Belyaeva Galina Serafimovna

Public-legal regime: essence, content, normative legal consolidation

No. 7, 2015

In the article, for the first time in legal science, an attempt is made to conduct a comprehensive general theoretical analysis of the essence and content of the public law regime as an independent one in relation to the sectoral variety of the legal regime. The main components of the public legal regime are considered: the subject, (including the limits), method, means (methods) and mechanism of public legal regime regulation, its principles, as well as the features of its normative legal consolidation. Based on the analysis of scientific literature and the regulatory framework, the main features of the public law regime are identified and formulated. The study uses a systematic approach (system-component, system-structural and system-functional analysis), comparative legal and interpretation methods. Based on the results of the study, it was concluded that the public law regime is an independent legal category, not reducible to sectoral legal regimes, with a specific essence and content, which is important both for legal science (creation of an integral consistent theory of legal regimes) and practice (lawmaking and law enforcement).

Borulenkov Yuri Petrovich

TECHNOLOGIES OF LEGAL KNOWLEDGE: CONCEPT AND CONTENT

No. 7, 2015

In the focus of the author's attention in this article is the question of the technological approach as one of the aspects of the methodology of legal knowledge. It is noted that legal knowledge, being a means of constructing legal reality, enters a phase of its development that allows it to comprehend itself as a

self-developing whole and raise questions about the laws of its own formation. The need to ensure the effectiveness of legal knowledge and the possibility of considering it as a production process calls for the standardization of this activity, the development of special cognitive techniques, forms and techniques, as well as ways of interaction between subjects. The technologization of the cognitive process reflects the focus of applied research on the radical improvement of human activity, an increase in its effectiveness, intensity, instrumental and technical equipment and gives it a dynamic, purposeful, constructive and creative character. According to the author, not every activity organized in a certain way is technology. The technological effectiveness of legal knowledge means a transition to a qualitatively new level of efficiency, optimality, and science intensity of the cognitive process. The technology of legal knowledge is a systemic set and procedure for the functioning of personal, instrumental and methodological means used to achieve goals, which are an integral volumetric polystructure consisting of vertical and horizontal levels, due to the objective logic of multidirectional functional relationships of structure elements that create and implement the functioning of the legal cognitive system. It is emphasized that the technological structure of legal knowledge is much wider than the procedural one in the sense of the procedural form and is revealed in the system of procedural, information-cognitive, cognitive-analytical and tactical aspects of cognitive, organizational, planning, management activities, representing a single technological process. The article examines problematic issues, identifies a number of features and limitations that must be taken into account when designing technologies of legal knowledge in law enforcement. It is noted that the specificity of professionally oriented technologies of legal knowledge is primarily related to the fact that epistemological goals and objectives are not always systemically important.

Viktorova Natalia Nikolaevna

APPLICATION OF THE GREATEST BENEFITS REGIME IN RESOLUTION OF CROSS-BORDER INVESTMENT DISPUTES

No. 7, 2015

The article is devoted to the problem of the application of the most favored nation treatment in the settlement of cross-border investment disputes. Most favored nation treatment is enshrined in almost all international agreements on the protection and promotion of investment. Based on an analysis of several decisions from the practice of the Arbitration Institute of the Stockholm Chamber of Commerce, as well as the International Center for the Settlement of Investment Disputes, the author shows that arbitrators sometimes use most favored nation treatment to determine their competence, that is, they extend the most favored nation clause not only to substantive legal issues of international investment agreements, but also on procedural issues related to the resolution of investment disputes. The article emphasizes that neither the doctrine nor the arbitration practice has a uniform solution to this problem. This creates uncertainty about the mechanism for resolving investment disputes. The author concludes that it is inadmissible to use the most favored nation clause to resolve procedural issues. Arbitration does not have the right to broadly interpret the provisions of international investment agreements on the most favored nation treatment, even if they are worded broadly. The opposite is permissible only when it is possible to unequivocally establish the intention of the states parties to international investment agreements to use the clause in this way.

Dudikov Mikhail Vladimirovich

Mining law in the system of branches of law

No. 7, 2015

In order to improve the legal regulation of relations arising in connection with the rational, comprehensive, safe use and protection of subsoil, it is necessary

to formulate an appropriate concept. This concept, if adopted, will subsequently form the basis for the development and further improvement of mining law. Clarification of the formulation of the concept of "mining law" was carried out taking into account the opinion of leading scientists, as well as the peculiarities of the legal regulation of relations associated with the process of rational, comprehensive, efficient and safe use and protection of subsoil, as well as waste from mining and related processing industries. The definition of "mining law" is supplemented by a complex of concepts, the presence or absence of which in the legislation of the Russian Federation on subsoil influences the effectiveness of the legal regulation of mining relations. Analyzed the scientific works of authoritative scientists in the field of law, taking into account their views on the existing concepts of mining law. Mining law is considered from the standpoint of its place in the system of various branches of law, the norms of which affect mining relations. The admissibility of the concept of independence of mining law is substantiated. Arguments are given in favor of the fact that the development of mining law should not follow the path of implementing the norms of other branches of law, but along the path of developing its own norms of law that regulate mining relations and take into account their peculiarities.

Zolotukhina Natalia Mikhailovna

STATE DYAK IVAN TIMOFEEV: "APPOINTMENT OF OFFICIALS TO HIGH POSITIONS IS A SERIOUS AND RESPONSIBLE BUSINESS"

No. 7, 2015

The article tells about the conclusions made by a prominent Russian official, the sovereign clerk Ivan Timofeev, who lived at the turn of the 16th-17th centuries, regarding the reasons that upset all state administration and economic life in Russia in the second half of the 16th - early 17th centuries. and eventually led the country

to civil war and foreign intervention. Among the main of them, Timofeev names the appointment to senior positions in the state apparatus (central and provincial) of unworthy persons who do not correspond in their business and personal qualities to the posts given to them, received in exchange for bribes, or immoderate praise of the bearers of supreme power in the state. In the system of his reasoning, Timofeev was able to connect the disorder of state administration with the subsequent civil war and the Troubles with the oprichnina measures of Ivan the Terrible, which destroyed the "love union" between people and set one half of the population against the other; the subsequent "dark intrigues" of Boris Godunov; further devastation of the country, deterioration of the entire system of government, which came under False Dmitry I, and then its complete collapse under Vasily Shuisky. The development of vicious rule and government of the country was facilitated by the "wordless silence" of subjects of all classes and ranks, who obediently accept the destruction of the foundations of law and order, giving rise to a decline in morals in society and the associated spread of destructive vices (love of money, pride, thirst for unjust awards, theft the abundance of things, the insult inflicted during quarrels, the pronunciation by mouth and language of obscene nasty words, the excessive use of wine and gluttony and sodomous vile deeds), which ultimately led to an explosion of popular indignation, the subsequent civil war, which put the country on the brink of disaster , possible loss of independence and death. The article shows that the picture drawn by Timofeev of the oprichnina defeat of the country, the vices of the rule of Godunov, False Dmitry and Vasily Shuisky in many respects coincide with the revelations made by his other contemporaries, both domestic and foreign, who visited Russia in the 16th - first half of the 17th centuries. But none of them has such a deep analysis of the harmfulness for the country of appointment to the highest positions in the state of "ignoramuses, scavengers and bribery "; when the worst rush to power and ranks, and behind them even worse ones, from whose activities the state can be destroyed "as if it did not exist." Responsibility for allowing such a disorder in the activities of all branches and spheres of state

administration Timofeev equally places on both the ruling and the subordinate, for "everyone has sinned from head to foot", since it is unacceptable when people, wrapped like a shroud in wordless silence, have completely lost the ability to resist violence, silently looked "at innocent deaths" and, moreover, allowed when their compatriots "for the sake of increasing their profits entered into an alliance with foreigners who captured us <...> concluding deals with them on the depletion of the Orthodox land." Timofeev's conclusion is cruel and unambiguous: the appointment to responsible positions in the state apparatus in order to manage all the affairs of the state and the country's economy is a serious and responsible task for the holders of supreme power and supreme officials. Timofeev warned his compatriots that if in the future there are people capable of destroying "such a great, shining and God-decorated state" like Russia, then his Vedomosti will serve as a warning about the consequences that such " evil-minded " actions can lead to the country .

Kalyuzhny Alexander Nikolaevich

Chaplygina Victoria Nikolaevna

CRIME REPORT VERIFICATION: WAYS TO IMPROVE

No. 7, 2015

The article analyzes the problems of law enforcement and the legislative structure of norms governing the features of consideration and resolution of reports of crimes that have undergone transformation by the Federal Law of 04.03.2013 No. 23-FZ "On Amendments to Articles 62 and 303 of the Criminal Code of the Russian Federation and the Criminal Procedure the code of the Russian Federation "; emphasizes the legislative expansion of the list of procedural actions, the conduct of which became possible at the stage of initiating a criminal case; attention is drawn to the change in the priorities of the criminal procedural policy - the expansion of the number of investigative actions allowed when

considering reports of crimes and the transition from the principle of the exclusivity of their production at this stage to a system of investigative actions carried out according to the general rule; a study is being conducted of the difficulties encountered by persons resolving reports of crimes in the performance of investigative and procedural actions that are possible at the stage in question; the haste of the introduced innovations is noted, which entailed a weakening of the procedural guarantees of the participants in criminal proceedings, the uncertainty of their procedural status at this stage, which creates the preconditions for procedural violations; indicates the uncertainty of the procedural form of some, both procedural and investigative actions carried out when considering reports of crimes, the possible inconsistency of their results with the requirements for evidence, and suggests visible ways to resolve these problems.

Lushnikov Andrey Mikhailovich

Lushnikova Marina Vladimirovna

K.N. Gusov

No. 7, 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 Moscow State Law Academy in 1994-2013. Kantemir Nikolaevich Gusov . It is concluded that he made a significant contribution to the development of the Russian science of labor law, investigated a number of topical problems of the industry, primarily related to labor contracts. His special merit is the classification of labor contracts, justifying them as a generic concept. He proposed to take as a basis for the classification of individual labor contracts such stable signs as the peculiarity of the conclusion and content of labor contracts. In accordance with these features, contracts are divided by him into two large groups: contracts on the employee's labor activity and contracts on the educational and labor activity of the employee. In each of these

groups of contracts, their further classification was carried out according to other criteria: subject composition, intended purpose, etc. This classification is currently supported by the majority of labor scientists. It also currently has the character of a legal classification of employment contracts. He made a significant contribution to the study of problems of international labor law, sports law, to the development of the doctrine of certain types of labor contracts.

Maleina Marina Nikolaevna

AGREEMENTS ON TARGETED ADMISSION AND TARGETED LEARNING

No. 7, 2015

The article examines two interrelated agreements in the field of education aimed at organizing training. A targeted admission contract qualifies as a civil service contract. Its subject is the actions of a state body (or a certain organization) for the selection and direction of citizens to participate in a competition for targeted places, for organizing practice in accordance with curricula, as well as actions of an educational organization to ensure targeted admission and training of citizens. The author proves the necessity of securing in the law such essential conditions of the target admission agreement as the number of citizens who can be accepted by the educational organization within the framework of target admission, as well as information on the directions of the body's activities. The subject of the contract on targeted training is seen in the actions of the body for organizing the educational, industrial, pre-diploma practice of a citizen and for his employment in accordance with the qualifications obtained, as well as in the actions of the citizen for targeted training and subsequent employment. It is proposed to apply an expansive interpretation of the turnover “failure of a citizen to fulfill his obligation to find a job”.

Naumov Anatoly Valentinovich

CRIMINAL LIABILITY OF LEGAL ENTITIES

No. 7, 2015

In the theory of domestic criminal law, there is no general unambiguous assessment of the need to establish criminal liability of legal entities. In this respect, one can even speak of a certain “split” in the doctrinal view of this. Some authors are in favor of introducing such responsibility, while others are against it. Usually, the objection to such a criminal law institution boils down to the fact that, firstly, it is associated with the system of "common" law, and secondly, it contradicts the fundamental principle of criminal law - the criminal liability of only individuals. However, an analysis of modern foreign criminal legislation indicates that such responsibility is provided not only in the criminal legislation of the systems of "common" law, but also in the Romano-Germanic, that is, European continental (for example, France, Holland), socialist (for example, China), Muslim (for example, Albania, Syria), CIS countries (for example, Kazakhstan). As for the European continental law, only the legislation of Russia and Germany remained virtually uncovered in this part in Europe (although there, in the theory of criminal law, this issue is "seriously" discussed). At the same time, the article emphasizes that this problem, since the adoption of the Criminal Code of the Russian Federation in 1996, was quite practical for the process of lawmaking in the criminal legal sphere: in both draft laws of the Criminal Code that were submitted to the State Duma, norms on the criminal liability of legal entities were formulated. The State Duma periodically receives official bills that provide for such responsibility. The article analyzes in detail the content of such bills, indicating their pros and cons. At the same time, special attention is paid to the most difficult, according to the author, problem of "implementation" of such a doctrinal idea into domestic criminal legislation, as determining the content of guilt in crimes committed by legal entities. The fact is that almost all draft laws use the so-called psychological theory of guilt as the basis for resolving this

issue. However, it is obvious that it was created to substantiate the guilt of individuals. In this regard, the article draws attention to the fact that in the criminal legislation of those countries that provide for the criminal liability of legal entities, the content of such guilt is generally not “prescribed” (for example, France, the United States).

Orel Yuri Viktorovich

Development of legislation on criminal-legal protection of normal activities of bodies and institutions of the penitentiary service of Ukraine in 1917-1960.

No. 7, 2015

The article analyzes the first criminal and corrective labor codes of the RSFSR and the Ukrainian SSR, judicial practice for the presence in them of norms providing for criminal liability for encroachment on the normal activities of the bodies and institutions of the penitentiary service of Ukraine. It is concluded that the responsibility of the arrested person for escaping from custody or from a place of confinement occurred only in the presence of aggravating circumstances, namely: when it was committed by undermining, breaking, damaging the gates, walls, etc. The escapes of the arrested, not accompanied by the indicated circumstances, did not entail criminal responsibility, but were punished only in a disciplinary manner. Later, the criminal liability for the escape was abolished and disciplinary liability was provided instead. After revealing the erroneousness of the cancellation of criminal responsibility for the escape, it was soon reinstated. The practice of applying this norm has confirmed its effectiveness and, over time, revealed the need for its improvement. After the introduction of the appropriate changes, the criminal legislation began to recognize as punishable any escape of an arrested person from custody or from a place of imprisonment, and not only committed in the presence of aggravating circumstances. In addition, norms

appeared in the corrective labor legislation, which indicated what should be considered as an unauthorized absence, and what should be considered an escape. At the same time, for unauthorized absence and failure to appear on time, the prisoners bore disciplinary responsibility, and for escape - criminal. Attention is drawn to the problems of responsibility of convicts for committing actions that disrupt the work of correctional labor institutions. The increased danger of this crime and the absence of a special article of the criminal law involuntarily forced judicial practice to apply analogy in such cases, when such actions were qualified as banditry. It is noted that in the event of evasion from serving a sentence in the form of a fine, corrective labor (forced labor), they could be replaced by imprisonment, despite the lack of legislative norms providing for the possibility of such a replacement for corrective labor (forced labor). Responsibility of convicts for evading serving other types of sentences, despite their sufficiently developed system, was not envisaged.

Pan Dongmei

CORPORATE CRIME IN CHINESE CRIMINAL LAW

No. 7, 2015

A corporate crime, which in criminal law theory is called a crime of a legal entity, is a crime committed in the interests of an organization or on behalf of an organization. It is a special form of crime, different from that of a natural person. In this article, on the basis of the provisions of the Criminal Code of the PRC on corporate crimes, the concept and classification of corporate crimes, the corpus delicti of a corporate crime and the corresponding judicial practice will be considered.

Plotskaya Olga Andreevna

Replication of the Komi (zyryan) customary legal norms as a condition for the implementation of the educational process and the basis for the formation of competencies of modern students

No. 7, 2015

The article presents an analysis of the Zyryan customary legal norms that governed the educational process. The aim of this work is to study the customary legal experience of the Komi (Zyryan) in the ethno-educational process, as well as the possibility of using customary legal features in the modern educational process in the context of the reform of the Russian education system and the formation of a competence- based approach. The subject of the research is the usual legal norms, traditional views and institutions that governed the ethno-educational process among the Komi (Zyryan). The methodological basis of the research is sociological phenomenology, which reveals the perception of the world by an individual through the prism of subjective ideas and meanings that have developed in the practical world. Among the methods used in this work, it is necessary to highlight the following: historical and legal, structural and functional, comparative legal, systemic, social and legal. In addition, the Komi (Zyryans) use methodological developments of modern pedagogy, psychology, sociology, and ethnology as the basic principles of the theoretical and legal analysis of the usual legal aspects of the ethno-educational process . The article presents a study of the role of customary legal norms in legal education among the Komi (Zyryans) in the 19th - early 20th centuries. Special attention is paid to the syncretism of the Zyryan customary legal experience and innovations in the modern educational process. Based on the works of ethnographers, ethnolinguists , developments in social psychology, pedagogy, and the history of law, this study will reconstruct the genesis and replication of the features of the customary legal regulation of the ethno-educational process among the Komi (Zyryan). As a result, the author highlighted the features of the legal views of the Komi (Zyryan) in the ethno-educational process. Based on the usual legal experience, the author's concept of

the educational system is proposed, which includes a set of collective cases aimed at the implementation of educational activities and the development of a competence- based approach. The author also proposed an action plan for the implementation of a system of collective affairs in a modern student group. The indicators of the implementation of the educational work system in the student group and, accordingly, the reflection of the level of competence formation in the form of quantitative and qualitative indicators also deserve special attention . The novelty of this scientific work lies in the fact that it is an independent scientific study of general theoretical and historical-legal, psychological and pedagogical aspects of the genesis and development of the customary legal regulation of the ethno-educational process among the Komi (Zyryans) and the application of past experience in the modern educational process. Today in Russia the results of this study can be applied in the Russian education system, which also determines its novelty.