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**NEW FORMAT OF BUSINESS PROTECTION: MODERN
DIGITAL PLATFORMS**

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Abstract

This work is devoted to the development of digital platforms to protect rights and legitimate interests of entrepreneurs. The author pays special attention to legal prospects of applying digital ways of businessmen's appeal to authorities, considers modern technical solutions and assesses the possibility of the existence of digital platforms as an alternative to traditional ways of business protecting. The article is aimed at analyzing foreign models of a "digital ombudsman" and detail discussing the Russian project of creating a single platform for entrepreneurs' claims on violations of their rights by authorities. The main advantages of the human rights platform implementation are given and possible risks of the incorrect work of such platforms are estimated. In the framework of this study, the issues of legal validity and feasibility of the application of rights protection platforms will be considered through the prism of the digital platform announced in Russia for working with entrepreneurs' claims. The main research methods are methods of theoretical research (synthesis, analysis, formalization, reflection, induction, deduction, modeling and abstraction). They allowed not only to define the architecture of human rights platforms, but also to model possible options for their development. The author also used system-structural, specific-sociological, technical-legal, and other methods.

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1. Introduction

One of the digitalization trends in the social sphere is the development of human rights platforms. And despite the fact that numerically this trend is not yet very notable, there is a focus on the creation of platforms that would allow not only to protect the applicants' rights, but also to ensure transparency of claims through public control services. The European Bank for Reconstruction and Development became one of the initiators of the creation of such platforms. It helps individual states to organize a system of a digital business protection. Currently, under its supervision, public control projects are being conducted in Albania, Armenia, Kazakhstan and the Ukraine (European Bank for Reconstruction and Development, 2019). However, in most cases, projects do not live up to their name because of the very limited digitalization degree of human rights platforms. As a rule, the digitalization is reduced only to the possibility of accepting an appeal via the platform, while each applicant retains the opportunity to apply to an ombudsman in writing or in person. Thus, the concepts of a "digital platform" and a "digital way" of rights protection within the traditional ombudsman service for the entrepreneurs' rights protection are being replaced.

Of great interest is the experience of Australia, where a digital platform was launched to protect the rights of small and family businesses. In addition to handling complaints against the authorities, it helps to resolve disputes between organizations and authorities in case of the violation of rights of small companies (Australian Government, 2019). In the UK, there is an electronic ombudsman system established by the parliament, on the website of this service you can file a complaint against the actions of more than 300 organizations and public authorities (Parliamentary and Health Service Ombudsman, 2019). The country also has a rights protection system in the field of municipal administration and social protection (Local Government and Social Care Ombudsman. Official Website, 2019) and a system of online consultations on the rights protection (Citizens Advice, 2019), which not only consider incoming applications, but also provide the necessary legal assistance to businessmen. The need to protect the entrepreneurs' rights has led to the creation of specialized platforms for business protection in the field of digital transactions and payments (Ombudsman Scheme for Digital Transactions (OSDT)). The financial digital ombudsman was announced in India in early 2019 and its main task is to respond to rights violations of the usage of new digital tools (ET Rise, 2019). Taking into account the pace of digitalization of the state and different social spheres, there is every reason to believe that in the near future the number of human rights platforms will only increase. The question, however, is whether their creation is appropriate, and whether the development of the digital legal protection will conflict with traditional response and control mechanisms.

2. Problem Statement

The apparent lag of the legislation behind technological advances in the field of human rights raises questions about whether it is permissible to register and record legal information received on the human rights platform, and what legal status the platform has in the administrative and judicial proceedings. It is important to note that the formulation of these questions is not new to the modern legal doctrine. In one aspect or another, they were raised in connection with the assessment of the ombudsman's work within the framework of the open government concept (OECD, 2018), harmonization of the work of international

organizations (Posta, 2015), determining the feasibility of creating the institute of the financial business protection (Thomas & Frizon, 2012); through the prism of possible development scenarios for the ombudsman institution (Jorgensen, 2017) and the rights protection of digital services consumers (Thorun & Diels, 2019). However, despite the importance of these problems, it should be noted that the most important issues of the legitimacy of the platform's work (namely, the registration of claims and the legal obligation to consider them) have not yet been solved either at the level of individual states or the international community as a whole.

3. Research Questions

In this regard, it is timely and important to consider the issues raised through the prism of the Russian project for the entrepreneurs' rights protection, namely the legal status of the autonomous non-profit organization "Platform for working with entrepreneurs' claims", goals and objectives of its activities, as well as resource opportunities for operational and full protection of the entrepreneurs' rights. The answers to these questions will help not only to reveal the potential of digital technologies in human rights activities, but also to determine the essence of the conflict between old and new human rights mechanisms.

4. Purpose of the Study

The purpose of this article is to analyze foreign experience in creating models of a "digital ombudsman" and discuss the similar Russian project in detail that is an attempt to make a single platform for entrepreneurs' claims on violations of their rights by authorities. The author considers the main advantages of such a platform implementation and tries to estimate possible risks of its incorrect work.

5. Research Methods

The author used a wide range of methods of theoretical research (synthesis, analysis, formalization, reflection, induction, deduction, modeling and abstraction). They allowed not only to define the architecture of human rights platforms, but also to model possible options for their development. The author also used system-structural, specific-sociological, technical-legal, and other methods: with their help, the legal nature of the digital ombudsman was determined and the range of legal risks associated with the use of new digital technologies in law enforcement activities was designated. Sociological methods of analysis (surveys, questionnaires, analysis of statistical data) allowed analyzing the phenomenon of human rights platforms through the prism of their compliance with the main digitalization trends of a state and a municipal administration and on this basis assessing the social demand for new human rights institutions.

6. Findings

The idea of creating a digital platform to protect the entrepreneurs' rights was voiced by the President of the Russian Federation Vladimir Putin. In his address to the Federal Assembly of 20 February 2019 he stressed that under conditions of the administrative pressure on business and the unsatisfactory work of law enforcement agencies in the field of entrepreneurial crimes investigation, it is extremely

important to combine efforts of the state and the business community to create a special digital platform by which businesses will be able not only to make public information about the burden on businesses, but, which is even more important, to obtain consideration of the merits.

After preliminary consultations with leading Russian business associations (public organizations "Russian Union of Industrialists and Businessmen, Trading-Industrial Chamber of the Russian Federation", "Business Russia", "OPORA Russia" and "Agency for Strategic Initiatives") the Ministry of the Economic Development of the Russian Federation has prepared an Order of the Government of the Russian Federation of June 4, 2019 No. 1197-R.

In accordance with this order, the operator of the digital platform for working with entrepreneurs' claims became a non-governmental autonomous organization "Platform for working with entrepreneurs' claims"(hereinafter – the Platform or Digital Ombudsman). The purpose of this human rights platform was to promote the development of the business climate in the Russian Federation, to improve the business environment, as well as to reduce administrative pressure on business.

The statutory documents of the digital platform enshrine a wide range of its responsibilities: support of digital services for collecting and processing claims, analysis of business needs based on the synthesis of received applications, participation in the development of regulatory legal acts aimed at improving the business climate, organization of interaction between business and law enforcement agencies, development and promotion of initiatives to improve the business climate, information support for small and medium-sized businesses, interaction with domestic and international organizations in terms of studying the best business protection practices.

The supreme collegial management body for this platform is the Supervisory Board which structure includes heads of the all-Russian business associations, the advisor to the president of the Russian Federation, business Ombudsman and heads of law enforcement agencies (the Ministry of Internal Affairs of Russia, General Prosecutor's Office, Investigative Committee and Federal Security Service of the Russian Federation).

Never before in the modern Russian history, any human rights project in the business field has had such a wide representation as the Platform has. The composition of the Supervisory Board makes it possible to fully and effectively solve the statutory tasks of the platform through an open dialogue between business and government.

The technical options inherent in the project architecture allow to verify information about the applicant quickly, confirm his status and specify data on the time and place of the offense, as well as information about the responsible officials. And the unification of data from the Ministry of Internal Affairs of Russia, General Prosecutor's Office, Investigative Committee and Federal Security Service of the Russian Federation on a single platform ensures a full range of the claim movement within its jurisdiction. In addition, the applicant is assigned the opportunity to appeal not only to law enforcement agencies, but also to leading business associations. The latter are obliged to place their reasoned position using the platform resources.

Through the creation of a transparent mechanism for the placement and consideration of claims, the possibility of unjustified refusal in their consideration is excluded, as well as the risk of distortion and falsification of data is minimized. A distinctive feature of the Platform is that only entrepreneurs will apply

to it and only on a strictly limited range of issues related to illegal actions of law enforcement agencies and administrative pressure on business. But the main advantage of this digital platform is that its activities are provided on the basis of the adoption by law enforcement agencies special regulations for working with the Platform. In November 2019, such regulations have been approved by the heads of the Ministry of Internal Affairs, the Investigative Committee and the Federal Security Service of the Russian Federation.

According to the developers' ideas, claims received from entrepreneurs should be considered at the level of the Central Office of law enforcement agencies, it will eliminate corruption risks and enables to avoid possible administrative pressure in the regions. In this case, the Platform performs two tasks simultaneously: it allows businessmen to rely on an objective consideration of their claims and at the same time provides the Central Apparatus of law enforcement agencies with information about the work quality of their regional departments. Thus, the use of digital technologies allows not only to protect the entrepreneurs' interests, but also create a broad database on the work of state bodies and possible administrative barriers. But with the undoubted advantages of the Platform, it is impossible not to note a number of issues that have not yet found their solution yet.

First, the procedure of the entrepreneurs' claims selection is contradictory. Defining the removal of administrative barriers as the main objective of the Digital Ombudsman, the project authors have not developed a unified methodological approach to the understanding of this term. It is not clear what offenses on the part of officials may constitute the content of the term "administrative barrier", if control and supervisory functions were excluded from it at the very beginning (it is assumed that for such claims there are specialized services in the field of control and supervisory activities).

It is also not clear what is meant under the "protection of entrepreneurs", and whether a person can apply for protection if he has the status of an entrepreneur, but the crime committed against him is not related to his business. There is no answer to the question whether the Digital Ombudsman can take into consideration claims on commission of common crimes (causing harm to health, beatings, extortion, theft, destruction of property, etc.).

Secondly, the issue of the procedural status of the Platform has not yet been solved. With its broad technical capabilities, the Digital Ombudsman has practically no legal resources to effectively protect businesses. In particular, the claim received on the Platform is de facto processed by the platform's employees before it is sent to law enforcement agencies, and de jure this claim is submitted by the entrepreneur to the authorities independently. The law simply "does not see" the Platform, which in the near future may affect its relations with law enforcement agencies.

This means that in case of incomplete or improper response of state bodies, the Digital Ombudsman is simply deprived of the opportunity to disagree or protest this decision. He has only one legal opportunity – to "persuade" the entrepreneur to appeal the decision or direct the claim to the General Prosecutor's Office. Thus, the Platform can help a businessman in drawing up a competent claim, appeal and preparing legal documents, but it cannot fully solve his problem. In this case, it resembles the work of a lawyer or legal representative, except that fact that the latter have a procedural status, and the Platform does not.

Thirdly, there is no clarity on how the functions of the Digital Ombudsman relate to the powers of the business ombudsman. One of the first obvious advantages of the digital platform is that according to the state regulations, applications received from the platform are automatically considered by the Central

Office, while the ombudsman can apply to regional authorities. But this advantage of the Platform in practice turns into its disadvantage. The fact is that the restriction of the consideration of cases by the Central Office automatically leaves out of the analysis of more than half of all claims related to pressure on business (in particular, the claim against the investigator's actions to higher authorities).

The platform has no procedural status, and its activities are regulated by bylaws. At the same time, the powers and the status of the business ombudsman are described in detail in a separate law – Federal law of May 7, 2013 № 78-FZ "On business ombudsmen in the Russian Federation". It stipulates not only the range of rights and duties of the ombudsman, but also his procedural possibilities for entrepreneurs' rights protection. And from these positions, the digital project is seen as a less effective one (Autio & Levie, 2017).

Perhaps, the only advantage of the Platform over the ombudsman is the technical transparency of the claims registration and the impossibility of artificial understating or overstating the indicators.

Fourth, the issue of personal data security and the possibility of posting information about implemented projects on the website is still open. The duties of the Platform for the collecting and processing of personal data generally comply with the current legislation, but nevertheless some questions remain open: Can the data on the termination of a criminal case against an entrepreneur or other procedural documents be laid out in the public domain? May data on officials accused of committing crimes be published or not? Obtaining a consent from one of the parties of a legal conflict does not exclude the possibility of violating the rights of another party. Currently, these issues are hypothetical, but soon they can significantly limit the human rights functionality of the Platform because of the inability to post materials on the results of consideration of entrepreneurs' claims.

Fifth, neither at the legislative level, nor in the internal documents of the Platform, the issue of responsibility of its employees for the improper consideration of applications or for giving unprofessional or deliberately false advice to an entrepreneur is not solved. Taking into account the social significance of this project, the issue of the legal liability of the Platform consultants should be considered in more detail.

7. Conclusion

Now the developers of the algorithm assume that the structures of the Ministry of Internal Affairs and the Investigative Committee will be responsible for respond to the entrepreneurs' claims, they will give an answer to the applicant, and therefore the responsibility is removed from the Platform experts. If the applicant is not satisfied with the answer, then the platform analysts will conduct an examination of the answer. But the criteria for assessing answers are still in development, as well as the questions of the experts' responsibility. In fact, the Platform experts perform the role of silent intermediaries in the relations between business and government, and therefore, they are not interested in performing their human rights functions in good faith. The official launch of this digital project will take place at the end of 2019. And despite the obvious legal gaps in its regulation, it is impossible not to recognize that the application of such platforms is a good example of the penetration of digital technology into the human rights sphere. It is significant that in the Russian digital platform, digital tools do not replace qualified lawyers, but perform a technical and very effective role – they provide the consideration transparency of claims and the objectivity of statistical information.

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