

National Research University
Higher School of Economics

Copyright manuscript

Izotova Anzhelika Nikolaevna

**LEGAL REGULATION OF THE SECRECY OF COMMUNICATION IN
CURRENT CONDITIONS**

PhD Dissertation Summary for the purpose of obtaining
academic degree Doctor of Philosophy in Law

Academic supervisor:
Dmitrik Nikolay Andreevich,
PhD in Law

Moscow – 2022

The thesis was completed at the School of Digital Law and Bio-Law of the Faculty of Law of the National Research University “Higher School of Economics”.

The text of the thesis is deposited and available on the website of the Higher School of Economics: <https://www.hse.ru/sci/diss/>

Discipline: 5.1.2 – public law (state and legal) sciences

Relevance of the research topic.

In the information society, many areas of public life are undergoing changes, including the sphere of communication. The leap in the development of the information infrastructure, improvement of modern information technologies, emergence of new forms of communication based on the exchange of data on the Internet, international nature of communication, digitalization economy have an impact on the secrecy of communication and lead to the need for a different look at its legal nature, content.

Under the influence of such socio-economic, technological changes, there have been changes in the subject-object composition of the secret of communication. New types of messages transmitted over the information and telecommunications network have appeared, new subjects have appeared that ensure the exchange of such messages. All this allows us to talk about the need to update the existing legal regulation of communication secrecy.

On the one hand, in the context of digitalization of communications, the importance of information security of communication services' users¹, increases, and the risk of violation of the secrecy of communication rises.

The right of everyone to the secrecy of correspondence, phone conversations, postal, telegraphic and other communications is enshrined in Russia at the constitutional level and has been developed in federal legislation. According to the Doctrine of the Information security of Russian Federation, ensuring and protecting the constitutional rights and freedoms of the individual and the citizen in terms of obtaining and using information, privacy when using information technologies, is attributed to the national interests of the Russian Federation. It should be noted that ensuring information security is a strategic task for the development of the digital economy in many states, including the Russian Federation. Information security and legal regulation of the digital environment are the basic areas of building of the digital economy and are closely interconnected with each other.

¹ Due to the variety of terms used to designate the subject who is entitled to the secret of communication (subscriber, user, sender, recipient), the work uses the universal term "*user*".

The state is undoubtedly called upon to solve the tasks assigned to it by society to ensure the security of citizens and the country, as well as to prevent or solve crimes, to identify persons involved in criminal activities, for which it has the right to allow certain restrictions on the constitutional rights and freedoms of citizens, in particular, the right to secrecy of correspondence, telephone conversations, postal, telegraphic and other messages, including those transmitted over communication networks.

On the other hand, the development of the digital economy raises the question of revising the legal mechanisms for access to information constituting the secrecy of communication, the conditions of its processing. Apart from that, the state's approach to the role of communication intermediaries participating in the organization of communications is changing, which leads to the assignment of additional functions to them.

All these factors emphasize a long-standing need to update the existing mechanism for regulating the secrecy of communication, taking into account the interests of all actors in the new reality. In this regard, the following statement of the philosopher V.S. Soloviev is relevant: “Individuality is directly interested in its freedom, and society is directly interested in its security and welfare; yet law and the lawful State are not directly interested in this, but are only interested in the rational equilibrium of these empirically contradictory interests. It is equilibrium that is the distinctive specific character of law. To be precise, equilibrium is the distinctive, specific character of law”².

At the same time, as was rightly noted by V.V. Arkhipov, “it cannot be ruled out that while various interested groups are arguing about the possibility or impossibility of single acts in relation to information systems, the development and changes of the technological paradigm of society in the medium-term perspective

² Essays by V.S. Soloviev/ Ed. by S.M. Soloviev and E.L. Radlov. Part 8 – Saint Petersburg: Book publishing partnership Prosveshchenie, 1914. P. 547.

will either make this question irrelevant or modify it beyond recognition”.³ Thus, given that the secrecy of communication remains relevant in the changing reality (both in economic and technological terms), the institution of the secrecy of communication needs to be adjusted to the present-day developments.

The degree of scientific development of the topic and the theoretical basis of the study. A stable interest in the study of legal issues of ensuring the confidentiality of communications has persisted over the past century. However, in the last decade, scientific interest in this topic has increased significantly due to the rapid spread of various forms of communication.

The theoretical basis of this study was the work of Russian and foreign scientists in the field of information law and other branches of legal sciences.

General theoretical provisions on the legal status of an individual, the balance of private and public interests, privacy, an integral part of which is the secrecy of correspondence, telephone conversations, postal, telegraphic and other messages as one of the components of the legal status of an individual, are set out in the works of domestic scientists in the field of legal theory, constitutional law, such as S.S. Alekseev, M.V. Baglaj, S.N. Bratus', T.A. Vasil'eva, N.V. Vitruk, G.A. Gadzhiev, O.E. Kutafin, V.V. Lazarev, E.A. Lukasheva, YU.I. Malevich, A.V. Mal'ko, N.I. Matuzov, I.L. Petruhina, A.YA. Suharev, O.I. Tiunov, V.E. Chirkin, B.S. Ebzeev and others, as well as foreign authors, such as J. Bellami, A. Beksi, K. Vasak, D. Gom'en, L. Zvaak, D. Harris, K. Ekshtajn.

The works of L.K. Tereshchenko, A.V. Minbaleev, G.G. Kamalova, V.A. Severin, N.I. Petrykina construed the scientific understanding of the legal nature of the information and its legal regime. V.V. Arhipov, N.A. Dmitrik, V.B. Naumov, A.I. Savel'ev, E.V. Talapina, A.V. Tulikov, as well as E. Gratton, H. Nissenbaum, R. Pozner, D. Solov and others contributed to the study of the evolution of human rights (including the right to privacy) and information law institutions.

³ Voinikanis E., Saveliev A., Golovko L., Katkov P., Kotenko D., Arkhipov V. *Privacy vs security: balans interesov v informatsionnom obshchestve* [Privacy vs security: Balance of Interests in the Information Society] // *Zakon*. 2016. No. 4. P. 25.

The issues of legal regulation of the secrecy of telephone conversations and other messages can be traced in particular in the works of V.A. Vajpan, Yu.V. Volkov, Yu.V. Gavrilin, L.I. Ivchenko, E.S. Lapin, K.I. Popov, N.YU. Ryazanov, V.Yu. Stel'mah, L.K. Tereshchenko, A.V. Cherenkov, A.E. Chechetin, N.G. Shuruhnov, A.V. Yushkevich and others.

In recent decades, a number of dissertations have been defended on issues related to the secrecy of communication, but the analysis of these works allows us to conclude that the studies mainly concerned the secrecy of communication as a private secrecy of a person from the point of view of constitutional law, as well as criminal law, criminal procedure aspects of the secrecy of communication. Studies of the problems of communication secrecy and its limitations from the point of view of the theory of information, information law institutions, development prospects, taking into account changes in legislation and the trend of global digitalization of society, have not been conducted in recent years.

The object and particular subject matter of the research

The object of the research is public relations in the field of communications related to the secrecy of correspondence, telephone conversations, postal, telegraphic and other messages (communication secrecy). The subject matter of the research is the legal norms of the Russian Federation that regulate relations that develop over the secrecy of communications, the norms of international and foreign legal acts on the topic under study, the practice of their application, as well as doctrinal sources on the secrecy of communications.

The purpose of the research is to substantiate and develop the theoretical foundations of the legal regulation of communication secrecy in connection with the digital transformation of society, the development of scientifically based provisions for improving the legal regulation of information legal relations to ensure communication secrecy.

To achieve this purpose, the following **goals** need to be met:

- to identify the legal nature and content of the secrecy of communication, as applied to the present-day developments;

- to develop criteria for classifying the information as the data constituting the secrecy of communication;
- to identify the role of communication intermediaries in ensuring the secrecy of communication;
- to study international approaches and foreign experience in matters relating to the legal regulation of the secrecy of communication;
- to develop approaches for improving the legal regulation of the secrecy of communication, to determine the conditions for expanding access and processing the data constituting the secrecy of communication.

This research relies on the methodology of both general scientific research methods (dialectical method, analysis and synthesis, induction and deduction, and modeling) and special scientific research methods (formal legal method, functional, comparative legal method, and sociological method).

General scientific methods were used for a consistent analysis of the norms of legislation and the construction of author's judgments. An important role in the study is played by the modeling method used in determining the directions for the development of the secret of communication (in particular, the conditions for processing information that constitutes the secret of communication). The sociological method made it possible to determine the prerequisites for the formation of the secret of communication and their influence on the content of the secret of communication. The formal legal method was used in the study of the concept of the secret of communication and its relationship with related legal concepts and categories. The functional method (when studying the legal status of a communication intermediary, in particular its function of transmitting information) and comparative legal methods (when analyzing foreign legal regulation of communication secrecy in general and the legal status of a communication intermediary in particular) helped to identify gaps in legislation in the field of communication secrecy.

Taken together, these methods have made it possible to fully and objectively study the issues of legal regulation of the secrecy of communication and to achieve the set research goals.

The empirical research base includes the applicable laws and regulations of the Russian Federation and foreign countries, documents of international organizations, judgements of courts, draft laws and regulations, as well as doctrinal sources and sociological research data.

The scientific novelty of the thesis is determined by the goals and objectives set, the theoretical understanding of the secret of communication, as well as the conclusions obtained as a result of the study. As a result of the study, the sociological prerequisites for the formation of the communication secrecy are established, as well as the contextual nature of the secret of communication. The author reveals the criteria for the object of the legal regime of the secret of communication - information constituting the communication secrecy, as well as the features of the content of the communication secrecy.

The development of the information society and its digital transformation affect the change in legal approaches to regulating communication secrecy in terms of the legal status of a communication intermediary, as well as the conditions for processing information constituting communication secrecy. The paper proposes approaches to modernizing the regulation of information legal relations to ensure the secrecy of communications.

Key research findings and statements submitted for defense:

1. The secret of communication is a special legal regime of information, determined by the communication context and the participation of a communication intermediary in a legal relationship.

A communication intermediary is an information intermediary that provides the communication process, including receiving, transmitting, and delivering messages through an information and telecommunication network.

The communication context is a set of conditions and circumstances that determine a specific communication process (the process of sending, transmitting

and receiving messages), including the composition of the persons involved in communication (including the communication intermediary), the methods of communication, the purpose of transmitting information to each of the persons involved in the communication process.

2. The communication context determines the content of the legal regime of the secrecy of communication.

When using communication services or a communication service, the user entrusts his or her messages to the communication intermediary and, through his or her actions, sets the communication context, including the purposes and conditions for the communication intermediary's processing the message and related information, without which the latter will not be able to deliver the message or which inevitably becomes known to it in connection with provision of the communication services or a communication service. The communication context determines the scope of information protected by the legal regime of the secrecy of communication, the parties involved in the secrecy of communication, and the conditions for processing the data constituting the secrecy of communication in order to ensure the communication itself. The communication context suggests that the content of the message and information about it will remain unknown to third parties.

3. The legal regime of the secrecy of communication is based on preserving the communication context intact. A new communication context can only be set based on law or upon consent of the user, being either a sender or a recipient of the message.

4. The user, as the owner of information, has the right to independently allow access to information constituting a communication secret, therefore, the user's consent may be the basis for the processing of information constituting a communication secret, and access to them by third parties.

5. The following criteria are used to classify the information as the data constituting the secrecy of communication:

- a contextual criterion (ascertaining the information in the process and (or) in connection with provision of the communication services or of a service for exchange of messages);

- an identifying criterion (link of such information with a particular person, the ability to directly or indirectly identify the user of the communication services or of the service for exchange of messages).

The combination of these two criteria makes it possible to precisely classify certain data as the object of the legal regime of the secrecy of communication.

6. In labor relations, the secrecy of communication ensures, first of all, the interests of the employer as a person who has provided his employees with the means of communication in order to perform labor functions and thereby set the communication context. A necessary restriction of the employer's right to access the content of employees' communications or to monitor such communications is his obligation to create conditions that exclude violation of the employees' rights to privacy, in particular, by notifying employees of the prohibition of using the means of communication provided by the employer for personal purposes.

7. The digital transformation has led to the transformation of communication intermediaries from neutral into active participants of information relations involving processing of messages.

Previously, the legislation of various countries, including Russia, was based on the doctrine of limited liability associated with the neutral role of communication intermediaries in the process of transmitting messages between users, when the communication intermediary is neutral to any type of traffic transmitted by users. Since the mid-2010s, the communication intermediary has been assigned additional responsibilities associated with the messaging process: the responsibilities of increased protection of the communication network as an object of the critical information infrastructure, the responsibilities for storing the messages and information about them, as well as for monitoring communications to detect violations.

8. Communication intermediaries' processing of the data constituting the secrecy of communication in a context other than the context of communications is permissible only if conditions are met that reduce the likelihood of inflicting harm to the user.

The communication intermediary's implementation of its active role in an information legal relation connected with the provision of communication services or a communication service is limited by the user's interests; at the same time, changing the context of processing, even upon the user's consent, should not lead to inflicting harm to the user.

9. Changes to the legislation on information and communication are proposed, aimed at clarifying the list of information constituting the secret of communication, as well as updating the subject composition of the legal regime of communication secrecy.

Theoretical relevance of the research lies in the actualization of scientific ideas about the communication secrecy as an information and legal concept. The results of the study can be used in theoretical developments of both the problems of the secrecy of correspondence, telephone conversations, postal, telegraphic and other communications, and information law in general. The conclusions, recommendations and proposals received and formulated by the author can also be applied in improving the information legislation of the Russian Federation, to eliminate existing gaps and contradictions in the legal provision of communication secrecy.

Practical relevance of the research lies in making suggestions for development trends as regards the legal regulation in the sphere of ensuring the secrecy of communication, in the preparation of proposals for changing the legislation on information and communication. The practical relevance of the research is also determined by its focus on enabling a uniform and accurate application of legal norms by participants of legal relations (including courts, state and municipal authorities, communication service providers), elimination of errors in law enforcement resulted from the misinterpretation of the content of the secrecy

of communication, the conditions for its restriction, the rules for access to the data constituting the secrecy of communication, and their processing. The research results can also be used in the educational process, including within the framework of special courses.

Authenticity and practical evaluation of research results

This thesis has been prepared at the School of Digital Law and Bio-Law of the Law Faculty of the National Research University Higher School of Economics (NRU HSE). The main findings of the thesis research are reflected in scientific articles published in scientific journals, including those recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation, listed as high-level journals by the NRU HSE.

The main findings and conclusions of the scientific research were presented by the author during conference presentations on the issues of information law, including:

- 1) IX International Conference “The Law in the Digital Era”, Moscow, October 21-22, 2019. Conference presentation: “Contemporary development trends as regards regulation of the secrecy of communication”;
- 2) XV International School-Workshop of Young Legal Scholars “Constitution and Modernization of Legislation”, Moscow, May 27 – June 5, 2020 (10th module, June 4, 2020). Conference presentation: “Restriction of the secrecy of communication during the pandemic”;
- 3) X International Conference “The Law in the Digital Era”, Moscow, October 15, 2021. Conference presentation: “The changing role of the communication intermediary within the institution of the secrecy of communication”.

Certain findings of the research were used in the teaching activities of the author in the framework of educational programs of the Law Faculty of the NRU HSE in the framework of the course «Information Law» (the master’s program of the Faculty of Law of the HSE “Intellectual Property and IT Law”, 2020-2021, the master’s program of the Faculty of Law of the HSE “Digital Law”, 2021-2022), research seminars (the bachelor’s program in Law of the Faculty of Law of the HSE,

2021), as well as in the framework of the research projects carried out by the NRU HSE:

1) Research Project (International Laboratory for Information Technologies and Intellectual Property Law of the HSE). Study of foreign experience in the legal regulation of data management, making suggestions for improving the legal regulation of data management for the Russian Federation in the context of implementing measures to create a national data management system as part of the federal project “Digital Public Administration” of the national program “Digital Economy of the Russian Federation” (2019);

2) Research Project (Institute for Law in the Digital Environment, HSE). Problems of legal regulation of the secrecy of communication in the digital economy: the Russian and international experience (2020).

The thesis structure is determined by its purpose and goals and consists of an introduction, two chapters containing six sections, a conclusion, and a list of references.

MAIN CONTENTS OF THE THESIS

The **introduction** substantiates the relevance of the research topic, reflects the scope of its development, defines the purpose and goals of the research, the research methodology, identifies the main statements submitted for defense, and confirms the degree of authenticity and practical evaluation of research results.

Chapter 1 “Legal Nature and Content of the Secrecy of Communication” analyses the secrecy of communication as a concept and as a legal institution of information law, as well as a legal regime of information. It considers general trends of its development, legal aspects of the main elements of the secrecy of communication as the legal regime of information.

Section 1.1. “Concept, essence, and purpose of the secrecy of communication” deals with the secrecy of communication as a legal concept, a legal institution of information law, a legal regime of information. It defines the purpose of the secrecy of communication from the perspective of its value and risks of

inflicting harm and substantiates the contextual approach to the secrecy of communication.

The secrecy of communication constitutes a legal concept of information law and an important legal institution. The essence of the secrecy of communication is revealed in more detail within the meaning of the legal regime of information.

The secrecy of communication constitutes the legal regime of information established in relation to the information that has become available to the communication intermediary in connection with organizing communication between users, aimed at protecting the rights and legitimate interests of communication participants by applying a combination of legal methods, techniques and avenues in order to prevent the unauthorized access, distribution, provision and illegal obtaining of protected data by other means. A communication intermediary is an information intermediary that provides the communication process, including receiving, transmitting, and delivering messages through an information and telecommunication network.

The secrecy of communication is a guarantee for other special legal regimes of information (personal and family secrecy, commercial, official, and professional secrecy etc.). It ensures the protection of all those values, which are protected by these legal regimes, within the communication context.

The secrecy of communication shares a number of common features with other legal regimes of secrecy (including professional secrecy). However, the secrecy of communication is characterized by its own value-based feature. The value of communication secrecy lies both in the value of information transmitted through communication channels, and in ensuring the inviolability of the communications sphere from the influence of third parties.

Moreover, the potential damage that may be caused as a result of violating the right to the secrecy of communication necessitates the existence of a special legal regime of the secrecy of communication in order to protect the above-mentioned values in the sphere of communication.

The secrecy of communication possesses a number of characteristics:

- information in the context of communication, that is messages being transmitted or having been transmitted in the communication process, as well as information about such messages constitute an object protected by the secrecy of communication;
- value of the secrecy of communication is determined by the actual or potential value of the information for the user, as well as by the fact that the communication sphere is free from the influence of any third parties;
- taking measures to protect the information, including restriction of access to it, is a right of the user and a duty of the communication intermediary;
- disclosure of information constituting the secret of communication can potentially cause damage to the user and other persons;
- for violation of the order of access, use, circulation of information, constituting the secret of communication, legal liability is provided.

The purpose of the secrecy of communication lies in the protection of the information transmitted during the communication process and in the information security of any users of communications (both individuals and legal entities, as well as public law entities), as ensured by the communication intermediary.

The research has revealed the contextual character of the secrecy of communication. The legal regime of secrecy of communication is determined by the communication context, aimed at ensuring communication and confidentiality of information transmitted in the process of communication. The communication context is a set of circumstances that accompany the communication process, including the composition of the persons involved in communication (including the communication intermediary), the methods of communication, the purpose of transmitting information to each of the persons participating in the communication process. The communication context is a social prerequisite for regulating the secrecy of communication by legal norms, and it affects the content of the secrecy of communication regime and the specific character of its main elements. Applicability of the contextual approach to the secrecy of communication is confirmed by the sociological data. The secrecy of communication regime shall

ensure the preservation of the communication context that has been developed in society in relation to communications with the participation of the communication intermediary and that has been shaped by the user. However, it does not mean that processing the data constituting the secrecy of communication is impossible to achieve goals, other than the provision of communications. A new context of the secrecy of communication can only be set based on law or upon consent of the user, being either a sender or a recipient of the message.

Section 1.2. "Data constituting the secrecy of communication" analyses legal approaches to define the object of the secrecy of communication regime and contains suggestions as regards the criteria to define the object of the secrecy of communication regime.

The contextual character of the secrecy of communication can be traced when determining the data constituting the secrecy of communication which are to be protected by establishing a special legal regime of information in relation to them. Thus, the secrecy of communication covers all data that are determined by the communication context: both the messages themselves and the data directly related to them received or generated by the communication intermediary in connection with the provision of communication services or of the service for exchange of messages. The processing of such data directly in connection with the communication appears to be the first criterion for the data constituting the secrecy of communication (a contextual criterion).

The information established and processed within the communication process is of value and poses risks for the user, mainly when it is possible to attribute this information to a particular user. Both doctrine and jurisprudence recognize that the secrecy of communication protects any information processed within the context of communication between the "particular users". The possibility to identify the user either directly or indirectly constitutes the second criterion for the information that falls under the secrecy of communication regime (an identifying criterion). The data that meet both criteria are the object of the secrecy of communication. The dissertation contains proposals for changing the legislation on information and

communications, aimed at clarifying the list of information constituting the secret of communications, taking into account the developed criteria.

Section 1.3. “Actors of the secrecy of communication regime” considers the legal aspects of the secrecy of communication regime related to the parties involved in the secrecy of communication and to the trends in legal regulation of their activities.

Despite the fact that the secrecy of communication historically is closely related to ensuring the right to privacy, in practice the secrecy of communication has an independent sphere of legal protection, neutral to the user’s status.

Parties involved in the secrecy of communication include users of communications entitled to the secrecy of communication (that is, both individuals and legal entities, as well as public law entities), on the one hand; and communication intermediaries ensuring the protection of the data constituting the secrecy of communication (communication service providers, organizers of dissemination of information in the Internet), on the other hand.

Traditionally, communication service providers and postal service providers were regarded as communication intermediaries that ensure the secrecy of communication. With the development of digital communication services at the level of the Federal Law “On Information, Information Technologies and Information Protection” in 2014, the legislator singled out a special category of actors: organizers of dissemination of information in the Internet, and among them – organizers of the instant messaging service. To qualify as an organizer of the instant messaging service, one needs to use information systems and software to exchange electronic messages between their users, as well as to transmit electronic messages to the general public. Thus, organizers of social networks and messengers have fallen under the definition of the organizer of the instant messaging service. Organizers of e-mail services do not possess this feature and, therefore, belong to the “regular” organizers of dissemination of information in the Internet. This distinction between the organizers of dissemination of information in the Internet is important to note, since it entails a different scope of obligations for the organizers

of the service in regulatory terms: only the organizers of the instant messaging service are legally obliged to ensure the confidentiality of transmitted electronic messages. This approach of the legislator appears to be inconsistent⁴. Despite the apparent obviousness of a universal approach to ensuring the secrecy of communication by any communication intermediaries, the jurisprudence reveals a large number of disputes in this area.

European legislation suffers from the same shortcoming, protecting the data constituting the secrecy of communication only in relation to the provision of communications services open to general public. Changes to the EU legislation are currently being discussed, with the aim, among other things, to extend protection to cover all communication services in order to establish the broadest and the most technologically neutral approach to the secrecy of communication.

Communication intermediaries that ensure the secrecy of communication include communication service providers and organizers of dissemination of information in the Internet in terms of exchanging electronic messages between users (excluding the placement of the publicly available information in the Internet and communication with general public). The legislation in this regard requires a certain harmonization in order to effectively protect the data constituting the secrecy of communication transmitted by any means⁵. In connection with this dissertation, amendments to the Federal Law "On Information, Information Technologies and Information Protection" are proposed.

Chapter 2 “Legal regulation of processing the data constituting the secrecy of communication” deals with the legal ways to regulate the secrecy of communication regime from the perspective of the legal aspects of restricting the third parties’ access to the secrecy of communication and contains suggestions as regards the conditions for processing the data constituting the secrecy of communication.

⁴ Izotova A.N. Legal Regulation of Communication Privacy in the Information Society // RUDN Journal of Law. 2020. V. 24. No. 4. P. 989.

⁵ Izotova A.N. Legal Regulation of Communication Privacy in the Information Society // RUDN Journal of Law. 2020. V. 24. No. 4. P. 989.

Section 2.1. "Restriction of access of third parties to information constituting the secret of communication" analyses the methods of legal regulation aimed at ensuring the secrecy of communication by the communication intermediary, including at restricting the third parties' access to the secrecy of communication.

The secrecy of communication regime is designed to ensure the information security of users. The information security of users in the sphere of communication is ensured by restricting the third parties' access to the data constituting the secrecy of communication. The access is restricted, among other things, through the legal regulation of protection of the information infrastructure used for exchanging messages between users, through the user identification procedures, as well as through establishing the list of persons and the grounds for their access to the data constituting the secrecy of communication.

The legal regulation of the activities of communication service providers consisting in protecting the information and telecommunication infrastructure, as well as in identification of users of communication services, is elaborated in detail. The activities of communication service providers are regulated from the perspective of applying the licensing procedure in connection with the provision of communication services and protection of the critical infrastructure. The legal regulation of the activities of organizers of dissemination of information in the Internet, which ensure the operation of communication services, consisting in the protection of the secrecy of communication is limited to the establishment of a number of obligations of the organizer of the instant messaging service to ensure the confidentiality of messages. The obligations of other organizers of dissemination of information in the Internet, which ensure the operation of communication services, are scarcely regulated by law in terms of the secrecy of communication. These gaps do not contribute to the full-fledged protection of the right of users to the secrecy of communication and shall be eliminated.

Monitoring by the employer of communications of employees using means of communication provided by the employer to perform the labor function is not a restriction on the secrecy of communication between employees. In this context, the

secrecy of communication is primarily aimed at protecting the interests of the employer. However, monitoring of official communications may be carried out solely for the purposes and to the extent necessary to protect the interests of the employer. Monitoring of official communications should be carried out in compliance with conditions that exclude violation of the employee's rights to the inviolability of his private life.

The legislator provides for an exhaustive list of cases and grounds for the third parties' access to the data constituting the secrecy of communication. In addition to the statutory established situations, the access to such data is possible upon the user's consent. In this case, the consent enables to change the context of processing the data constituting the secrecy of communication.

Section 2.2. "Access of state bodies to information constituting a communication secrecy" considers the grounds for restricting the right to the secrecy of communication, as well as the conditions for the state authorities' access to the secrecy of communication.

The secrecy of communication regime is based on the right to the secrecy of correspondence, telephone conversations, telegraphic, postal and other messages, which may be limited. As a rule, such a restriction is imposed by the state. However, any restriction must comply with the law, must have a legitimate purpose, and must be necessary and proportionate. In this regard, it seems promising to actively apply the doctrine of proportionality that will ensure a balance of private and public interests while limiting the right to the secrecy of communication.

The state authorities' access to the secrecy of communication can be represented through the ex-ante ("preliminary control") and the ex-post ("final control") models. The ex-ante model includes the communication intermediaries' obligations to store the information about users, about their messages, as well as the content of messages. The ex-post model is based on the access of the authorized state authorities to the information held by the communication intermediaries in certain cases established by law. The cases when the state authorities get access to the secrecy of communication are strictly regulated by law both in personal scope and

in terms of the conditions for accessing the data constituting the secrecy of communication.

Section 2.3. "Processing the data constituting the secrecy of communication" analyses the impact of changes in the legal status of the communication intermediary on the conditions for processing the data constituting the secrecy of communication and contains suggestions for revising the conditions for processing the data constituting the secrecy of communication by the communication intermediary.

Changes in the technical capacities of the communication intermediary as regards the messages transmitted through its infrastructure could not but affected its legal status within the secrecy of communication regime. As a result, the role of the communication intermediaries increases: due to their personalization, the data of the communication intermediary are becoming increasingly valuable for the state and other participants in the information society; the communication intermediary, instead of being neutral in communication, is actively involved in the processing the data constituting the secrecy of communication for the purposes laid down by the legislator through the performance of additional duties assigned to it by the state.

Given the value of the communication intermediaries' data for achieving the socio-economic goals, as well as for satisfying the legitimate interest of the communication intermediary itself, it is necessary to review the conditions for the communication intermediary's processing the data protected by the secrecy of communication.

The processing by communication intermediaries of information constituting a communication secret is considered as permissible only if conditions are met that reduce the likelihood of harm to the user, while maintaining the context of data processing, including subject to obtaining the consent of the user whose data is supposed to be processed. In this case, the data constituting the secrecy of communication will be processed both in discharge of the duties imposed by the state and as a result of the voluntary acceptance by the communication intermediaries of the relevant obligations. In its turn, it will address some of the

challenges associated with finding a balance between the interests of the user, the state and the communication intermediaries.

The thesis **concludes** with the general outcomes of the research and reflections on perspective areas for development of the topic under consideration in the legal science.

The list of the author's publications reflecting the main outcomes of the research

Publications in journals recommended by the NRU HSE:

Izotova A.N. Legal Regulation of Communication Privacy in the Information Society // RUDN Journal of Law. 2020. V. 24. No. 4. P. 985-1004;

Izotova A.N. The Role of Identification for the Communication Secrecy // Zakon. 2022. No. 3. P. 119-129;

Izotova A.N. Taina sviazi: obrabotka dannykh informatsionnym posrednikom [Communication secrecy: Processing of Data by the Information Intermediary] // Zakonodatel'stvo [Legislation]. 2022. No. 1. P. 27-34.

Publications in journals included in the additional list of journals, publications in which are taken into account by the Dissertation Council of the NRU HSE in Law for the dissertation defense:

Izotova A.N. Transformation of the Circle of Subjects of the Secrecy of Communication: the Impact of Digitalization // Aktual'nye problemy rossiiskogo prava [Actual problems of Russian law]. 2022. V.17. No. 3. P. 40-52.

Publications in other journals:

Izotova, A. (2021). The Right to Access to Privacy of Correspondence and Russian Judicial Practice. Legal Issues in the Digital Age, 1(1), 160-168.