

LEGAL REGIME OF RECORDS MANAGEMENT IN RUSSIAN EXECUTIVE AUTHORITIES

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The subject. Problems of legislative regulation of information and records management in executive authorities activity are raised.

The purpose of the article is confirmation or confutation of the hypothesis that the lack of centralization of legal regulation of records management in Russian executive authorities causes problems in public governance.

The methodology includes formal-legal method, systematic approach, formal-logical method, analysis, synthesis.

The main results of research. The "legal regime of records management" is the established legal procedure for documenting information and organizing work with documents. The activity of executive authorities for the production of documented information has its own specifics. If analyze the normative legal acts, it can be stated that the system of legislation that regulates the implementation of documentation operations in the structure of executive authorities of the Russian Federation needs to be modified by specifying a number of existing provisions and including new ones.

Conclusions. Despite the fact that currently there is a fairly developed regulatory framework for documentation management, a significant part of the issues related to the organization and technology of working with documents is not sufficiently regulated. In particular, this applies to the organization of electronic document management in the activities of executive authorities. The following measures could help to solve this and many other problems, and improve the state of documentation support for governance in the country: adaptation of international standards in the field of documentation maintenance of management to Russian conditions; restoration of state regulation of records management in executive authorities at all levels; creation of a federal executive authority responsible for improving, controlling, and regulating the documentation maintenance of governance; adoption of the federal law, which would fix the general principles and the most significant provisions of records management.

1. Introduction

In connection with the implementation of administrative reform in our country, there have been not only structural changes in Federal Executive bodies, but also various aspects of legal regulation of their activities, including in the field of documentation support for management. So, earlier the procedure of office work was defined by the standard instruction on office work in Federal Executive authorities, approved by the order of the Ministry of culture of Russia. The rules of office management in Federal Executive bodies approved by the Decree of the Government of the Russian Federation of 15.06.2009 N 477, indicate an increase in the state's attention to this issue. The problems of regulating the office work of Executive authorities are also largely actualized by the rapid development of information technologies and accelerated informatization of modern society.

Currently, many researchers are studying the problems of legal regulation of clerical processes. General issues of regulatory and legal regulation of management documentation are discussed in detail in the works of E. A. Kosheleva [1], T. V. Kuznetsova [2], A. Yu. Chukovenkov [3] and other authors. Articles by A.V. Ermolaeva [4], N. A. Khramtsovskaya [5], V. F. Yankova [6], M. V. Larin [7] and V. V. Boriskin [8] are devoted to the analysis of normative regulation of documentation support of management in state authorities.

At the same time, there are issues of documentation support for the activities of Executive authorities, which are still insufficiently covered. The purpose of this study is to identify the concept and specifics of the legal regime of office management in the Executive authorities of the Russian Federation and to determine the prospects and main directions of its improvement in the conditions

of insufficient centralization of legal regulation.

2. The concept of the legal regime of office work

Being complex, this term consists of two concepts – "legal regime" and "office management". The concept of "legal regime" in Russian legal science has existed for quite a long time and has become widespread primarily as an industry category. Many scientific works are devoted to the study of legal regimes in certain areas of law. For example, this term is often used by researchers of civil law problems. Moreover, one of the most popular areas of research on legal regimes in the field of civil law is the legal regimes of various objects of civil rights, primarily property. Much less attention is paid to modes of activity, legal States, etc. Legal regimes are also considered in branch studies on land law, international law, constitutional law, administrative law, and other branches of law. Some of them are considered in conjunction with other legal regimes [9].

The term "legal regime" is also actively used in law-making: "transit regime", "export regime", "legal regime of the State border", "regime of closed administrative-territorial entity", "state of emergency", "legal regime of rural settlements", "legal regime of marital property", etc. However, even at the legislative level, there is still no clear definition of the content of this concept.

At the same time, the first attempts at theoretical understanding of the category "legal regime" in Russian legal science were made in the early 80-ies of the XX century. Priority in the theoretical development of this term belongs to V. B. Isakov – in 1982, his article "Legal regimes and their improvement" was published, where the following definition was given: "the legal regime can be defined as the social regime of a certain object (phenomenon, process, social subsystem), fixed by the norms of law and secured by a set of legal means" [10, p.35].

Since then, the study of the legal regime as a theoretical category has been repeatedly addressed by such scientists as S. S. Alekseev, N. I. Matuzov, A.V. Malko and some others. And yet, despite the fact that the history of the issue goes back more than three decades, there is currently no consensus in the scientific legal literature on the concept of a legal regime. However, the diversity of existing approaches and definitions can be reduced to two main areas.

The first direction is based on the idea of the legal regime as a specific order of regulation, which is established and guaranteed by the state. Moreover, the term "legal" implies that this order is fixed in legal norms.

Thus, S. S. Alekseev considers the legal regime as a regulatory procedure, which is expressed in a diverse set of legal means that characterize a special combination of interacting permits, prohibitions and positive obligations, and create a special direction of regulation [11, p.185].

According to N. I. Matuzov and A.V. Malko, the legal regime is a special order of legal regulation, which is expressed in a certain combination of legal means and creates the desired social state and a specific degree of favorability or unfavorability to meet the interests of legal entities [12, p.17-18].

A similar definition can be found in the works of O. S. Rodionov, who proposes to consider the legal regime as "prescribed by law special provisions, and presented a specific set of remedies, which, using the optimal combination of incentive and restrictive elements creates a specific degree of favorable or adverse for the smooth implementation of the subjects of their interests" [13, p. 9].

The second approach to defining the concept of "legal regime" is United by the General provision that this order must be embodied in objective reality, and thus the

legal regime is perceived as the result of an ordering effect on public relations. Such an idea of the concept of the legal regime is found both in the works of the Soviet period [14, p. 122-123] and in more modern studies [15, p.26], and suggests the identification of completely different concepts - the legal regime and the rule of law, which, from the point of view of formal logic, is unacceptable.

The definition of the concept of "legal regime of office work" also largely depends on what is meant by the term "office work".

GOST R-51141-98 "The office Management and archival business. Terms and definitions" gave the following definition: office management or documentation support of management is a branch of activity that provides documentation and organization of work with official documents.

The terms "office management" and "documentation support of management" in accordance with GOST R 51141-98 were used as synonyms, but there are still some differences between them. First, the concept of "office management" is mainly used when describing the organizational side and traditional methods of working with documents. Secondly, the concept of "document management support" emphasizes the information technology component in the modern organization of office work and it is better to use it when it comes to computer technologies for working with documents.

In accordance with GOST R 51141-98, office management involves, first of all, the creation of documents or documentation, i.e. recording information on various media according to the established rules, which are fixed in legal acts and regulatory and methodological documents. The result of documentation is a document-information recorded on a material carrier with details that allow it to be identified. The carrier can be any material object used for fixing and storing speech, sound, or visual information on

it, including in a converted form. At the same time, the process of recording information on paper or other media is strictly regulated, which, in turn, ensures the legal force of the document.

Office management, however, involves not only the creation of documents, but also the organization of work with them, which includes the organization of document flow, storage and use of documents in the current activities of the institution.

Thus, we can distinguish two components of office management:

- documentation of information;
- organization of work with official documents.

Since March 1, 2014 GOST R 7.0.8-2013 has been introduced. This standard separates the concepts of "office management", "document management" and "document management".

Thus, the concept of office management is defined as "activities that provide documentation, processing, use and operational storage of documents; documentation support (management), DOW-activities that purposefully provide document management functions; document management-activities that ensure the implementation of a single policy and standards in relation to the organization's documentary Fund" [16, p.230].

Thus, if the legal regime is a special procedure established by law for regulating relations in a particular area, then the legal regime of office management is a procedure established by law for documenting information and organizing work with documents.

3. Features of the legal regime of office work in the Executive authorities of the Russian Federation

The activity of Executive authorities for the

production of documented information has its own specifics (in current legislation, this process is called "documentation", which means "recording information on various media according to the established rules"). The procedure for documenting and organizing work with documents in Executive bodies is established by the Decree of the Government of the Russian Federation No. 477 dated June 15, 2009 "on approval of the rules of office management in Federal Executive bodies". Legal regulation in this area is not limited to this document, of course. Federal laws, presidential decrees, legal acts of the chambers of the Federal Assembly, resolutions of the government of the Russian Federation, state standards, and regulatory legal acts of the constituent entities of the Russian Federation are among the normative legal acts regulating the specifics of documentation support in Executive authorities.

Due to the fact that state symbols are widely used in documenting the management activities of Executive authorities, one of the most important sources of legal regulation in the field of public records management is the Federal constitutional law of December 25, 2000 No. 2 of the Federal law on the state emblem of the Russian Federation. This law establishes one of the components of the legal regime of office management in Executive authorities, namely, the procedure for using the state emblem of the Russian Federation as an official state symbol on letterheads, other documents and seals of state bodies. So, according to this law, on the forms of Federal Executive authorities, the image Of the state emblem of the Russian Federation is placed in a single-color version.

By the decree Of the government of the Russian Federation of December 27, 1995 No. 1268 "On regulation of manufacture, use, storage and destruction of seals and letterheads with the image of the State emblem of the Russian Federation" it is established that the

production of stamps and stationery with the image of the State emblem of the Russian Federation is administered only by printing and stamp-engraving of enterprise, having issued in the established procedure a license for a specific activity and the certificate on availability of technical and technological capabilities to manufacture specified products at the proper quality level . Production of seals and letterheads with reproduction of the coat of arms of the Russian Federation is carried out by orders of Federal state authorities and other state bodies, organizations and institutions, as well as bodies, organizations and institutions, regardless of the form of ownership, endowed with separate state authorities.

Important components of the legal regime of office work in the Executive authorities of the Russian Federation related to the implementation of the constitutional right of citizens to receive documented information are established by the Decree of the Government of the Russian Federation of 24.11.2009 N 953 "on ensuring access to information about the activities of the Government of the Russian Federation and Federal Executive authorities" . For example, this resolution approved a list of information about the activities of the government of the Russian Federation and Federal Executive bodies that are mandatory for posting in public information systems.

The specificity of this legal regime is also due to the legal properties of information that is subject to documentation in the course of the activities of Executive authorities, and in some cases is information of limited access. In accordance with clauses 2.38 and 2.39 of the Model regulations on interaction between Federal Executive bodies approved by the government of the Russian Federation On January 19, 2005. No. 30, " ... work with secret documents, cipher telegrams, and other

restricted documents, as well as processing of secret and other restricted information, is carried out in accordance with special instructions. Organization and record keeping in the Federal Executive authority are carried out a structural subdivision of the Federal Executive authority responsible for record keeping, as well as those responsible for record keeping in other structural divisions of the Federal enforcement authority" .

Currently, the basis of the legal regime of the proceedings in the Executive bodies constitute the "Rules of clerical work in Federal Executive bodies", approved by RF Government Decree of June 15, 2009 № 477 , which reglamentary in detail how to create documents.

In order to optimize the procedure and procedure for the development of Federal Executive authorities instructions on office work, Methodological recommendations were developed . The provisions of the office management Instructions apply to the organization of work with documents, regardless of the type of medium, including electronic documents, including the preparation, processing, storage and use of documents, carried out using information technologies. Electronic document management systems (automated document processing systems) used by a government Agency must ensure compliance with the requirements of the office management Instructions.

It should be noted that:

- the provisions of the instructions on office management do not apply to the organization of work with documents containing information constituting a state secret;

- the specifics of working with documents containing confidential information (official and other secrets, personal data) are regulated by special regulations (instructions, regulations, rules) approved by the Manager;

- the requirements of the office management

Instructions for working with accounting, scientific and technical and other special documentation apply only to the General principles of working with documents, as well as preparing documents for transfer to archival storage;

- organization, maintenance and improvement of office work on the basis of a unified policy, the use of modern information technologies in working with documents and methodological guidance and control over compliance with the established procedure for working with documents in structural divisions is carried out by the office management Service of the relevant state body;

- the functions, tasks, rights and responsibilities of the office management Service are regulated by its regulations;

- official duties of employees of the office management Service and employees responsible for organizing work with documents in structural divisions of the state body are established by official regulations [17, p.51].

Based on the analysis of normative legal acts, it can be stated that currently the Russian Federation has formed a system of legislation that regulates the implementation of documentation operations in the structure of Executive authorities. However, many experts in the field of DOW note [18, p. 87-90; 8, p. 55-58, 19, 20] that the Rules need to be refined, specifying a number of existing provisions and including new ones.

4. Prospects for improving the legal regime of office management in the Executive authorities of the Russian Federation

Currently, the main direction of changes in the organization of office management in Executive authorities is the introduction of information technologies, including electronic document management. Their application will allow to raise to a new level not only office

work in the authorities themselves, to make the activities of the state apparatus more transparent, but also to optimize the implementation of state functions [21, p.139].

It should be noted that much has already been done in this direction at the legislative level. The separate section is devoted to working with electronic documents – "Section VI. Features of working with electronic documents in the Federal Executive authority". Order No. 221 of the Ministry of communications and mass media of the Russian Federation dated 02.09.2011 approved "Requirements for electronic document management information systems of Federal Executive authorities that take into account, among other things, the need to process information that has limited access to it" . In 2012 the government of the Russian Federation adopted Resolution No. 890 dated 06.09.2012 "on measures to improve electronic document management in state authorities".

At the same time, despite a fairly large number of legal acts in this area, there are still quite a few problems in the use of electronic documents in the activities of Executive authorities, especially in the field of interdepartmental information exchange, which are due to the lack of uniform requirements for magnetic media, for the format of texts of documents on magnetic media, standards that ensure the compatibility of information systems and their integration. Ultimately, the Executive authorities independently decide on the creation and use of electronic documents, developing local regulatory documents to regulate these processes. Any Agency can develop various forms and forms of documents at its own will.

Thus, the lack of a unified regulatory and methodological framework that regulates the direct use of electronic documents in the office work of Executive authorities makes it much more difficult and sometimes impossible to

implement electronic documentation in management activities, so electronic documents are often used as "drafts" or copies of paper documents.

5. Conclusion

Despite the fact that at present there is a fairly well-developed regulatory framework for the documentation support of management, a significant part of the issues related to the organization and technology of working with documents are not sufficiently regulated. In particular, this applies to the organization of electronic document management in the activities of Executive authorities. The uncontrolled introduction of electronic documents leads to the fact that any Agency can arbitrarily enter forms and forms of documents, and oblige all lower-level state and non-state organizations to fill out these forms. This situation is aggravated by the fact that the existing national standards in the field of office management are not mandatory for public authorities and are of a recommendatory nature.

The following measures could help to solve this and many other problems and improve the state of documentation support for management in the country:

- adaptation to Russian conditions of international standards in the field of management documentation support,
- restoration of state regulation of clerical processes in Executive authorities at all levels;
- creation of a Federal Executive body responsible for improving, monitoring, and regulating the documentation support of management in our country;
- adoption of the Federal law "on documentation support for management", which would set out the General principles and the most significant provisions of documentation support for management.

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