Lazarev Valery Vasilievich

LEGAL SCIENCE: CONTINUING POLEMICS

No. 11, 2015

The magazine " Lex Russika ", publishing two of my articles on the state of legal science, hoped to develop on this basis a broad discussion of the science of law. It took place. And not only on the pages of the magazine. The editorial staff of the journal acted together with the department of theory of state and law as the organizer of the conference, at which the published articles were the subject of controversy. In addition, the author of articles in the epistolary genre (" electronic ") expressed a variety of judgments about the domestic legal science.

Initially, it was assumed that I would have to summarize some of the results of the discussion. In this regard, I believe: 1) only intermediate results can be summed up, since the discussion has not reached its apogee and needs to be continued neither in terms of the coverage of the participants (industry experts are silent), nor in terms of the coverage of discussion issues; 2) the discussion has reached the level of philosophy of law, which requires the involvement of a new language and new discourses. I consider the publication of two articles by prof. Yu.A. Vedeneev, who are distinguished by the depth of philosophical analysis and creative innovative approach, which are not inferior to Western models of such a systematic vision of the subject. Another positive result of the detailed discussion is the appearance of two publications by S.V. Lipen, who drew attention to the need for legal science of science (philosophy of legal science) and considered a tiered approach to the structure of theoretical legal knowledge.

The proposed article states the positive results of the discussion and, on this basis, presents the general theory of state and law in its ontological and epistemological being associated with the comprehension of subject forms of state and legal realities (dogma of law and state) and creation in the process of abstracting from them the conceivable and sensible forms (philosophy of law),

which, through the mediation of theory, return from philosophical heights to legal practice. The key fundamental role in these processes should be played by all the recognized categorical imperative that defines the essence of law and the state. The author draws attention to the phenomenon of simulation and simulacra, involved in the research process by a number of scientists, which turned out to be especially in demand in diverting from the truths of jurisprudence.

The integrative (integral) position of the author does not reject the post-classical epistemological approaches, but at the same time he sees a danger for the research of state and law in their one-sidedness and complete withdrawal into the sphere of the transcendent, into the field of psychic esoteria , capable only of evocation of the entropy of state and legal realities ...

Semenov Valery Evgenievich

MORAL AND LEGAL PRINCIPLES IN THE HISTORY OF THE PHILOSOPHY OF LAW

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The moral and legal principles underlying law and the foundation of the entire social order have received a detailed elaboration in the history of philosophical and legal thought. The beginning of this process should be attributed to Antiquity, but the most complete and comprehensive substantiation of these regulations falls on the New Age and the period of the Enlightenment. The article analyzes the moral and legal teachings of Plato, Aristotle, J. Locke, I. Kant, J. Rawls . Philosophers understood freedom, first of all, as the only original right, given to a person by virtue of belonging to the human race, and as a pure concept of reason, which is of particular social importance as a regulatory principle. The following were also highlighted: the negative aspect of freedom - independence from the coercion of another person and, in addition, the positive content - the ability to start an action spontaneously, i.e. consciously and independently choose

the motive of the action. However, freedom as a basic moral and legal principle includes some other a priori principles. First of all, freedom presupposes innate equality. Moreover, freedom is unthinkable without the human right to be his own master and to act independently. Freedom is also immanent in the property of an honest person who, in the face of any legal act, has not done anything wrong with anyone. Another aspect of freedom is the recognition and respect for property rights. Finally, freedom is simply impossible without freedom of speech. All these a priori principles are originally embedded in the idea of innate freedom. In these principles, the right of freedom is concretized and specified in accordance with its various aspects. Moral and legal principles are at the same time the highest human values on which all social life is built. As values, they represent general human guidelines from which all types of norms flow and by which reason is guided. In everyday life, these principles appear in the form of natural moral rights, and in the legal field they acquire the character of legal powers.

Kochetkov Vladimir Valerievich

MODERN RUSSIAN CONSTITUTIONALISM: RECEPTION OF PUBLIC LEGAL INSTITUTIONS OR IMPLEMENTATION OF VALUES?

No. 11, 2015

The article is devoted to the peculiarities of the reception of constitutional public law institutions in modern Russia. The author shows that the problem is that due to the dominance of positivist values of legal consciousness in domestic legal science, the borrowing of constitutional institutions does not lead to the implementation of the idea of the priority of human rights declared in the 1993 Constitution. Showing the inner antinomy of Russian constitutionalism, the author believes that the consistent constitutionalization of modern Russian power is possible only if the values of constitutionalism are spread in the legal consciousness of citizens and the elite.

Engelhardt Artur Avgustovich

STATE CRIME OF EXECUTION IN CRIMINAL LAW OF RUSSIA (HISTORICAL AND LEGAL OUTLINE AND THEIR SIGNIFICANCE FOR MODERNITY)

No. 11, 2015

Of course, any criminal-legal study of the problem of responsibility for state crimes in view of its connection with politics and management is possible only on the basis of the appropriate socio-historical context. At the same time, it is obvious that it should be based on a specific legal analysis. Actually, this predetermines the interest in the monographic research "State crimes in the criminal law of Russia in the XX century", published by the publishing house "Prospect" in the form of historical and legal essays. Suffice it to say that the authors carried out a diachronous comparative legal study covering two historical arrays: the genesis and evolution of the institutions of power in Russia; the genesis and evolution of the criminal law support of its functioning.

But, perhaps more importantly, the legal information summarized in the study provides an opportunity to evaluate on its basis a number of provisions and hypotheses that are significant for the current criminal legislation. First of all, having put this information as the basis for assessing the qualitative peculiarity of state crimes, admit that the subject content of the range of goods that make up the object of their criminal legal protection is so vague that it makes the concept of state crimes conditional. Further, to illustrate the existence of a danger more characteristic of the Soviet era, but still preserved to this day, a symbolic understanding of the fact of committing, respectively - the meaning of establishing and applying responsibility for state crimes. Finally, the essays expand the information base of the problematic of the certainty of prohibitions on state crimes, touched upon in the manner of posing the question. What was said in the article

characterizes, in particular, the difficulties of ensuring the certainty of the criminal law in the case of the use by the legislator: a) short formulations (in the absence of an opportunity to reveal their content from the standpoint of constitutional law); b) concepts that carry an ideological (politicized) charge; c) compositions that expand the scope of the action to preliminary criminal activity, or consolidate the actions of an accomplice as an independent crime.

Kachalova Oksana Valentinovna

IMPLEMENTATION OF THE PRINCIPLES OF CRIMINAL PROCEDURAL LAW IN ACCELERATED PROCEEDINGS

No. 11, 2015

The article examines the features of the operation of the principles of criminal procedure law in relation to accelerated proceedings in the Russian criminal process: a special order of trial, a special order of trial when concluding a pre-trial agreement on cooperation and an abbreviated inquiry. It is concluded that a number of principles of criminal procedural law are systemic (the principle of separation of procedural functions, the principle of publicity), a number of principles operate with exceptions (the principle of objective truth, the presumption of innocence and the protection of individual rights and freedoms in criminal proceedings). The adversarial nature of criminal proceedings is viewed not as a principle of criminal procedural law, but as a type of criminal proceedings. The limits of limiting the principles of objective truth, the presumption of innocence and the protection of individual rights and freedoms in criminal proceedings in the context of accelerated proceedings in the context of the ideas of optimizing criminal proceedings are also determined by the correlation of possible exemptions with the severity of the committed acts and their social danger. It is concluded that the more serious the crime is committed, the stricter the amount of possible punishment for the crime committed and the more serious the

other legal consequences of the committed act, the more weighty should be the guarantees of the rights of the participants in the proceedings in this criminal case. The possibility of considering a criminal case in a special order in cases of grave and especially grave crimes creates an imbalance in the operation of the principles of criminal proceedings. The limitation of the principles of the presumption of innocence and objective truth under such conditions and the prevalence of ideas for optimizing the criminal process seems unreasonable. Procedural economy can be considered justified only in the context of considering cases of crimes of small and medium gravity. Simplification of the procedure of criminal proceedings should not call into question the expediency of optimizing the process itself, the fairness of the court decision made in this way and undermine the credibility of justice as a whole.

Alla Kerimovna Polyanina

THE CONCEPT OF "INFORMATION PRODUCTS" AS A KEY CATEGORY OF THE LEGAL SUPPORT OF INFORMATION SECURITY OF CHILDREN

No. 11, 2015

Interpretation of the concept of "information products" plays a key role not only in law enforcement practice, but also in the implementation of the entire state and legal policy of ensuring the information security of children. The relativity and instability of the definition used in the legislation requires analysis and improvement in order to comprehensively protect children from harmful information. The formulation of the concept "information products" by the Federal Law of December 29, 2010 N 436-FZ "On the Protection of Children from Information Harmful to Their Health and Development" seems to need clarification. The use of methods of complex and systemic topical problems of formulating basic concepts and structure, as well as their correspondence to stable

categories of legal science, general scientific methods of cognition, legal analytical processing of normative material, determine the methodological basis of the study. The author sees a solution to the problem in expanding the area of understanding and application of the concept of "information products", covering, along with the existing forms of information, toys and children's household items, including all kinds of products (souvenirs, accessories, clothing, etc.), in order to ensure health, physical, mental and moral development of children.

Sitnikova Alexandra Ivanovna

CHAPTER "NEO- FUNCTIONAL CRIME" of the Criminal Code of the Russian Federation AND ITS LEGISLATIVE-TEXTOLOGICAL RATIONALE

No. 11, 2015

The draft of the chapter " Unfinished crime" is designed in the legislative-textological paradigm, which reflects the author's concept of the types of unfinished crime (deep level of the text) and legislative-textological provisions concerning the construction of prescriptions (surface level). The practical implementation of the provisions of legislative textual criticism in the design and interpretation of prescriptions was reflected in the observance of a number of requirements for the normative text: within the framework of the head of the TM of the Criminal Code, the headings of the articles were formulated in a new way, generalizing the content of criminal law provisions; the definition of an unfinished crime was formulated, corresponding to the concept of types of unfinished crime; text formation of criminal law orders was carried out within the framework of the optimal model; descriptive and thematic features are used in the designed prescriptions as interrelated elements; the imperative of accuracy is observed, which does not allow for different interpretations and obliges to take into account the addressee's reaction to the content of the normative text.

When designing the institute of unfinished crime, its criminal law prescriptions, compliance with a number of requirements of criminal law textology found its practical embodiment: the structural organization of short stories, the formulation of chapter titles and its articles as actualizers of criminal law prescriptions, objectification of the author's intention in the projected text, the implementation of text formation within the framework of the minimal model, the use of descriptive and thematic features in the formulation of short stories, the use of the principle of purposefulness to formulate a single text space, giving pragmatism to the designed prescriptions, taking into account the perlocutionary effect, i.e. reactions of the addressee to the content of the text.

From the standpoint of legislative textual analysis, the design features of the criminal-legal prescriptions of Chapter 6 of the Criminal Code of the Russian Federation are revealed, a theoretical model of the institution of unfinished crime is developed and its legal-textological interpretation is given.

Natalia Sokolova

EURASIAN INTEGRATION: UNION COURT OPPORTUNITIES

No. 11, 2015

The first part of the article examines the main provisions on the Court of the Eurasian Economic Union (hereinafter the Court of the Union): the procedure for its formation, structure and organization of activities. The Treaty on the EAEU and other documents defining the status and mandate of the Court indicate that the states took into account the experience of the Court of the Eurasian Economic Community (hereinafter EurAsEC) and formulated other rules for the operation of the new Court, significantly changed its competence. The second part deals with the process of integration and the legal personality of international integration associations, the formation of supranational institutions and a special legal order for organizing integration. Indicators of integration are indicated, which allow

assessing the capabilities of the judicial body of an international integration association for its strengthening and development. All bodies of the EAEU are obliged to contribute to the achievement of the stated goals, including the formation of a single market for goods, services, capital and labor resources within the Union. Of course, the judicial practice, which is just being formed, and those doctrines that will be accepted by the Union Court, will be of great importance for determining the role of the Union Court in the development of Eurasian integration . A strong and independent court is an important part of the architecture of any international organization, especially one that proclaims the goals of integration. Practice shows that at present the actions of international courts, especially in associations of regional integration, are not only legal actions proper, but also have a political significance for strengthening integration. Therefore, the third part examines the possibilities , problems and prospects for the activities of the Court of the Union in the light of the development of Eurasian integration. They relate to the interpretation of the Union's legal norms, the possibility of judicial rule-making, the narrowing of the competence of the new Court in comparison with the EurAsEC Court , the problem of judicial protection of human rights, the need to interact with national courts, the competition of dispute resolution forums, the fairness of international court decisions and their execution at the national level. ...

Sazonova Kira Lvovna

EX GRATIA PAYMENTS FOR VICTIMS OF ARMED CONFLICTS AND INTERNATIONAL LIABILITY LAW

No. 11, 2015

The last ten years have become a real test for the law of international responsibility, especially for the institution of responsibility of states and international organizations for the misuse of force. Of particular concern is the

practice of so-called " ex gratia payments ", which is increasingly used by Western states, especially the United States .

These payments represent a means of satisfying material claims on the part of citizens of those states where armed conflicts occur and which have suffered from the aggressive actions of soldiers of the Western armies.

Such payments, despite the semblance of friendliness and sympathy that, at first glance, they create, in fact, are a very dangerous practice, since in fact they represent actions outside the current international legal field. Payments to an ex gratia give the wrongdoing State an opportunity to "pay off" from the affected citizens, not recognizing formally guilt and freeing himself from any further claims as part of the "traditional" international responsibility of States, the development of which is already complicated by numerous problems. In the doctrine of international law, especially domestic law, the phenomenon of ex gratia payments was practically not considered, since in recent years, researchers have mainly focused on those forms of implementation of international legal responsibility that were enshrined in the Draft Articles on the responsibility of states for international law. wrongful acts in 2001 and in the Draft Articles on Responsibility of International Organizations in 2011, namely on compensation, restitution and satisfaction. However, given the current rate of introduction by Western states of the practice of ex gratia payments , the prospects for the further development of these forms look very vague, since it is obvious that this type of payments is much more preferable for states than proceedings in an international justice body, where, after a decision is made, recognition by the state is mandatory. the aggressor of your guilt. That is why it seems very important to draw the attention of as many specialists as possible, especially those representing the Russian law school, to this problem.

André Legrand

ANGLE MINISTERS RESPONSIBILITY: FRENCH SPECIFIC

No. 11, 2015

The article examines the French criminal policy, legislation and jurisprudence on the criminal liability of ministers, compares with the state of affairs on the regulation of the liability of these persons in Germany. On the example of a number of criminal cases on the facts of abuse by ministers of their powers, embezzlement or misappropriation of state or public funds, the author shows the complex aspects of the legal assessment of acts, primarily related to the recognition as committed with the performance of ministerial functions. In addition, the author analyzes the issues of jurisdiction of this kind of criminal cases, focuses on changes in public opinion, doctrine and judicial practice in relation to the presence of the so-called special jurisdiction.

Sosenkov Fedor Sergeevich

IDEAS OF STATE UNITY AND PREVENTION OF SEPARATISM IN GERMAN POLITICAL AND LEGAL THOUGHT (VIEWS OF FRIEDRICH THE GREAT, I.G. FICHTE AND OTTO VON BISMARK)

No. 11, 2015

The article is devoted to the ideas of state unity and the prevention of separatism in German political and legal thought of the 18th - 19th centuries. The article analyzes the works of King of Prussia Frederick II " Antiimachiavelli ", the philosopher Johann Gottlieb Fichte "Closed commercial state", "Speeches to the German nation", memoirs of German Chancellor Otto von Bismarck, as well as the constitution of the North German Union (1867) and the German Empire (1871). At the same time, attention is drawn to individual statements on these issues by Friedrich Engels, August Bebel, King of Bavaria Ludwig II and some other German politicians. Of particular interest are the judgments of German statesmen, since they are predominantly of a practical,

applied nature. A structural research method was used in terms of analyzing the ideas of state unity, including views on the unification of disparate German states, their integration within a single Germany and the prevention of centrifugal forces, a biographical method in the process of determining the influence of stages in the life of public and statesmen on their views, a comparative method for comparing the political and legal views of various thinkers, as well as a functional method for determining the degree of effectiveness of the implementation of the considered ideas in state and legal practice. Ideas of different political orientations of German thinkers are combined within the framework of a single theme and chronologically consistently analyzed. It is noticed that all the reviewed authors paid considerable attention to the issues of legal regulation of unification processes, the establishment of a stable legal order as a factor contributing to state unity. It is concluded that the German political and legal thought of the period under consideration not only reflected, but to some extent guided the process of the gradual strengthening of the unity of the German statehood, which was not interrupted even during the crisis years of the Weimar Republic. This process was artificially accelerated by the criminal policy of National Socialism, which ultimately led Germany to defeat in World War II and territorial division, significantly slowing down the country's development and opposing its regions to each other.

Morozova Ludmila Alexandrovna

ENFORCEMENT OF JUDGMENTS OR RESPECT FOR THE COURT

No. 11, 2015

The article analyzes an urgent problem for modern Russia - the execution of court decisions; an excursion into the history of the issue is made, in particular, the issues of ensuring the implementation of the court's decision in the post-

reform (1864) period of Russia, the duality of the legal status of bailiffs as special officials who carried out the enforcement of court decisions are considered. Particular attention is paid to the current state of enforcement proceedings, the content of the Federal Law of April 30, 2010 No. 68-FZ "On compensation for violation of the right to legal proceedings within a reasonable time or the right to enforce a judicial act within a reasonable time to the participants in the trial" participants in civil and criminal proceedings for monetary compensation in case of violation of these rights. This kind of compensation is recognized by specialists as compensation by the state for moral damage caused to the participants in the trial. And although the amount of compensation is not established by the current legislation, the very fact of the adoption of this Law testifies to the trouble in our country with the execution of court decisions. The author concludes that non-execution of court decisions that have entered into force leads to the following negative consequences: first, violation of the constitutional right of Russian citizens to judicial protection, their rights and freedoms (part 1 of article 46 of the Constitution of the Russian Federation); secondly, the incompleteness of the justice process: it is important not only to obtain a legal document confirming the right to something, but also the actual exercise of this right or restoration of the violated right; third, the decline in the prestige of the judiciary, loss of confidence in them from the population, the emergence of legal nihilism; fourthly, it testifies to the absence in the country of an effectively operating mechanism of enforcement proceedings, therefore, reliable protection of the rights, freedoms and legitimate interests of individuals and legal entities.