Lipen Sergey Vasilievich, No. 10 2020

The network paradigm and the modern state in legal research at the beginning of the XXI century.

Annotation. The network paradigm assumes a view of society as an open, multilevel, decentralized system of interactions. The social concept of a networked society is terminologically matched by the idea of a "networked state"; the network state is characterized by the decentralization of power, the priority of horizontal ties, and an almost equal position of the state among other political actors. Legal science is not inclined to exaggerate the role of networks and proceeds from the need for sovereign state power, the obligatory presence of hierarchical power relations. Nevertheless, it is essential to see both the new opportunities that network technologies provide for the institution of the state and the corresponding risks. The advantages and disadvantages of network strategies are relatively poorly known to modern jurisprudence. and here research at the intersection of legal science and political science, sociology, and management science is promising. The network methodology can quite organically be included in the methodological tools of jurisprudence. At the same time, legal science reflects many problems of the theory of a network society and the networkization of state activity in its concepts and categories, without using the "network" terminology.

Filin Andrey Yuryevich, No. 10 2020

The Schumpeterian State of Labor in Political and Legal Studies of the Modern State

Annotation. Based on the analysis of scientific literature, the article examines one of the possible models of the modern state - the Schumpeterian workfare state. The author assesses the phenomena that determined the transition to a new production and technical paradigm of post-Fordism. The preconditions for the formation of the idea of the Schumpeterian state of labor and its main essential characteristics are considered. In particular, it is noted that the model of the Schumpeterian state of labor is applicable to any state of the capitalist type at the present stage, regardless of whether they have passed the stage of Fordism. The

author's definition of the category of the Schumpeterian state of labor, which was previously absent in the modern domestic theory of the state, is proposed. The author poses a number of problems which require permission for theoretical understanding and practical application of the model of the Schumpeterian state of labor. Taking into account the above, updating the doctrine of the state in domestic science is seen as necessary to create a solid theoretical basis for the development and functioning of the Russian Federation at the present stage.

Ilya Isakovich Aminov, No. 10, 2020

The development of statehood in the Central Asian region in the Hellenistic period (IV-III centuries BC)

Annotation. against the background of an objective reconstruction of the foreign policy situation of Central Asia in the era of antiquity, it is argued that the victory of Greece and Macedonia over the Achaemenid Empire, which included the Central Asian regions (Sogd, Bactria, Margiana, Parthia, Hyrcania), was largely a victory of a more developed slave economy over more backward forms. This ensured the creation of favorable conditions in the Central Asian region for the further development of economic relations, the wide expansion of trade, the establishment of regular monetary circulation, in other words, the integration of the Central Asian region into the ancient community. At the same time, more effectively than under the Achaemenids, the danger of separatism on the part of large provinces (satrapies), forming an economic and cultural-ethnic whole, was suppressed. The fusion of the highest Greek (Hellenistic) culture and the way of life of the original local society gave rise to a progressive historical phenomenon-Hellenism. It covered not only the Middle East and the Mediterranean, but also the Central Asian region up to the Tashkent oasis (Chach). At the same time, the external forms of ancient Greek statehood on the territory of Central Asia during the IV-III centuries BC absorbed the features inherent in Eastern despotism.

Oleg Brezhnev, **No. 10 2020**

Preliminary constitutional review and its implementation in Russia: problems of theory and practice

Annotation. The article deals with the problems related to the legal nature, normative regulation and the procedure for the implementation of the institution of preliminary constitutional control in the Russian Federation. Ensuring the elimination of the revealed violations in a preventive manner, the implementation of this type of constitutional control is fraught with certain risks associated with the limited time frame of its implementation, the impossibility of taking into account the interpretation of the impugned norm in law enforcement, etc. The permissible forms of using preliminary control in the activities of constitutional justice bodies in Russia are shown (when checking the constitutionality of international treaties of the Russian Federation, assessing constitutional amendments, etc.); the existing practice of the implementation of the relevant powers has been studied. Particular attention is paid to the analysis of the legal positions of the Constitutional Court of the Russian Federation, determining the limits of the implementation of preliminary judicial constitutional review. The author considers the issue of the powers of the constitutional (statutory) courts of the constituent entities of the Russian Federation in the area under study.

\ Ponomareva Karina Aleksandrovna, No. 10 2020

Tax measures to combat the consequences of the CoVID-2019 pandemic: the experience of the EU and the OECD

Annotation. Modern cross-border tax relations operate within the framework of a multi-level system of legal regulation based on the norms of international, supranational and national law. In 2020, the coronavirus (COVID-19) pandemic triggered a systemic crisis that required an urgent response, including in the area of taxation. In response to the threats posed by the pandemic, the OECD, the EU and individual states have adopted tax measures to mitigate the effects of the economic crisis and ensure the safety of their citizens. The article provides an overview of

these support measures and concludes that these measures need to be considered both in the national and in the transboundary context. It is noted that in the situation with the pandemic, different countries around the world are faced with a common problem for all. At the same time, the means of tax regulation were one of the most important mechanisms of state support measures for the affected enterprises and citizens. However, in different states, these mechanisms and the results of their application are different and had different effects.

Mirzaev Rustam Mirzaevich, **No. 10 2020**

Regional investment project: balance of fiscal powers

Annotation.

In the context of the need to finance large investment projects in the constituent entities of the Russian Federation, a regional investment project is a promising mechanism for providing tax incentives to investors. The Tax Code of the Russian Federation provides for three types of participants in regional investment projects, for which different procedures for granting tax benefits and their scope are provided. The mechanism for granting benefits to participants of regional investment projects is implemented through joint legal regulation by the Russian Federation and its subjects. Such a mechanism effectively takes into account the fiscal interests of the subjects of the Russian Federation by providing them with additional fiscal powers in terms of providing tax benefits to participants of regional investment projects. At the same time, the Tax Code of the Russian Federation provides for a mechanism for granting benefits to participants of regional investment projects without taking into account the opinion of the subject of the Russian Federation, based only on the decision of the federal executive body. This may lead to the loss of financial stability of the subject of the Russian Federation due to the inability to regulate the revenues of its budget. Further improvement of the regional investment project institution is required in order to ensure a true balance of the fiscal powers of the Russian Federation and its subjects.

Shaikhutdinov Evgeny Maratovich, **No. 10 2020**

Refusal to release a citizen from obligations upon completion of the bankruptcy procedure

Annotation. The article examines the history of the institution of bankruptcy of citizens in the Russian legislation, justifies its social and rehabilitative nature. The article analyzes the grounds for applying the legal institution of refusal to release a citizen from obligations upon completion of the bankruptcy procedure. The legal grounds for refusal to release from obligations related to both illegal actions of a citizen preceding the initiation of bankruptcy proceedings and actions committed during the bankruptcy procedure are given. The main reason for the refusal to release from obligations is the concealment of the necessary information by the debtor citizen or the provision of deliberately unreliable information. At the same time, the conclusion is formulated about the need to identify in each case signs of abuse of law (bad faith) on the part of the debtor, an opinion is expressed about the abstract nature of the categories of abuse of law and good faith, depending on the court's assessment of the specific circumstances of the case, the judicial discretion.

Idrisov Huseyn Vakhaevich, No. 10 2020

Theoretical and practical aspects of the formulation and interrelation of the categories "will", "expression of will", " interest»

Annotation. The article provides a psychological and legal analysis of such categories as" will"," expression of will "and"interest". It is emphasized that initially, the studied concepts represent the object of study of psychological science, but at the same time they have their own expression and application in jurisprudence. Along with the psychological and legal characteristics of these categories, the etymology of these concepts is also given. It is established that these concepts having dualistic properties in their legal nature express interrelated, mutually conditioned processes. The article presents the author's formulations of the studied categories, based on their legal characteristics. The legal analysis of the issues under study is based on the existing legal acts and judicial and arbitration practice. In conclusion, the article emphasizes that the categories that have become the subject of this work are insufficiently studied by legal science and need further scrupulous analysis.

Sayapina Tatyana Sergeevna, No. 10 2020

General and special aspects of the emergence and termination of membership in real estate owners ' partnerships

Annotation. To date, the procedure for the emergence and termination of membership in real estate owners 'partnerships is not defined in the legislation and has not yet been worked out in detail in the scientific doctrine, in contrast to its main types – horticultural and horticultural non-profit partnerships and homeowners' associations, which led to the expediency of preparing this article. The study of the grounds for the emergence of membership in a horticultural and horticultural non-profit partnership, as well as a homeowners ' association, allowed the author to come to the conclusion that "automatic" membership in a real estate owners ' association also does not occur. You must personally apply to a specific partnership of real estate owners with an application to join its members. The introduction of any additional conditions that prevent the emergence of membership in the partnership of real estate owners and its types is actually unacceptable. Despite the fact that the issues of termination of membership in various types of real estate owners 'associations are regulated differently, in the course of the study, the author found out that the real estate owners' association is a "collective category" in relation to its types. As a result, it was concluded that there are general and special grounds for termination of membership in the partnership of real estate owners. The general grounds may apply both to the real estate owners ' association itself and to any of its types. The general grounds include an application to withdraw from the membership of the real estate owners 'association and the termination of ownership of the property owned by a member of the real estate owners' association. Special grounds for termination of membership are applicable only to a specific type of real estate owners 'partnership, or to the real estate owners' partnership itself and its other types that are not related to the main ones, in cases where they are directly indicated in the main document of the partnership-the charter.

Grin Oleg Sergeevich

Grin Elena Sergeevna, No. 10 2020

Accounting systems for rights under various contractual relationships

Annotation. The article examines a number of existing systems for accounting for rights under certain contractual relations in their relationship with the systems of state registration. The key attention is paid to the consideration of the notarial system of accounting for movable property pledges, which began to function in Russia in 2014. With regard to the solution of the problem of accounting for the pledge of non-individualized property, conclusions are drawn regarding the possible adaptation of the design of a solid pledge to the needs of modern turnover. It is proposed to consider the issue of supplementing the standard of good faith behavior of the pledgor by ensuring that the pledged items that do not have other individualizing designations contain information about the number of the pledge notification, as well as the corresponding code (barcode, QR code) in any form. The need to supplement the register of pledge notifications with information on the amount of the claim secured by the pledge is emphasized. Based on the analysis of foreign experience, it is concluded that it is advisable to preserve the possibility of applying to a notary for entering a notice in the register only on the part of the pledgee. Proposals were made to adjust the legislation on mortgages. With regard to accounting systems in the field of intellectual property, it is pointed out that there are no legal obstacles to the development of such systems for accounting for the results of intellectual activity and related intellectual rights, and examples of accounting systems in this area are shown. The development of such systems will make it possible to involve a much larger number of digital objects of intellectual rights in legal circulation and create maximum guarantees for the protection of their owners.

Chernykh Nadezhda Vyacheslavovna, No. 10 2020

Formation of approaches to determining the differentiation of labor relations within the framework of atypical employment

Annotation. This article examines the differentiation of the legal regulation of labor associated with the ever-increasing expansion of atypical forms of employment.

Approaches to the identification of the grounds (criteria) of differentiation, its limits, and the correlation of the norms of differentiation caused by the development of atypical forms of employment with other norms of labor legislation devoted to the regulation of labor of certain categories of workers, in particular, workers working in the Far North and equivalent areas, underage workers, and disabled workers, are determined. The article substantiates the conclusion about the attribution of differentiation factors in atypical employment to objective factors that are not related to the employee's personality, analyzes the attribution of norms adopted in the legalization of atypical employment to norms-exceptions or norms-adaptations. The conclusion is formulated about the need for a more precise definition of the limits of differentiation in order to maintain a unified approach to the minimum standard of labor rights of an employee.

Chugunova Ksenia Yurievna, No. 10 2020

Features of the formation of the will of subsidiaries of joint-stock companies with predominant state participation (on the example of JSC " Russian Railways»)

Annotation. In this article, the author examines the question of the independence of subsidiaries of joint-stock companies with a predominant state participation in decision-making through the prism of the practice of building corporate governance in JSC "Russian Railways". The author set the task to study the limits of the participation of the main company in the formation of the will of the management bodies of the subsidiary company on the example of one of the largest Russian joint-stock companies with state participation. The author came to the conclusion about the virtually unlimited power of the main company in determining the decisions of the subsidiary company, generated by the broad approach of the legislator to the definition of the subsidiary company. For the first time, the paper identifies two independent forms of determining the decisions of the subsidiary by the main company, which are actively used in practice, but have not been directly consolidated at the legislative level: the main company sends draft local regulations

to the subsidiaries, which are subject to approval by the management bodies of the subsidiary; issuance of instructions by the main company for voting at the general meeting of shareholders and the meeting of the board of directors of the subsidiary. In the context of the unlimited powers of the main company in determining the decisions of the subsidiary, the author notes the risk of turning the subsidiaries of joint-stock companies with predominant state participation into nominal structures that are not interested in high-quality corporate governance, blindly fulfilling the will of the main company. The material presented in this article can be used both in further scientific research when studying the issue of independence of subsidiaries of joint-stock companies with predominant state participation, and by practicing lawyers working in joint-stock companies with state participation and their subsidiaries, as well as by state bodies involved in improving corporate legislation.

Sorokina Elizaveta Mikhailovna,

Ponomareva Darya Vladimirovna, No. 10 2020

Legal aspects of patenting the human genome on the example of legislative and judicial regulation in Australia

Annotation. This article is devoted to the review of the Australian experience in the legal regulation of the patented human genome, as well as to the study of the practice of the Australian courts on this issue. The purpose of the study is to study the approaches of law enforcement agencies of this state to one of the most important aspects of the legal regulation of genomic research – patenting of the human genome, their comparison (comparative analysis) with the approaches of the judicial authorities of other states (USA). The authors note that, based on the judicial practice in Australia, it is possible to patent human DNA, which makes it quite attractive for commercial companies to develop research in the field of the human genome, since it protects the possibility of such companies obtaining an economic effect from the use of scientific developments. The authors note that the issue of patenting an isolated genetic sequence has also been the subject of legal proceedings in other jurisdictions (in particular, the United States) with the participation of the same

defendant (Myriad Genetics). It is emphasized that, despite the similarity of legal systems, the identity of the subject of claims, the judicial authorities of the United States and Australia have formulated different approaches to determining the possibility of patenting human DNA.

Mashkova Ksenia Viktorovna,

Alexey Shirokov, No. 10, 2020

Formation of the legal status of applied genomic research through the formation of self-regulating professional associations

Annotation. The most discussed directions of using individual genomic data are considered. There is an increase in the volume of research on the decoding of the individual genome and the use of genomic data in the field of assisted reproductive technologies. It is noted that the Russian Federation is discussing the development of ethical principles, the development of national ethical requirements, and the formation of an ethical code. The question is raised about the mechanisms for implementing the principles of self-regulation. A possible key to solving this issue is the creation of self-regulating professional associations, as well as the improvement of the legislative framework of the Russian Federation on this issue. The most discussed areas of using individual genomic data are considered. An increase in research on the decoding of the individual genome and the use of genomic data in the field of assisted reproductive technologies was noted. It is noted that the Russian Federation is discussing the development of ethical principles, the development of national ethical requirements, and the formation of an ethical code. The question is raised about the mechanisms for introducing the principles of self-regulation. A possible key to solving this issue is the creation of self-regulatory professional associations, as well as improving the legislative framework of the Russian Federation on this issue.

Ilyas Muslimovich Evloev, No. 10, 2020

Liquidation of constitutional (statutory) courts of the subjects of the Russian Federation: a pattern or a mistake?

Annotation. The history of the formation of regional constitutional justice in the Russian Federation is a series of shortcomings and compromises that prevented its normal functioning. Initially ill-conceived and not properly formed by law, the system faced numerous problems that led to the reversal of the process and the

abolition of the constitutional (statutory) courts of the subjects of Russia. The result was the adoption of amendments to the Constitution of the Russian Federation, excluding these courts from the judicial system. Such a decision seems logical in the current circumstances, but it is wrong from the point of view of strengthening democratic and federal principles in the state structure. The proposal to eliminate the constitutional courts is an example of avoiding solving the problem: choosing a simple way instead of carefully studying the issue and working out measures to possibly optimize this system and use its potential. The reform of the constitutional justice bodies with a significant expansion of their jurisdiction can turn them into an effective tool for solving the main task of the state - the protection of the rights and freedoms of citizens.

Zykova Olga Andreevna, No. 10 2020

Controlled foreign company-Offshore company: identity or autonomy?

***Annotation*.** Federal Law No. 376-FZ of 24.11.2014, adopted as part of the deoffshorization program. "On Amendments to Parts One and Two of the Tax Code of the Russian Federation (regarding the taxation of profits of Controlled Foreign companies and income of Foreign organizations)" (hereinafter referred to as the "Tax Code"). – Federal Law No. 376-FZ of 24.11.2014), led to an increase in the number of doctrinal arguments regarding the above-mentioned domestic program aimed at reducing capital outflow abroad, at combating the concealment of income of legal entities whose beneficiaries are Russian residents, but formally registered within offshore zones.It is worth noting that due to the name of the program designated by the President of the Russian Federation at the end of 2013, Federal Law No. 376-FZ of 24.11.2014 was named "anti-offshore law". Such a formulation of the legislative act provoked the formation of an erroneous opinion that the linguistic construction "controlled foreign company" introduced by this legal source, which is new for Russian legislation, is synonymous with the term "offshore company". The article analyzes the doctrinal sources that reveal the concept and essence of two phenomena (a controlled foreign company and an offshore company), and examines in detail their legal definitions. As a result, not only the characteristics inherent in both business entities were presented, but also the features that allow us to draw a clear line between these types of organizations. Thus, the author came to the conclusion about the autonomy of the categories of companies under consideration, but despite this fact, he still pointed out three important and essential conditions, the observance of which leads to the equivalence of a controlled foreign company and an offshore company.

Anastasia A. Pestrikova, No. 10, 2020

Formation of ethical and legal ways to control scientific research in the field of development and use of genetic technologies

Annotation. the article is devoted to the problems of forming ethical and legal ways of regulating and controlling scientific developments and discoveries in the field of genetic engineering and biomedical cell technologies. The main stages of the development of science in this field and the implementation of the results in global practice and civil circulation are highlighted. The question of distinguishing the ways of public discussion of scientific discoveries and achievements in the global aspect for the formation of legal methods of regulation and control is raised. Aspects of the commercialization of scientific discoveries, their use in the framework of international competition and stimulating the economy of countries involved in scientific progress in the field of genetic engineering are considered. It is concluded that it is necessary to form a unified global approach to scientific research in order to avoid circumvention of the law and the use of" weak " law and order to legalize the currently unacceptable results of scientific research. It is important to separate the issues of technical safety criteria from the ethical, social, religious, and legal aspects, and also to include the political and economic context in which scientific research is increasingly conducted and new products and services are introduced to the market.

Shpakovsky Yuri Grigoryevich,

Yevtushenko Vladimir Ivanovich, No. 10 2020

Modern problems of ecological migration: legal analysis

Annotation. The analysis carried out in the article shows that the group of legal norms regulating the procedure of forced and voluntary resettlement of residents (environmental migration) and the protection of the rights and freedoms of these environmental migrants is a special case, a kind of integral part of the general legal institution of regulating environmental migration of the population from areas of natural and man-made emergencies and zones of environmental disasters, territories where the constitutional right of a person and citizen to a favorable environment is violated, as well as the protection of the rights and freedoms of environmental migrants. This legal institution is currently in the process of formation. The main reason for this situation is, first of all, the lack of a basic federal law defining the general principles of the functioning of the legal mechanism for regulating the forced or voluntary temporary or permanent

relocation of the population from areas where the right of a person and citizen to a favorable environment (environmental migration) is violated, and protecting the rights and freedoms of environmental migrants. The analysis carried out in the article allows us to determine the legal status of an environmental migrant as a legally fixed state of a person who, due to the deterioration of the quality of the natural environment and the violation of the constitutional right of a person and citizen to a favorable environment, has left his place of permanent residence or stay and who, in the case of long-term stabilization of the environmental situation in the area of the former place of residence or stay, is provided with additional guarantees until its complete settlement, they facilitate the implementation of certain rights, freedoms and obligations inherent only in this category of persons and which should be enshrined in both international and domestic legislation (the Constitution of the Russian Federation and industry regulations).

Barbashova Natalia Vladimirovna,

Aseeva Natalia Vasilyevna, No. 10 2020

Bankruptcy of environmentally hazardous enterprises: relevance of legal regulation

Annotation. It is shown that in the current law "On Insolvency (Bankruptcy)" there are no norms regulating the relations of environmental safety of the insolvent debtor. It is established that the bankruptcy proceedings are characterized by a small proportion of rehabilitation procedures, resulting in insufficient financing of reclamation measures and a high risk of environmental pollution when the company ceases to operate. The preservation of business and a high percentage of repayment to creditors allow both the debtor and creditors to comply with the requirements of environmental legislation with relatively low costs for themselves. It is concluded that the absence of ecologized norms in the bankruptcy law contradicts the requirements of the Strategy for Ensuring Environmental Safety of the Russian Federation. It is established that the innovations in the regulation of the insolvency relations of environmentally hazardous enterprises in foreign countries were not required by national legislation. Recommendations on the implementation of the norms of foreign legislation on the bankruptcy of environmentally hazardous enterprises, which have proven their effectiveness in practice, are given.

Khamidullin Marat Talgatovich, No. 10 2020

The concept and types of the contract on connection to the heat supply system

Annotation. In this article, the author offers his own definition of the contract for connection (technological connection) to the heat supply system, as well as the classification of this contract. The classification of the technological connection contract is made by the author on the following grounds: the type of heat carrier used, the type of heat supply system, the type of heat load, the order of determining the price, the order of setting the tariff, the type of connected object, the purpose of concluding the contract, the structure of contractual relations, the multiplicity of connection. The types of connection agreement identified by the author are illustrated by examples from court practice. According to the results of the classification, contradictions in the legislation are revealed, which require further improvement of the regulatory legal regulation, in particular, when connecting (technological connection) to the district heating system of heat energy sources and heat networks. It is noted that the existing procedure for calculating the connection fee based on the heat load of the applicant's heat-consuming installation is unsuitable for connecting heat supply facilities, since the source of heat energy and the heat network are not devices for receiving energy resources. In this regard, it is proposed to connect heat supply facilities under a connection agreement on the basis of an individual fee that takes into account the actual costs of technological connection to the heat supply system of new energy sources and heat networks.

Kharkiv Vladimir Nikolaevich, No. 10 2020

Priority provision of public environmental interests as a constitutional principle of environmental protection and nature management

Annotation. The Constitution of the Russian Federation has defined the goals and objectives of state policy in the field of environmental protection and nature management, designed to ensure an environmentally sound environment and natural resource potential for the present and future generations of the peoples of Russia, which, in the context of the legal positions developed by the Constitutional Court of the Russian Federation, determines as one of the most important principles of legal regulation of environmental protection and nature management, the principle of priority ensuring public environmental interests. This principle is considered as the main component of the state environmental policy and the dominant environmental development of the Russian Federation, since it is designed to ensure both the current natural resource needs of socio-economic development, and the preservation of natural potential for future generations of Russian citizens and all mankind. Priority provision of public environmental interests is considered as a guarantee of protection of legitimate private environmental interests.