

Taeva Natalya Evgenievna, №3 2020

Institutionalization of the norms of constitutional law in the dynamics of the subject of legal regulation

Abstract

The article, based on the conceptual provisions put forward by E.I. Kozlova, aims to identify trends that are manifested in the development of constitutional and legal institutions at the present stage, taking into account the dynamics of the subject of legal regulation, as well as the ongoing transformation of the Russian legal system. In this regard, the problem of expanding the scope of regulated relations in the branch of constitutional law is considered. Conclusions are made about the blurring of boundaries between the institutions of constitutional law, which entails the problem of attributing norms to a specific institution. The problem of the emergence of cross-sectoral institutions, which cannot be unambiguously classified as public-law or private-law, material or procedural, is analyzed. This leads to the need to change the very approach to the concept of the institution of law. The conclusion is made,

Kononov Kirill Alexandrovich, No. 3 2020

"The subject of the industry gets its real expression in the system"¹: Professor E.I. Kozlova on the system of the branch of constitutional law and its institutions

Abstract

The article analyzes the creative heritage of Professor E.I. Kozlova in terms of her research into fundamental issues of the theory of constitutional (state) law - the system of the industry and state legal institutions. The author focuses on the innovative demarcation of prof. E.I. The gantry system of the branch of constitutional law and the structure of the Constitution, a meaningful approach to the construction of a state-legal institution, its consistent defense of the concept of the unity of the system of constitutional (state) law. The modern significance of the

¹ Kozlova E. I. On the issue of the subject of constitutional law of the Russian Federation: a modern format of discussion // Materials of the international scientific and practical conference " State and Law of the XXI century (Kutafin readings)": collection of theses. M. 2009. p. 5.

conclusions of E.I. Kozlova on the tendencies in the development of constitutional and legal institutions: the complication of their structure, expansion and specialization of constitutional and legal norms and, as a consequence, the emergence of complex institutions and problems of sub-branches;

Dudko Igor Gennadievich, No. 3 2020

Modern concepts in Russian constitutional law

Abstract

The change in the scientific paradigm in Russian jurisprudence is accompanied by the assertion of pluralism in legal science. The article notes that modern Russian constitutional theory seeks to express itself in the problems of ontological and axiological foundations, claiming to form an integral “constitutional philosophy”. One of the most significant concepts of constitutionalism is constitutional axiology.

Constitutional axiology is built as an area of scientific reflection (nature, content, system of constitutional values). From these positions, an assessment of the law enforcement practice of the constitutional justice body is given. The article recognizes the high importance of studies of constitutional law from the position of axiology.

The conclusion is formulated that constitutional values, as a reflection and expression of the "charter" of the life of society ("protoconstitutional"), is an objectified systemic set acting as the highest goal of constitutional development. Constitutional values are what the social and spiritual environment of society and the purpose of the state must correspond to.

The article critically evaluates the concept of a "living constitution" in its Russian interpretation as a constitutional and evaluative activity of the Constitutional Court of the Russian Federation on "generating" constitutional values. It is noted that the result of the activities of the Constitutional Court of the Russian Federation, expressed in legal positions, cannot be other constitutional values "generated" by it than those contained in the Constitution of the Russian Federation. “Transformation” of the content-legal attitudes and meanings of the

Constitution, constitutionally expressed values, without changing its text, can lead to “distortions” of the essence and its purpose to be an act with supreme legal force.

Osavelyuk Alexey Mikhailovich, No. 3 2020

Evolution of representative bodies in Russia

Abstract. Based on the analysis of the provisions of the Constitution of the RSFSR of 1918, the Constitution of the USSR in 1936, and the Constitution of the USSR in 1977, the basic principles of the organization and activity of the Soviets, as the representative bodies of power of the Soviet state, are shown. Scientific publications are analyzed, first of all, the scientific works of E.I. Kozlova, revealing the main stages and features of the evolution of the essence and activity of the Soviets at all levels of the Soviet state, as well as the shortcomings of the legal status and functioning of the national representative bodies of state power - the Soviets - in the Soviet period.

It is shown that with the adoption of the Constitution of Russia in 1993, a fundamentally new, democratic stage of development of representative bodies of state power, as well as local self-government, based on the principles of democracy, separation of powers, federalism, independence of local self-government and its representative bodies of power, began in the Russian Federation.

As a result of the analysis of scientific publications of Professor E.I. Kozlova, the author comes to the conclusion that even on the example of her research into one of the most important institutions of the state - the representative bodies of state power and local self-government in the Russian Federation, Ekaterina Ivanovna made an outstanding contribution to the development of the science of constitutional law in Russia.

Naruto Svetlana Vasilievna, No.3 2020

The value of the scientific heritage of Professor E.I. Kozlova for a modern understanding of the legislative process and legislation

Abstract

. The article discusses the development of lawmaking taking into account the current ideas of Professor E.I. Kozlova about the place of the legislative body in the system of state power, the procedure and results of its activities, the problems of determining the limits legislative regulation and politicization of lawmaking, which entails a decrease in the quality of laws. The conclusion is substantiated that the expansion of legislative regulation gives rise to problems, including conflict of laws, legal uncertainty, numerous references to subordinate regulation. Excessive

legislative regulation leads to the restriction of human rights and freedoms, hinders democratic processes. At the same time, the presence of gaps in the legislative material leads to arbitrary interpretation, unlimited discretion of the law enforcement officer.

The works of E.I. Kozlovoy are developed in the modern scientific doctrine of parliamentarism, federal legislative process and legislation, public control.

Valery Nevinsky, No. 3 2020

The essence of presidential power in Russia in the works of Professor E.I.

Abstract

. The article is devoted to the study of the scientific views of Professor Ekaterina Ivanovna Kozlova on the essence, content and role of presidential power in modern Russia. The opinion of E.I. Kozlova on the objective conditionality of the fact that the President of the Russian Federation is not included in any branch of state power; the conditional constitutional separation of the power of the President of the Russian Federation from the bodies of the traditional branches of state power, giving it an integrative function; the essence of the power of the President of the Russian Federation (presidential power) as the totality of his constitutional representative powers and, in part, powers in the legislative, executive and judicial branches. Some views of E.I. Kozlovoy are developing taking into account the author's position in relation to them.

Komarova Valentina Viktorovna, No. 3 2020

Modern mechanisms for the formation, identification and protection of the will of the people

Abstract

. The article analyzes the creative heritage of Professor E.I. Kozlova in terms of her research into fundamental issues of the theory of democracy and various forms of its manifestation and mechanisms of implementation. For many years of her creative life, Ekaterina Ivanovna Kozlova has studied the evolution of the conceptual foundations of democracy in the Russian Federation, the quintessence of which is the will of the people. The basic ideas of Ekaterina Ivanovna were reflected and developed both in the modern doctrine of constitutional and municipal law, and in practice. The article considers the local community as a way of forming and revealing the will of residents of a municipal formation. The modern development of the ideas of popular representation in the concept representative democracy, municipal and public representation; substantiating the idea, building and filling public power. The development of society and scientific and technological progress give rise to new risks, which requires the creation of new and renewal of existing mechanisms. This part examines the proposals of contemporary authors on the "popular accusation".

Zabelina Elena Pavlovna, No. 3 2020

Development of the lawmaking process at the municipal level

Abstract

This article systematically analyzes the lawmaking activities for the development and adoption of municipal legal acts. This activity is characterized as a municipal law-making process. On the basis of the positions of scientists who differentiate the municipal law-making process at the stage, and their corresponding analysis, the optimal number and characteristics of each stage of the law-making process at the municipal level are determined.

As a criterion for identifying the stages of the municipal law-making process, it is proposed to use a target criterion that allows you to highlight the specific procedures of each stage. At the same time, it is noted that only after the execution of the first stage procedures, conditions arise for the transition to the implementation of the procedures for the next stage of the municipal law-making process.

The author identifies two directions of the law-making process at the municipal level - the referendum process and the law-making activity of local self-government bodies, and also reveals their features. Considering that the population is the main subject of the referendum municipal law-making process, and the implementation of the constitutional right of citizens to hold local referendums is very difficult due to certain legislative restrictions, proposals are formulated aimed at enhancing the law-making initiative of the population of municipalities.

Ivanova Ksenia Alekseevna, No. 3 2020

Participation of residents in the development of urban agglomerations as an element of ensuring their safety

Abstract

By the author are being studied capabilities participation population in management urban agglomerations, are described types management

agglomerations. IN article investigated opportunity participation urban population in management as factor securing security cities. By the author done output about Tom, what already now agglomeration have large socio-economic weight. but them development is happening chaotic. On the federal level in Russian Federation has not yet worked out and not fixed approaches to an integrated development. IN quality possible approach to management described method decentralization. In his basis lies "Agglomeration thinking". its shaping look at territory How on single whole, not on aggregate parts; development territory whole, but not preferably center; as well as aspiration to harmonization interests of all participants process (residents, administrations municipalities, private entrepreneurship and etc.). article emphasizes what effective development agglomerations directly depends from state support and coordinated work miscellaneous level organs authorities on places. Explored foreign experience management urban agglomerations.

Rybakova Olga Sergeevna, No. 3 2020

Child safety in the context of the constitutional values of the Russian Federation

Abstract

The article studies the constitutional and legal nature of the child's right to safety, claiming the status of constitutional value. The author pays special attention to the study of the doctrinal understanding of constitutional values as a determinant of state and legal phenomena that constitute the spiritual, moral basis of the development of society and the state. The safety of the child is considered by the author through the category of safety of the individual (as a part and a whole), which in turn is the criterion of social security, which presupposes the protection of the entire spectrum of human values, rights and freedoms, incl. dignity, legitimate interests, property security, etc. Based on the analysis of the norms of the Constitution of the Russian Federation, the author shows that the guarantees of the safety of the child's personality are laid down in its very text. The article substantiates the conclusion that at the present stage of the development of Russian statehood, child safety is a constitutional value built into the general security system

of an individual, society, and state, which demonstrates the interdependent nature of the organizational and legal foundations of Russia's national security. Ensuring the safety of a child in the context of constitutional and legal values presupposes, according to the author, the creation of a favorable environment for the child's life in which an encroachment on his life and health is impossible, the formation of which is ensured by a system of guarantees: economic, political, social, moral and, of course, legal.

Leshchina Eduard Leonidovich, No. 3 2020

Administrative and procedural status of participants in disciplinary proceedings

Abstract. The article examines the legal status of participants in disciplinary proceedings, highlights and analyzes the existing points of view on their classification. Bringing together a number of approaches, the author proposes to classify the participants in disciplinary proceedings on the following grounds: 1) according to their functional role in production; 2) depending on the obligation of their participation in the production; 3) depending on the interest of the participants in the disciplinary proceedings in its results. The following is a description of the administrative and procedural status of participants in disciplinary proceedings, and proposals for improving the legal status of a civil servant in respect of whom disciplinary proceedings are being carried out are substantiated. It is concluded that that disciplinary proceedings as a whole are a means of realizing the legitimate interests of its participants. In conclusion, the opinion is expressed that the current state of legal regulation of the legal status of participants in disciplinary proceedings in the system of the civil service of the Russian Federation in the conditions of the incompleteness of the reform of the institution of civil service is far from perfect.

Churilov Alexey Yurievich, No.3 2020

Intellectual property in the age of 3D printing

Abstract

. The paper examines the features of three-dimensional printing and what innovations it has brought to the field of copyright, industrial property rights, in particular to an industrial design, and means of individualization. The concept and

some features of the technology of three-dimensional printing are disclosed. The author studies the exclusive rights to which results of intellectual activity may be violated when using 3D printing technology. It is concluded that the exclusive rights to an industrial design, trademarks, and also to objects of copyright may be violated. Actions are investigated that will not constitute a violation of the exclusive right to the considered results of intellectual activity. It was concluded that not every action would constitute a violation of exclusive rights, in particular, use of a trademark for purposes not related to the introduction of goods into circulation; use of an industrial design for purposes not related to the implementation of entrepreneurial or other income-generating activities.

Gribov Nikolay Dmitrievich, No. 3 2020

The Doctrine of the Prohibition of Conflicting Behavior

Abstract

. The article is devoted to the study of the legal structure of the prohibition of contradictory behavior. The author has carried out a comparative study of the legal constructions *venire contra factum proprium* and *estoppel*. It is concluded that, by their legal nature, the designated legal phenomena are different, although they have a single goal - to protect the rights and interests of the weak party. The work indicates that under the prohibition of contradictory behavior, one should consider a rule aimed at protecting a bona fide party by refusing to satisfy claims (material aspect) and (or) refusing to satisfy a procedural request (procedural aspect), if the actions of the party that filed the claim, is aimed at refuting one's own pre-trial behavior (material aspect) and (or) behavior in the framework of court proceedings (procedural aspect). The author also highlights the elements of the *venire contra factum proprium* rule, which form the subject of proof when referring to this doctrine, in particular: (1) the contradiction of secondary behavior to the original behavior, (2) the presence of bad faith in the actions or intentions of the person acting in a contradictory manner, (3) causing or intent to harm the opposing party.

Dmitry Tereshchenko, No.3 2020

**Specificity of the legal regime of functioning of objects of civil legal relations
(theoretical aspect)**

Abstract

. The article analyzes the current state of development of the concept of the legal regime and its features in the legal literature. It is pointed out that the key phrase "regulation order" in the definition of the legal regime is not fully consistent. Broader approaches to understanding the phenomenon of the concept of "legal regime" are proposed, in the form of a functional characteristic of the action of law. Also, it is noted that to describe the features of the legal regime, researchers often and haphazardly use individual qualitative characteristics that do not fully reveal the meaning of the definitions of both the legal regime and its individual features. The author clarifies the difference between the characteristics "special" and "special", "special" and "specific" in relation to civil legal relations. The conclusion is made about the need for legislative consolidation of the identified differences and the establishment of two types of legal regimes - the legal regime of activity and the legal regime of the object's functioning. On the basis of the structural study, the author's definition of the legal regime and civil law regime was formulated.

Ivan Karavaev, No.3 2020

Detention and Detention: A Comparative Legal Analysis

Abstract

. The paper analyzes the legal regulation of the detention of persons detained on suspicion of committing a crime, as well as persons in respect of whom a measure of restraint in the form of detention has been chosen. The article examines the provisions of the Federal Law "On the detention of suspects and those accused of committing crimes", as well as the Criminal Procedure Code concerning the specified legal relations. The article examines the differences between two types of custody: "during arrest" and "during custody". There are six fundamental criteria that underlie the distinction between the two types of detention: the basis of the detention; the person or body empowered to decide on detention; term of detention; place of detention; the legal status of persons in custody; grounds for release.

Larichev Alexander Alekseevich, №3 2020

Historical and foreign experience of implementing the principle of the supremacy of the council in the system of local government and self-government: lessons for modern Russia

The Municipal Council is called upon to provide an important function of representing the interests of the population at the local level. At the same time, in Russia, the evolution of the legal status of this institution since the early 1990s is ambiguous - the functionality of representative bodies is limited, there are organizational shortcomings in their activities. In the article, through the prism of the views and ideas of the famous Soviet and Russian constitutionalist E.I. Kozlova, considers the nature and legal status of local representative bodies, based on the principle of their supremacy. The implementation of this principle is also analyzed on the example of foreign models of local self-government. According to the author,

Kabyshev Sergey Vladimirovich, №3 2020

The legitimacy of power and constitutional continuity

Abstract

. The article analyzes the views of Professor E.I. Kozlova about the lost values of the procedures for the constitution of the Russian parliament, the risks of inconsistent implementation of the mechanisms for recognizing the powers of elected deputies of legislatures, the peculiarities of these procedures in other countries. The mechanisms of ensuring the legitimacy of the authorities have been identified. The importance of preserving legal traditions, customs and rituals to ensure the stability of the constitutional legal order is argued. It is hypothesized that constitutional identity and continuity of historical development are covered by the concept of constitutional continuity. The conclusion is formulated that the study of the constitutional continuity as a concept reflecting the natural connections between various states of the constitutional legal order is necessary because it can help to ensure the legitimacy of power and the search for optimal ways to transform the constitutional legal system.