commercial, military) data; distribution in the form of leaks and sales, at best leading to meaningless and uninteresting data calls for cold calls. Cybercrime has formed as a new type of crime, the objects of which are the individual, society and the state. Most major cybercrimes are driven by selfish goals, political politics

(espionage, terrorism), and personal motives, such as dissatisfaction with financial status or social status, mischief are behind the rest (Shakirova, 2013) and even cognitive goals (Glotina, 2014, p. 12). Hence, the subjects of crime, as a rule, are personnel with professional skills, and the consequences are artfully hidden and, if detected after a certain time, are often not shown to public.

As a result, first, a sufficiently large number of people generally refuse to be present in virtual communities and use their own data in a global network. There are also those who use risky resources and services, while accumulating the potential for discontent. Secondly, both states and corporations have undoubtedly great material, informational and technical advantages in terms of access, use, modification, destruction and improvement of information technologies. This expands their opportunities for acquiring even more resources and managing economic, political and spiritual processes. Thus, conditions and signs of deepening social inequality with the information dimension and the expansion of the strata of the precariat are created.

In our view, contemporary risk society is the most because, despite the fact (and maybe due to) that there are much more subjects of ownership and power (albeit not always large). The level of uncertainty in a society of risk social, technical, cultural processes increases. Distribution of any global information networks – television, computer, radio communications – increases the risks of deformation of legal awareness in the absence of proper regulation.

As for the impact of information and communication technologies (ICT) on the transformation of justice, the status quo, opportunities and challenges of informatization of the legal sphere, the following is true. The development of ICT along with other factors of contemporary risk society leads to a contraction of social time and space, the interdependence of social actors; enhancing the interaction of cultures; "denationalization" of international relations and strengthening the role of transnational corporations.

ICTs are gradually transforming legislation and understanding of law. Informatization, not only multiplying the volume of information produced, but also increasing the speed of generation and dissemination of information, consists in the creation and application of appropriate tools, changes the information space. For legal systems, these changes are quite significant. They are joined by a new dimension, the electronic form that requires the creation of websites and taking into account the needs of users that are legal entities, which leads to cultural and political consequences.

In addition to traditional social forms associated with the hierarchy of social strata, simple and rigid norms, traditions, ideals, modern (such as computer network infrastructure) arises, characterized by heterogeneity, variability and access to the information space of a huge number of people included in horizontal, vertical and other types of connections. If traditional society was held together by a rigid framework of the classical concept of space and time, the current variety of forms and connections tore this framework apart, giving rise to a pluralism of perception of time and space.

In a situation of multiple relations in a "fluid sociality" between network users (who may become a new social unit), it is difficult to specify the direction of development of law as a whole and its individual segments. Without this predictability, legal subject may lose orientation. In addition, the boundaries between real and virtual weakening, which may pose a certain risk to society.

In addition, in certain branches of law there is a "legal hunger", for example, in the field of robotics and the use of other new technologies, access to personal data and their databases, and blocking of prohibited resources. On the other hand, information and computer culture are not sufficiently developed and distributed. As far as possible, legal information resources should counter this tendency to transform culture, including legal culture, into a "dump" that does not have a specificity and develops its orientation, and the individual as a subject of law into an individual as an object of law. In fact, all local cultures – national, religious, or gender – have a legal dimension, which means they must be protected by law.

Fifth, the technological development of society contributes to a broader and more pluralistic interpretation of the legal system, the creation of data warehouses for a network of consultants – living and automatic – in all areas of law. This is fraught with certain risks, because the absolutization of the legal system as only information and legal support instrumentalizes and loses its non-utilitarian functions: worldview, social, cultural, associated with legal awareness and legal culture.

Nevertheless, the informatization of society as a new condition for activity depends solely on its participants and does not in itself prevent the preservation of the traditional functions of law, but only requires more active participation of the individual, expanding its capabilities.

To prevent terrorism, stricter border checks, reduction of illegal immigration, the introduction of mandatory identity cards and identification criteria for those who may cause a damage are reasonable. However, in everyday life it is difficult to strike a balance between minimizing risk and non-discrimination, respecting the principles of social justice. Issues such as the penetration of video surveillance systems and their location, access to personal data, affect not only risk factors, but also the right to privacy. They not only provoke different reactions in different people, but at different times provoke different reactions in the same people: the majority maintains great restrictions immediately after a terrorist attack or a particularly outrageous crime.

Any restriction of freedom is allowed only in order to prevent harm, but this principle is not specified and does not give clear instructions on what to do in a particular situation. Hence, sometimes the risk to society is not prevented, and for representatives of unpopular or unorthodox communities, regardless of whether these people or groups pose a real danger, it increases due to the "witch hunt".

Moreover, such a sacrifice may not contribute to, but, on the contrary, harm the common good, therefore, the development of the concept of justice for all persons as equals to justice is necessary.

Currently, no state is recognized to be a hegemon by most other states. No international organization, even such as the UN, provides and guarantees the inviolability of the sovereignty of individual states, as it has more moral authority and is more likely to record world politics than to influence them (Kortunov, 2009, p. 43). Separate military and political blocs are also subject to disintegration, violation and breaking of agreements. International organizations proved to be ineffective due to imbalances in power, because, unlike formal (declared, proclaimed) equality, in the real world there is a disproportion of forces and capabilities between member states. Individual states as institutions of political power also do not cope with foreign and domestic actions of terrorist organizations, the activities of money laundering groups. They lack the ability to confront new network organizations (using at the same time the capabilities of hierarchical type organizations), which function like groups and clans, but at a new level, using both military and information means. These are the so-called "stuffing" and winning an audience of sympathizers, and sometimes financially supporting, for example, buttons "donate 5 rubles for development" to spectators who are unaware of the true goals and content of the activities of an organization. On the way – a realistic fake of video files using artificial intelligence systems, when staged and processed frames cannot be distinguished from the originals (Krasilnikova, 2016), and the evidence of fact, including legally significant, comes from falsification of such. This raises the "issues of social and spiritual being of a person, including those of ethical nature" (Sirazetdinova, 2014, p. 207).

In the case of video materials, evolution proceeded from centrally broadcast television channels by a few large entities to mass-produced and relatively freely distributed commercials. This format still remains and, due to the specifics of human perception, will continue to be the most effective and widely used means of influencing legal consciousness. The video image is easier to perceive by consciousness due to its effect of eyesight as the most important channel of communication with the surrounding reality, and the addition of this effect to sound and light memory, the association of created images and provocation of emotions. It most strongly affects the subconscious: even the presence in one room, without direct interaction with the screen transmitting the image, still allows some of the information to penetrate the subconscious of an unaware person.

Discussion

The paper revealed risks and prospects of globalization and the application of information and communication technologies (ICT) in the field of law. The realization of the principle of maximum freedom, compatible with the equal freedom of all others, is extremely complex and almost impossible. The difficulties in obtaining a balance of "equal freedom" are such that it becomes tempting to exclude from the aggregate of individual groups and persons protected by law based on any markers that are associated with risk. The concept of "subjective and objective factors of counteracting legal consciousness manipulation" (Lukmanova & Sirazetdinova, 2016) may provide risk minimization by the development of software and protection from legal consciousness

distortions on individual (psychological) and collective (political and cultural) levels. This is also proved by recent research (Rakhmatullin, 2014, p. 235). Hence, property segregation in risk society is supplemented by justification and deepening of discrimination, the emergence of its new types. This is explained by the fact that refusing excluded groups is much easier than trying to maintain a balance between the rights available to all.

Conclusions

Thus, among sociocultural factors in the formation of legal awareness in a risk society, increasing the level of uncertainty of social, technical, spiritual processes associated with globalization, technization, informatization, commercialization, causes insufficient legal regulation and promotes the spread of value relativism in the form of relativity of differences between legal and illegal behavior can be named. Global informatization both opens up new ways to improve the individual and society, and complements existing restrictions, including being used against the rights of the individual and the laws of the state. The segregation of society is supplemented and deepened by a new, informational dimension, as resource owners try to limit the access of others to the information available to them.

This limits the possibilities of creative comprehension of the legal order necessary in a risk society.

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