Alfimtsev Vladimir Nikolaevich

Definitive chaos in the normative regulation of national policy

No. 5 , 2015

The necessity of improving legislation in the field of normative regulation of national policy is proved. The identification of certain shortcomings of the Strategy of State National Policy until 2025, pushing towards the problem of conceptual and terminological interpretations in domestic legal acts, as well as consideration of the practice of the European Court of Human Rights and the European Commission against racism and intolerance towards Russia in 2013-2014, allows the author comes to the conclusion about the need for normative consolidation of the concept of a nation or ethnos. Having traced the genesis and development of the main approaches to the definition of these concepts in the theoretical works of the Russian school over the past hundred years, the author puts forward the thesis that basically the definition of these concepts is based on four main features, namely, a certain national or ethnic community is characterized by a common territory, language, cultural unity, socio-economic structure. Based on this, the current state of national communities in Russia is examined through the prism of a socio-demographic portrait and the national composition of the population. In the course of analyzing the statistical data of the 2010 All-Russian Population Census, the author comes to the conclusion that three of the four basic features of a national or ethnic community are currently not relevant, and the only characteristic remains only cultural unity, which, together with a common historical origin, should be the basis of the definition subject to normative consolidation. The thesis is put forward that in order to eliminate contradictions, the legal system of Russia only needs to consolidate the concept of "nation", and not "ethnos", as corresponding to the domestic legal tradition and more convenient for perception and enforcement . The concept of "multinational people", enshrined in the Constitution, from the point of view of the author, is sufficient and does not require further development. In the conclusion, the author's definition of the concept of "nation" is formulated, which

seems acceptable for normative consolidation in order to improve legislation. It proves the need to improve legislation in the field of normative regulation of national policy. Identification of certain shortcomings of the Strategy of State National Policy until 2025, pushing towards the problem of conceptual and terminological interpretations in domestic legal acts, as well as consideration of the practice of the European Court of Human Rights and the European Commission against racism and intolerance towards Russia in 2013-2014, allows the author comes to the conclusion about the need for normative consolidation of the concept of a nation or ethnos. Having traced the genesis and development of the main approaches to the definition of these concepts in the theoretical works of the Russian school over the past hundred years, the author puts forward the thesis that basically the definition of these concepts is based on four main features, namely, a certain national or ethnic community is characterized by a common territory, language, cultural unity, socio-economic structure. Based on this, the current state of national communities in Russia is examined through the prism of a socio-demographic portrait and the national composition of the population. In the course of analyzing the statistical data of the 2010 All-Russian Population Census, the author comes to the conclusion that three of the four basic features of a national or ethnic community are currently not relevant, and the only characteristic remains only cultural unity, which, together with a common historical origin, should be the basis of the definition subject to normative consolidation. The thesis is put forward that in order to eliminate contradictions, the legal system of Russia only needs to consolidate the concept of "nation", and not "ethnos", as corresponding to the national legal tradition and more convenient for perception and law enforcement . The concept of "multinational people", enshrined in the Constitution, from the point of view of the author, is sufficient and does not require further development. In the conclusion, the author's definition of the concept of "nation" is formulated, which seems acceptable for normative consolidation in order to improve legislation.

Vedeneev Yuri Alekseevich

LEGAL REALITY: ONTOLOGY AND EPISTEMOLOGY

No. 5 , 2015

The article is devoted to the theoretical development of the category "legal reality". Presented in the system of various definitions and approaches, this category can be used as the basis for the construction of a modern integral theory of law. Various aspects and forms of expression and existence of law in the historical, socio-cultural and conceptual dimensions are considered.

Legal reality is a complex phenomenon that combines linguistic, cultural, historical and political practices of the production and reproduction of law. It is a set of legal ideas and concepts, legal values and orientations that ensure the process of social communication in various normative modes of its legal organization.

Various historical systems of legal communication correspond to their own discursive and normative practices and the legal languages developed in them for explaining and justifying the boundaries of social behavior.

Legal reality in various historical forms of its formation and development can be presented as a system of legal syntheses, which are based on organically and culturally determined socio-natural , religious and political ties and relations.

The material is inscribed in the general context of reflections on the universal meaning and unconditional cultural and historical significance of law in the life of any society, especially in the era of changes, expressed, in particular, by Valery Zorkin in the article "Civilization of Law" (Rossiyskaya Gazeta, Thursday, March 13, 2014) ...

The evolution of law is the evolution of historical forms of normative communication, each of which has its own legal language of positivity or the definition of normative boundaries and standards of social behavior.

Zholobova Galina Alekseevna

Regulation of the trade in alcoholic beverages in the establishments of the tavern industry during the "counter-reforms" of Alexander III

No. 5 , 2015

In the last decade, the discussion of state policy in the sphere of alcohol circulation has intensified, and the process of optimizing the legislation regulating this sphere is underway. Understanding the historical essence of the domestic mechanism of legal regulation of the trade in alcoholic beverages, as well as, in general, the experience of alcohol policy in conditions of freedom of entrepreneurship, is important for the creation of a modern concept of state regulation of alcohol turnover in Russia. In the article, based on the analysis of the legislation of 1881 - 1894. and the study of archival documents presented a domestic legal retrospective of the regime of trade in alcoholic beverages in the establishments of the tavern industry. The policy of Alexander III was in many ways a continuation of the Great bourgeois reforms of the 60s and 70s of the 19th century, although many scholars tend to assess it as counterreforms. In the sphere of alcohol policy, there has been an optimization of the legislation regulating the trade in alcoholic beverages in the context of the preservation of the excise taxation system. These measures were designed to increase the state's drinking income and ensure the development of domestic winemaking and agricultural distillation, on the one hand, as well as to counteract the increased alcoholization of the population, or "to protect the people's sobriety and morality" - on the other. The author showed that the search for new legal solutions to ensure the tasks of legal regulation of the alcohol trade gradually led the government of Alexander III to increasingly restricting the freedom of trade in alcoholic beverages.

Elena Kovryakova

The adogmatic nature of the theory of separation of powers

No. 5 , 2015

The article examines the reasons for the internal inconsistency of the theory of separation of powers, which underlies the basic principle of constitutional legislation in most countries of Western civilization, including Russia. At the heart of the triad of powers is not one, but two, from each other, different principles: formal and material. According to the author, in the modern sense, the term "separation of powers" is used in at least six senses: separation of legislative, executive and judicial authorities (at the federal level and the level of subjects in federal states, at the central level and the level of territorial autonomies in unitary states); delineation of powers (functions) of these bodies; branch of central and regional government bodies; separation of powers (functions) of central and regional bodies of state power (in federal states - between federal bodies and bodies of subjects of the federation, in complex unitary states - between central bodies of state power and bodies of state power of territorial autonomies); separation of local government bodies from public authorities at all levels; delimitation of the powers (functions) of local authorities from the functions of public authorities at all levels. In this regard, the problems of the plurality of the branches of power themselves are considered (currently there are more than 10: legislative, executive, judicial, constituent, electoral, control, civil, organizational, presidential , people's, prosecutor's, financial and banking, supervisory, monetary, etc.), and the exercise of parliamentary control under various forms of government in theory and practice. The reasons for the transformation of the constitutional norms regulating the relationship of authorities into a fiction, expressed in the absence of a possible balance between the legislative and executive authorities, are analyzed. The work is illustrated by an analysis of foreign constitutional legislation: Hungary, Italy, Moldova, Monaco, Poland, Portugal, Romania, Russia, Slovenia, USA, Ukraine, France, Germany, Croatia, Switzerland, Sweden, Estonia, etc.

Laptev Vasily Andreevich

THE DEFINITION OF "SOURCE OF BUSINESS LAW"

No. 5 , 2015

Domestic jurisprudence contains fundamental works on the general theory of law, in which the analysis of the sources of law finds its place. Scientific discussions about the choice of the "suitable" type of legal thinking did not lead to a unified approach, including the issue of the content of the source and form of law. It seems relevant to study the sources of business law in the system of sources of Russian national law.

The author of the presented article examines the concept of "source of business law" as a legal category. At the same time, it is proposed to single out the following entrepreneurial and legal relations regulated by the norms of entrepreneurial law: 1) relations arising in the implementation of entrepreneurial and other economic activities; 2) relations related to the regulation of entrepreneurship; 3) on-farm (intra-production and intra-corporate) relations.

The uniqueness of the sources of entrepreneurial law is proved, taking into account the subject of regulation - entrepreneurial and legal relations. The unity of private and public law principles in the norms of business law, which form the country's economic legal order, testifies to the convergence of the private and public in business law, as well as the impossibility of a market economy functioning solely by the principle of self-regulation.

The author substantiates the need to use an integrated type of legal thinking , as well as the inadmissibility of an exclusive positivist understanding of the sources of business law, traditionally characteristic of Soviet jurisprudence. The "restrictive" nature of positivism does not take into account the development of market relations, which are in the field of state regulation and self-regulation, which are not opposed, but complement each other. A number of norms

of entrepreneurial law are formed by economic practice - independent entrepreneurial activity of participants in market relations.

The categories “source” and “form” of business law are distinguished, which are often identified in the legal literature.

The article formulates the following definitions. The source of business law is the basis (force, factor) of the formation, expression and consolidation of the rules of law governing business and other economic relations. In other words, the source of entrepreneurial law is a set of norms on entrepreneurship and the economy as a whole. At the same time, the form of business law is a way of internal organization and external expression (consolidation) of norms on entrepreneurial and other economic activities.

The conclusions of this article can be used in scientific works in the field of business law.

Lushnikov Andrey Mikhailovich

Lushnikova Marina Vladimirovna

S.A. GOLOSCHAPOV

No. 5, 2015

The article examines the life path and scientific heritage of the head of the Department of Labor Law and Social Security Law of the All-Union Institute of Laws in 1984-1986. Semyon Andreevich Goloshchapov . It is concluded that he made a significant contribution to the development of the Soviet science of labor law, investigated a number of topical problems of the industry, namely the institutions of labor protection and individual labor disputes. He approached occupational safety and health as a multilevel and multidimensional phenomenon in need of a comprehensive analysis. He saw labor protection as a complex intersectoral education (a comprehensive institution of the branch of law), located

at the junction of labor, administrative and civil law, as well as social security law. This approach is one of the leading and at the present time, as well as the division of labor protection proposed by him in the "narrow" and "broad" senses. The scientist made no less contribution to the development of the doctrine of labor disputes, comprehensively considered their causes, types, jurisdiction, procedural legal relations. It is noted that he was in practical work for many years.

Przhilensky Vladimir Igorevich

Reality and Truth in the Constructivist Paradigm of Philosophy of Law

No. 5 , 2015

The article analyzes the latest controversies about realism and constructivism, which are going on in the philosophy of science and have an ontological, epistemological and methodological dimension. Then the problems arising in the process of philosophical and legal theorizing and in the study of the specifics of legal knowledge are considered. Particular attention is paid to the relationship between the concepts of reality and truth in the philosophical and scientific understanding of law enforcement practice. In particular, the possibilities and boundaries of hypostatization in the process of explication of the basic concepts of legal science are discussed in their connection with discussions about the meaning and meaning of the concept of truth, as well as about a set of implicit ontological assumptions that underlie the initial philosophical and legal conceptualizations .

In the Russian philosophy of law, disputes continue about the possibility of creating a certain integral version, which incorporates all the main ideas of various philosophical and legal doctrines and systems. At the same time, the conceptual difference between them is often ignored, which is clearly visible both at the level of ontology and at the level of methodology. The purpose of the article is to analyze the relationship of discussions in modern philosophy of science, touching

on the problems of realism, truth and rationality with the problems of philosophy of law and methodology of legal knowledge.

The modern Russian philosophy of law, after a long hiatus caused by external circumstances, again begins to enrich itself with ideas and concepts of modern philosophy, the most important of which should be recognized the concepts of hermeneutics, communication, discourse, realism, rationality, etc. But these influences often lead to borrowing terms, theoretical constructions and models carried out without sufficient elaboration of the very possibility of such actions. The problem of the correspondence of the communicative theory of law or ethics of discourse to the ontological and epistemological doctrines prevalent in the domestic theory of law, or, moreover, in the theory of the state, is not questioned, not to mention a critical understanding of the latter. Meanwhile, it is extremely important to identify and describe the conceptual difficulties that arise in the interaction of modern philosophical doctrines and Russian theoretical legal and philosophical legal thought.

Svirkov Sergey Alexandrovich

Guarantees of the rights and legitimate interests of energy consumers in energy legislation

No. 5, 2015

The subject of this article is the provisions of the energy legislation aimed at ensuring the rights and legitimate interests of energy consumers. The paper notes that in the Russian legislation undeservedly little attention is paid to the problem of social principles in the energy sector, examples of the regulation of these relations in foreign legal orders are given. The need to form institutional mechanisms that will ensure the rights and legitimate interests of energy consumers is pointed out . Much attention is paid to the analysis of practical problems related to the implementation of consumer rights in the energy sector.

The methodological basis of the research is the general scientific (dialectical) method of cognition, methods and techniques of formal logic (analysis, synthesis, deduction, induction, etc.), as well as special methods of cognition: formal legal, comparative legal, technical legal, linguistic, institutional , systemic, empirical and others.

The article is notable for its scientific novelty, since the aspects of energy legislation touched upon in it were practically not considered in the domestic legal doctrine. The main conclusion of the article is the proposal of clear formulations of the rights of energy consumers, which should be reflected in energy legislation.

Alexander Sidorkin

FEATURES OF THE FIGHT AGAINST BANDITISM IN PLACES OF DEPRIVAL OF FREEDOM IN THE 1930-1950s

No. 5, 2015

The subject of the research is: - a set of laws, other normative acts of the Soviet period in the field of regulating the fight against banditry in places of deprivation of liberty; - decisions of the Plenums of the Supreme Court of the USSR and the Union republics on the issues under consideration; - judicial practice, statistical data, reviews, departmental materials on application of the norms on banditry in places of deprivation of liberty; - scientific publications (abstracts, dissertations, monographs, periodicals, educational literature) concerning the history of the fight against banditry in places of deprivation of liberty and issues related to this problem. The methodological basis of the article is formed by the dialectical method of research, as well as the logical, historical and legal, systemic and structural, statistical, specific sociological and other methods of scientific knowledge. The scientific novelty lies in the fact that the study identified a number of reasons contributing to the progressive growth of banditry in prisons, despite the legislative measures taken to combat this phenomenon. These include: -

the absence at the legislative level of a clearly formulated rule on banditry in places of deprivation of liberty, which had its own specifics; - gross violations of orders, orders and instructions regulating accommodation, the regime of detention of prisoners that were allowed in camps and colonies, failure to comply with instructions on reliable isolation of various categories of criminal recidivism; - poor organization of operational and preventive work of the regime- operational apparatus of camps and colonies for the timely opening and decisive suppression of the criminal activity of a criminal gangster element; places of imprisonment for representatives of criminal recidivism and others.

Olga Sokolova

Use of diagnostic information during examination and presentation for identification of living people and corpses

No. 5, 2015

On the basis of the study of special literature, the current directions of the use of diagnostic information during the examination and presentation for identification of living people and corpses are considered. Depending on the personal participation of a person in identification, the following types of it are proposed: identification of a person in nature and identification of a person by his materially fixed images; types of identification depending on the system of human sensory organs that perceive information. Priority signs of appearance have been established, which are perceived by eyewitnesses when perceiving a person in nature and from his photographs, presenting corpses or their remains (parts) for identification; organizational, procedural, psychological and other features that affect the conduct of this investigative action. The work uses the comparative legal method, sociological, experimental and statistical methods, methods of generalizing information, questionnaires. To improve the procedure for presenting for identification, it seems expedient to create special rooms designed for

identification of living persons and corpses; seizure and storage of skin areas with tattoos from unidentified corpses, etc. The received information of a diagnostic nature about the signs of the wanted person's appearance, his facial expressions, speech, articulation, gait, etc., in the future, the investigator can check during investigative actions: experiment, interrogation, confrontation, presentation for identification, as well as examination, verification of testimony on the spot, to clarify and compare contradictory data obtained from different sources of information.