Tanimov Oleg Vladimirovich, No. 2 2020

Transformation of legal relations in the context of digitalization

Abstract

The article analyzes the problems that arise in the process of the emergence of new elements in the structure of legal relations in the context of the development of information and telecommunication technologies (ICT): objects (Internet, artificial intelligence, etc.), subjects (virtual personality, provider, virtual bank, etc.) and See also content. In the process of the analysis of normative legal acts (hereinafter - RLA) operating in the information sphere, a number of conclusions are formulated related to the subject-object composition of legal relations that appeared in the process of digitalization, as well as the development of information law and legislation, which occurs due to these processes. It is concluded that the consolidation of the content of legal relations (subjective rights and legal obligations) in the legislation of the Russian Federation has characteristic features that are disclosed in the text of the article.the content of legal relations, in the context of the development of information and communication technologies, functionality that provides streamlining digitalization processes in all spheres of public life.

Derho Daniil Sergeevich, No. 2 2020

Systematic analysis of the paradigm of constitutional law: constitutional and law-making synergy.

System analysis of the paradigm of constitutional law education: constitutional and law-creating synergies.

Abstract

The heuristic possibilities of the system analysis methodology in constitutional and legal research at this stage of the development of scientific thought are significantly underestimated. Meanwhile, consideration of social and legal processes through the prism of the provisions of synergetics allows us to identify their new essential features and propose more effective approaches to solving urgent scientific and theoretical problems.

This article is devoted to the study of the paradigm of constitutional law-making as a complex self-organizing system that includes law-making and interpretation-law-making elements. The approach proposed by the author made it

possible to: consider the mechanisms of textual and non-textual development of the Constitution within the framework of a single category of constitutional law; identify and substantiate the phenomenon of constitutional law-making synergy; trace the merger of the legal positions of the Constitutional Court of the Russian Federation and the norms of the Constitution into a single regulatory complex - an integrative source of constitutional law.

Sekhin Ivan Viktorovich, No. 1 2020

The principle of timeliness of lawmaking: problems of implementation

Abstract. The article is devoted to the study of the process of accelerating legal regulation. Regulatory speed is defined as the ratio of the number of legal norms issued by the legislator to a unit of time. An attempt is made to build a scale for the speed of legal regulation. The criterion for ranking the speed of normative regulation of public relations is the standard for the speed of lawmaking, which expresses the maximum possible number of published legal norms per unit of time, at which the legislator is able to ensure the minimum sufficient level of quality of normative legal acts. Compliance or deviation from the values of the standard for the speed of lawmaking forms an average, low or high degree of speed of normative legal regulation. A feature of the high degree of speed of normative legal regulation is a decrease in control over lawmaking, which provokes legal risks. The author substantiates the extraordinary nature of establishing a high degree of speed of normative legal regulation, which consists in prioritizing the promptness of the publication of legal norms to the detriment of the quality of legislation.

Teplyashin Ivan Vladimirovich, No. 2 2020

The Arctic: Institutional and Legal Public Participation

Abstract. Informational, political, legal principles for the establishment and development of the status of the Arctic zone of the Russian Federation require a complex relationship on the part of the state and the public. Modern civil society has the necessary potential to assist and participate in the protection and guarantee of the

rights and legitimate interests of citizens living in the Arctic and adjacent northern territories. The issues of the formation of organizational and legal principles, means, methods, forms of inclusion of public structures in the processes of servicing the Arctic space deserve special research interest on the part of industry sciences and general theory of law. The author of the article is sure that the establishment of the legal basis for the use of public initiatives on the part of entrepreneurship, national-cultural associations, the indigenous peoples of the North and other social structures in the development of the Arctic zone require systematic law-making monitoring and effective law enforcement. While strengthening the sovereignty and state presence of the Russian Federation in the Arctic zone, the existing forms of democracy and public-private partnership should be actively used.

Mironova Svetlana Mikhailovna, No. 2 2020

The impact of state financial and legal policy on municipalities

Abstract. The consolidation of the financial and legal foundations of local self-government in the Constitution of the Russian Federation implies the implementation in the Russian state of an appropriate financial and legal policy aimed at implementing constitutional norms in relation to the financial activities of municipalities. Due to the fact that the concept of financial and legal policy is not normatively fixed, in the literature you can find different points of view on its content and types. For the implementation of the financial activities of municipalities, the budgetary and legal and tax and legal policies pursued in the state as a whole matter. One of the most important documents that determine the financial and legal policy in general, including in relation to municipalities, are the messages of the President of the Russian Federation. Analysis of the messages of the President of the Russian Federation showed that that the financial and legal support of municipalities is not a separate priority area of the financial and legal policy of the state as a whole. Measures of financial support for municipalities, enshrined in the messages of the President of the Russian Federation, are the basis for subsequent regulatory decisions taken at both the federal and regional and local levels.

Sergeev Sergey Vitalievich, No. 2 2020

Place of the rules governing the taxation of foreign organizations that do not operate in the Russian Federation

Abstract

. Russian legislation establishes a special taxation procedure for foreign organizations that do not operate on the territory of the Russian Federation, but receive income from Russian sources. When paying income to foreign organizations, Russian organizations may be obliged to pay both income tax and VAT. The regulation of the procedure for taxation of income of foreign organizations from Russian sources is complex and covers the norms contained both in national legislation and in international agreements on the avoidance of double taxation. Despite the fact that a significant number of works by scientists and practitioners are devoted to certain aspects of tax collection from foreign organizations, at the moment not enough attention is paid to the nature and place of norms, establishing the taxation regime for foreign organizations that do not operate in the Russian Federation. At the same time, a lack of understanding of the nature and place of these norms in the system of tax law of the Russian Federation may lead to incorrect enforcement of the taxation of income of foreign organizations from Russian sources. The author analyzes the applicable legislation and the positions of scientists on this issue, on the basis of which he forms a conclusion about the composition and place of the mentioned norms in the system of tax law of the Russian Federation.

Petruchak Anastasia Valerievna, No. 2 2020

Features of the legal regulation of tax revenues of the budgets of cities of federal significance (on the example of the city of Moscow)

Abstract. The article examines the powers of cities of federal significance to establish and enforce regional taxes, which are part of the tax system of the Russian Federation. The author comes to the conclusion that the competence of the cities of federal significance in the field of taxes is attributed to the joint jurisdiction of the

Russian Federation and the subject of the Russian Federation - the city of federal designation. Changes in legislation have a significant impact on the structure of budget revenues of the city of Moscow, due to the emergence of new sources of income for the budgets of cities of federal significance, an increase in the share of budget revenues of the city of Moscow received from the property tax of organizations due to the expansion of the list of real estate objects in respect of which the base is defined as their cadastral value, etc. However,

Sakharova Yulia Vladimirovna, No. 2 2020

Commercial corporate legal entities: ways to improve Russian legislation

Abstract

. This article examines five organizational and legal forms of commercial corporate legal entities: business partnerships, business societies, peasant (farm) farms, business partnerships and production cooperatives. Some problems of their legal status and activities have been identified. Proposals were formulated to change the current legislation governing the types of legal entities under study: 1) it is necessary to abolish the general partnership, improving the limited partnership, in which the presence of depositors will not be mandatory. This structure of a legal entity should be renamed "business partnership". The legal provisions on general partnerships should be abolished. The maximum number of possible contributors should be increased to 30. Memorandum of Association should be replaced by articles of association; 2) Federal Law of 19.07.1998 No. 115-FZ "On the specifics of the legal status of joint stock companies of workers (people's enterprises)" must be canceled; 3) a new version of clause 2 of Art. 66.3 of the Civil Code of the Russian Federation: "A joint-stock company that does not meet the criteria specified in paragraph 1 of this article is recognized as non-public"; 4) it is necessary to eliminate the duality of the legal status of the peasant (farm) economy by changing Art. 86.1 of the Civil Code of the Russian Federation, as well as the Federal Law "On Peasant (Farm) Economy" indicating the possibility of forming this organization only as a legal entity. specified in paragraph 1 of this article is recognized as non-public "; 4)

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Kasyanov Andrey Sergeevich, №2 2020

Issues of choosing the method of disposing of the right of claim for bringing to subsidiary liability when considering an application

Abstract

By including into the Federal Law "On Insolvency" Chapter III.2 "Liability of the Head of the Debtor and Other Persons in a Bankruptcy Case", the legislator has detailed the procedure for bringing the controlling debtor to subsidiary liability. But the established procedure raises independent questions about the procedure for its implementation, the answers to which are not always available. This article discusses the problems that arise with the determination of the moment when the creditor chooses the method of disposing of the right of claim for bringing the controlling debtor to subsidiary liability, as well as the problems arising with the direct disposal of the right in question. The article analyzes the peculiarities of the choice by creditors of the method of disposing of the right to claim for subsidiary liability, depending on the bankruptcy procedure in which such a choice takes place, attempts are made to find the optimal solution to the identified difficulties with the implementation of the procedure under consideration. Possible difficulties with the approval of the creditors 'meeting or the creditors' committee of the provisions on the sale of the right of claim on bringing the controlling debtor to subsidiary liability are considered, options for solving the identified problems are proposed.

Poduzova Ekaterina Borisovna, No. 2 2020

Law as an object of civil legal relations in the context of the digital environment and the sharing economy

Abstract. At this point in time, the social and economic conditions for the development of society focus on joint consumption, which raises new questions of the legal regime of property rights, in particular, rights (claims), options, digital rights, uncertified securities.

Uncertified securities and digital rights have become an important stage in the information revolution, however, their legal regime is ambiguous and undefined.

An optional design was provided for back in 2008 by the Concept for the Development of Civil Legislation of the Russian Federation. Subsequently, it was provided for in the Draft Federal Law on Amendments to the Civil Code of the Russian Federation, based on some provisions of the Draft, the Federal Law of March 08, 2015 on amending part one of the Civil Code of the Russian Federation provided for Art. 429.2 of the Civil Code of the Russian Federation, in which it secured the option to conclude an agreement, in Art. 429.3 of the Civil Code of the Russian Federation - option agreement.

In legal doctrine, the proliferation of ownership of property rights as "incorporeal things" has evoked a critical response. The legal regime of these objects is ambiguous in the context of special legal regulation and judicial interpretation.

The paper analyzes the concept, the legal nature, qualifying features of property rights, makes a proposal to introduce a unified legal regime in relation to these objects.

Efimov Anatoly Viktorovich, No. 2 2020

Application of the rules on business obligations to relations arising from corporate agreements

Abstract

. As a result of the reform of obligations and contract law in 2015, the division of obligations into those related to the implementation of entrepreneurial activity (b2b - the actual entrepreneurial obligations, b2c), and those that are not related to the implementation of entrepreneurial activity (c2c) was more clearly expressed.

Given this division, the problematic issue is the qualification of relations that arise from corporate agreements. Within the framework of the article, it is determined that such relations are obligatory, however, the rules on which obligations are subject to application remains open. The Civil Code of the Russian Federation only fragmentarily indicates the application of norms on entrepreneurial obligations to relations from a corporate agreement. This issue is controversial due to the formed position of the Constitutional Court of the Russian Federation, according to which relations, related to the exercise of corporate rights, do not refer to entrepreneurial, but to other economic activities, which makes it difficult to apply the rules specifically on entrepreneurial obligations. At the same time, the author proposes to qualify obligations from corporate agreements as entrepreneurial, if the persons who conclude a corporate agreement are affiliated persons in relation to this legal entity, or if, as a result of concluding a corporate agreement, its participants become affiliated persons.

Sviridenko Oleg Mikhailovich, No. 2 2020

Challenging transactions to the detriment of creditors outside the bankruptcy procedure (out-of-competition challenge)

Abstract

The article deals with the problems related to the out-of-competition contestation of the debtor's transactions. In particular, the author examines the current positions of the Supreme Court of the Russian Federation on challenging the debtor's transactions before bankruptcy, the procedure for distributing the burden of proof, and the legal grounds for challenging.

Based on the results of the study, the author comes to the conclusion that out-of-competition contestation has a number of undoubted advantages, similar to competitive contestation, including aimed at preventing the withdrawal of the debtor's assets, protecting the creditor from abuse of the right by the debtor. The institution of out-of-competition contestation provides additional guarantees to creditors even before the initiation of the bankruptcy process. At the same time, for

out-of-competition contestation of a transaction made by the debtor on the eve of bankruptcy on the basis of Art. 10, 168 of the Civil Code of the Russian Federation, it is necessary to provide the court with compelling evidence of abuse of law, the purpose of causing harm to creditors both on the part of the debtor and on the part of the counterparty. In addition, the institution of out-of-competition challenging requires careful consideration at the legislative level,

Ivanova Nina Andreevna, No. 2 2020

The decision and order of the antimonopoly body as objects of dispute in the arbitration court

Abstract

. Based on the analysis of judicial practice and science, the article substantiates that the decision of the antimonopoly body on violation of the antimonopoly legislation by an economic entity and the order issued on its basis can be attributed to public non-normative legal acts, and their challenging - to proceedings on cases arising from public legal relations. The problems of the theoretical and practical nature of a separate challenge of a decision and a prescription are discussed, and it is substantiated that challenging a decision and a prescription separately is inappropriate. In cases of challenging only the decision or only the instructions of the antimonopoly body, the arbitration court, if it has doubts about the legality of both of them, is justified on its own initiative to check for legality of both of these public non-normative legal acts, going beyond the stated requirements. It is substantiated that the existence of two non-normative legal acts of the antimonopoly body - decisions and orders - is unjustified and, over time, the decision and order of the antimonopoly body can be combined into one act - the decision of the antimonopoly body.

Ilyichev Petr Andreevich, No.2 2020

Problems of Prejudice in Arbitration Proceedings

Abstract

This article is devoted to some aspects of the application of the institution of prejudice in the framework of arbitration (arbitration proceedings). The article analyzes two topical issues of interest for both procedural science and law enforcement practice. The first question concerns the prejudicial force of decisions of courts of general jurisdiction and arbitration courts that have entered into force for an arbitration tribunal: the author raises the question of whether the circumstances established by an act of a state court that has entered into legal force cannot be proven in proceedings on a case within the framework of arbitration (arbitration proceedings). Based on the results of the study of this issue, conclusions are formulated. Another question concerns the equally important problem of using the institution of prejudice in arbitration proceedings: whether the arbitral award has the property of prejudice, and whether the circumstances established by the arbitral award can not be contested when considering another case, both within the framework of arbitration and within the framework of state justice. Based on the analysis of scientific doctrine and judicial practice, including the legal positions of the Constitutional Court of the Russian Federation, the author proposes a set of measures aimed at the implementation of the current legal regulation of arbitration (arbitration proceedings)

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Criminal law characteristics of a terrorist act

Abstract

. The qualification of a terrorist act (Article 205 of the Criminal Code of the Russian Federation) is not without problems for law enforcement due to the complexity of the legal norm and the presence of gaps in the current legislation. In the theory of criminal law, these issues remain controversial; in practice, there is also no uniform approach. The article is devoted to the study of the signs of the composition of a terrorist act, the complex issues of the qualification of a crime and its delimitation from related compositions are disclosed.The authors note that when characterizing the object of the crime in question, the following should be borne in mind: the main object of a terrorist act is considered to be public safety, an additional object is the life and health of citizens and (or) property belonging to them. At the same time, domestic legislation does not contain a definition of "public safety". This term does not have a universally recognized definition in international law. The article provides recommendations on the application of the criminal law norm on a terrorist act and in terms of improving legislation.

Filatyev Vladislav Alexandrovich, No. 2 2020

Decision to take into custody as part of a sentence: preventive measure or enforcement of punishment

Abstract. The choice of a preventive measure against the defendant in the form of detention on the sole basis of the need to ensure the execution of the sentence, without establishing and taking into account the risk of evasion from serving the sentence, is unacceptable. In such cases, the preventive measure lacks a fundamental property - its preventive nature, in connection with which the emerging criminal procedural relations are not regulated by the provisions of Ch. 13 of the Code of Criminal Procedure of the Russian Federation, and are subject to Ch. 46 of the Criminal Procedure Code of the Russian Federation, which regulates the issues of the appeal of the sentence to execution. The appeal of a sentence that has not entered into legal force in terms of the imposed punishment to immediate execution, bypassing the prohibition established by law, and likewise, the selection of a preventive measure in accordance with the imposed punishment when passing a sentence solely for the purpose of its execution contradicts the constitutional principle of the presumption of innocence. The author claims that the provisions of

Part 2 of Art. 97 of the Code of Criminal Procedure of the Russian Federation, which determine the possibility of choosing a preventive measure to ensure the execution of a sentence, in their constitutional and legal meaning, assume that in order to ensure the execution of a sentence imposed on a sentence that has not entered into legal force and is not subject to execution, the court has the right to choose or change a measure of restraint according to the imposed punishment, if there are sufficient grounds to believe that the accused will evade serving the punishment imposed on him. The court does not have the right to choose or change the measure of restraint in relation to the accused in accordance with the punishment imposed at the same time as the sentence is passed. The issue of the need to apply a preventive measure in connection with the ruling of the verdict is subject to resolution in a separate court session at the request of the prosecution or on the initiative of the court after the announcement of the verdict.

Chernyavskaya Maria Stanislavovna, №2 2020

Directions for improving the activities of non-state forensic organizations

Abstract

. The article is devoted to the problems of non-state forensic expertise, especially in the field of non-state forensic institutions (organizations). As part of the consideration of these problems, the concepts of "forensic institution" and "forensic expert organization" have been analyzed. The position is substantiated according to which non-state forensic organizations should be created on a non-commercial basis. Also considered the requirements that may be presented to non-state forensic organizations. Based on this, proposals were made to improve regulation, including legal, non-state forensic activity. First of all, they include the creation of a forensic expert community, which would unite experts on the basis of presenting uniform requirements to them, for which it is necessary to carry out standardization in the field of forensic activity and certification of forensic experts. Additionally, the author considers the issues of advertising features of forensic organizations and their equipment. The latter includes the problem of the lack of

sufficient equipment for non-state forensic organizations to carry out forensic examinations.

Pestrikova Anastasia Alexandrovna, No. 2 2020

Human gene editing: the formation of international principles of legal regulation

Abstract

The article is devoted to the analysis of the 2018 UK Bioethics Council report on genetic engineering and editing of the human genome. The direction of formation of international legal principles of regulation of these relations is presented. Basically, two fundamental principles presented in the report are considered: welfare when using genetic engineering (and based on the rights and interests of a particular person, society and humanity as a whole) and the use of editing the human genome, which will not lead to aggravation of inequality and marginalization in society. The possibilities of genetic engineering at the present stage of development of science and technology, in particular, somatic editing and editing of the germ line of the human genome have been studied. Revealed the need for legal regulation.

Sadomovskaya Maria Evgenievna, №2 2020

Evolution of the legal framework of the European Union in the field of combating the legalization (laundering) of proceeds from crime and the financing of terrorism: current trends and prospects

Abstract

Currently, the European Union has a developed regime for combating the legalization (laundering) of proceeds from crime and the financing of terrorism. For almost thirty years of its existence, this regime has proven its effectiveness in achieving its goals due to the comprehensive nature of regulation and compliance with global achievements in the field of combating money laundering and terrorist financing, primarily the Recommendations of the Financial Action Task Force on Money Laundering (FATF). The AML / CFT regime developed by the European legislator has become an effective tool in the fight against money laundering in a situation when this problem has become especially acute in connection with the

widespread tightening of measures to combat terrorism, including international. It is for this reason that the European AML / CFT regime has served as a guideline in the development of anti-money laundering measures in many non-European Union states, including the Russian Federation. This article will consider the content of current trends in the legal regulation of the European Union in the field of combating the legalization of proceeds from crime and the financing of terrorism, as well as an overview of the main prospects and directions of development.