Przhilensky Vladimir Igorevich, №4 2020

Individual rights and concern for the future of the genus: possibilities and boundaries of building the axiomatics of legal regulation of bioengineering

Abstract

. The article analyzes the possibility of predicting and even retrospectively tracing all the socio-historical consequences of scientific discoveries, as well as their impact on the deepest layers of human existence. The research leading to the discovery of antibiotics illustrates the boundaries and possibilities of those who claim to be experts in the field of futurology. The analysis examines the role of social institutions and practices, through which control over the processes of using the latest scientific achievements is achieved, as well as an insufficient level of competence in managing the development of technical systems. The intuitions of philosophers and representatives of the humanitarian intelligentsia are explicated regarding such significant effects of modernity as "cultural and ethnic redistribution" and other similar results of the development of scientific thought. The contours of axiological uncertainty are outlined in which Russian legislators find themselves in an effort to rely in their activities on the Russian tradition, which includes the pre-revolutionary, revolutionary and post-revolutionary periods. These periods are very different from an axiological point of view. At the same time, value gaps appeared, then smoothed and bridged, and the entire value system is in the process of searching for its own identity. Conceptual possibilities of presenting the phenomenon of somatic human rights in the subject space of legal thought in the context of their legislative protection are investigated. Experiences of discussion by lawyers of the topic of personality integrity and means of its legal protection are analyzed. The issues of correlation of individual and collective goal-setting in the knowledge society and within the framework of the modern system of social relations are considered. The current principles of bioethics are subjected to philosophical and critical reflection as the basis for legal regulation and as an implication of the system of humanitarian values and human rights.

Artemov Vyacheslav Mikhailovich, No. 4 2020

Moral philosophy as a methodological basis and value guideline of professional ethics in law

Abstract

. Proceeding from the statement of the obvious deficit of morality in professional fields, where the person himself, and therefore society as a whole, is often under attack, the author of the article substantiates the position that it is moral philosophy that is called upon to act as a methodological basis and value guide of professional ethics in law. in the center of which a person initially appears as a person, and not an external object as a formal value. The approach is positioned according to which the training of modern lawyers presupposes the strengthening of morality in law by the forces of professional philosophers, first of all, ethics, who are able to give knowledge about the origin and essence of morality, the history of ethical teachings, the content of categories and values; carry out a sufficiently deep moral and philosophical examination of various applied problems, keeping in mind their internal relationship. All this makes it possible to understand that a kind of core in the professional activity of a lawyer is the motivation to perform the necessary work, which is important for the common cause, necessary for the preservation and improvement of society in the direction of the social ideal. From this comes the philosophical and legal club "Moral Dimension of Law", which has been successfully operating on the basis of the Department of Philosophy and Sociology for 18 years. The combination of educational and scientific activities has a serious educational value, which in a sense is salutary for modern education as a whole. necessary for the preservation and improvement of society in the direction of the social ideal. From this comes the philosophical and legal club "Moral Dimension of Law", which has been successfully operating on the basis of the Department of Philosophy and Sociology for 18 years. The combination of educational and scientific activities has a serious educational value, which in a sense is salutary for modern education as a whole. necessary for the preservation and improvement of society in the direction of the social ideal. From this comes the philosophical and

legal club "Moral Dimension of Law", which has been successfully operating on the basis of the Department of Philosophy and Sociology for 18 years. The combination of educational and scientific activities has a serious educational value, which in a sense is salutary for modern education as a whole.

Elena Aleksandrovna Berezina, No. 4 2020

Limits of legal regulation of social relations: problems of understanding, classification and significance in the mechanism of legal regulation

Abstract

. The article examines the problem of the limits of legal regulation, analyzes the factors that determine the degree of impact of law on public relations, discusses the issues of the dependence of understanding the limits of legal regulation on the type of legal thinking. Special attention is paid to the classification of the limits of legal regulation. In domestic and foreign legal science, the problem of the limits of legal regulation has not been unambiguously resolved. There are many definitions of the concept of "limits of legal regulation". In the most general form, the limits of legal regulation can be considered as a measure of the permissible, necessary and sufficient impact of the right on public relations, carried out with the help of special legal means, due to the presence of objective and subjective factors. First of all, the understanding of the limits of legal regulation depends on the type of legal thinking within which this problem is considered. In addition to analyzing the limits of legal regulation within the framework of the theory of legal positivism, the article examines other approaches to this problem: the limits of legal regulation are studied in the light of sociological, anthropological, discursive (R. Alexi), integral (R. Dvorkin), procedural (L. Fuller) theories of law. Special attention is paid to the consideration of the types of limits of legal regulation. In addition to the traditionally singled out classification criteria based on volition and on the basis of the direction of interests, it is proposed to classify the limits of legal regulation depending on the modality and depending on the volume of relations regulated by law.

Batiev Levon Vladimirovich, No. 4 2020

"Search" in the Russian adversarial process of the second half of the 17th - early 18th centuries.

Abstract

. The adversarial process included "trial" - the stage at which the parties got acquainted with the claims of the plaintiff and the explanations of the defendant, determined the evidence in the case, and "investigation" - the examination of evidence. The subjects of proof were the court and the parties. The burden of proof lay on the parties. Collection of evidence at the initiative of the court in the second half of the 17th century. was not allowed. The acceptance of certain means of proof and the extension of their value to both parties depended on the consent of the litigants. By the beginning of the 18th century. evidence is becoming more and more public. The legislator seeks to limit the amount of evidence in the case and to build a sequence of their use. The evolution of the adversarial process was accompanied by the liberation from the remnants of the ancient indictment, the restriction of the rights of the parties and the strengthening of the public nature of the proceedings. However, the merger or transformation of the adversarial process into the wanted list did not take place. Throughout the process, the active role of the parties, their equality, and the ability to influence the course of the case and the procedural decisions taken by the court remained

Vorontsova Natalia Leonidovna, No. 4 2020

Education as a service

Abstract

. The variety of relations covered by the general concept of "relations in the field of education" requires the use of various methods of legal regulation and taking into account the characteristics of emerging relations. Being a process of training and upbringing, education contributes to the development of personality and at the same time satisfies the need of a person of a professional and qualification nature. The article attempts to show the variety of approaches to defining the essence of education. Against the background of the theoretical multivariance of the definition of the content of the concept of "education", the study of the legal aspect of educational policy acquires a special meaning. The analysis of educational legislation makes it possible to observe the use of a narrow meaning of the concept

of "service", first of all, as a paid educational service. Statistical data, presented in the article demonstrate an increase in demand for paid educational services provided by state and municipal educational organizations. However, education as a social institution presupposes a policy of general accessibility and free education. The analysis of theoretical and legal material made it possible to define education as a socially significant benefit, realized as a service. Changes in the status of an educational organization as a result of the reform of the budgetary sector are considered. The article defines the range of normative legal acts regulating the provision of state (municipal) services in the field of education. education as a social institution presupposes a policy of general accessibility and free education. The analysis of theoretical and legal material made it possible to define education as a socially significant benefit, realized as a service. Changes in the status of an educational organization as a result of the reform of the budgetary sector are considered. The article defines the range of normative legal acts regulating the provision of state (municipal) services in the field of education. education as a social institution presupposes a policy of general accessibility and free education. The analysis of theoretical and legal material made it possible to define education as a socially significant benefit, realized as a service. Changes in the status of an educational organization as a result of the reform of the budgetary sector are considered. The article defines the range of normative legal acts regulating the provision of state (municipal) services in the field of education.

Dobrovinsky Alexander Andreevich, №4 2020

Some aspects of the interpretation and application of Art. Art. 35, 39, 45 of the RF IC in judicial practice.

Abstract

. The article analyzes the interpretation and application of certain norms of Art. Art. 35, 39, 45 RF IC. A characteristic is given to the norms devoted to the regulation of property relations in the family and the responsibility of spouses for obligations, and their types are also disclosed in detail. The concept of debt and the need to include it in the norms of Family legislation are analyzed. Particular attention is paid to the interpretation of the rules aimed at the procedure for the

implementation of transactions with the common property of the spouses, the procedure for enforcing the collection of the debts of the spouses. Revealed common features in the implementation of transactions with the common property of spouses and transactions that may lead to the emergence of common debt obligations. The existing judicial practice on this issue of the Supreme Court of the Russian Federation is considered. Practical problems in the sphere of application of the specified legal norms, as well as existing contradictions in the approaches of the legislator and the courts in the regulation of homogeneous property relations in family law, are noted. Suggestions for improving the legislation are given.

Ivakin Valery Nikolaevich, No. 4 2020

Factual basis of the claim: concept and composition

Abstract

. Abstract The factual basis of the claim consists of those facts that substantiate the claim of the plaintiff. The basis of the claim may include various facts of legal significance. These facts are classified into law-making (law-producing), law-obstructing, law-changing and law-terminating. Some authors, as an independent type of facts that may be included in the basis of the claim, highlight the facts of violation or challenge of the right or legitimate interest. The article substantiates the attribution of these facts to law-making. The views are also criticized, according to which the understanding under the basis of the claim of legal facts and the ability of the plaintiff to substantiate the claim with any facts of reality, including those having only informative value, are recognized as incorrect. The author also expresses a negative attitude towards the division of the basis of claim into active and passive, which is widespread in civil procedural science, since the infringing facts included in the passive basis of the claim, often referred to as the facts of the reason for the claim, are law-generating facts, and therefore should be attributed to the active basis of the claim. The delimitation of the facts of active and passive legitimation from the rest of the facts of active and passive legitimation seems to be unnecessary and artificially complicating the structure of the basis of the claim. In the procedural theory, the opinion was expressed that the basis of the claim is not necessarily

exactly what the plaintiff indicated. Meanwhile, in this case, it is allowed to confuse the concepts of "ground for a claim" and "grounds for satisfying a claim", in connection with which this view cannot be recognized as correct. Thus,

Salnikova Anastasia Vladimirovna, No. 4 2020

Blockchain technology as a copyright protection tool

Abstract

. The study of blockchain technology is one of the most relevant topics in scientific circles and among specialists in various fields, which is due to the consolidation of blockchain as one of the digital technologies of the national program. The aim of the work is to substantiate the feasibility of using blockchain technology as a tool for protecting copyright. The work uses a systematic approach, dialectical method, methods of analogy, generalization, induction. Analysis of the theoretical foundations of blockchain technology and application practice allowed the author to come to the conclusion about the significant potential of its use in the field of intellectual property in Russia. The author identified both the advantages and the main problems of this technology as a tool for protecting copyright at the present stage. Despite the absence of a legislatively enshrined need for registration of works, in practice authors quite often have to prove their authorship, which is not always easy. In the era of the Internet and the development of the digital economy, it becomes more and more difficult to control the use of works and the payment of rewards. The introduction of blockchain into the field of intellectual property will allow confirming the authorship of works, dispose of copyrights and control their use, and receive remuneration for the use of works. Reliable and secure technology allows authors, copyright holders and consumers to interact openly, transparently, without intermediaries, minimize time and financial costs, and protect copyright. One of the topical and most significant problems is still the lack of legislative consolidation of blockchain technology in Russia. The author came to the conclusion that blockchain technology creates a new and simpler tool for confirming authorship, disposition and control over the use of works, which does not replace the existing system of copyright protection, but supplements it.

Kichigin Sergey Vladislavovich, No. 4 2020

Suspension of validity and suspension of performance of an employment contract

Abstract

. This article raises the problem of the procedure for the suspension of the employment contract, reveals significant differences between the grounds and procedure for the suspension of the employment contract unilaterally and in a contractual manner, it is proposed to terminologically separate these procedures in order to prevent confusion of concepts, separating the actual suspension of the employment contract from the unilateral suspension of it. In the work, considerable attention is paid to the study of the content of the term for the suspension of the employment contract, the identification of significant characteristics of the procedure and controversial issues in the formulation of the legislative norm. Based on the defining key characteristics, the identified meanings of the concept of suspension of the employment contract,

Ivanov Evgeny Evgenievich, №4 2020

Notification of participants in proceedings at the pre-trial stages: strengthen guarantees

Abstract. Resume: The current issue of increasing the effectiveness of guarantees of notification in criminal proceedings at the pre-trial stages is considered, including through the introduction of new procedural means to bring information to the participants in criminal proceedings using information technologies. Notification in criminal proceedings does not fully fulfill the function of ensuring the effective implementation of the rights and legitimate interests of participants who are either not notified of all the necessary procedural actions and their capabilities, or are notified formally, or, contrary to the law, are not notified at all. One of the reasons for this situation is the weakness of guarantees of notification in the criminal process and too narrow understanding of the essence of this type of procedural activity. To solve the problems posed in this study, a system of methods of scientific knowledge is used. The author relied on the method of materialistic dialectics (the problem of notification is considered taking into account general procedural problems, the purpose of criminal proceedings, its principles, the rights

and obligations of participants in criminal proceedings, procedural guarantees), on general scientific methods: historical, logical, sociological, as well as private scientific methods research: formal legal, systemic legal, logical legal.

Kovtun Yulia Sergeevna, №4 2020

Discussion issues of the corpus delicti in the field of art in the criminal legislation of the Russian Federation

Abstract

. Choosing the subject of research in the field of scientific knowledge, related equally to both criminal law, which has extensive scientific potential, and with the boundless world of art, which inspires thinking not only about itself as a phenomenon, but also for a lawyer - about its understanding in context law, ultimately our goal is to clarify the content of modern criminal law policy in the field of art in Russia. Within the framework of this article, the author examines the main structures of art crimes existing in the national criminal legislation, through the prism of the specifics of the sphere of art, some shortcomings of legislative structures establishing responsibility for the relevant crimes are revealed.

Kuchina Yaroslava Olegovna, No. 4 2020

Cryptocurrency turnover as an object of crime and doctrinal errors of its perception

Abstract

. Cryptocurrency and the problems of its legal regulation have recently become the object of numerous studies. Juridical sciences, including criminal law, do not stand aside either. The contradictory nature of the legal nature of cryptocurrencies, the inability to accurately determine their species, a sufficiently large number of questions from the side of the law enforcement officer led to the emergence of an extensive doctrinal discussion. One of the most pressing issues, in the opinion of the author of the article, is the definition of cryptocurrency relations as an object of crime, and how errors in the perception of these relations and, most importantly, their subject matter, affect law enforcement and the subsequent qualification of offenses. The article discusses in detail the main points of view on the essence of cryptocurrency, the positions of scientists on this issue. The author explains,

Smushkin Alexander Borisovich, No. 4 2020

Possibilities of using computerized systems of a car and devices installed on it in the investigation of information

Abstract

. The article draws attention to the development of computerized car systems and the expansion of their functionality. However, at the same time, according to the author, the use of information from these devices for criminalistic purposes of investigating crimes is paid in science and in practice there is clearly not enough attention. The article discusses the main range of systems that allow obtaining forensically significant information, as well as the possibility of practical application of obtaining electronic information from computerized vehicle systems. The conclusion is made about the possibility of forensic research of computerized car systems using forensic developments in the field of electronic traces and electronic evidence. Correctly conducted research can allow obtaining a dynamic three-dimensional model of a crime committed traffic accident, as well as other criminal events recorded by car sensors. The article also discusses the prospects for research on the so-called "Smart Cars". An increase in the efficiency of examination is noted in the production of a complex computer autotechnical study.

Terentyeva Lyudmila Vyacheslavovna, No. 4 2020

The criterion of the directed activity of the professional side to the territory of the country of residence of the consumer as a condition for special conflict regulation of consumer relations

Abstract

. The article examines the specifics of conflict regulation of consumer relations in the digital environment. For these purposes, the author analyzes, enshrined in the law of the Russian Federation and the European Union, the criterion of "directed activity of the professional party to the territory of the country of residence of the consumer", the presence of which determines the use of special conflict of laws protection, both in relation to the consumer and the professional party, endowed the use of these protective collision mechanisms. The article

formulates proposals to clarify the content and scope of this criterion, the purpose of which is, on the one hand, to protect the consumer from the use of an unfavorable law of a particular state, and on the other, establishing a reasonable degree of predictability in relation to the professional side of the application of the consumer's residence law and establishing judicial jurisdiction. The aim of the article is to examine specifics of conflict regulation of consumer relations in a digital environment. For this purpose, the author carries out an analysis of the criterion of “the directed activity of the professional party to the territory of the country of the consumer's domicile” stipulated in the law of the Russian Federation and the European Union. The primary task of the present article is to formulate proposals to clarify the content and scope of this criterion, the purpose of which is, on the one hand, to protect the consumer from the application of an unfavorable law of a state, and on the other hand,

Petrov Konstantin Valerievich, №4 2020

Fair and Equal Treatment as a Mechanism to Protect Investor Rights in Environmental Investment Disputes

Abstract

. In the article, the author examines the relationship and mutual influence of international investment and environmental law on the example of one of the most effective mechanisms for protecting the rights of an investor - the standard of fair and equal treatment. As part of the study of the application of the standard in investment disputes related to environmental protection, the content of the fair and equal treatment standard is considered, in the form of obligations of the state-recipient of investments. Highlighted the most essential guarantees of fair and equal treatment in the context of "environmental investment" disputes: due process, protection of legitimate (reasonable) expectations and access to justice. The features of their application in "environmental investment" disputes by analyzing the practice of investment tribunals are considered. Cases were considered, in which the investor does not have the right to invoke the violation by the state of the recipient of the investment of the standard of fair and equal treatment. It is concluded that the

application of the standard should contribute to finding a balance of interests between public and private interests.

Sadomovskaya Maria Evgenievna, No. 4 2020

Evolution of the legal framework of the European Union in the field of combating the legalization (laundering) of proceeds from crime: a historical overview

Abstract. Over the past twenty-eight years, the European Union has developed a regime for combating the legalization (laundering) of proceeds from crime and the financing of terrorism. Already during the first years of its development (from 1991 to 2005), the legal regulation of the European Union in the field of combating the legalization (laundering) of proceeds from crime has proven its effectiveness in achieving the set goals due to the comprehensive nature of regulation and compliance with global achievements in the field of AML / CFT, primarily the Financial Action Task Force on Money Laundering (FATF) Recommendations. 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.

Kornakova Svetlana Viktorovna,
Mishchenko Elena Valerievna,
Mishin Victor Vadimovich, No. 4 2020

Application of conciliation procedures in the CIS countries: comparative legal analysis

Abstract

Abstract. The article is devoted to the consideration of the regulation of conciliation procedures by the norms of the legislation of the CIS countries, the application of which depends on the will of the parties and entails a change in the general procedure for criminal proceedings. Their undoubted practical advantages are noted. On the basis of a comparative legal analysis, the authors investigated the legislative norms of each of the CIS countries, which regulate conciliation procedures in criminal proceedings. Some features, advantages and disadvantages of such regulation are revealed. The conclusion is made about the importance

attached to conciliation procedures, which have become an integral part of the legal system of the CIS countries, as well as about the similarity of many basic provisions concerning their regulation. It was noted that the legislation of all CIS countries contains conciliation procedures, based on the reconciliation of the parties and active repentance of the person who committed the crime (with the exception of the legislation of Kyrgyzstan). At the same time, for making a decision to release a person from criminal liability, similar conditions are provided, namely: a category of crime clearly defined by law, the consent of the suspect (accused) and compensation for the harm caused by the crime. It is noted that Kazakhstan, Belarus, Kyrgyzstan have accumulated experience in the successful use of mediation as a way of resolving conflicts in the pre-trial order. Such experience, according to the authors, is advisable and necessary to study and use in the process of improving domestic legislation. At the same time, for making a decision to release a person from criminal liability, similar conditions are provided, namely: a category of crime clearly defined by law, the consent of the suspect (accused) and compensation for the harm caused by the crime. It is noted that Kazakhstan, Belarus, Kyrgyzstan have accumulated experience in the successful use of mediation as a way of resolving conflicts in the pre-trial order. Such experience, according to the authors, is advisable and necessary to study and use in the process of improving domestic legislation. At the same time, for making a decision to release a person from criminal liability, similar conditions are provided, namely: a category of crime clearly defined by law, the consent of the suspect (accused) and compensation for the harm caused by the crime. It is noted that Kazakhstan, Belarus, Kyrgyzstan have accumulated experience in the successful use of mediation as a way of resolving conflicts in the pre-trial order. Such experience, according to the authors, is advisable and necessary to study and use in the process of improving domestic legislation. Kyrgyzstan has accumulated experience in the successful use of mediation as a way to resolve conflicts in the pre-trial order. Such experience, according to the authors, is advisable and necessary to study and use in the process of improving domestic legislation. Kyrgyzstan has accumulated experience in the successful use of

mediation as a way to resolve conflicts in the pre-trial order. Such experience, according to the authors, is advisable and necessary to study and use in the process of improving domestic legislation.

Agafonov Vyacheslav Borisovich,
Natalya G. Zhavoronkova, No. 4 2020

Theoretical and legal problems of ensuring the biological safety of the Russian Federation

Abstract. The article is devoted to the study of modern theoretical and legal problems of ensuring biological safety in the context of the discussion of the Draft Federal Law No. 850485-7 "On the biological safety of the Russian Federation". Based on the results of the critical assessment of the draft law, in addition to the analysis of direct threats and risks, the authors identified the features (specificity) of biological safety problems from the point of view of organizational and legal features and from the theoretical positions of environmental law. The conclusion is proved, according to which the proposed version of the draft law has insufficient efficiency from the point of view of a real, practical, immediate and effective response to solving a complex of problems of ensuring biological safety, a response to a biological threat. The authors have proposed a number of theoretical conclusions and practical recommendations,

Fatherly Tatiana Ivanovna, No. 4 2020

In memory of the teacher, Professor V.I. Rokhlin

Abstract. Head of the Department of Organization of Judicial and Prosecutor's and Investigative Activities of the Moscow State Law University named after O.E. Kutafina (Moscow State Law Academy) T.I. Otcheskoy, Candidate of Legal Sciences, Associate Professor of the Department of Organization of Judicial and Prosecutorial Investigative Activities of the Moscow State Law University named after O.E. Kutafina (Moscow State Law Academy) T.G. Voevodina, judge of the highest qualification class of Honorary Worker of the Judicial System, Honored Lawyer of the Russian Federation A.A. Koloskov, Doctor of Law, Professor, Head of the Department of Human Rights, Law Enforcement, Criminal Law and Procedure, Pskov State University B.B. Cossack, etc. Associate Professor of the

Department of Organization of Judicial and Prosecutorial Investigative Activities of the Moscow State Law University named after O.E. Kutafina (Moscow State Law Academy) T.G. Voevodina, judge of the highest qualification class of Honorary Worker of the Judicial System, Honored Lawyer of the Russian Federation A.A. Koloskov, Doctor of Law, Professor, Head of the Department of Human Rights, Law Enforcement, Criminal Law and Procedure, Pskov State University B.B. Cossack, etc. Associate Professor of the Department of Organization of Judicial and Prosecutorial Investigative Activities of the Moscow State Law University named after O.E. Kutafina (Moscow State Law Academy) T.G. Voevodina, judge of the highest qualification class of Honorary Worker of the Judicial System, Honored Lawyer of the Russian Federation A.A. Koloskov, Doctor of Law, Professor, Head of the Department of Human Rights, Law Enforcement, Criminal Law and Procedure, Pskov State University B.B. Cossack, etc. criminal law and process of the Pskov State University B.B. Cossack, etc. criminal law and process of the Pskov State University B.B. Cossack, etc.