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РЕКОМЕНДАЦИИ ЕВРОПЕЙСКОЙ КОМИССИИ ЗА ДЕМОКРАТИЮ ЧЕРЕЗ ПРАВО О СТАТУСЕ ВЕРХОВНОГО СУДА УКРАИНЫ

Аннотация

Европейская комиссия за демократию через право за время своего существования приобрела значительное уважение среди государств мира. Украина широко использует помощь этого органа. Комиссия неоднократно предоставляла рекомендации по судебной системе Украины, в том числе о статусе Верховного Суда Украины. Эта статья посвящена влиянию рекомендаций Европейской комиссии за демократию через право на статус Верховного Суда Украины. Анализируются изменения, которые в нём уже произошли и реализация которых ещё планируется.

Ключевые слова: судебная система, Верховный Суд Украины, Европейская комиссия за демократию через право, рекомендация, конституционные изменения.

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THE INFORMATION FUNCTION OF THE MODERN STATE

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The article focuses on the further study of theoretical and legal foundations of the information function essence and determination of its place and importance in the modern state functions system in the context of globalization and informatization of society. The author researches the phenomenon of the modern state in connection with certain state-legal changes in the world and provides a definition of the "modern state". Some innovations in information relationships are offered in the article such as "e-government".

Keywords: globalization, informatization, functions of the modern state, the information function, the modern state, e-government, access to public information.

Formulation of the problem. The main feature of a modern society is the growing role of information, informational relations and informational space, which is an essential part of all internal and external processes in public life, thus their regulation is one of the priorities of a state.

At different stages of historical development of a state major trends and types of public activities arise according to social needs that arise and are formed as the tasks of a state. These major trends and types of public activities are traditionally called functions of a state.

It is generally accepted that the modern state functions are the most general and stable directions of its activities aimed at solving key social problems. Such directions are determined by domestic and international legal order and are legitimated by society [6, p. 321].

Recently, the nation-state is increasingly engaged in global issues such as informational, environmental, cultural et al. These processes determine the rise of new functions. The impact of globalization is so significant that we can see the formation of a new reality, marked as "modern state" and a new understanding of its effective functioning. The image of the modern state is often replacing the image of a nation-state with its outdated features and functions [7, p. 6]. Therefore, first of all we have to determine what the modern state is and what its main features are, and only

then we can describe the main areas of its activities using the example of information function.

Globalization greatly enhances the role of information in society, causing many active discussions among scientists in different fields of knowledge. The speed of its spread, the lack of any real mechanisms of its spread and cross-border nature of its communications updates the information function of state, which has become the subject of research recently. This is due to the fact that the Soviet theory of state and law considered information activities of the state as a political and legal framework of existing ideology [13, p. 66]. A push to the research of information function was democratic transformation in the late 80s – early 90s of the twentieth century and the proclamation of the principle of transparency. However, the attention of scientists and legislators focused mainly on issues of the freedom of speech, the right to freedom of expression and belief, freedom of media [3, p. 22].

Analysis of recent researches and publications. At the present stage of the theory of functions study, which is a critical reconsideration of many previously developed general theoretical aspects of this category, there is still no common approach for their understanding. Among the recent studies are noteworthy developments of domestic and foreign scientists as Yu. M. Oborotov, E. A. Dzhurayeva, P. Klymentyev, O. M. Loschyhin,

T. A. Kosteckiy, L. R. Nalyvayko, V. F. Pohorilko, V. V. Simutin, O. Yaremenko, F. Fukuyama and others.

Objective of the article is the determination of the modern state and further research of the theoretical and legal foundations of the information function, research of innovations in information relationships such as "e-government" and determining the place and importance of information function in the modern state functions system. The study of these problems and the category of "information function of the state" will contribute, in our opinion, to the enrichment of the national legal doctrine of such complex concepts as "functions of the modern state" and will improve the classification of functions of the modern state.

Presentment of the main material. First of all, let's discuss what the modern state is. The category "modern state" has not been sufficiently studied in jurisprudence because this category is very dynamic. It should be noted that the term "modern state" is closely akin to the criteria of time and is not constant. Each age has been "modern" and for each period of time there is a certain type of state that is "modern". Therefore, analyzing the phenomenon of the modern state, it is appropriate to outline its main features nowadays.

Several authoritative sources use only a common phrase to describe the modern state: "the modern type of state is a democratic, social, legal state" [11, p. 179]. There are many scientific researches of the concept of "modern state", but they are incomplete. Different scientists are exploring this category using different criteria. That is why we must determine our own criteria.

First of all among the classic features of the state – nation, territory and state power, we highlight such an important feature of the state as its recognition by other states and international community [7, 7]. The moment of international recognition has legal importance and defines the transformation of the existing nation-state into the modern state.

The modern state must create the proper conditions that would guarantee the realization of human rights and contribute to the restoration of violated rights. For the modern state, the main social value is a person's life and health, honour and dignity, his rights and freedoms, their protection and implementation. Thus, consolidation and implementation of human rights is normative-legal assessment of the quality of the modern state.

An important criterion of the modern state is stability, which indicates the possibility of the state to exist and survive despite destabilizing external (natural disasters, war, economic sanctions) and internal (inter-ethnic conflict, separatism, revolution) changes [8, p. 25]. The stability of the state is achieved through the integrity of the political system, the legitimacy of the government, the effectiveness of state institutions and the rule of law and security, and value orientations, depending on the mentality and traditions of the state [8, p. 27]. The value of any state has to be connected with its stable existence. The issue of the state stability is associated with such an important criterion for the modern state as the division into strong and weak, as expressed through their actual degree of

independence and ability to maintain its existence [14, p. 42].

The modern state should be open to the dialogue of legal cultures and participate actively in global communication process [7, p. 9]. No state can exist without the active cooperation with the international system today, and the state openness is the constitutive element of the statehood.

So, based on the mentioned main criteria, we are able to provide the concept of the modern state. The modern state is a legal, stable, strong, communicative, economically and spiritually stable institutional system of legitimate, legal and legalized government power in a society operating on a particular territory, which main task is to ensure and protect human and civil rights and freedoms.

Informatization processes in a society is an important feature of the modern state. It can influence state-legal life differently. On the one hand information opens new horizons to the state, making it open and communicative, increases the role of information in all areas of human existence. Internet has already been acting as one of the tools of political activity and as a convenient way of public activity display [10, p. 111]. On the other hand, this allows individuals to achieve the information interests beyond the state, which causes problems for traditional institutions of the state and its functions. Such negative effects cause the erosion of the sovereignty of the nation-state. It also causes the problem of information sovereignty and information security.

In this context, there is a need for the theoretical-legal reconsideration of the state functionality in the relevant processes and determination of the mechanisms of the state functions' realization. Accordingly, the information function research will provide the opportunity to implement effectively public information policy of the modern state.

Controversial point in the study of this concept is that the concept of information function is under development and there is no unity among scientists on the issue of this function understanding. For example, O. F. Skakun considers information function of the state as an organization and support of the system of acquisition, use, distribution and storage of information, access to a wide range of high tech software (computer network with file servers) [11, p. 134]. N. M. Krestovskaya and L. G. Matveeva consider information function as an organization and support of the system of acquisition, use, distribution and storage of information [5, p. 115]. Among the latest research noteworthy is the author's definition of information function by O. P. Klymentyev given in his thesis. He has defined information function as an independent and priority direction of the state information policy, carried out through information means to achieve information sovereignty, free and safe information development of the information society within a particular state. It includes protection of information rights, freedoms and legitimate interests of human and citizen, while acting as an information form to achieve the objectives of society and the state in other most important areas of social life [4, p. 4].

So, summarizing a number of existing doctrinal definitions in our opinion we should prefer the lat-

ter as the most complete, covering the main features of this function.

This makes it possible to determine the nature of information function, which is to organize and ensure the system of creation, collection, acquisition, distribution, storage, use, protection and security of the information. It involves active participation of the state, through its representative bodies in the development of the world information space, establishment of the information resources use regime based on equal cooperation with other states through an appropriate information policy.

Another very important moment in the information function study is to determine its place in the functions system of the modern state. Not all scientists allocate information function as an independent one. For example, A. Vengerov, one of the first lawyers who explored the information function of the state, considered it as an activity of the fourth power – the media. V. F. Pohorilko refers information function to the basic functions of the state [13, p. 67]. O. F. Skakun considers information function as the internal function – an organization and support of the system of acquisition, use, distribution and storage of information, access to a wide range of high tech software, and external function – participation in the development of the global information space, establishment of the information resources use regime based on equal cooperation with other states through an appropriate information policy [11, p. 135].

According to classic classification of state functions, depending on their role in the society, they are divided into basic – areas of the state activity, without which it will not properly function and develop, and auxiliary – the constituent elements of the basic functions, which cannot separately disclose the nature of the state [2, p. 15]. The mentioned separation can be considered a relative one, because nowadays each country does not exist in isolation from the others, and according to the principle of cooperation in international law, enters into certain relations with other countries and we cannot implement basic functions separately from auxiliary ones. This can be seen in the example of information function – it can act as a basic function because its display inside and outside the country is permanent and cannot be a temporary one.

In modern science we can observe a tendency to abandon the classification of state functions, depending on the scope of impact and implementation on internal and external, as they both are closely linked, acting in a certain unity, complementing each other, because today any state is characterized by the general functions carried out within the country and abroad. It should also be remembered that foreign policy of any state is a logical extension of domestic policy and domestic policy, as well as legislation can not contradict international law, ratified by the legislation of Ukraine.

Another criterion is the division of state functions, depending on the period of their performance, into constant ones – performed during the lifetime of the state and temporary ones – performed over a period of existence of the state or associated with a specific factor [2, p. 16]. By this criterion information function can be attributed to both types because the ensuring of the right of

public access to information (legal, environmental, etc.) is permanent.

In our opinion, one of the key points in the study of the theory of functions of a modern state should be the revision and improvement of existing classification of state functions based on conflict points.

It is said that information function is performed by all public authorities. For example, one of the Verkhovna Rada of Ukraine authorities is to determine the principles of domestic and foreign policy. In this regard, the information function directly can be realized through appropriate rules on external and internal information policy [12, art. 85, it. 5]. The Cabinet of Ministers of Ukraine has the authority to conduct domestic and foreign policy, take steps to ensure the defence capability, national security of Ukraine (information security) and public order [12, art. 116, it. 7].

Further proof of information functions realization by all public authorities is actively implemented in the world concept of "e-government", the essence of which is the active use of information technology by all public bodies in their daily activities [10, p. 111].

The Cabinet of Ministers of Ukraine considered and approved the concept "of e-government" in Ukraine in December 2010. The proposed concept of "e-government" defines the purpose, the basic objectives, priorities, stages of building "e-government" in Ukraine until 2015, and expected effects of its implementation. The concept is the basis for the further development strategy for "e-government" in Ukraine, program documents on implementing "e-government", the Law of Ukraine "On the development of e-governance". "E-government" is one of the tools of the information society, the implementation of which will contribute to the creation of conditions for open and transparent public administration. Taking into consideration everything mentioned above, the question arises as to clarification of "e-government" nature.

In accordance with the provisions of the Concept, the "e-government" is a form of organization of public administration that promotes efficiency, openness and transparency of state and local government using information and telecommunications technology to create a new type of state, focused on the needs of citizens. The main component of "e-government" is the "e-government" infrastructure as a single interagency automated information interaction of state and local governments among themselves and with citizens and economic entities [1, p. 3-4]

Nowadays e-reorganization of public administration is causing tremendous interest worldwide. Canada, United Kingdom, Sweden, Denmark, Norway and Costa Rica, Qatar, United Arab Emirates, Latvia, Estonia, Czech Republic and many other countries are developing or creating "e-government".

According to the research, the idea of "e-government" is one of the most controversial, key aspect of debates is the fundamental question of the fate of governments and the state in general. Today there is a growing number of supporters of the opinion that the implementation of information technology in public administration will

enable to optimize everything quickly, to reduce maintenance costs of the state and to accelerate the cooperation between public authorities and the citizens. The most significant argument in favour of "e-government", suggested by its supporters, is increasing transparency and openness in government by switching to a new level of feedback both from citizens and business [9, p. 69]. Thus e-government is an adaptation of governance to the new conditions of social development, which includes the direct services provided by the state through its bodies to its citizens, and interaction between them, in particular thanks to the support and implementation of feedback system (citizen – government – citizen and vice versa) using modern information technologies in communication.

Thus, the purpose of information functions of the state is to create organizational and legal opportunities for access to public information for all interested actors. One of the implementation means of such an objective is the introduction of the "e-government" concept in Ukraine, which will be one of the steps to ensure transparency and openness of public authorities. It is important for democratic society that the public have access to information of public importance issues, because it will strengthen public confidence in government.

Nowadays, over 90 countries have already adopted and implement the right of access to public information by fixing it in their constitutions or creating special laws that provide the ability to use this right in practice effectively. Currently, laws on access to public information have been adopted in almost all the European Union, except Cyprus, Malta and Luxembourg, where the access to government information to the public has already been given in practice [9, p. 71]. However, some states, including Ukraine, only started this process, in which a special role is given to ensuring the right of access to public information at the appropriate level. Thus, the adoption of the Law

of Ukraine "On Access to Public Information" on 13 of January 2011 was an important step towards the fulfilment of a number of international legal obligations by Ukraine.

So, the research leads to the following **conclusions**: global changes indicate that the image of the nation-state is gradually replaced by the image of the modern state that meets the criteria of internal and external public activities nowadays. In connection with it the information function is under development and formation too. There are many controversial issues that require further study, but modern scientists take pretty confident steps.

The main priority of information function implementation within the state is to create optimal conditions for the realization of the legitimate information interests, their self-organization and interaction within the information society, to ensure optimal functioning of the institutionalized elements of the information society in the most important areas of social life.

However, the external side of information function aims to use power resources more or to influence the nature of its institutions in the state interests in the sphere of international relations and international security. This allows us to distinguish the internal and external aspects of information function and to assert erosion of the boundaries between internal and external functions of the state in general.

Information function of the state at the current stage of development of Ukraine occupies a key position among other functions of the state, but at the same time is interrelated with them. The formation of information function of the state, as the primary and independent one, is caused by the intensive development of information society, the need for ensuring and adoption of legal acts in the information sphere. So we should explore such direction of the state activities as information function because its importance is growing each day.

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ІНФОРМАЦІЙНА ФУНКЦІЯ СУЧАСНОЇ ДЕРЖАВИ

Анотація

У статті зосереджується увага на подальшому дослідженні теоретико-правових засад сутності інформаційної функції та визначення її місця і значення в системі функцій сучасної держави в умовах глобалізації та інформатизації суспільства. Досліджується феномен сучасної держави в зв'язку з певними державно-правовими змінами у світі та надається визначення «сучасна держава». А також пропонуються інновації в сфері інформаційних відносин – «електронне урядування».

Ключові слова: глобалізація, інформатизація, функції сучасної держави, інформаційна функція, сучасна держава, електронне урядування, доступ до публічної інформації.

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ИНФОРМАЦИОННАЯ ФУНКЦИЯ СОВРЕМЕННОГО ГОСУДАРСТВА

Аннотация

В статье сосредоточено внимание на дальнейшем исследовании теоретико-правовых основ сущности информационной функции и определении ее места и значения в системе функций современного государства. Исследуется феномен современного государства в связи с определенными государственно-правовыми изменениями в мире и предоставляется определение «современное государство». А также предлагаются инновации в сфере информационных отношений – «электронное управление».

Ключевые слова: глобализация, информатизация, функции современного государства, современное государство, электронное управление, доступ к публичной информации.

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TRAVEL OF RELIGIOUS ORGANIZATIONS MEMBERS OUTSIDE UKRAINE: PROBLEMS AND PROSPECTS OF INTRODUCING VISA-FREE REGIME FOR UKRAINE

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The substance of the right to freedom of travel – as an individual's constitutionally enshrined and guaranteed by state possibility to travel freely and choose his/her place of residence at his/her discretion, to leave and enter the territory of Ukraine was examined. The questions of providing benefits in issuing visas to members of religious organizations were considered. The specifics of the procedure of applying to consular offices of the EU member countries and the prospects for the introduction of a visa-free regime for Ukrainian citizens were investigated. The question of the European Union strategy for the introduction of a visa-free regime for Ukrainian citizens was studied.

Keywords: visa-free travel, visa, and religious organization, the right to freedom of travel, consular offices, and international relations.

The relevance of the research is confirmed by the insufficient extent of investigations on the problem of providing benefits for issuing visas to members of religious organizations and the prospects of introducing visa-free regime for Ukrainian citizens.