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TEACHING DIGITAL LAW AS A PREREQUISITE FOR THE FORMATION OF STUDENTS' DIGITAL COMPETENCE AND DIGITAL CULTURE

LA ENSEÑANZA DEL DERECHO DIGITAL COMO PRERREQUISITO PARA LA FORMACIÓN DE LA COMPETENCIA DIGITAL Y LA CULTURA DIGITAL DE LOS ESTUDIANTES

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ABSTRACT

The purpose of the study is to analyze the necessity of introducing the subject of "Digital Law" in the educational process of the specialty "Jurisprudence". The authors consider one of the objectives of higher legal education to be the formation of digital competences and digital culture in future lawyers, which is going to contribute to the intensive development of the digital economy and administration. The paper refines the concepts of "digital culture" and "digital competence" substantiates the composition of their structural components, and spells out the paths of the development of these qualities as part of training in the specialty of "Jurisprudence". The study explores approaches to the development of digital competences in law students utilized in international practice. The authors conclude that the theoretical foundations for the discipline of "Digital Law" cannot yet be considered fully contrived. The development of digital competences is only indirectly affected by teaching the discipline of "Digital Law", along with the study of applied disciplines teaching the application of digital technology in judicial practice.

Keywords:

Digital competence, digital culture, digitalization, jurisprudence, legal regulation.

RESUMEN

El objetivo del estudio es analizar la necesidad de introducir la asignatura de "Derecho Digital" en el proceso educativo de la especialidad "Jurisprudencia". Los autores consideran que uno de los objetivos de la educación jurídica superior es la formación de competencias digitales y cultura digital en los futuros abogados, lo que va a contribuir al desarrollo intensivo de la economía y la administración digital. El trabajo afina los conceptos de "cultura digital" y "competencia digital", fundamenta la composición de sus componentes estructurales, y detalla los caminos del desarrollo de estas cualidades como parte de la formación en la especialidad de "Jurisprudencia". El estudio explora enfoques para el desarrollo de competencias digitales en estudiantes de derecho utilizados en la práctica internacional. Los autores concluyen que los fundamentos teóricos de la disciplina del "Derecho Digital" aún no pueden considerarse completamente inventados. El desarrollo de las competencias digitales solo se ve afectado indirectamente por la enseñanza de la disciplina de "Derecho Digital", junto con el estudio de las disciplinas aplicadas que enseñan la aplicación de la tecnología digital en la práctica judicial.

Palabras clave:

Competencia digital, cultura digital, digitalización, jurisprudencia, regulación legal.

INTRODUCTION

In the late 20th and early 21st century, the expansion of the areas of legal regulation became an established trend due to the introduction and influence of digital technology, telecommunications, the global Internet, artificial intelligence, robotics, and other phenomena of modern society in almost all areas of human life, the legal sphere included (Kuteynikov et al., 2022; Slesarev et al., 2021). This, in turn, necessitates the revision of normative legal acts capable of meeting the avant-garde cultural, social, informational, economic, and political understanding and purpose of "digitalization" both on the basis of the existing legislation and in view of the emergence of new institutions and rules of law (Baranova et al., 2021; Kirillova et al., 2021).

In this light, the problem of forming new digital competences of lawyers who carry out their professional activities in the information (digital) era is brought to the forefront (Adygezalova et al., 2021). In the coming years, the legal profession is reckoned to change dramatically. Typical operations are expected to be performed faster and better by artificial intelligence, and lawyers with competences in digital technology are about to be of a much higher professional level (Klochkova et al., 2019; Stryabkova et al., 2021). In our view, this will dramatically increase competition both among lawyers themselves and the educational institutions training specialists in law (Kulantaeva, Tokareva, 2021). We are witnessing the process of digitalization of rulemaking and law enforcement, the creation of electronic codes, the generation of template court resolutions by means of artificial intelligence, and the creation of an automated system of judicial practice control. The practice of electronic cases is already used in arbitration courts. With enough mastery of the basic digital skills necessary to work with information and communication in a digital environment, university students are found to have a qualitatively low level of information consumption, unable to transform it into knowledge (Shaukhalova, 2020). This speaks to the need for students to develop not only digital competences, but also a digital culture.

The phenomena of digital competence and digital culture are considered in the works of researchers at the material (Zhao et al., 2021), functional (Hatlevik et al., 2015), mental, and educational and value levels (Blazheev, Egorova, 2020). All the studies voice a common idea that the subjects of legal activity should not only be good specialists, professionals but also people who are able not only to use digital technology but also deeply understand the legal aspects of its use.

The Glossary of Federal State Educational Standards (n.d.) defines competence as a complex of knowledge, skills, and abilities a person should possess and have practical experience in. From the applied point of view, of interest is the definition of this concept offered by the Glossary of the European Project TUNING (Tuning Educational Structures in Europe, Universities' Contributions to the Bologna Process, n.d.). Competences are interpreted as a dynamic combination of cognitive and metacognitive skills, knowledge, understanding, interpersonal, intellectual, and practical skills, and ethical values. The development of competences is the purpose of educational programs.

Based on a variety of studies, we outline the relationship between the concepts of "digital literacy", "digital competence", and "digital culture" that is universal for all specialties:

- digital literacy – the cognitive level: a basic set of knowledge and skills in working with information and communication in a digital environment;

- digital competences – the value-motivational level: digital literacy is supplemented by the ability and readiness to critically evaluate information and the ability to create digital resources and observe information security;

- digital culture – the worldview, reflexive level: digital competences are accompanied by the worldview aspect, a striving for continuous learning and interaction in the digital environment (Shaukhalova, 2020).

Proceeding from the above understanding of the essence of digital competence and digital culture, we argue for the need to deliberately develop digital competences and digital culture in law students by means of teaching the discipline of "Digital Law".

The hypothesis proposed in this study is that teaching students in legal specialties the fundamentals of digital law is not a critical precondition for their mastery of digital competencies required for a modern lawyer, although it does contribute to the development of their digital culture and expands their options for specialization.

MATERIALS AND METHODS

The study employs systemic and complex approaches based on a variety of methods of general and special scientific analysis. The primary methods are analysis, synthesis, comparison, and generalization. The method of transition from a general concept to a specific allows singling out digital law as a separate discipline in higher legal education. The comparative legal method is used to identify the common and specific characteristics of the influence produced by the advancement of digital technology on

legislation and the law in different countries, as well as to compare the Russian experience in the formation of digital competence and digital culture of future lawyers with the world practice. The proposed hypothesis is tested based on the information materials composed by normative legal acts and published scientific works that set out the views of scholars on various aspects of digitalization of training in law schools, and other information on the subject available on the Internet. The research hypothesis determines the choice of specialized research methods: the case study method and expert survey, the purpose of which is to disclose the practice and attitude to the teaching of programs focused on the study of digital law in legal education.

Case study method. The programs of 25 universities from around the world are selected for analysis. The temporal scope is defined based on the criterion of the programs being published no later than 2016, with the geographic focus mainly on European countries. As a result, three approaches to the formation of digital competence in lawyers found in international practice are identified.

Expert survey. In June 2021 we selected 30 experts with considerable (more than 10 years) experience in the organization of the educational process – heads of departments of basic legal sciences and applied legal technologies and deans and deputy deans of law faculties of three multidisciplinary universities who agreed to answer some questions on the problems of digitalization in higher education. The criterion for the selection of experts is having at least three articles on the topic of interest published in journals included in the Scopus or Web of Science citation database. The experts were emailed with the following questions: 1. Is there a need for training in the use of digital technology in the work of a lawyer? and 2. Is there a need today to introduce a mandatory educational discipline "Digital Law" in the training programs for legal specialties?

The participants in the expert survey were informed of its essence – the planned use of its results for the present study and the intent to present the responses in a summarized form.

RESULTS AND DISCUSSION

As an academic discipline, digital law is a system of information on legal norms that regulate the relations arising due to the acquisition, exercise, and alienation of digital rights, as well as the use of digital technology (Blazheev, Egorova, 2020).

The question of the position of the discipline "Digital Law" in the system of academic disciplines of educational programs of higher legal education is debatable. This is explained by the debatability of the issue and the place of digital law in the system of Russian law. However, it is undeniable that future lawyers need to be taught the legal basics of digitalization.

The results of the expert survey are given in Table 1.

Table 1. The experts' attitudes towards the issue of teaching digital technologies in law schools.

Question	Answer	
	Yes	No
Is it necessary to teach disciplines that cultivate digital competences and digital culture to law students?	100%	0
Is it necessary to introduce the discipline of digital law in the educational programs of universities?	46%	54%

It is evident from the table that so far, the expert have no universal stance on the introduction of the discipline "Digital Law". This disparity appears to stem from the fact that a number of universities lack specially developed educational and methodical materials for the discipline, as well as the relevant competences of the faculty.

Preparation for the use of digital technology in future professional practice is actively carried out today in higher education institutions, particularly at the undergraduate stage of university education (Kulantaeva, Tokareva, 2021). Federal State Educational Standards of higher education for the Bachelor's degree programs presuppose a graduate's possession of general cultural, general professional, and professional competencies, which implicitly include digital competencies. In training future lawyers, in particular, digital competences are formulated as professional competences. These are a basic set of knowledge and skills of working with information and communication in the digital environment (digital literacy), the ability and readiness to use this knowledge and cooperate in the digital environment (digital competences), and a worldview and emotional-value component as the basis of digital culture.

The relevance and importance of digital competencies of modern lawyers are reflected in international standards of information training and in international studies (Martzoukou et al., 2021), they are emerging qualities.

An interesting example, in our view, is the "Law and Digital Technology" Master's program at Leiden University (Netherlands), which provides comprehensive training in both law and technical skills. Those who have completed this program receive the qualification "Master of Laws in Advanced Studies in Law and Digital Technologies" (L.L.M.) (van der Hof, n.d.).

At other universities, such as the University of Sussex (UK), law students can choose a narrow specialization in jurisprudence, such as Information Technology and Intellectual Property Law (LLM) (University of Sussex…, n.d.).

Russian practice, particularly the Federal State Educational Standard for Higher Education 3++ for the direction of training 40.03.01 Jurisprudence (Bachelor's degree), defines universal and general professional competences in the sphere of information skills required from future lawyers in view of the advancement of modern technologies:

- UC-1 (Universal Competence 1) – ability to perform search, critical analysis, and synthesis of information, apply a systematic approach to solve problems;

- GPC-8 (General Professional Competence 8) – ability to purposefully and efficiently obtain legally important information from various sources, including legal databases, to solve professional tasks with the use of information technologies and in accordance with the requirements of information security (Order of the Ministry of Science and Higher Education of the Russian Federation № 1011, 2020).

Researchers assert (Kulantaeva, Tokareva, 2021) that at present, training in the field of information technology is kept to a minimum (students study the course "Information Technologies in Legal Activity" only for 108 academic hours, of which lectures and practical classes are allocated 18 hours each, which is clearly not enough to train a lawyer of the next generation). In recent years, the subjects "Legal Informatics", "Information Law", "Information Security", and others were removed from curricula (Kulantaeva, Tokareva, 2021). In view of this, the scholars are convinced that the established goals of forming digital competences in future lawyers become virtually unattainable (Kulantaeva, Tokareva, 2021).

The above examples and the examined educational programs of universities allow us to distinguish three approaches to the formation of lawyers' digital competence that have been developed in international practice. It is reasonable to present these approaches in the form of a table.

Table 2. Three approaches to the formation of lawyers' digital competence that have been developed in international practice.

Approach	Country	University (example)	Specialty
Legal education with training in digital competences in all specialties equally	Russia	Kutafin Moscow State Law University	All specialties
The presence of specialties in legal education with in-depth training in digital technology	Nether-lands	Leiden University	Master of Laws in Advanced Studies in Law and Digital Technologies (L.L.M.)
The presence of narrow specializations in legal education in certain areas of law related to the use of digital technology	Great Britain	University of Sussex	Information Technology and Intellectual Property Law – LLM

Thus, today, many countries train law students in digital law both within the classical model of legal education and in the form of an in-depth study of digital technology and narrow specialization in the areas related to the use of digital technology.

Digitalization has no nationality. To varying degrees, this process affects the entire world. In this regard, of critical importance is not only knowledge of Russian legal and doctrinal provisions. A lawyer of the present day needs to have comparative research skills to integrate into the global digital environment and be in demand in the digital economy market, the borders of which are gradually blurring (Blazheev, Egorova, 2020).

As a result of the study, we arrive at the conclusion that one of the key objectives of training lawyers in the system of higher education is forming their digital competences and digital culture, which are vital for professional practice in various spheres of the economy and administration. To the main components of digital competence we attribute:

- knowledge in the field of professional legal communication with the use of information technologies;

- the ability to choose a particular model of communication using information technologies in accordance with a particular legal task;

- the ability to understand and interpret information of a professional nature obtained with the help of information technologies (Beglarian, 2019).

We believe that the most common approach to defining the structure of competence is the approach that highlights its cognitive and personal components. The cognitive component includes two components: knowledge and activity (functional) (Hatlevik et al., 2015). The first one defines the level of development of the knowledge system, including the theoretical and methodological fundamentals of the subject area. The second one refers to the degree of formation of practical skills, assessing the ability to apply theoretical knowledge in practice and make decisions in both standard and non-standard situations. The personal component covers the motives and value orientations of a person in the process of acting, their attitude to the activity (Osipova et al., 2010).

However, many researchers concur that only comprehensive mastery of the aforementioned components allows for the development and advancement of future specialists' information (digital) competence. O.N. Griban argues that it is the incorporation of the motivational-value component that testifies to the development of the information and digital culture of a university student (Griban, 2015). Clearly, such an understanding of information culture sets the level demanded from each university student and graduate. The required digital competences of students may vary depending on the area of their future professional practice: education, economics, law, etc. At the same time, digital culture is an indispensable quality of a competitive future specialist.

Following the understanding of digital culture presented at the beginning of the article, the development of digital culture can be presented as a three-step structure. The first stage is the formation of digital literacy. Usually, university students do demonstrate the necessary level of digital literacy from a technical point of view. Problems arise in the application of this knowledge in independent information activities. For this reason, undergraduate students are required to master the second level (stage) of work with information – digital competences: readiness to search, critically evaluate, and structure knowledge, present it in the form of multimedia objects (Shaukhalova, 2020). Digital competences should be purposefully formed in the process of mastering various academic disciplines by students. The third stage – digital culture – represents the worldview, axiological, and reflexive level of information training. At this stage, the student has formed information needs and interests, they are motivated to refer to information sources, able to self-assess their digital culture, and are part of Internet communities (Beglarian, 2019).

Further on we will examine the role of teaching digital law in the formation of digital competences. Scientists investigating the essence of digital law assert that it creates a special legal space, which, in contrast to classical law, lacks specialization by sectors. It mixes together the norms and institutions of various spheres, changing the structure of law in classical legal relations. In digital law, classical law is brought to a minimum, in fact, down to the principles of recognition and efficiency (ethics). All other attributes of law, such as certainty, normativity, and general binding, are considerably transformed. In this sense, digital law is a combination of non-legal regulators, which in certain combinations acquire legal quality. The digital environment creates a new type of jurisprudence, which forms a legal quality in previously non-legal spheres, primarily in the technical-informational and natural-technical (Griban, 2015).

A number of researchers conclude on the need to establish a new integrated legal institution of "digital law" (Siniukov, 2019), which is viewed as a complex of rules governing the relations of two or more parties with respect to property and personal non-property benefits, which are generated by the circumstances of occurrence and existence in virtual space as a result of communication and data exchange in an electronic digital form (Arkhipov, 2013). Digital (virtual, electronic) law is considered as a specific form of an informal legal system that is fragmentary in nature and presents a disordered set of rules that operate in distinct virtual communities, enshrining the norms and value orientations of real and nominal communities (Skorobogatov, 2021).

The claim that the prospects of digital law lie not in the need to adapt digital technologies to the everyday legal environment (Arkhipov, 2013) seems fair to us. Instead, these prospects are found in new forms of social regulation, a transition to a different model of the social and legal order. This perspective fundamentally changes the research problem – from a search for the means of adapting technologies to the creation of models of a legal sphere that would give new chances to humans as a social and biological species. The future prospect is the possibilities of strategic application of the legal method in the new economy to a new effective public administration, the restructuring of the social sphere, as well as in the possibility of creating new legal values, in many respects, a new legal culture, in the bosom of which the original advantages of the legal mentality, including the Russian one, will receive the most natural embodiment.

In this regard, we consider it important to note the work of V. Laptev, in which he spells out the main approaches to countering the problems and difficulties that revealed themselves when the academic course "Digital Law" was being created: "Modern approaches do not do not rule

out the preservation of the traditions of the school of economic law on the convergence of private and public principles in the legal regulation and implementation of economic activity, the refraction of which allowed to clearly show students the mixture of the technological and the legal in contemporary social relations". It is not so much the format of training that matters, but rather the optimal depth of immersion of lawyers in the algorithms of the relevant technologies. The study of digital law should provide the lawyer with an understanding of the legal rather than technological aspects of digital innovation (Kutafinskie chteniia…, 2021).

CONCLUSIONS

The conducted research gives reason to conclude that digital law still requires further development both as a legal science, i.e., the theoretical basis for the formation of a system of digital legislation, and as an academic discipline. From this, we can conclude that the already demanded development of digital competences in students is not conditional on the indispensable teaching of not fully formalized digital law as a separate discipline.

These competences are formed through targeted training in digital skills of professional practice, its technical and technological support, including communicative, methodological, and constructive activities. Meanwhile, the study of digital law, especially participation in its advancement, certainly does affect the development of digital culture.

Perception of the latter expands the spheres of professional competence of a lawyer, for instance, allowing them to take part in the development of the norms of digital legislation, which in the future will undoubtedly be systematized into a separate block of law regulating the key issues of digital transformation and activities in the critical areas of the economy, state institutions, and society. Thus, the proposed hypothesis is considered to be confirmed. Promising directions for further research appear to be the organizational and legal problems of developing digital competences and digital culture in students.

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