Ogleznev Vitaly Vasilievich , No. 3 2019

Contextual definitions and their applicability in legal language

Resume: Contextual definitions within the framework of modern logic and philosophy of science have become widespread and explained, moreover, they have acquired an independent epistemological meaning along with other types of definitions. However, in the humanities, their applicability has been questioned and disputed more than once, but the author, on the contrary, substantiates the thesis that the effectiveness of contextual definitions, in particular, in the legal language is not at all lower, and sometimes even much higher than generic definitions. In modern, first of all, Western legal science, the point of view of I. Bentham and G. L. A. Hart continues to dominate that the contextual definition is opposed to the generic definition, and the latter, in relation to the analysis of legal concepts, is recognized as ineffective and unproductive. The author is of the opinion that these two types of definitions may well coexist and, in a sense, complement each other, taking into account the different areas of their applicability. The main and most characteristic area of application of contextual definitions, according to the author, is constitutional and legal norms. With this approach, constitutional norms are considered as contextual definitions of basic concepts, with the help of which other norms of the legal system are formulated. With this approach, contextual definitions turn out to be very useful when we need to clarify extremely general concepts and terms that are found, for example, in the text of the Constitution. As a result, the defined terms become semantically meaningful, and their use in the legal language is syntactically consistent.

Egorov Alexander Alexandrovich , No. 3 2019

The category "offense" in the theoretical and legal views of A. P. Kunitsyn

Annotation. The article is devoted to the theoretical and legal views of A.P. Kunitsyn for an offense. The process of the emergence of law and human rights is analyzed as its kind , in the context of which the right to perform acts is especially emphasized. The views of the scientist on the concept, types, elements of the offense

and the circumstances excluding the criminality of the act are investigated . General theoretical ideas of A.P. Kunitsyn are compared with the views of his contemporaries - representatives of the science of criminal law in order to determine the degree of their elaboration. In conclusion, the position of A.P. Kunitsyn on the issue of punishment is given.

The author notes that A.P. Kunitsyn quite objectively and naturally describes the process of the emergence of law, within the framework of which he especially emphasizes human rights. This emphasis is especially relevant today. The division of human rights into primary and derivative is an absolutely correct guess, which was perceived by legal science as a whole. Formulating the concept of an act inconsistent with the law, A.P. Kunitsyn does not use the terms "crime" or "offense". However, the word he uses, insult, only within the framework of a general definition, refers to the private-law interpretation of a wrongful act. The classifications of types of offenses proposed by him in terms of clarity, brevity and depth of thought surpass the gradations of types of crimes proposed by his contemporaries - representatives of the science of criminal law. This is a very rare phenomenon, since in most cases it is the developments in the doctrine of criminal law that precede the actual general theoretical ideas. His views on the careless form of guilt had no analogues at all among the researchers of the phenomenon of crime.

Przhilensky Vladimir Igorevich ,

Vergun Andrey Alexandrovich , No. 3 2019

Legal regulation of genomic banks in the context of social, cultural and regulatory diversity[four]

Resume: The article examines the regulatory regulation of genetic research and bioengineering, compares the experience of different countries in this area. The legislative basis for the preservation of privacy in the context of the formation of biobanks in countries such as Denmark, Israel and China is subjected to a detailed analysis as a basis for comparison. Using the example of law enforcement practices prevailing in these states, the author shows the variety of ways for the development of relevant legislation, as well as the impact on them of legal, political and socio-

cultural traditions. Special attention is paid to the connection of genetic research with the development of computer technologies, which require complex legal regulation, taking into account both the specifics of genomic and the features of computer knowledge. The validity of the thesis about the decisive role of the influence of political and administrative reasons in the choice of a strategy for legislative and institutional regulation of biotechnology and bioengineering is substantiated with the help of a comparative review of various schemes and models that are formed in Danish, Israeli and Chinese legal realities. From the problem of the development of legal support for the activity of genomic biobanks, the article makes a transition to the problem of the ethical foundations of this activity and expanding the angle of view by including in consideration the issues of protecting the rights of unborn children, protecting the rights of minors and those who have lost their legal capacity in old age. The issues of preserving the effectiveness of legal regulation in the context of the development of precision (personalized) medicine, which is based on the ontology of the unique, are themed and problematized, while law enforcement, in principle, is of a normative nature, which means it is based on the ontology of the universal.

Ogorodnikov Alexander Yurievich , No. 3 2019

The value foundations of the formation of the subjectivity of the personality of a lawyer

Annotation. The article examines the essence and conditions for the formation of the personality of a lawyer, capable of independent decision-making, realizing the principle of independence in professional activity, with critical thinking, focused on thoughtful innovative actions, improvement of legal relations. The axiological foundations of the development of a lawyer are determined, concentrated around the values of life, directing a lawyer to the implementation of essential human qualities in their professional activities.

Petrov Alexander Arsenievich , No. 3 2019

Opportunities and directions for the development of the digital economy in Russia and

blocking factors of its development.

Annotation. The importance of the fourth industrial revolution and its product - the digital economy - in the development of mankind is shown, its double impact on the welfare and labor market of an individual nation, country, as well as on the world community as a whole. The consequences of the introduction of artificial intelligence, cyber-physical systems into production processes are considered. Analyzed the German program Industry 4.0 of digitizing the manufacturing industry in Germany through the use of digital technologies and the creation of smart factories. The digital programs of the USA, Great Britain, Japan are summarized. Possibilities and problems of development and blocking of DE in Russia are shown. The basic components of the digital economy are described, such as blockchain, cyber-physical systems, digitalization, big data, and artificial intelligence. The negative consequences of the digital economy, factors blocking its development, as well as possible ways of their neutralization and elimination are considered.

Oleg Brezhnev , No. 3 2019

Mandatory judicial constitutional review in Russia:

problems of theory and practice

Annotation. The article shows the specifics of compulsory judicial constitutional control, reveals its role in the mechanism of legal protection of the Constitution of the Russian Federation. This institution is designed to guarantee constitutionality in the exercise of certain powers of the highest bodies of state power, being an integral part of the legal composition of one or another state-power decision that has constitutional and legal significance (the application of measures of public legal responsibility, the adoption of a new subject in the Russian Federation, the appointment of a referendum of the Russian Federation) ... In some cases,

compulsory constitutional review is used as a means of ensuring constitutional legality in judicial enforcement. The features of the implementation of mandatory judicial constitutional review are analyzed: the emergence of a constitutional-legal dispute in this case is not always a prerequisite for applying to the Constitutional Court of the Russian Federation; the need for such an appeal is provided for by peremptory norms of legislation or follows from the legal positions of the Constitutional Court of the Russian Federation; some principles of constitutional proceedings in relation to the procedure for considering these cases show their regulatory impact in a special way.

Polyakov Maxim Mikhailovich, No. 3 2019

Anti-corruption monitoring in public administration

Resume: The presented article examines the concept, essence and purpose of anti-corruption monitoring in public administration. The author presents a comprehensive analysis of the main directions of anti-corruption monitoring carried out by the relevant officials of state bodies. The article consistently studies the provisions of regulatory legal acts at the federal level and at the level of the constituent entities of the Russian Federation, establishing the procedure for conducting anti-corruption monitoring, as well as the powers of the subjects of this area of combating corruption in public administration. The author gives examples of reporting documents of anti-corruption monitoring of some government bodies and gives his own assessment of their quality content. The author substantiates proposals for making changes and additions to the federal anti-corruption legislation in order to consolidate anti-corruption monitoring as one of the most important tools for combating corruption.

Guznova Elizaveta Alekseevna

Guznova Ekaterina Alekseevna, No. 3 2019

Development of the concept of beneficial owner in the tax law of the Russian Federation

Resume : The article examines the history of the development of the concept of beneficial owner in international tax law. It is noted that in the Russian Federation the concept of “beneficial owner” was introduced into tax legislation only in 2014, but there were attempts to use this concept even before that time. The authors analyze in detail the legal acts adopted before the “deoffshorization law” and approaches to the interpretation of the concept of the beneficial ownership of income. The modern concept of “beneficial owner”, enshrined in Russian tax legislation, is investigated. In general, the concept of beneficial owner has come a long way of development both in international practice and directly in the Russian Federation. At the moment, there are still difficulties in interpreting the concept of the beneficial owner of income, and a uniform law enforcement practice in relation to the concept under consideration is in the process of forming.

Guznova Ekaterina Alekseevna , No. 3 2019

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Poduzova Ekaterina Borisovna , No. 3 2019

Unilateral organizing transactions (transactions for organizing relations between the parties): problems of definition and interpretation in the context of the collective use of goods and services (sharing economy)

Annotation. The modern socio-economic context of sharing economy raises new questions of the use of structures for organizing contractual ties, in particular, unilateral organizing transactions. The article presents the main doctrinal problems of unilateral transactions, as well as unilateral organizing transactions. Approaches to classification, as well as classification groups of unilateral transactions are investigated, constitutive signs of unilateral organizing transactions are identified and substantiated. The legal nature of unilaterally binding and unilaterally authorizing transactions is considered, the legal relationship between these groups of transactions is established.

The constitutive features of unilateral organizing transactions are the basis for qualifying transactions most often considered in the doctrine as unilateral organizing transactions. So, the legal nature of the issuance of a power of attorney, testamentary refusal, offer, acceptance, application for registration as needing improvement of living conditions, etc. has been determined.

The material of the article is based on the main results of the reform of contractual law of the Russian Federation, new trends in the science of civil law. Also, the classical civil law doctrine of unilateral transactions, organizational contracts and organizational relations was studied and presented in this article.

Shcherbakov Mikhail Gennadievich , No. 3 2019

Civil law aspect of the regime of goods

dual-use

Annotation. In the article, the author analyzes the civil regime of dual-use goods in the aspect of the turnover capacity of dual-use goods. The author reveals the role of civil law as elements of the legal regime in the legal regulation of vertical and horizontal legal relations, and also analyzes the process of transformation of civil law in the course of law enforcement practice. The author highlights the main

legal characteristics that make it possible to differentiate dual-use goods, such as: technical features, scope of application, availability of export controls. In the article, the author offers his own definition of the legal regime of dual-use goods. In addition, the author singles out such a feature of the regime of dual-use goods as the dependence of the degree of turnover of dual-use goods on external factors.

The author concludes that the functional purpose of civil law has changed in the legal regime.

In conclusion, the author offers a number of recommendations to improve the efficiency of legal regulation of foreign economic activity in the field of circulation of dual-use goods.

Kovaleva Anna Vladimirovna , No. 3 2019

On the possibility of participation of a specialist in providing evidence

Based on the analysis of the current civil procedural legislation of Russia, which demonstrates the different approaches of the legislator to the procedure for securing evidence, and France, whose experience is interesting from the point of view of the further formation and development of the domestic model of pre-trial (preliminary) and out-of-court provision of evidence, as well as judicial practice, are disclosed the possibility of a specialist's participation in securing evidence (using special knowledge), including de lege ferenda as an independent way of securing evidence (within the framework of the relevant pre-trial procedure), as well as in providing specialist advice as an independent means of proof (in the case of mandatory participation of a specialist in notarial examination of electronic sources, carried out in order to provide evidence). In addition, the author, based on an analysis of the current provisions of the Code of Civil Procedure of the Russian Federation and the Fundamentals of Legislation on Notaries, draws a conclusion about the possibility of a specialist's participation in the implementation by a notary in order to provide evidence of the following actions: examination of written or material evidence, as well as the appointment of an examination (to fill the lack of special knowledge required by a notary in the formation of issues to be resolved by an expert or experts). A proposal is made to introduce into the Arbitration Procedure

Code of the Russian Federation the norms establishing the possibility of the participation of a specialist in the examination of written and material evidence by the court in order to ensure such.

Polushkin Evgeniy Sergeevich , No. 3 2019

Historical aspect of the development of the institution of jurisdiction in civil proceedings

Annotation. The author of the article carried out a retrospective analysis of the institution of jurisdiction in Russian civil proceedings. The institution of jurisdiction dates back to the pre-revolutionary period. To determine the mechanism for the delineation of competence between jurisdictional bodies, such concepts as "generic jurisdiction" or "department" were used. During this period, a distinction was made between the competence of the administrative and judicial authorities.

The very concept of "jurisdiction" was first enshrined in Soviet legislation. At the same time, in the scientific literature, jurisdiction was often identified with jurisdiction. The main task of jurisdiction during the Soviet period was the delineation of competence between courts of general jurisdiction and state arbitration tribunals. During this period, subjective and substantive criteria for the delimitation of competence between courts of general jurisdiction and other jurisdictional bodies were formulated, which are still used today.

In the post-Soviet period, the judiciary was finally separated from the executive and the courts acquired special importance in resolving jurisdictional disputes. All large categories of cases were transferred to the jurisdiction of the judiciary. The creation of a system of arbitration courts has led to an even greater importance of the institution of jurisdiction. It was in the post-Soviet period that the delimitation of the categories of "jurisdiction" and "jurisdiction" finally took place. As a result of the research, the author came to the conclusion about the continuity in the development of the institution of jurisdiction.

Chaikina Alena Vasilievna , No. 3 2019

Application by the courts of decisions of the Constitutional Court of the Russian Federation and the European Court of Human Rights in one case

Resume: The article examines the problem of the application by the courts of the Russian Federation of the decisions of the Constitutional Court of the Russian Federation (RF CC) and the European Court of Human Rights (ECHR) in the same civil case. The problem is caused by the vagueness of the hierarchy of these sources of law from the point of view of the norms of international and national law . The issue of non-execution of judgments of the ECHR is considered from the point of view of the provisions of the Vienna Convention on the Law of Treaties of 1969 . The foreign practice on the issue of the execution of the ECtHR judgments is analyzed . In particular, the author analyzes the practice of the United Kingdom and the Federal Republic of Germany, which faced contradictions between the fundamental norms of the state and the judgments of the ECHR.

The mechanisms are identified that allow balancing the legal positions of these courts. As one of the possible means of eliminating the contradictions between the Constitutional Court of the Russian Federation and the ECHR, the author proposes to consider Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The advisory opinion procedure, from the author's point of view, can make it possible to harmonize the legal positions of the ECHR and the national practice of the application of the Rome Convention before the stage of filing a complaint by Russian citizens with the ECHR.

Soloviev Konstantin Sergeevich , No. 3 2019

Differentiation between the production of medicines and pharmaceutical activities

Annotation. In the work, on the basis of the concepts used in the legislation on the circulation of medicines (including the relevant provisions on licensing) , a distinction is made between two licensed types of activities: production of medicines and pharmaceutical activities. Relate to the concept of "manufacture e " and "production of " , "vacation" and "implementation " under the rules of the Federally of the law and of 12.04.2010 number 61-FZ "On Circulation of Medicines" , and taking into account the need to separate economic

activities of the all-Russian nd classifier for types of economic activity (OKVED 2) OK 029-2014 . Are examples of judicial practice, consider the case where a license for pharmaceutical activity is not required (taking into account the purpose to her activities , as well as the set-in-law of the list of subjects that need to obtain a license for pharmaceutical activities). The article touches upon the problem of a significantly wider use of the concept of "pharmaceutical activity" in various specialized and scientific literature in comparison with the definition established by the legislator.

Irina Moskalenko, No. 3 2019

Registration of works as an instrument of copyright protection in cross-border relations (Internet)

Annotation. The article analyzes the systems of copyright registration in the Russian Federation and abroad. The fact of creating a work gives rise to a number of rights and obligations for the author without fulfilling any formalities, including registration of the work. There are three systems in which the registration of a work creates additional protection for the copyright holder for the rights of the author, does not create negative consequences for failure to comply with the registration procedure, or is legally provided only for specific objects of copyright. Deposit is considered as an element of the registration procedure for works, including as an indirect confirmation of the fact of the place of creation of a digital work for states that are guided by the collision linking *lex loci origi nis* (law of the state of origin of the work), and for states that are guided by collision linking *lex loci protectionis* (law the state where protection is claimed), the deposit does not confirm the fact of the creation of the work, but helps to preserve the object of copyright.

Litvinova Veronika Vladlenovna , No. 3 2019

Comparative analysis of social codes of the constituent entities of the Russian Federation

Annotation . The current system of social support for the population is governed by a large number of federal and regional regulatory legal acts adopted over the past 25 years. This creates both significant problems for the beneficiaries (it does not allow them to quickly navigate what social support measures and under what conditions they are entitled), and certain difficulties for the authorities themselves.

During the existence and development of the legal field in the field of social support, not only the terminology has changed, but also the very principles and approaches to social protection. There is an objective need to systematize the existing legislation. The constituent entities of the Russian Federation have followed the path of codification: the social codes of the Astrakhan, Belgorod, Volgograd, Leningrad, Omsk, Yaroslavl regions and the city of St. Petersburg have already been adopted.

The article provides a comparison of the social codes of the regions of Russia according to six criteria : the basic concepts , goals and objectives of the code , the principles of social legislation, the structure of the code , the presence of calculation formulas in the text of the code, and the delimitation of action in time . Based on the results of the analysis, recommendations were made to the constituent entities of the Russian Federation on the codification of social legislation.

Dremlyuga Roman Igorevich,

Kripakova Alexandra Vitalievna, No. 3 2019

Virtual reality crime: myth or reality?

The article is devoted to the problems of committing crimes using virtual reality technologies and their qualifications. The optional features of the objective side and their significance when using new digital technologies

are characterized . The factors complicating the investigation of such torts are analyzed in detail.

Based on the results of the study, the authors come to the conclusion that virtual reality technology gives the criminal completely new opportunities. First, virtual reality allows you to manipulate the emotions and consciousness of the victim at a completely new level. The psycho-emotional effect is comparable in strength to the effect of events in the real world, at the same time it can be achieved remotely via the Internet. Secondly, due to the integration of real-world devices into the virtual environment, the consequences of actions in virtual reality extend to the real world. This means that many criminal acts, for which it was necessary to contact the victim, can now be committed remotely.

Dubrovin Vladimir Valerievich, No. 3 2019

Problems of proving guilt in criminal cases in connection with tax evasion

Annotation. The establishment of an intentional form of guilt and its specific type is mandatory for the implementation of the provisions of Art. 8 of the Criminal Code of the Russian Federation. In criminal proceedings in connection with tax evasion , direct intent in the act of the accused must be established, otherwise the provisions of the resolution of the Plenum of the Supreme Court of the Russian Federation of 28.12.2006 No. 64 "On the practice of applying criminal legislation by courts on liability for tax crimes will be violated. ". One of the proofs of direct intent in the act of the accused may be the decision of the tax authority to prosecute for the commission of a tax offense, made as a result of tax control measures (office or field tax audits). In the event that it establishes a careless form of the taxpayer's guilt when committing a tax offense, then an irreparable contradiction may arise when proving the guilt of the accused in the course of criminal proceedings.

Khatuev Vakha Buhadyvovich , No. 3 2019

The Criminal Law Significance of the Special Properties of the Victim of a Crime as the Basic or Qualifying Signs of Crimes

Annotation. In many norms of the Special Part of the Criminal Code of the Russian Federation, legal significance is attached to such special qualities of the

victim as pregnancy, childhood, old age , helplessness, illness and dependence on the culprit. They are taken into account as criminogenic or qualifying signs. The subject of the research is the problem of reflection in the criminal law norms of the characteristics of the victim and the formulation of the corpus delicti, taking them into account. According to the author, it seems necessary to supplement: clause "c" part 2 of Art. 105 of the Criminal Code of the Russian Federation with the sign of "old age"; Articles 110 and 110 [1] of the Criminal Code of the Russian Federation - childhood and old age, which, together with the helplessness, dependence and pregnancy present in them, are distinguished as especially qualifying circumstances; Art. 111 and 112 of the Criminal Code of the Russian Federation - old age, pregnancy and addiction and provide for them, together with the childhood and helplessness contained in them, as especially qualifying ones; Art. 115 and part 2 of Art. 119 of the Criminal Code of the Russian Federation - pregnancy, childhood, old age, helplessness and dependence, while in the first of them in the status of especially qualifying; Art. 117 of the Criminal Code of the Russian Federation - childhood and old age, which, together with the pregnancy, helplessness and dependence present in it, are distinguished as especially qualifying, etc.

Krylova Maria Sergeevna , No. 3 2019

Features of the legal protection of personal data of minors in the field of electronic communications in the European Union

Annotation. This article examines the features of the legal protection of personal data of minors in the field of electronic communications in the European Union. The reasons for the advisability of introducing differentiated rules for minors in the context of the exercise of the right to the protection of personal data are substantiated. In addition, the article analyzes the provisions of Regulation (EU) 2016/679, which entered into force in May 2018 on the protection of individuals in the processing of personal data and on the free movement of such data, reflects its innovations regarding the conditions for applying the concept of informed consent to minors. processing and verification of the age of data subjects, including in the provision of services in the field of electronic communications.

Romanova Olga Alexandrovna , No. 3 2019

Legal problems of regulation of the development of the territories of resorts and health-improving areas

Resume : The article examines the problems of legal regulation of the development of resorts and health-improving areas in the Russian Federation and suggests ways to further improve the legislation in this area of relations. The relevance of the topic is due to the current unsystematic development of the territories of most resorts in Russia, which leads to an increase in anthropogenic load on resort ecosystems, degradation of natural medicinal resources, deterioration of the ecological and sanitary-epidemiological state of the territories of resorts and health-improving areas. The author shows the importance and peculiarities of the organization of the development of the territories of resorts and medical and recreational areas to ensure their sustainable development, analyzes the current urban planning legislation in terms of the development of resorts, identifies the problems of regulation and implementation of urban planning activities on the territory of the resorts. The priority role of territorial planning in the regulation of justified development of resort territories, taking into account the peculiarities of their functioning and further development, has been substantiated.