Zhuk Maxim Sergeevich

WAYS TO IMPROVE THE SYSTEM OF INSTITUTIONS OF RUSSIAN CRIMINAL LAW

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The article notes that the changes made to the Criminal Code are often negatively assessed in the scientific community and sometimes create insurmountable obstacles for the practice of criminal law combating crime. The author states that the work to improve the Criminal Code of the Russian Federation cannot be carried out without a preliminary theoretical analysis of the current situation. The system of criminal law institutions needs to be revised and contains significant reserves in its optimization, ensuring the integrity, consistency and consistency of the current criminal law regulation and criminal rule-making. The author critically evaluates the stable scientific tradition of analyzing the system of criminal law institutions solely from the point of view of the structure of the criminal law. At the same time, it is noted that the Criminal Code as a form of expression of criminal law does not so much form as it reflects the existing or emerging institutions of criminal law. The article presents the author's view of the problems of improving the system of criminal law. It is concluded that it can be carried out in two directions: 1) improving the internal structure and content of individual criminal law institutions of the General and Special parts; 2) optimization of the system itself or the nomenclature of institutions.

Mikheev Denis Stepanovich

ENSURING PUBLIC CONTROL IS A KEY DIRECTION IN DEVELOPING THE PUBLICITY OF LOCAL GOVERNMENT

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The article is devoted to the study of one of the key principles of the organization of local self-government - glasnost. By its structure, it is not homogeneous and consists of several elements, among which the public control of the population and civil society institutions occupies a significant place. Revealing the distinctive features of public control at the municipal level, analysis of its subjects and objects allows us to identify forms of public control, which also have specificity. Consideration of the current state of legal regulation of public control involves the development of proposals for its further legal regulation. All the above aspects are considered by the author from the standpoint of the principle of publicity. The systemic-structural and comparative-legal methods of cognition of the phenomena under study were used as a methodological basis. They make it possible to isolate the principle of publicity from the general system and examine in detail one of the elements - public control, to carry out a comparative analysis. The scientific novelty of the work lies in the fact that the author for the first time presents the characteristics of public control of citizens and institutions of civil society as an element of the principle of publicity of local self-government. The conclusion of the work is that local government, as an independent level of public authority, the closest to the population, is inherently inherent in civilian control. It acts as a necessary organizational and legal condition for the implementation of the principle of publicity of local self-government, capable of giving an adequate assessment of the effectiveness of municipal government.

FREEDOM, MORALITY, RIGHT: WAYS OF Rapprochement

No. 4. 2015 g.

December 24, 2014 Moscow State Law University named after O.E. Kutafin (Moscow State Law Academy), a theoretical conference "Freedom, morality, law: ways of convergence" was held, devoted not only to the problems of freedom, morality and law in themselves, but also, most importantly, to

considering the prospects for their convergence in the context of the peculiarities of Russian culture and modern realities. It was prepared and carried out in connection with the 12th anniversary of the philosophical and legal club "Moral dimension of law" under the guidance of Doctor of Philosophy, Professor V.M. Artyomov and the 60th anniversary of the latter. In the work of the conference, along with the faculty, students and graduate students of the O.E. Kutafin was attended by scientists from leading scientific and educational centers of Russia (Lomonosov Moscow State University, Moscow-Petersburg Philosophical Club based on the Institute of Philosophy of the Russian Academy of Sciences). This indicates not only a serious academic, but also a kind of scientific and educational nature of the event. The main report on the history of the author's research and a substantive analysis of these problems was made by the hero of the day. It was also told about the club itself, its composition, activities and some events, including offsite. The presentation of the monographic collection "Morality, Freedom, Law: Ways of Rapprochement", published by the publishing house of the O.E. Kutafina . A number of selected articles, which were written over the years, set out the main ideas of the club's scientific director. Head of the Department of Ethics of the Faculty of Philosophy, Moscow State University M.V. Lomonosov Doctor of Philosophy, Professor A.V. Razin dwelled on the practical and moral aspect of law. Deputy Head of the Department of Theory of State and Law of the University named after O.E. Kutafina Doctor of Law, Professor A.V. Kornev spoke about his vision of the content of the concepts of "freedom" and "right". Some approaches to the problem of freedom in the context of modern legal concepts of law were highlighted by Doctor of Law, Professor of the same department S.V. Sticky. On the quest for freedom of thinking Candidate of Legal Sciences, Associate Professor of Criminal Law of the University of OE Kutafina D.M. Molchanov. The rhetorical motive was sounded in the report of the doctor of philosophical sciences, professor of the department of philosophical and socio-economic disciplines Ch.B. Daletsky . The chairman of the board of trustees of the Moscow-Petersburg Philosophical Club

A.V. Zakharov. A Memorandum of Understanding and Cooperation was noted, under which Academician of the Russian Academy of Sciences A.A. Huseynov and Professor V.M. Artyomov. Different facets of the club's work and its scientific leader were reflected in the speech of a third-year student of the Institute of Prosecutor's Office of the O.E. Kutafina S.V. Zarochintseva .

Bagmet Anatoly Mikhailovich

Tsvetkov Yuri Anatolievich

A STRONG CONSEQUENCE AND ITS Opponents

No. 4, 2015

The discussion on the models of organizing investigative activities that has unfolded in recent years on the pages of the legal press and scientific forums proves that the question of the investigator as a procedural figure is currently the cornerstone issue of the formation of the modern doctrine of pre-trial proceedings, and, by and large, of the entire criminal process. The authors of this work, referring to examples from prosecutorial and judicial practice and the practice of organizing law enforcement activities abroad, analyze the main arguments of opponents of the formation of a strong and independent investigative power in the Russian Federation, in contrast to which they substantiate approaches to building the most effective model of interaction between public participants in criminal proceedings. nominated by the scientific school of the Academy of the SK of Russia.

The subject of the analysis is the provisions of the current criminal procedural legislation that do not give the subjects of investigative activity the right to appeal against the prosecutor's decisions in court, blocking the movement of the criminal case, as well as to participate in the consideration of the criminal case on the merits without changing their procedural identity. The article examines the effectiveness of procedural supervision over the criminal procedural activities of the investigator on the example of the cancellation of decisions on the

refusal to initiate a criminal case. Based on examples from the practice of the European Court of Human Rights in considering complaints from citizens about the use of torture during operational-search activities, an assessment of the supervisory practice of the prosecutor's office in the field of compliance with the rule of law by the internal affairs bodies is given. The article provides a historical and critical analysis of the proposals of modern Russian scientists to strengthen the supervisory powers of the prosecutor at the stage of preliminary investigation and, accordingly, weaken the procedural independence of the investigator and the independence of the investigating authorities.

The authors trace the ideological and historical connection between the elimination of the independence of the investigative authorities and the establishment of torture practices in the activities of law enforcement agencies. The substitution of true, directly related to the interests of society, guidelines in the work of law enforcement agencies, with imaginary interests related to the achievement of statistical indicators, is criticized. The authors consider the formation of a strong investigative power on the basis of a single Investigative Committee of the Russian Federation to be the most acceptable in the current historical conditions by improving pre-trial proceedings in criminal cases, which can simultaneously contribute to the strengthening of Russian statehood and the protection of fundamental individual rights, and above all the right to life and personal integrity. ...

Zavyalov Yuri Stepanovich

METAPHYSICS

(POWER, POLITICS, STATE, LAW)

No. 4, 2015

The essay defines the place of metaphysics in the general process of cognition. Metaphysics is opposed to theology, and it is mainly directed towards

reason. Some of its boundaries are outlined in connection with the analysis of such socio-political phenomena as the state, power, politics, law, and law. A general definition of politics is given, the subjects of politics are named, and the state is presented as the main object of influence on the part of political actors (nations, classes, social strata, political parties and other strata of society). Particularly highlighted, the widespread issue in the scientific literature on the relationship between law and law, and law is considered as the basis of the law. The thesis about the superstate and supranational nature of law is disputed . There are no sufficient grounds to raise the question of the pre-state origin and existence of law. All social evolution provides no argument for this. It is especially emphasized that even with a high level of abstraction and a metaphysical approach, one should not forget about the main figure of society - a person. The social stratification existing in the conditions of modern civilization, the technical division (fragmentation) of labor, the spread of electronic means to many spheres of society's life leads to the legitimation of social differences and, as a consequence, to the distribution of power. Here it is appropriate to pose the question of a person's position in various social relations and connections. Neither science, nor art, nor metaphysics can answer how a person should act in this or that case. Only law and ethical reasoning can answer.

Isaev Igor Andreevich

"Political testament of the Grand Inquisitor"

(three essays on sovereignty)

No. 4, 2015

The article attempts to analyze some of the trends in modern law, which have their origins in the notions of sovereignty that were formed at the beginning of the New Age and the era of modernity. Their later interpretation led to nihilistic distortions. Rejecting tradition and transcendental sources, the idea of law

descended into the metaphysics of authoritarianism, replacing the divine idea of justice with "miracle and mystery." The insight of F.M. Dostoevsky allowed researchers of law to take a fresh look at the origins of modern legal doctrines and the development of right-wing reality.

The revolution revealed the secrets of politics and diplomacy of the "old regime", and its organizers and leaders made their ideas and slogan "open" politics. Legality has become legitimate , and legality has become just . Destructive and negative motives have become constructive and generally binding. The secret law has become an external law. Latent political impulses that have long threatened society have become a political program. However, the forces that reached “in silence” continued their impact: the Absolute was made from the idea of law. Its own religion of human rights was born.

The nation that entered the political arena became a new subject of law. The nation, as a living organism, absorbed the idea of power and justice that the secret organizations of the 18th century carried within themselves. The real institutions and structures of society have embraced the traditions of political secrets from the dark past.

The sovereign is the one who decides on the state of emergency. People-sovereign or monarch can become an exception from the legal sphere, making their own laws a sacred attribute. To ensure the legal order, the presence of order as such is necessary .

The exceptional situation fills with wonder when order is born out of chaos or nothing. The established order thus acquires the meaning of "purity and correctness." But what matters is “what exclusivity is contained — exile or privilege”.

The legal and political in this situation are included in the mythological sphere of the sacred. The myth of law is located in a sacred space, symbolically combining the "light of truth" and "darkness of untruth." The non-religious sacred

acts as a miracle that is both in the space of law and outside it: this is the essence of myth.

In the interpretation of Karl Schmitt , the authority itself proves that he, in order to

Create right, it needs to turn blue right. Miraculously, the act of making a decision by the sovereign creates the missing rights. Authority is accelerated on faith, such as the myth of law. What matters here is their effectiveness, not truth or justice. Attempts to demythologize infringe on authority, revealing its "secret". Exclusivity is reduced to the norm and the normal, dissolving into them. As a result, religious and sacred profanity , turning into a positive of law.

Bakishev Kairat Alikhanovich

SYSTEM OF TRANSPORT OFFENSES IN THE NEW Criminal Code of the REPUBLIC OF KAZAKHSTAN

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The subject of the research is the criminal law measures to combat transport offenses at the present stage, characterized by the reform of the criminal legislation of the Republic of Kazakhstan. The author analyzes the system of transport offenses in the criminal legislation of the republic, the law enforcement experience of past years, conducts a comparative study of the articles of this system with the norms of the Criminal Code of the Republic of Kazakhstan in 1997 (in particular, the construction of articles, the amount of sanctions, etc.). In the process of writing the work, a comparative legal and historical research method was used, legislative and other regulations in the field of traffic safety were studied. The scientific novelty of the work is that the author, taking into account the current state of socio-economic and political development of Kazakhstani society, the previous law enforcement practice in cases of transport crimes from a critical standpoint analyzes the system of transport offenses in the new Criminal Code of the Republic

of Kazakhstan and proposes measures to improve it by eliminating identified deficiencies.

Gracheva Yulia Viktorovna

Alexander Korobeev

Chuchaev Alexander Ivanovich

A NEW KIND OF TRANSPORT CRIME AS A MODIFIED OPTION OF A WELL FORGOTTEN OLD

No. 4, 2015

The article provides an analysis of amendments and additions to the norms on criminal liability for transport crimes carried out by the Federal Law of December 31, 2014 No. 528-FZ "On Amendments to Certain Legislative Acts of the Russian Federation on the Issue of Strengthening Liability for Committing Offenses in the Field of Road Safety. motion ", in particular, the provisions of the Notes to Art. 264 of the Criminal Code of the Russian Federation, the signs of a new corpus delicti under Art. 2641 of the Criminal Code of the Russian Federation (violation of traffic rules by a person subjected to administrative punishment). Particular attention is paid to theoretically debatable issues: the validity of changing the conceptual approach in determining the subject of a crime - a power-driven vehicle, which, in fact, expands the scope of the criminal law norm fixed in Art. 264 of the Criminal Code of the Russian Federation; the correctness of the definition of the concept of the state of intoxication; social conditioning of the criminalization of driving in a state of intoxication by a person who was subject to disciplinary punishment. The rate provided for by Art. 2641 of the Criminal Code of the Russian Federation, is not new to the criminal legislation of Russia, in the Criminal Code of the RSFSR it was contained in Art. 2111. On 24 December 1992 this article was excluded from the Criminal Code of the RSFSR as ineffective.

The authors come to the conclusion that this time, too, the indicated act was declared criminal without sufficient grounds for that, and they prove this on the basis of an analysis of the theoretical provisions that have developed in the doctrine of criminal law on this issue, foreign experience and Russian judicial practice of past years.

Laptev Vasily Andreevich

LEGAL REGULATION OF ENTREPRENEURSHIP IN RUSSIA (HISTORICAL ASPECT)

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The study of the chronology of the development of legal regulation of economic relations in Russia is essential for the science of business law. The economic legal order existing in the country at various stages of development of social relations characterizes the branch of business law. Analysis of historical trends indicates the content of sources of legal regulation of economic activity. The article provides an overview of the historical periods of development of sources of entrepreneurial law. The author distinguishes three periods: pre-Soviet, Soviet and post-Soviet. Each of these periods is characterized by a special approach of the state to the issue of regulation of economic activity, and also contain separate stages that require deep scientific analysis capable of assessing the tasks of the state, the needs of civil society and the state of the economy. The pre-Soviet period testifies to the development of trade relations. The commercial law began to emerge, the norms of which, for the most part, were commercial customs, regulating the professional trading activities of merchants. Sea trade is developing. Codified normative legal acts are gradually being adopted (for example, a commercial charter, a charter on bills, a charter on industry, etc.). With the advent of manufacturing industries, factory law is formed. The Soviet period consists of a number of special stages that characterize the state of economic law

during the years of the socialist economy, including: war communism (revolutionary years), the new economic policy (NEP), the Stalin years, the Khrushchev thaw, the period of stagnation, perestroika and the collapse of the USSR. The role of state regulation in the national economy is noted. State ownership formed the foundation of the economy and predetermined the mechanisms of industrial management. In this period, the branch of economic law was finally formed in the system of branches of law. The market economy, the transition to which was made by the country's leadership, brought up by the Soviet era, forced to abandon the state monopoly on the means of production and tools, and also formulated the principles of guaranteeing private property, freedom of entrepreneurial activity and economic space. There is a variety of forms of entrepreneurial law that make up the system of sources of law that regulate representation in Russia. The business legal order is harmonized by international integration processes, in particular, in the context of Russia's entry into the World Trade Organization and the Eurasian Economic Union.