Strakhov Sergey Evgenievich , No. 2 2019

Institutionalization of provincial judicial institutions in the provinces of the Russian Empire under Catherine II

Annotation. The article examines the features of the institutionalization of the provincial-level judicial institutions, created by Catherine the Great in the course of the implementation of the administrative-judicial reform and functioning on the basis of the "Institutions for the administration of the provinces of the All-Russian Empire."

The author expounds his author's view on the problem of the periodization of the stages of the administrative-judicial reform, establishes the system of judicial bodies at the provincial level, simultaneously introducing their classification by the field of activity, by class and by the sphere of territorial jurisdiction of cases.

At the same time, it is noted that at the level of the province, one chamber of the civil and criminal courts, one provincial magistrate and such a number of upper reprisals and upper zemstvo courts could be created, which was required depending on the population in the province.

Establishing the features of the structure and functioning of judicial institutions, the author comes to the conclusion that their personnel did not always meet the requirements of the legislator for class rank.

Lyapunov Boris Alekseevich , No. 2 2019

Personal privacy: concept, essence and legal nature

Annotation:

This article is devoted to the issues of comparative legal analysis and correlation of theoretical and legal concepts of personal privacy, prevailing in foreign legal literature, in order to determine the legal nature, essence and social value of privacy for the individual, society and the state in the conditions of the formation and development of public relations in the information age. technologies.

In this article, for the first time in the domestic legal literature, an attempt is made to formulate the author's theoretical and legal model (concept) of understanding the privacy of an individual as a complex system of interrelated

elements - the rights and freedoms of the individual, - the essence and legal nature of the corresponding elements is revealed, their author's definitions are given, and conclusion about the importance of this approach both for domestic legal science and for legal practice.

Kashkin Sergey Yurievich , No. 2 2019

Philosophy of Integration Law

Annotation. The purpose of the article is to analyze the philosophical issues of the development of modern integration law. The subject of the article is the philosophical characteristics and features of integration law and its basic model - the law of the European Union . The article is written with the general scientific, philosophical and specific legal methods of knowledge, and is based on a material called ovo go to the philosophy of law the object - the philosophy of the integration of the rights as well . Based on the results, the article describes the main features , characteristics and development of the philosophy of integration and European law . The analysis of the philosophy of integration law carried out in the article is carried out in the Russian legal science for the first time. The article formulates practical proposals which are recommended for the development of this sphere of law in P USSIAN F EDERATION .

Zubets Olga Prokofievna, No. 2 2019

Eichmann's trial: an ethical view

Annotation. The trial of Eichmann, conceived as the embodiment of the unity of morality and law, revealed a complex interweaving and conflict of legal and moral issues, actualized the idea of the non-opposition of morality and law, revealed the opposition of morality and sociality, put both philosophers and lawyers before the need to rethink the fundamental concepts and foundations of thinking about morality and law. An ethical view of this process is possible only as the view of a moral subject, that is, of the one who is responsible for Auschwitz as his deed: for him, the

central question is the question of how not to commit radical evil, not to participate in it. The answer presupposes a rethinking of the idea of morality, opposing its sociality, including liberation from legal meanings. Referring to the materials of the Eichmann trial allows us to describe a number of moments that require reflection: the difference between Eichmann and witnesses in the moral coloration of the language, in the fit into the logic of the trial, in relation to one's own guilt, in understanding the truth, in relation to a fact; the possibility of a legal and moral attitude towards radical evil, which destroyed the very law and morality as the basis for its assessment, the judicial routinization of evil and the instrumentalization of morality, which makes it possible to pass a guilty verdict, the difference in the understanding of an act in ethics and law, etc. A consistent ethical response is associated with an absolute prohibition on murder, not based on morality or law, but which is their basis.

Yaroslavtseva Elena Ivanovna , No. 2 2019

Research Ethics: Copyright and Standardization

Annotation . Modern problems of the development of science combine very acute issues - human freedom as a moral value and the need to create common principles of understanding and interaction, a certain standardization, which allows you to disseminate knowledge and conduct joint research.

Standardization, especially in modern conditions of global communications, the diversity of information flows, is focused on the development of unambiguous, and therefore rather rigid, systems for describing research activities. But when individual and collective formats of interaction come into contact, there is a risk of losing the qualitative characteristics of knowledge that are important for life and the world outlook of a person, which is especially important for the effectiveness of scientific research. This problem is quite clearly manifested in the field of the humanities, in particular, in the ethical and legal area.

Kolesnikova Evgeniya Gevorkovna, No. 2 20119

Secured transaction credit default swap: risk of re-qualification into surety agreement

Annotation. *The article examines two actual situations where a Russian bank (hereinafter referred to as a bank) is: (1) a provider; (2) the recipient of credit protection under an OTC derivative credit default swap transaction (hereinafter - CDS), which is of a security nature and is subject to Russian or English law*[2] *. It is emphasized that in these situations, the Russian courts and tax authorities may carry out the re-qualification of the CDS transaction into a surety agreement, which is undesirable for the bank . A description of the possible negative consequences for the bank of the realization of this risk is given: 1) bringing the bank to responsibility for illegal reduction of the tax base for income tax by the amount of credit protection paid by it under CDS ; 2) the refusal of the Russian court to satisfy the claim of the bank, which received the amount of credit protection under CDS , to recover from the control person the amount of the debt under the main obligation to the bank in the amount of the amount of credit protection already received by the bank. It is concluded that to formalize transactions that ensure the proper fulfillment of the control person's obligations to the recipient of credit protection, it is worth using a surety agreement or CDS Standard Terms, including the clause that such transactions are not derivative financial instruments (hereinafter referred to as derivatives).*

Starovoitova Anna Sergeevna , No. 2 2019

Recognition of rights as a way to protect property rights

Annotation. The article substantiates the conclusion about the need for legislative consolidation of the recognition of rights as a way to protect property rights. The emergence of this method of protecting property rights is associated with the category of real estate.

It is concluded that it is necessary to differentiate legal structures similar to the recognition of law. In particular, it is noted that it is necessary to distinguish private methods of recognition of property rights, considered in the doctrine as

recognition of rights, from recognition of rights as a way to protect property rights. The conclusion about their different legal nature and purpose has been substantiated. Particular attention is paid to the legal structure of the claim for the recognition of rights. A number of complex controversial issues of civil law are considered: about the object, the conditions for filing a claim for the recognition of law, about the subjects of the claim. It is concluded that the defendant must be identified in all cases of filing a claim for the recognition of a real right. When determining the conditions for filing a claim, the work highlights not only the existence of a dispute about the right, which must be recognized, but also the legal interest in judicial confirmation of such a right. The features of the application of the requirement for the recognition of real rights are revealed . The conclusion is argued that the civil regulation of relations for the protection of property rights needs to be updated and reformed.

Tasalov Philip Artemievich , No. 2 2019

Non-freedom of contract and unfair contractual conditions in the practice of state and municipal procurement

Annotation. Most modern studies on freedom of contract are devoted to the peculiarities of the implementation of this principle in commercial relations. The article analyzes the other side of freedom of contract - its application in state and municipal procurement.

The author analyzes the conclusions of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of March 14, 2014 No. 16 "On freedom of contract and its limits" on the basis of current litigation between government customers and suppliers within the framework of the application of Federal Law No. 44-FZ of April 5, 2013 "On contractual system in the field of procurement of goods, works, services to meet state and municipal needs. "

The key features of the operation of the principle of freedom of contract at the stage of determining the supplier and at the stage of fulfilling obligations under government contracts are highlighted. Special attention is paid to the assessment of the negotiation capabilities of government customers and procurement participants,

the problem of abuse of the right by a strong side, depending on the starting conditions of the procurement and the methods of its implementation by the customer. An analysis of the arguments of the courts in relation to the interpretation of the terms of state contracts from the point of view of freedom of contract and its limits is presented. In the conclusion, practical recommendations and conclusions are formulated.

Fomina Olga Yurievna , No. 2 2019

Professional representation : pros and cons

annotation

This article analyzes the proposals to reform the institution of legal representation in the legislative recognition of the obligatory presence of a representative of higher legal education, contained in the draft federal laws prepared by the Supreme Court of the Russian Federation (p freeze function of the Plenum of the Supreme Court from October 3, 2017 № 30) and P .IN. Krasheninnikov (draft federal law No. 273154-7 "On the implementation of representation of parties in courts and on amendments to certain legislative acts"), and also investigates the Concept of regulation of the professional legal aid market developed by the Ministry of Justice of the Russian Federation . The proposed novelties are assessed for their necessity and correlation with constitutional principles. The author substantiates and proves the inconsistency of the approach about the possibility of representing interests in court at a professional level only by persons who have received a higher legal education. Even a long work experience in the legal profession does not always guarantee the possibility of providing qualified legal assistance in representing the interests of citizens and organizations in court.

Golubykh Nikita Vladimirovich ,

Lepikhin Maxim Olegov Ich, No.2 2019

Improvement of criminal legislation in the field of combating corruption

Annotation . The article examines the current legislation aimed at combating corruption. Special attention is paid to crimes, whose specific weight, among corruption crimes , is overwhelming. These include, in particular, Art. 290

"Taking a bribe", 291 "Giving a bribe", 204 "Commercial bribery" of the Criminal Code of the Russian Federation [3] . The article also pays attention to the relatively new elements of crimes, providing for liability for corruption-related crimes , namely Art. 291.1 “Mediation in bribery”, 291.2 “Petty bribery”, 204.1 “Mediation in commercial bribery” and 204.2 “Petty commercial bribery” of the Criminal Code of the Russian Federation. It also analyzes international regulations governing the fight against corruption, especially the United Nations Convention against Corruption. Based on the analysis of the above norms, the authors provide arguments about the need to amend the current legislation, including in order to bring it into line with international regulatory legal acts.

Zheludkov Mikhail Alexandrovich ,

Chernyshov Vladimir Nikolaevich ,

Kochetkova Maria Nikolaevna , No. 2 2019

Criminal legal problems in the definition and object of crimes in the field of intellectual property

Annotation . At the present time, due to the rapid development of information technology, there is an urgent need to protect the public property relations of crime in the intellectual sphere. The absence of a legislatively enshrined or found support of the scientific community of the conceptual apparatus in this aspect creates difficulties in determining the relationship between the concepts of "property", "property", "intellectual property" and "property right", which subsequently predetermines the attribution of acts to different objects of criminal law. protection. The scientific article examines a set of topical issues related to ensuring protection against crimes in the field of intellectual property in Russia, analyzing the ratio of crimes against property and crimes affecting intellectual property, researching the features of their objects of criminal law protection.

Koval Andrey Vladimirovich , No. 2 2019

"Bribery" and "covetousness" as criteria for differentiating responsibility for bribery

Annotation. The article is devoted to the issues of validity of differentiation of criminal liability for bribery depending on the legality or illegality of behavior in the service for a bribe. Particular attention is paid to the study of the legal nature of covetousness, i.e. bribery for illegal actions (inaction). It is concluded that bribery for illegal actions (inaction) in the service is not an exclusively qualified corpus delicti, but is to a greater extent an independent main corpus delicti, entailing a more severe criminal punishment due to the increased degree of public danger of this form of bribery. On this basis, a recommendation is made that the rules for the legislative formulation of qualified offenses should not apply to such a form of bribery as covetousness. The opinion expressed in the theory of criminal law and the position of some foreign legislators that the composition of bribery for illegal actions (inaction) should be excluded from the criminal law is refuted.

Kulev Alexander Gennadievich ,
Kuleva Lyudmila Olegovna , No. 2 2019
Categorization of crimes in the design of criminal procedural norms

Annotation. The rules on the categorization of crimes are substantive in nature. Nevertheless, they have a great influence on the state and development of criminal procedural matter. The provisions of the Code of Criminal Procedure of the Russian Federation, in which the prescriptions of Art. 15 of the Criminal Code of the Russian Federation, it is proposed to be conditionally divided into two groups. The first group includes the norms of criminal proceedings, which are a kind of logical continuation of criminal law orders related to exemption from criminal liability and punishment. The second group consists of purely procedural norms that do not directly depend on the substantive law: concerning the composition of the court, jurisdiction and jurisdiction of criminal cases, the choice of preventive measures, control and recording of negotiations, and the return of the criminal case to the prosecutor. Special attention is paid to the possibility of changing the categorization of crimes by the court.

On the basis of the studied theoretical sources, materials of judicial practice, the authors made proposals aimed at improving the current criminal procedure legislation and optimizing its application in line with the problems raised.

Feschenko Pavel Nikolaevich, No. 2 2019

A systematic approach to combating corruption

Resume: In the article, the author examines the problems of increasing the effectiveness of combating corruption and suggests ways to improve this activity. Proposals are made to eliminate violations of the principle of consistency in defining the concept of corruption and its structure, building a system of measures and subjects of anti-corruption activities, increasing the interest of citizens in cooperation with law enforcement agencies. The positive foreign and domestic experience is analyzed. Supplements are proposed to the Federal Law of the Russian Federation dated 25.12.2008 No. 273-FZ "On Combating Corruption".

The necessity of considering the influence of organized crime and related criminogenic background phenomena, first of all, prostitution, on corruption is substantiated, the question of the need to stimulate the activity of citizens in combating corruption through the system of material and moral incentives is raised, the introduction of criminal liability in this area is proposed by analogy with the construction of Art. .205.6 of the Criminal Code of the Russian Federation. The need to control the income and expenses of all subjects of corrupt legal relations, receiving illegal income as a result of transactions, is substantiated.

Shakhnazarov Beniamin Alexandrovich , No. 2 2019

General characteristics of the system of conflict of laws regulation of industrial property objects

Annotation. This article takes an integrated approach to the study of the system of conflict of laws regulation of industrial property objects. The author

emphasizes the absence of unified conflict of laws rules that would regulate the procedure for determining the law applicable to industrial property and the scope of such law. The tendency of the formation of a systematic approach to the conflict of laws regulation of industrial property is noted. The system of conflict-of-law regulation of industrial property is based on the persisting territorial principle of protection of industrial property objects, which has a significant impact on the development of conflict-of-law regulation of industrial property. On various aspects of conflict of laws regulation of industrial property on the basis of the legislation of different states, as well as harmonizing principles of conflict of laws regulation of intellectual property, the use of conflict principles is generalized and noted: "the law of the country where protection is claimed", "the law of the country in respect of which protection is requested" , “The law of the country of registration”, “the law of the country of protection”, “the law of the country of creation”, “the law of the country of origin”, “the law of the country where the offense was committed”. The author comes to the conclusion that the specificity of relations developing in the sphere of industrial property protection predetermines the development of the system of conflict-of-law regulation of industrial property. The complication of such relations by a foreign element in a wide variety of variations testifies to the specificity of industrial property objects and the need to develop separate conflict-of-law approaches to the definition of law applicable to various aspects of industrial property rights.

Alsov Nikita Maksimovich, No. 2 2019

Deposit insurance systems in the European Union: legal regulation and development prospects

Abstract In this article, the author has carried out a historical, substantive and functional analysis of the legal regulation of deposit insurance systems (hereinafter referred to as CERs) in the European Union (hereinafter referred to as the EU) on the basis of Directive 2014/49 / EU of the European Parliament and of the Council of April 16, 2014 “On deposit insurance systems ”(revised). The contribution of CERs to improving the financial stability of the EU banking sector is

considered. The assessment of the implemented and planned for implementation measures initiated by the European Commission and the European Central Bank for the implementation of a single European CER as the III pillar of the Banking Union. The author comes to the conclusion that the third Directive "On CERs" made it possible to make a qualitative step forward towards the creation of the third pillar of the Banking Union. Despite some unresolved and controversial issues, it creates uniform rules of the game for national CERs in deposit insurance policy. Further development and movement towards EHRN will increase the efficiency of the EU's deposit insurance policy by reducing costs and overcoming administrative barriers in national CERs, increase the level of protection of depositors' rights and strengthen confidence in the banking sector and its stability.

Zaplatina Tatiana Sergeevna, No. 2 2019

Actualization of personal freedom to self-determination in the right to labor mobility and mutual recognition of professional qualifications in the European Union

Annotation. The purpose of the article is to analyze the role of mutual recognition in the realization of the rights and freedoms of individuals using the example of the right to labor mobility and mutual recognition of professional qualifications in the European Union. Many philosophers have written that the freedom of one ends where the freedom of the other begins to read. Fichte noted that mutual recognition between free intelligent beings is a prerequisite for the possibility of their self-awareness. In the European Union, mutual recognition is the foundation of the freedom of movement of persons and institutions - the freedoms of the internal market of the European Union. In this aspect, the right to freedom is accompanied by the need for recognition, without which its existence is impossible.

Freedom of movement of persons, institutions and freedom to provide services are fundamental freedoms of the internal market. They provide individuals and legal entities with the right to organize and conduct business anywhere in the European Union. Mutual recognition of professional qualifications is a key mechanism for facilitating the exercise of these freedoms, it allows qualified professionals to cross borders and carry out their work in another Member State. Mutual recognition of professional qualifications eliminates the need for retraining in another Member State. The system of such recognition, which has gradually developed in the European Union, is an important element of the effective operation of the fundamental freedoms of its internal market.

The mechanism of mutual recognition of professional qualifications established in the European Union confirms the idea that recognition according to the rules is a guarantee of mutual freedom. The law subject to recognition determines recognition.

Mitrofanov Ilya Olegovich , No. 2 2019

P ravovye aspects of differentiation of the competence of the European Union institutions in the area of antitrust policy

Abstract The article analyzes the normative legal acts that secure the powers of the institutions and bodies of the European Union, their interaction, as well as the prospects for further development of the mechanism for regulating the Union's antimonopoly policy. Based on the results of the study, the author comes to the conclusion that the mechanism for regulating antimonopoly policy that has developed within the European Union is sufficiently effective, mainly due to the system of checks and balances, when no institution of the Union has exclusive decision-making power. Despite this, the mechanism is developing, and it develops along the path of decentralization, that is, the endowment of the national antimonopoly authorities. It seems that this should lead to the fact that compliance with the Union's antitrust laws will only increase.

Pozhilova Natalia Andreevna , No. 2 2019

Legal regulation of the activities of investment funds in the European Union and the Russian Federation

Resume: The article is devoted to some basic aspects of the legal regulation of the activities of investment funds in the European Union, including the issue of understanding the legal nature of an investment fund as a variety of collective investment schemes, in comparison with the law of the Russian Federation. Based on the analysis of Russian normative legal acts, the author comes to the conclusion that the legal system of the Russian Federation, despite some shortcomings, is quite successful in regulating the activities of investment funds . In addition, an important factor in the development of legal regulation in this area is the growing role of the Eurasian Economic Union (EAEU), in particular, the initiative to create a common market for financial services, within which a number of basic agreements have already been adopted . The author believes that within the framework of the EAEU, more stringent additional requirements for investment funds, similar to what is currently provided for in EU law, should not be introduced , since this can lead to a negative result associated with the loss of investors' interest in using such schemes ...

Atakishi Abbas Musa oglu, # 2 2019

Correlation of the adversarial principle and the concept of truth in the criminal proceedings of the Republic of Azerbaijan

Annotation . The article describes the author's approach to understanding the issues of adversariality and truth, evidence and proof in criminal proceedings, the main approaches to the issue of truth in the criminal procedural legislation of the Republic of Azerbaijan and the Russian Federation. With ostyazatelnost evaluated as an effective mechanism to ensure the equal participation of the parties in proving, as an expression of the essence of the modern criminal procedure. The problems of the correlation between objective truth and the adversarial nature of the criminal process, the

connection between the adversarial nature, equality of the parties and the establishment of objective truth in a criminal case are analyzed .

The conclusion is substantiated that if at the time of the initial verdict the parties and the court did everything that could be done in those conditions, then by the time of the pronouncement this verdict was valid and was perceived by everyone as a statement “beyond reasonable doubt”. This approach is more in line with the nature of procedural knowledge and allows you to organically combine, and not oppose the pursuit of truth and adversarial nature in modern criminal proceedings.

Molchanov Nikolay Andreevich

Trubacheva Kristina Igorevna , No. 2 2019

Economic and legal circumstances and by the investigation of the UK release of the European Union

Annotation. The presented article examines the issues and legal aspects of building relationships between the European Union and Great Britain. The current difficult situation between the European Union and Britain cannot go unnoticed. On June 19, negotiations on Britain's withdrawal from the European Union began in Brussels. This process is commonly referred to as Brexit .

Before the reform of the EU, the Lisbon Treaty did not stipulate the possibility of leaving the organization . However, there are several known cases when territories left the EU (which changed their political and administrative status as part of a member country of the organization). For example, in 1985 the EEC (the European Economic Community, the predecessor of the EU) left Greenland, which in 1979 received the rights of autonomy within Denmark.

In 2007, the association came from Caribbean island of Saint Barthelemy, which initially was a member of the French overseas departments of Guadeloupe, and then separated on t him and received the status of the overseas community (a special territorial unit of France).

Each time, the exit process was negotiated separately. Currently, Greenland and Saint Barthelemy are on the list of Special Territories of the Member States of the European Union (over 20 territories in total).

Vaino Alexander Antonovich , No. 2 2019

Legal technique in Muslim law

Annotation. The article studies and analyzes the features of legal technique in Muslim law. On the basis of the study, the author comes to the conclusion that Muslim law is largely a religious and legal commentary. This is given by his religious sources, which contain specific legal provisions. These sources lack structure and consistency, hence a rather high degree of casuistry of Muslim law.

The article determines that in Muslim law, since its inception, there has been a confusion of religious principles with legal norms. The comments of theologians-legal scholars were actively used to justify unlawful - from the point of view of European lawyers - behavior. With the help of legal techniques, legal postulates and opinions were legalized in Muslim law, which to this day largely determine the legal culture of the overwhelming majority of the population . All this means that the problem of the relationship between secular and confessional law in countries where Islam is the state religion was in the Middle Ages and remains to this day the main one.