Przhilensky Vladimir Igorevich №9 2019

Modernization of the conceptual foundations of Russian law: axiology, logic, pragmatics

Resume: The article examines the current state of the conceptual foundations of Russian law from the point of view of the possibility of overcoming the value-worldview dichotomy in determining the axiology, logic and pragmatics of these grounds. The theory of justice by J. Rawls, taken as the most influential political and legal philosophy of the West, as well as its alternative in the face of Eurasian philosophical thought, is considered separately. The article analyzes the ability of the Eurasian understanding of state and law to compete with J. Rawls's liberalism and neo-contractionism. The limitations of both the first and the second alternatives are shown and the need to take into account each of the vectors of development of the conceptual foundations of modern Russian law is substantiated.

Egorov Alexander Alexandrovich , No. 9 2019

To the category " offense " in the psychological theory of law

Resume: The article is devoted to the analysis of the category of offense in the framework of the psychological theory of law on the example of the works of prominent Russian thinkers - Lev (Leon) Iosifovich Petrazhitsky and Veniamin Mikhailovich Khvostov. The relationship between morality and law is analyzed from the point of view of the consequences of their violation, consisting in the corresponding ethical experiences, relapses of the corresponding ethical processes and their perception by others. The article examines the psychological laws that distinguish law from morality and the forms of their manifestation. In the context of the views of V.M. Khvostov provides and examines his author's definition of the concept of an offense, and also reveals its signs - the act, wrongfulness, sanity of the subject. The researcher's views on the subjective and objective aspects and their forms are analyzed by comparing them with the legislative norms of the Criminal Code of March 22, 1903 in force at that time. In the conclusion, based on the analysis of the specified range of issues, generalizing conclusions are formulated.

Khatuev Vakha Bukhadyvovich , No. 9 2019

Driving to suicide or attempted suicide: the formation, state and problems of criminal law regulation in Russian criminal legislation

Resume: The problem of suicide is a significant socio-economic problem for any modern society. In the current period, a very difficult suicidal situation has developed in the Russian Federation. Despite the trend of a decrease in the number of suicides that has emerged in recent years, their level still remains high. The basis of this phenomenon lies in the first place, socio-economic factors.

At the same time, committing suicides as a result of such factors as direct mental as well as physical impact on the victims of third parties, identified by the criminal law of the Russian Federation as signs characterizing a crime, - bringing to the deprivation of life, has also become not so rare. Therefore, in the fight against this extremely dangerous phenomenon, measures of a criminal-legal nature also play an important role.

A different approach was expressed to the issues of criminalization of incitement to suicide or to an attempt on it and the construction of the corpus delicti in the Russian criminal legislation in different periods. This article examines the genesis, evolution and current state of criminal law regulation of responsibility for bringing to suicide or attempted suicide in the criminal legislation of Russia, formulating proposals for its optimization.

Kuteinikov Dmitry Leonidovich , No. 9 2019

Features of the application of technologies of distributed ledgers and blockchains (blockchain) in popular votes

Annotation.

Today, intensive technological development has a strong impact on the modernization of democratic institutions. Various innovations in the field of digital communications have also affected the rather traditional sphere of popular voting. The widespread adoption of distributed ledger technology has had a

particular impact on rethinking the process of their organization. The most popular distributed ledgers are using blockchain technology (blockchain). Despite the fact that initially this technology was considered exclusively as an element of the development of the information industry, and then financial technologies, at the present stage it is gradually becoming more widespread in other areas of human activity due to the high degree of security and confidentiality.

The article discusses in detail the world practice of using this technology in popular voting. The technical solutions used in the most actively developing projects today aimed at developing their own software for conducting electronic voting using blockchain technology are analyzed separately .

The article also discusses certain problems of voting using blockchain technology, such as identification and secrecy of voting.

Mamedova Vladislava Eduardovna, No. 9 2019

Theoretical approaches to the concept of responsibility of members of political parties and its relationship with legal responsibility

Annotation. The article proposes the author's concept of the responsibility of members of political parties, provided for by the statutes of political parties and other internal party documents (internal party responsibility). The demarcation of intra-party, legal and other types of social responsibility has been carried out. It is concluded that the responsibility of members of political parties is a subtype of social and statutory responsibility. In the course of the study, a tendency of convergence (diffusion) of intra-party and legal responsibilities was revealed. The prospects for considering the responsibility of members of political parties as positive are analyzed, the conclusion about the need to study internal party responsibility exclusively in a retrospective aspect is rounded up. The thesis about the expediency of considering the forced implementation of intra-party penalties as the content of the responsibility of members of political parties is substantiated. The main properties of intraparty responsibility are identified and analyzed. The influence of the ambivalent nature of political parties and the peculiarities of intra-party relations

on the properties of responsibility of members of political parties has been investigated.

Kolesnikova Olga Vladimirovna , No. 9 2019

AND nstitut commissioner for the rights of indigenous peoples in the Russian Federation: the main areas of improvement

A nnotatsiya : The advocacy of state power of subjects of the P USSIAN F EDERATION against indigenous peoples as the persons who have the constitutional and legal status, and elevated levels of guarantees, compared with ordinary citizens, by virtue of its small size. W Erez comparative analysis of regional laws Republics B uryatiya, WITH aha (I kutiya) BY amchatskogo and K rasnoyarskogo edges in part embodied in these features the appointment of commissioners for the rights of Indigenous Peoples, orders of remuneration and financial support of the activities of the regional budgets, questioned the authenticity of their independence from government entities P USSIAN F Federation. These circumstances, coupled with the lack of a common approach to the scope and nature of functional tools authorized to consider the competence, provided the basis for the development of the study recommendations on coordination of their activities, the legal framework adjustments subjects P USSIAN F EDERATION in terms of entry requirements for candidates for such office, as well as the range of powers assigned to the realization of human rights potential, which are of practical importance and can be used by the authorities in the rule-making activity.

Belov Valery Alexandrovich , No. 9 2019

Legal essence of a gift certificate:

LLC "Bershka CIS" versus the Office of Rospotrebnadzor in Moscow

(***cases No. A40-A40-202419 / 17 and No. A40-226793 / 17)***

Annotation. This article is devoted to the consideration and analysis of arbitration cases related to the process of appealing the acts of the Office of Rospotrebnadzor in Moscow, in connection with the bringing to

administrative responsibility of one of the well-known retail organizations for the inclusion in the consumer agreement of conditions that infringe on the rights and legitimate interests of consumers when selling gift certificates (cards). The article provides excerpts from court decisions when considering cases, provides a detailed consideration of issues related to the legal qualification of a gift certificate sold by entrepreneurs to consumers, and also provides an author's commentary on possible ways of regulation when considering the actual relationship between retailers and consumers when they conclude an agreement. where the object is a gift certificate (card).

Solovieva Olesya Anatolyevna , No. 9 2019

Participatory management as a special administrative and legal regime of entrepreneurial activity

Annotation. The specificity of the scientific article is related to the study of economic and legal transformation in the direction of participatory interaction of entrepreneurship with state institutions. The article analyzes the features and clarifies the target and functional loads of the administrative and legal regime that regulate the activities of business entities in conditions of market competition. The author proposes to expand the differentiation of the directions of the administrative and legal regime in relation to the type of economic relations between business entities on the basis of systematizing the principles of administrative and legal regulation of entrepreneurship: strategic, tactical, prospective and current. In the work, participatory management is considered as a special administrative and legal regime of entrepreneurial activity, which is implemented through two forms: public-private partnership and co-regulation. This approach to the consideration of participatory management allowed the author to clarify the concept of "co-regulation", using it as a form of implementing participatory management. The presented research is intended for undergraduates, postgraduates, state management structures and other persons whose scientific interests are concentrated in the field of administrative and legal regulation of the business community.

Ruchkina Margarita Olegovna , No. 9 2019

The concept and subjects of valuation activity: issues of legal regulation

Annotation. The law on appraisal activity in its various versions is analyzed, and the dynamics of its development and improvement in relation to the subjects of appraisal activity is traced. A comparative legal analysis of various articles of the Valuation Activity Law is carried out. The article examines theoretical works devoted to the legal regulation of the subjects of appraisal activities. Separate proposals are made aimed at improving the legal regulation of the subjects of appraisal activities . In particular, it is noted that the structure of the legal relationship presupposes the existence of corresponding rights and obligations, since right is a measure of what is due, and duty is a measure of possible behavior. Taking into account the foregoing, the legislative consolidation of the rights and obligations of appraisers should be in a logical relationship, and not be arbitrary and theoretically unreasonable.

Burmagin Sergey Viktorovich , No. 9 2019

Final and interim court decisions in the context of the unity and differentiation of judicial proceedings in criminal proceedings

Resume : This article examines the legal concepts of final and interim court decisions in criminal proceedings. After conducting a verbal-semantic and subject-meaningful analysis of these definitions, the author reveals their viciousness in terms of the terminology used and fictitiousness in terms of content. It is stated that the concept of interim court decisions includes heterogeneous judicial acts that are fundamentally different in their essence and purpose. On the basis of the provisions of the theory of differentiation of criminal proceedings and the application of the method of systemic and structural analysis of the procedural activity of a criminal court, it is concluded that judicial acts issued based on the results of consideration of cases of judicial control and on the execution of a sentence, as well as the final

decisions of higher courts have common features final court decisions and should not be classified as interim, i.e. auxiliary. It is proposed to limit the concept of an interim court decision to a set of preparatory, security and organizational decisions taken by the court during the preparation and conduct of the trial of any cases considered in the criminal procedure.

Burmagin Sergey Viktorovich , No. 9 2019

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Tabolina Ksenia Andreevna

Jeyranova Zoya Robertovna , No. 9 2019

Improving the procedure for the application of compulsory measures of educational influence

Annotation. The article is devoted to the problem of improving the procedure for applying compulsory measures of educational influence in criminal proceedings against minors. The lack of proper regulation of the procedure for the application of

compulsory measures of educational influence and the existing legislative gaps determine the need for amendments and additions to the criminal and criminal procedural legislation. It is proposed to grant the right to decide on the termination of criminal prosecution and to initiate a petition before the court for the use of a coercive measure of educational influence to the prosecutor in a criminal case received by him with an indictment or indictment. To resolve the issue of the possibility of correcting a minor by applying compulsory measures of educational influence, it seems necessary to study his psyche using special knowledge, which implies the presence of an expert's opinion in the case materials. Exemption from criminal liability of minors according to the rules of Art. 90 of the Criminal Code of the Russian Federation should not be a right, but an obligation of a law enforcement officer. Approaches to solving the problem associated with the execution of compulsory measures of educational influence are formulated.

Podvolotsky Igor Nikolaevich , No. 9 2019

Preliminary study of human video images in portrait examination

Annotation. In the article, the author considers promising trends in conducting a preliminary study of a person's appearance, captured using video recording devices.

The peculiarity of the preliminary study of the media of portrait information seized during the inspection of the scene of the incident consists in the sequential study of their external characteristics and internal content, with the aim of further solving diagnostic ones aimed at establishing the characteristics of the shooting process, image quality, and the absence of signs of changes in the original content of the video or photographic image. Until now, the possibility of diagnosing human properties based on age, physique, clothing, gait is being studied.

Based on the analysis of the scientific literature and the practical activities of the experts, it can be concluded that it is necessary to improve the portrait examination methodology by including computer technologies for studying the shooting parameters and signs of possible interference with the integrity of the

record. At the same time, to effectively identify the properties and conditions of appearance of people, transmitted using modern media portrait images require a comprehensive study of a group of experts, taking into account knowledge of anatomy, anthropology, forensic science, computer technology, mathematical modeling, and others .

Belyakova Elizaveta Gennadievna , No. 9 2019

Actual problems of forensic financial and economic expertise in cases of deliberate bankruptcy of legal entities

Annotation. The article is devoted to an overview of the most serious problems arising in the production of forensic financial and economic examinations in cases of deliberate bankruptcy of legal entities. The author examines the main regulations that guide the conduct of expert research in the framework of forensic financial and economic examinations in cases of deliberate bankruptcy. Attention is drawn to the lack of a unified expert opinion regarding the choice of methods of financial analysis of the activities of legal entities when conducting forensic economic examinations. The author notes that today there is no single terminological apparatus, including in the understanding of such a category as “signs of the deliberate bankruptcy of an organization”. An urgent problem is raised related to the need to form a list of normative financial ratios, focusing on the specifics of the type of activity of a legal entity. It is concluded that it is necessary to solve a number of these problems in order to improve the quality of investigation and consideration of cases in legal proceedings.

Slepak Vitaly Yurievich

Ariyants Anna Ashotovna , No. 9 2019

Formation of the European Research Area in the context of the evolution of legal regulation of European research

Resume: Since the end of the 20th century, there has been a tendency in Europe to accumulate scientific knowledge, increase the level of competitiveness of European research and the mobility of scientists themselves.

The implementation of the goals and objectives set by the European Union is carried out through the creation of a single European research space and the implementation of special framework programs.

It has been determined that today the European Union is one of the world leaders in research and innovation. It is scientific knowledge, experience, high standards of research, developed research infrastructure that guarantee long-term, successful cooperation between the EU and other countries. Cooperation between Russia and the EU in the field of scientific and technical cooperation is developing quite actively. Both in the EU and in Russia, the development of effective innovation policies and programs for the development of an economy based on knowledge, and improve the efficiency of investment in research and developed weave prominently.

R amankulov Kubanychbek Sovetovich, No. 9 2019

The tendency of precarious employment: features of its manifestation in labor legislation and problems of the impact of other norms

sectoral affiliation to the world of work

international labor standards

(based on materials from the states of the Eurasian Economic Union)

Annotation. The article notes that the conceptualization of basic concepts related to precarious employment and the adoption of norms and legal acts adequate to these relations in the system of labor legislation of the states of the Eurasian Economic Union (EAEU) are in the preparatory stages.

In the article, the features of the manifestation of precarious employment in the labor legislation of the EAEU countries are analyzed using the example of norms on a fixed-term employment contract, taking into account international labor standards. In the labor legislation of the EAEU countries, there is a tendency to expand the scope of fixed-term employment contracts, including towards a decrease in the level of legal guarantees for workers (Article 41 of the Labor Code of Belarus, Article 30 of the Labor Code of Kazakhstan, Article 82 of the Labor Code of

Kyrgyzstan, Article 348.12 of the Labor Code of Russia), which contradicts the rules of the ILO Recommendation No. 166 on the termination of labor relations at the initiative of the employer (article 3) and the fundamental Convention No. 105 on the abolition of forced labor (article 1), ratified by all states of the Eurasian Economic Union. In the article, in the context of the manifestation of precarious employment, the author analyzes the problems of the influence of norms of a different industry affiliation on the world of work (on the example of Kyrgyzstan). From labeled, in particular, that the practice of application of patent oh systems s for regulating the world of work are not conducive dec eniyu issues of legalization of labor relations, and the tax authorities are not motivated to prove the availability of labor, instead of civil relations, even in cases when they meet the indications, enshrined in the ILO Recommendation No. 198 on the employment relationship and Art. 13 TC Kyrgyzstan. A conclusion is formulated regarding the restrictions established by the Law of the Kyrgyz Republic of May 25, 2007 No. 72 and the Resolution of the Government of the Kyrgyz Republic of December 17, 2018 No. 586 restrictions on the activities of labor inspections as contradicting the priority ILO Convention No. 81 on labor inspection in industry and trade (part 1 of article 12) ratified by Kyrgyzstan. Revealed serious inconsistencies between measures to deregulate administrative responsibility and the tasks of the labor legislation of Kyrgyzstan to counteract precarious employment .

Ponomareva Daria Vladimirovna, No. 9 2019

Patenting Human Genes: Case Studies in the United States of America, Canada and Australia

Annotation. This article is a review of the jurisprudence of the United States of America, Canada and Australia, which attempted to answer the question of the possibility of patenting human genes. The article substantiates the relevance of this problem, considers the ethical aspects of patenting genes. The author analyzed the main cases, the most significant from the point of view of the development of patent law in foreign countries, which were pending before the courts of the mentioned

foreign countries: the case of Diamond v. Chakrabarty (USA), Association for Molecular Pathology v. Myriad Genetics (USA), Myriad v. Cancer Voices (Australia), The Children's Hospital of Eastern Ontario (CHEO) v. Transgenomic (Canada). In the analysis, the author pays special attention to the argumentation and conclusions of judicial institutions regarding the patentability of human genes. In the conclusion, a conclusion is made regarding the continuity and possible harmonization of legislation and judicial practices of both the states mentioned in the article and the countries that have just embarked on the path of development of biomedical technologies.

Brisov Yuri Vladimirovich , No. 9 2019

Liability of the executive body of a legal entity for fraudulent actions

Annotation. The article examines various legislative and law enforcement approaches in the Russian Federation, USA, Great Britain; compared c I the various provisions of the Plenum of the Russian Federation and the Russian Armed Forces dedicated to integrity issues; analyzes the application of these provisions by the courts when considering the issues of bringing directors to responsibility as a result of unfair actions that resulted in property damage. On the example of considering a number of key cases from the law enforcement practice of the courts of the Anglo-American system of law, the issue of using tests is considered: objective and subjective tests of conscientiousness to regulate issues of bringing the executive body to justice. The English and American courts have used the good faith test on very rare occasions, and the fiduciary duty of directors in commercial companies has been substantially limited. The approach used by common law courts presupposes a minimum degree of court interference in the economic affairs of commercial companies. The prosecution of the director is allowed only in the case of obvious neglect of duties, or is considered in some cases, based on the individual circumstances of the case. Russian courts often hold directors liable not as a result of gross negligence or proven deliberate actions of executive bodies to harm the company, but as a result of the failure of society to achieve the desired economic

result. Also, bad faith compensates for obvious gaps in the internal corporate regulations, which do not allow to accurately determine the boundaries of authority and the sphere of responsibility of the executive body. The author formulates a conclusion about the degree of admissible judicial discretion when applying the provisions on good faith to corporate relations, as requiring special regulation.

Gordienko Irina Igorevna, No. 9 2019

Legal regulation of disposal of state-owned real estate

Annotation. The article deals with the problems associated with the disposal of state-owned real estate.

Two groups of objects have been identified that have features of write-off and utilization: objects, the write-off and utilization of which occurs according to the general procedure after the removal of their special status (cultural heritage sites, protective structures) and objects, the write-off and utilization of which is regulated by special legislation in connection with special the purpose of such objects (objects of the housing stock, subsoil use, water transport). The features of utilization of such objects are considered, in particular, the need to remove a special status prior to the procedure for utilization of objects. The problem of registration of rights to land plots under objects that are subject to demolition or are actually absent is considered. It is concluded that it is necessary to improve the legislation in terms of the disposal of facilities, including the development of a procedure for the sale of materials formed as a result of the demolition of capital construction projects.

Popova Olga Vladimirovna , No. 9 2019

Realization of the right to land by rural residents

Annotation . The preemptive right to buy and sell agricultural land by the authorities of the constituent entities of the Russian Federation, the maximum size of agricultural land, the endowment of rural residents with shares and some other features of agrarian legislation are restrictions on the implementation of the right of rural residents to own land.

Lack of proper infrastructure in rural areas, especially in the Far East areas covered by the Far Eastern Hectare project, are also seen as an obstacle for rural residents to exercise their land rights.

Krylov Konstantin Davydovich , No. 9 2019

Into the Influence of the New Industrial Revolution

on the development of labor law and social security law

Annotation. The article reflects the scientific discussions of the VI Moskovsko m juridical m Forum e on 100 fly I ILO , the international legal regulation of labor and social security, the fourth industrial revolution impact on development is, labor law and social security law , the manifestations of the legal traditions and innovations in the field of labor and social security.