Permyakov Yuri Evgenievich

RUSSIAN THEORY OF LAW: CHALLENGES OF TIME AND ANSWERS OF HISTORY

No. 10, 2015

The state of legal science and theory of law in particular is related to the widespread practice of legal judgments, the level of legal technology, the rule of law, the legitimacy of power and the state of legal culture in general. This circumstance prompts the conclusion about the historical responsibility of legal science. The relevance of the theory of law is one of the criteria for its scientific character and cannot be reduced to an arbitrary list of preferred topics. Today, given the postmodern situation, the posing of the question of the scientific nature of legal theory seems to many scientists old-fashioned. The actual has ceased to be a universal definition and has lost its intelligible content. The author believes that this is the most urgent task for theoretical jurisprudence - to respond to the challenges of the time and retain the ability to describe legal reality, predict the development of law and promote its effectiveness, taking into account the historical situation and the characteristics of the modern cultural context. The article traces a different understanding of the relevance of legal research in relation to different types of legal thinking .

Polyansky Victor Vladimirovich

METHODS AND PRINCIPLES OF PUBLIC POWER HARMONIZATION

No. 10, 2015

The article analyzes the methods and principles of harmonization of public power, taking into account the dynamic processes in the political and socio-economic systems of the Russian state-organized society, shows the mutual

influence and interdependence of the processes of functioning of public power and civil society. The conclusion is made about the systemic nature of the constitutional principles and methods of exercising public power, about the need for harmonious constitutional and legislative regulation of the mechanism of public power in order to ensure the constitutional principle, according to which a person, his rights and freedoms are the highest value. Special attention is paid to the characteristics of such principles of harmonization of public power as subsidiarity , differentiation, proportionality, and stability of the form of government.

Volkov Vladislav Eduardovich

ELECTORAL IDENTIFICATION: LIMITS OF INDIVIDUALIZATION OF ELECTION PROCESS PARTICIPANTS

No. 10, 2015

The article is devoted to the analysis of the problems of legal regulation of the identification of participants in the electoral process. The issues of electoral identification are studied in the context of the implementation of active and passive electoral rights in the context of the intensive development of information technologies. The inconsistency of the legal regulation of the processing of personal data in the field of electoral relations is noted, measures are proposed to reduce the level of information asymmetry. Based on the study of the norms governing the procedure for photo and video recording in the polling station, proposals are formulated to improve lawmaking and law enforcement practice. Taking into account the identified problems of identification of subjects of passive electoral law, recommendations for the harmonization of the modern model of information support for elections are substantiated.

Klenova Tatiana Vladimirovna

Socio-political components of the qualification of crimes

No. 10, 2015

The qualification of crimes is a complex phenomenon, the scope of which includes the norms of criminal law, the activities of authorized representatives of state authorities in connection with the establishment of a crime event and the definition of its type, law enforcement acts with a negative judgment on the commission of a crime by a person subjected to criminal prosecution. The plurality of structural elements of this legal phenomenon determines its regulatory function. The focus on the regulation and assessment of people's behavior determines the allocation of socio-political components in the qualification of crimes. The issue of using the qualification of crimes in criminal policy is not covered in the Russian legal literature. This material is about the problems of understanding the qualification of a crime, its significance for guaranteeing the normal development of social relations, also about the threats associated with the strengthening of the role of the principle of political expediency in the practice of qualifying crimes, and the need for a consistent policy of censure in qualifying crimes.

qualification of crimes, criminal policy, high-profile criminal cases, separation of powers in the field of criminal policy, policy of censure, discrimination and privileges in the qualification of crimes.

Artur Bezverkhov

ON THE OPERATION OF THE CRIMINAL LAW IN THE CONDITIONS OF INTER-BRANCH RELATIONS

No. 10, 2015

The article examines the features of the operation of the criminal law in the field of intersectoral relations that develop between different sectoral branches as a result of legal regulation and protection of various spheres of social life and express the relative dependence between two or more branches of legislation.

It is shown that the branches in the system of legislation are in a complex network of interdependencies . Those links between industries - components of the system of legislation , which are of a necessary, substantial and stable character , are recognized as "law- making ". These links ensure the stability of the legislation. Without them, the legal system would cease to exist as a whole.

The author touches upon the question of the typology of intersectoral relations, which includes the following classification series: direct and reverse; coordination (horizontal) and subordinate (vertical); functional and genetic (historical); systemic and complex; relationships of structure (structural) and development.

The article substantiates the position according to which the organic relationship of the regulatory provisions of the criminal and other branches of legislation on the rights and obligations of participants in public relations must be taken into account both in the legislative design and in the process of applying the relevant provisions of the Criminal Code of the Russian Federation. Attention is focused on the systemic, functional and structural links of the Criminal Code of the Russian Federation with related legislation.

It was revealed that the presence of intersectoral systemic links determines the need for the implementation of the criminal law in the system of subordinate (vertical) and coordination (horizontal) relations with other industries.

Within the framework of intersectoral functional interaction, the criminal law is designed to protect the most important public relations from possible criminal violations. In strict accordance with the functional approach, the Criminal Code protects not all particularly significant relations, but that part of them that, in

a positive sense, is regulated by other branches of law; individual social benefits and interests should only be protected by the criminal law when they are a legal value , and social relations - when they become legal relations.

It has been proved that the functional links that develop between the criminal law and regulatory sectoral codifications significantly affect the definition of criminal wrongfulness as a legal sign of a crime. This is justified by the fact that prohibitions are functionally inseparable from permissions and, in their legal essence, are called upon to act "in tandem" with permissions. In the conditions of the implementation of the right, certain legal permissions are correlated with the corresponding criminal-legal prohibitions, legally ensuring their effectiveness.

It is found that the law regulations put in non- necessity of complex inter-branch interaction should be as expressed by law to be able to operate in parallel and jointly, thereby providing consistent, slazhen- Noe , synchronous use of various law enforcement agents The relative raslevoy nature. Comprehensive legal protection - one of the most ef- -efficient legal means of combating crime and other unlawful attacks due to the variety of the Features-tics , the causes and conditions of antisocial behavior.

A hypothesis is put forward about the structural heterogeneity of legal norms. In this case, the idea of a variety of options for the structure of legal norms is advisable : from morphological indivisibility (indecomposability), inherent in norms-principles, to polystructurality of norms, which means that one norm has several structural elements of the same type.

The article touches upon the problem of blanketness in criminal law. At the same time, blanketness is considered as an expression of structural links between criminal law and other sectoral branches with the help of a special technique of legislative technique - a blanket method of presenting normative material in the text of a criminal law and the means of legislative technology corresponding to this method - blanket constructions and terminology. Blanketness as a legal reality

speaks of the “presence” of non-criminal legal normative material in the criminal law norm .

RUZANOVA VALENTINA DMITRIEVNA

POVAROV YURI SERGEEVICH

INTERPRETATION OF THE CONCEPT OF A LEGAL ACT

No. 10, 2015

The article discusses the problems of interpretation of the terms "law" and "other legal act" in the context of the application of Art. 168 of the Civil Code of the Russian Federation; it is concluded that the range of acts referred to in this article is wider than that specified in Art. 3 of the Civil Code of the Russian Federation. In addition, the issue of the consequences of a transaction in violation of decentralized regulations is being considered; it is emphasized that such a violation in itself cannot entail invalidation of the transaction on the basis of Art. 168 of the Civil Code of the Russian Federation, which does not exclude the possibility of recognizing the transaction as invalid on the basis of special legal provisions, as well as the onset of other negative consequences.

Taran Antonina Sergeevna

CHALLENGE OF ATTORNEY BY THE COURT AT SEPARATE STAGES OF PROCEEDINGS IN CRIMINAL CASE No. 10, 2015

The Criminal Procedure Code of the Russian Federation regulates the recusation of a lawyer by the court only in relation to the preparatory part of the trial. In connection with the lack of legal regulation, the article raises the question of the possibility and proper procedure for challenging a lawyer by the court at other stages and stages of criminal proceedings: preliminary investigation and preparation for the trial, as well as after the start of the trial.

With regard to the pre-trial stages of the criminal process, the Criminal Procedure Code of the Russian Federation mentions the possibility of challenging a lawyer by the court only in the cases provided for in Art. 165 of the Code of Criminal Procedure of the Russian Federation (part 2 of article 72, part 1 of article 69 of the Code of Criminal Procedure of the Russian Federation). The author concludes that the recusation of a lawyer by a court can be carried out in all forms of judicial control: not only in accordance with Art. 165 of the Criminal Procedure Code of the Russian Federation, and Art . 108, 125 of the Code of Criminal Procedure of the Russian Federation. The adoption by the court of a decision on the recusation of a lawyer in this case presupposes the need to comply with the procedural procedure for recusal inherent in adversarial proceedings: with the right of the parties to declare recusations, express their position on it, submit explanations and objections.

The article reveals the problem of the lack of legal regulation of the actions and decisions of the judge when circumstances are found that exclude the participation of a lawyer in the criminal process at the stage of preparing the case for trial. Possible forms of the judge's resolution of the situation in question are identified and analyzed . The author concludes that from the position of maximizing guarantees of the rights of the participants in the proceedings, it would be optimal for the judge to appoint a preliminary hearing to resolve the issue of disqualification of the lawyer.

It was revealed that in the science of criminal procedure , the rule established by Part 2 of Art. 64 of the Code of Criminal Procedure of the Russian Federation, which in general limits the application of recusal to the judge by the scope of the beginning of the judicial investigation The author concludes that this provision of the criminal procedure law should not apply to a lawyer . The judge must make a decision in the case of a recusation by the lawyer after the start of the judicial investigation, regardless of the time when the party learned about the existence of grounds for it. Failure to consider this challenge, making a decision on it

simultaneously with the issuance of a verdict should in itself be recognized as a violation of the criminal procedure law.

Sheifer Semyon Abramovich

CORRECT ACTIONS - ARE NEW TREATMENTS LEGAL ?

No. 10, 2015

The article analyzes the proposals of a number of authors on replenishing the system of investigative actions with new cognitive techniques, including operational-search measures and “non-traditional methods of proving”. Based on his ideas about the patterns of development of the system, the author shows the incompatibility of "new" investigative actions with the principles of the criminal process, with such an obligatory sign of an investigative action as the legal relationship between the participants. As a result, it is concluded that the proposed innovations destroy the system of investigative actions.

Olinder Nina Vladimirovna

CR IMINALISTIC CHARACTERISTICS OF ELECTRONIC PAYMENTS AND SYSTEMS

No. 10, 2015

The article provides a detailed description of electronic payment systems as an element of the forensic characteristics of crimes committed using electronic means of payment and systems. Provides statistical data on the turnover of electronic payments; the number of crimes committed using electronic means of payment and systems; damage from them. The features of the circulation of electronic means of payment are highlighted and analyzed ; internal content of electronic payment systems; similarities and differences from settlements in the banking sector. The analysis of the Russian legislation (in particular, the law "On

the national payment system") is carried out to define the concept of an electronic means of payment and an electronic payment system. Based on the results of the analysis, the definition of electronic cash (as a record that legally testifies to the mutual monetary obligations of payment system entities) and an electronic payment system (as a legal entity that is an independent participant in settlement relations, endowed with a special legal status, accumulating, distributing and redistributing electronic payment systems) was formulated. funds on behalf of clients on the basis of the concluded agreement, and (or) operations for depositing and withdrawing funds through a special software package, the components of which are executed on the Internet servers and the user's terminal network equipment). An attempt was made to analyze the " bitcoins " that have become widespread in the world, despite the ban in many countries, and their turnover. The most common electronic payment systems in the Russian Federation are listed.

An attempt was made to determine the minimum and maximum amount of information (information) about payment systems required for the investigation of crimes committed using electronic means of payment and systems. Information about an electronic system as a subject of criminal encroachment is compared with information about the operation of such systems. The need to pay special attention to compliance with the requirements of criminal procedure legislation on obtaining data on payment electronic systems and electronic means of payment during specially designed investigative actions - inspection of the scene, search, seizure, etc.

Trescheva Evgeniya Alexandrovna

THE STATUS OF THE PROSECUTOR IN THE ARBITRATION PROCESS NEEDS IMPROVEMENT

No. 10, 2015

The article deals with the problem of determining the legal status of the prosecutor as a participant in the arbitration process at the present stage. The article analyzes the questions about the inexpediency of applying to this participant in the process the terms defined in the current procedural legislation in relation to the plaintiff (statement of claim, waiver of the claim, etc.). When assessing the content of the articles regulating the legal status of the prosecutor in the arbitration process, attention is drawn to the need to supplement the provision on the ability of the prosecutor to give opinions on cases in which he is involved. In this regard, questions are raised about the need to change the current legislation.

Despite the fact that the current legislation on legal proceedings in arbitration courts does not mention such a form of participation of the prosecutor as giving an opinion, the entry of the prosecutor into the initiated process tends towards this very form in its content.

The author proves that the prosecutor also has such rights and obligations that can be called special. But these are not the rights and obligations of the plaintiff, but his own.

These rights and obligations include, in particular, the right of a prosecutor to initiate a case in an arbitration court in the "other people's interests" in those categories of cases that are named in part 1 of Article 52 of the Arbitration Procedure Code of the Russian Federation (cases from public legal relations, cases on recognizing a certain category of transactions as invalid and etc.); the right of the prosecutor to enter the process at any stage in the same categories of cases; the prosecutor, filing an application with the court, must substantiate the legality of his appeal to the arbitration court.

According to the author of the article, the uniformity of the legislation governing civil and arbitration proceedings on the same issues implies that the prosecutor, entering the process, must have the right to give an opinion on the case, ensuring the legality of the consideration of the case by the arbitration court. At the same time, analyzing the relationship between the prosecutor and the arbitration

court in the framework of arbitration procedural legal relations, one can come to the conclusion that the law should enshrine not only the right of the prosecutor to enter the process, but also his obligation to participate in the case to give an opinion if the arbitration court recognizes it as necessary.