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Bekyashev Kamil Abdulovich

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INTERNATIONAL LEGAL PROBLEMS OF THE ESTABLISHMENT OF MARINE PROTECTED AREAS

No. 2 , 2016

The article is devoted to the analysis of international legal aspects of the protection of marine biodiversity and its main component - marine protected areas (MPAs). An international legal definition of the MPA concept is proposed. The definitions of MPAs contained in the legislation of states are analyzed. The reasons and grounds for establishing such areas are considered.

The types of MPAs are considered in detail. It is noted that at present the following types can be distinguished : marine protected areas; especially vulnerable sea areas; areas for the protection of world cultural heritage; a protected area or an area where special measures need to be taken to conserve biological diversity; directly marine protected areas.

The article analyzes the provisions of international treaties, as well as acts of a recommendatory nature, providing for the possibility and necessity of establishing MPAs.

Considerable attention is paid to the consideration of the UN contribution to the development of the MPA institute. The great role of the UN Secretary General in the process of defining the role of MPAs in the conservation of marine living resources and biodiversity was noted. The resolutions of the UN General Assembly are presented and considered. It was noted that special attention should be paid to the Resolution adopted in 2015 “Development of an international legally binding instrument on the conservation and sustainable use of marine biological diversity in areas beyond the limits of national jurisdiction based on the UN Convention on the Law of the Sea”. In the course of the development of a legally binding document, the problems of establishing an MPA will be considered.

In addition to the UN, the activities of other international intergovernmental organizations were studied: FAO, UNESCO, NEAFC on various MPA problems.

Examples of the creation of MPAs in waters under the jurisdiction of a number of states are given: Canada, USA, Japan, Mexico and Cuba. The national normative legal acts, in accordance with which such areas were established, were noted and analyzed.

Special attention is paid to the activities of CCAMLR on the establishment of MPAs in the zone regulated by the 1980 Convention on the Conservation of Antarctic Marine Living Resources. It is noted that this organization is actively taking various measures to establish such areas. An analysis of the decisions taken by CCAMLR has been carried out.

Based on the results of consideration of these problems, the authors proposed to develop and adopt at the international level a code on the legal status of MPAs.

Galkin Ivan Viktorovich

THE PROBLEM OF ENSURING EFFECTIVE IMPLEMENTATION OF LEGISLATION IN THE SPHERE OF HUMAN RIGHTS PROTECTION IN THE RUSSIAN FEDERATION

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The article is devoted to the problem of ensuring effective legal implementation of legislation in the field of protecting human and civil rights and freedoms in the Russian Federation. For Russian political reality, it has become a completely traditional phenomenon to adopt lawful and expedient normative legal acts, the obvious legal value of which, however, is completely devalued by the non-obligation of their implementation. This situation is always fraught with the development of various deformations of the legal system of the state, and the most dangerous consequence of this kind of deformation should be considered the emergence of the legal regime of anomie. This phenomenon is completely

unacceptable in the conditions of laying the foundations of a legal (and social) state in our country, since only the exact and unswerving implementation of the rule of law is the most effective legal measure that determines the optimal legal regulation in the field of human and civil rights and freedoms. We should not forget that the main task of the rule of law is to be the most active guarantor and defender of natural human rights. Human rights and freedoms are both the means and the goal of the development of any civilized society, and hence its most important political, public authority institution, that is, the state. Thus, human rights act as a real and effective social regulator that directs and streamlines the activities of all social and political institutions that provide the necessary support in the life and creative realization of each human person. In our opinion, it is long overdue to shift the center of gravity from an analytical study of the regulatory framework that ensures the observance and protection of human and civil rights and freedoms , to consideration of the institutional component of this provision. That is why the purpose of this article was to search for effective ways to ensure the effective implementation of already existing legal norms, as well as to analyze the activities of public authorities responsible for the accurate and consistent implementation of legislation in the field of observance and protection of human rights and freedoms in the Russian Federation.

Demchenko Tamila Ivanovna

ETHNIC, TERRITORIAL AND TEMPORAL ASPECTS OF EDUCATION OF THE SLAVIC-RUSSIAN PEOPLE

No. 2 , 2016

The article says that the modern period is characterized by a reorganization of the existing world order, another reassessment of values and a search for the

meaning of Russian life. This meaning lies in the mystery of the birth of a people, it manifests itself in the peculiarities of its historical development.

The history of an individual, in particular, the Slavic-Russian people is not all that was in his life, but that which was historicized , selected, received a social assessment of significance, which is preserved as a historical experience that can influence subsequent events, other peoples , for a common history. The historicizing sees the basis of naming, identity of the people, the determination and the preservation of its destiny. This is actualized by a further, in-depth study of the emergence and development of the Slavic-Russian people.

This people, which is a part and basis of the common historical process, gave world culture the ideas of spirituality, Orthodoxy, conciliarity, righteous government, compulsory labor, conscience, responsibility, and the meaning of life. He gave a Russian idea based on a specific worldview, an integral religious and moral perception of the spiritual and material world, characterized by the unity of knowledge and faith, a sense of truth, enshrined in the concepts of "state of truth", "law of truth."

It is noted that the appeal to the issues of the emergence of the Slavic-Russian people is associated with a change in the territorial, temporary, other living conditions of previous ethnic groups, peoples, and their names. It is actualized by changing correlations of acting forces, subjectivism, politicization of events that are significant for their own and common history.

Actualization is associated with the borrowing of foreign, with distortion in the process of historicization of domestic history, not objective presentation of it by foreign and domestic authors. Russian thinkers saw this as a danger to the life of the people.

It has arisen throughout Russian history. In the XX century, it arose twice, at the beginning and at the end of it, when the Russian people began to lose the meaning of life, their identity and inner content. He tried to find them in the conditions of Soviet Russia. Realizing the impending danger, he is trying to do it now.

An appeal to the origins of the Slavic-Russian people is prompted by ongoing lively discussions in the scientific community, the subject of which has been and remains issues related to ethnicity , time, place, ways of origin, stages of development, family name, features of being and role in the historical process.

The question is raised that the Kiev period was a peculiar and important stage in the development of the ancient Russian nationality, its statehood and culture. But it is not with him that they begin their historical path. It is not in it that the spiritual and moral foundations and national characteristics of a peculiar type of the Slavic-Aryan, Slavic-Russian, Russian, Great-Russian, Russian people and their state-legal life are laid.

Zakharova Valentina Olegovna

Implementation of criminal prosecution by the investigation team

No. 2 , 2016

The first forensic definitions of the investigation team were given in the middle of the twentieth century, and so far they have not changed significantly. At the same time, this definition is not contained at the legislative level. For a long time, the investigation of a criminal case by several investigators had no legal regulation at all. The investigation of crimes by a group of investigators was first enshrined in Part 3 of Art. 129 of the Code of Criminal Procedure of the RSFSR in 1961. In the Code of Criminal Procedure of the Russian Federation, the investigation of a criminal case by several investigators is regulated in Art. 163 of the Code of Criminal Procedure of the Russian Federation. The article shows the activities of the investigative group on the investigation of a criminal case on the example of a criminal investigation into the accident at the Sayano-Shushenskaya hydroelectric power station. It is safe to say that the investigation by the investigation team is the same project, only regulated by the framework of the criminal procedure legislation. The head of the investigation team as a project

manager, working for the customer - the head of the investigative body, must remember that his task is to start an investigation (project) and do what he considers necessary in order to send a criminal case to court or make another legal and well-grounded decision (complete the project).

The head of the investigation team is responsible not only for the final result, not only for the personally performed investigative and other procedural actions, but also for the current investigation of the criminal case by the investigators. In order to successfully carry out your duties, you need to be aware of everything that happens during the investigation. Part of the information can be obtained from investigators personally, part - from their reports. It is useful to hold small meetings with the members of the investigation team once a week, during which it is necessary to dwell on the following questions: what work the team members (investigators) have done over the past week, how the plan is being implemented; what the investigators intend to accomplish next week and to what extent it meets the approved plan; whether there are any new problems or risks, whether the plan needs to be changed.

It is advisable to use such an organizational form of investigation as an investigative group in the presence of circumstances directly indicated in Part 1 of Art. 163 of the Criminal Procedure Code of the Russian Federation - in case of complexity or large volume. Forensic experts also highlight certain circumstances when it is possible to recommend the production of a preliminary investigation by the investigative team, namely: the emergence of a large number of versions about the persons who committed the crime and its circumstances, which must be checked simultaneously; the receipt of data on similar crimes that took place on the territory of various settlements, in connection with which there is an urgent need to check the version that they were committed by the same persons; the presence in the case materials of a large number of related episodes, the separate investigation of which is impossible; the need for the simultaneous investigation of crimes committed at a number of large facilities, in the absence of the possibility to single out independent criminal cases; involvement in a criminal case of a large number

of accused who have jointly committed one or more crimes; the vastness of the territory in which the investigation has to be conducted, if it is impossible to limit ourselves to investigative orders (separate requirements); public resonance, special significance of the crime under investigation; shortening the time frame for the investigation of a crime.

The positive experience accumulated over the years testifies to the undoubted effectiveness of the investigation of crimes by the investigation team. The advantages associated with the participation of several investigators in an investigation may include: reduction of the investigation time, which leads to an improvement in the quality of the investigation; the ability to effectively solve tactical problems of investigation in conditions when it is required to simultaneously produce a large number of investigative measures of different nature and complexity.

Lushnikova Marina Vladimirovna
Lushnikov Andrey Mikhailovich
P.P. Hansel
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The article is devoted to the analysis of the scientific heritage of the outstanding representative of the Moscow school of financial law P.P. Hansel . His research has not lost its relevance both in terms of content and methodology of financial and legal research. The teachings of P.P. Hansel on communal (local) taxation, land and house taxes, communal fees, progressive inheritance tax are of undoubted interest for our contemporaries. The fact is that the legal reforms of the domestic tax system again put on the agenda the issues of local real taxation, special local taxes (parafiscal payments), inheritance tax, which was very unreasonably and hastily excluded from our tax system. P.P. Hansel , being an adherent of the sociological direction of financial science, was far from being a

“non-cabinet” scientist, but a scientist making efforts to implement his ideas in lawmaking practice.

The article also outlines the biography of the scientist. The biographies of prominent Russian lawyers are interesting and instructive in themselves. They enable a better understanding and appreciation of the scientific heritage of these scientists.

Markuntsov Sergey Alexandrovich

FEATURES OF LEGAL ASSESSMENT OF A SPECIFIC CRIMINAL LEGAL BAN

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The construction of legal (legal) assessment, which is widely used in the context of criminal law, has been institutionally little researched at the level of the relevant branch of law. This article analyzes the concept of legal (legal) assessment, examines the elements of its structure (object, subject, basis and nature), the specifics of its manifestation . The article examines the process of using this design within the industry of criminal law, in particular, it addresses the issue of considering the qualification of crimes (criminal legal qualification) as a kind of legal (law) assessment. As the analysis of the literature has shown, in the doctrine of criminal law, the legal (criminal-legal) assessment was carried out on certain types and varieties of crimes, objects of criminal encroachment, certain signs of the objective side of the crime, actions whose criminality can be excluded , certain institutions of criminal law , some articles of the Criminal Code of the Russian Federation, certain criminal law categories. The author proves the thesis that certain criminal law prohibitions have near-harvesting complex evaluation. Criminal legal prohibition must be assessed how the normative-legal regulations, legislative legal construction, fixing all the possible options (models) prestupno- of conduct recognized in accordance with the criminal

legislative stvom illegal in a specific historical period; as a formal state-imperious command of a regulatory nature, contains a duty not to commit the person (refrain from)-wide governmental dangerous acts, recognized by the criminal law protivoprav-tion that interprets social relations through the prism mechanism nism criminal law. The author comes to the conclusion that in relation to a specific criminal law prohibition, its social conditionality and validity, as well as the semantic content and form of its presentation as a criminal law order, are subject to assessment ; at the same time - the practice of implementing a specific prohibition, that is, its assessment as a state-imperious command of a regulatory nature. The legal assessment of a criminal law prohibition, consisting in the establishment of its essential properties and features, aimed at identifying its social value, is due to the duality of its social and legal nature. This largely determines the grounds for assessing the corresponding prohibition, which also depend on the choice of the subject of assessment. Comprehensive legal assessment of a particular criminal prohibitions, having objective and subjective character, Dolj - on reflects the assessment of its various incarnations, acting as a "bridge" connecting theory and practice.

Ostapovich Igor Yurievich

INTERPRETATION OF THE STANDARDS OF THE CONSTITUTION BY THE PROTECTION BODIES OF THE CONSTITUTION OF THE REPUBLIC OF BELARUS, THE REPUBLIC OF KAZAKHSTAN AND THE RUSSIAN FEDERATION

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The article examines the issues of interpretation of constitutional norms by constitutional protection bodies in the post-Soviet space on the example of the countries of Belarus, Kazakhstan and Russia. Both similarities and distinctive

features of the designated bodies in resolving the issues under consideration are determined. The similarity is realized in the general approaches to the interpretation of the constitution by the bodies of constitutional control of the studied states. In addition, there are similarities in the mechanism of ensuring the unity of interpretation of constitutional norms and law enforcement by the courts. Distinctive features are that the specialized bodies for the protection of the constitution in Belarus and Russia are the Constitutional Court, and in Kazakhstan it is the Constitutional Council. It is noted that the unification of the highest courts in Belarus and the Russian Federation will contribute to the formation of the unity of law enforcement .

Polikarpova Elena Vasilievna

TRANSFORMATION OF THE CHINESE STATE IN THE NEW AND MODERN TIME

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The article discusses the history of Dai Qing th (Qing Dynasty), the Republic of China, led by the Kuomintang and the People's Republic of China led by the CPC during the period of the "Opium Wars" middle of the XIX century to the present day. Shown is the long and painful path of the "Celestial Empire" from political and national humiliation to wealth and power.

From the middle of the XIX century. the great powers, through "gunboat diplomacy", imposed a semi-colonial status on China. This pushed the ruling Qing dynasty towards a "policy of self-empowerment " by "assimilating Western affairs," and then promising constitutional reform.

The ineffectiveness of the ongoing government reforms led to the radicalization of the opposition movement, which turned into a revolutionary one. The Xinhai Revolution of 1911, curtailing the "alien" Manchu Qing dynasty, proclaimed the restoration of the national Chinese statehood and a republican form

of government. For the sake of public consent, the first President of the Republic of China, Sun Yat-sen, ceded his post to General Yuan Shikai, supported by the army elite.

The young Republic of China was threatened by both the restoration attempts of the supporters of the Qing dynasty and the imperial ambitions of President Yuan Shikai, and then the arbitrariness of the generals - "militarists" who did not reckon with the weak central government.

The Kuomintang party, founded by Sun Yat-sen, stood up to defend the republic and created a temporary "united front" with the Chinese Communist Party. Under the influence of the Soviet experience of party building, both the KMT and the CPC turned into authoritarian parties called upon to lead the state and military forces. The theory of "political tutelage" created by Sun Yat-sen entered the ideological arsenal and practice of the Kuomintang, and then was tacitly borrowed by the CPC.

Successful completion of the "Northern Expedition" 1926 - 1928. saved the Republic of China and gave rise to the ten-year "party rule" of the Kuomintang. The political practice of the " Nanjing Decade" led to the merging of the party, military and state apparatus, which was also typical for subsequent periods of Chinese history. The Kuomintang's rupture of the alliance with the CPC and the repression against the communists marked the beginning of the civil war of 1927-1936. Only the war with Japan forced political rivals to temporarily re-create the "united front".

The renewed civil war in 1946 led to the victory of the CCP and the creation of the People's Republic of China. The article analyzes in detail the main stages and major events of the political development of the PRC and their constitutional design.

Ponomarenko Vasily Alexandrovich

CIVIL LEGAL PROCEEDINGS AS A SERVICE IN THE ELECTRONIC SERVICE STATE

No. 2 , 2016

The article examines the prospects for the social and legal positioning of civil proceedings in the upcoming fundamentally new social and technological realities of the electronic service state. The author substantiates the thesis that in the coming post-industrial era of the electronic state, along with the activities of other state bodies, justice in civil (arbitration) cases will increasingly acquire the features of a public law service provided by the state due to the obligation imposed on it to protect violated right.

The author identifies and systematizes the prerequisites for the perception of civil proceedings as a public service provided by citizens to legal entities (consumers) by the state by virtue of the obligation imposed on him to protect violated rights. A general description of the socio-cultural, state studies, methodological, organizational and theoretical and legal prerequisites for the positioning of civil proceedings as a service in the conditions of an electronic service state is given. Qualitatively new properties of the electronic state are considered as a socio-cultural environment for the emergence and development of a new concept of civil proceedings, due to the implementation of modern scientific methodology and legal thinking , which replaced positivism.

Riekkinen Maria Alexandrovna

RESTRICTED POLITICAL RIGHTS OF MINORS: THEORETICAL AND LEGAL FRAMEWORK, INTERNATIONAL STANDARDS AND EXPERIENCE OF THE RUSSIAN FEDERATION

No. 2 , 2016

In 1987, the now abolished Commission on Human Rights considered the complaint of I. Söderberg- Lappalainen against Sweden, in which the question of the existence of the political rights of the child was first discussed at the level of an international body for the protection of human rights. In this case, the Commission made an unequivocal judgment on whether a child who has reached a certain age of mental maturity has certain political rights.

The adoption of the UN Convention on the Rights of the Child in 1989 marked the birth of a new international legal standard for the limited rights of minors. Nevertheless, a number of states have signed this Convention with clauses of non-recognition of those of its provisions that relate to political rights. Despite the formation of a new standard of international law, and today, both in legal science and in the practice of individual states, there is no fundamental agreement on the existence of political rights for children.

Taking into account the opinions of the authors who deny the possibility of giving the child political rights on an equal basis with the opinion of the supporters of the existence of the political rights of the child, this article defends the legitimacy of the existence of limited political rights of minors. The concept of the legitimacy of the limited political rights of minors is being tested on the provisions of the current Russian legislation on the rights of the child.

Sitnikova Alexandra Ivanovna

LEGISLATIVE AND TEXTOLOGICAL MODELING OF THE INSTITUTE OF COMPLIANCE IN CRIME

No. 2 , 2016

Institute of complicity in a crime considered from the perspective of a two-level organization of the legislative text, the presence of which results in legal and textual study design A specific feature stey complicity institution, its criminal law provisions, as well as conceptual constructs, which has been translated into

Normalization tive text. Novels chapter "complicity in the crime," formulated- Vanir in accordance with the author's conception of equivalent otvetstvenno- STI partners and key provisions of the legislative teksto -log that helped to clarify the definition of complicity; make adjustments regarding the types of organizers; to complement the definition sub strekatelya indication of the widespread methods of inciting-ments ; to formulate the norms on the forms of group complicity and to give definitions of the concepts “group of persons”, “group of persons in a preliminary conspiracy”, “organized criminal group”, “criminal community ”; to clarify the qualifications of the actions of the organizer, instigator and accomplice in the case of the incomplete nature of the actions of the performer under the influence of circumstances beyond his control; to propose rules for the qualification of the actions of a common subject who took part in a crime together with a special subject; to formulate new articles on the criminal liability of organizers, leaders and participants of an organized criminal group and a criminal community; regroup and clarify the normative text about the excess of the performer; to formulate novellas about the legal consequences of voluntary refusal of co-participants - in case of refusal of the perpetrator to bring the crime to an end and in case of refusal by the organizer, instigator and accomplice .

The theoretical model of the chapter "Complicity in a crime" is formulated in accordance with the main provisions of criminal law textology: in particular, the original article on the concept of complicity is supplemented with a legally significant feature, according to which accomplices are persons subject to criminal liability, and in the note to this article specifies persons whose joint activity does not form complicity; the short story about the responsibility of the accomplices has been disaggregated due to the paragraph-and- letter division of the projected instructions; logical pro- consummate head of complicity is a wording of partners responsibility in the presence of their actions voluntary abandonment of long-range Nation crime.

Slyshchenkov Vladimir Alexandrovich

LEGAL TEACHING NIKLAS LUHMANN AND THE CRISIS OF MODERN SOCIETY

No. 2, 2016

The article introduces the basic concepts of N. Luhmann 's system theory about law, such as communication, autopoiesis , normative expectation, legal / illegal code, paradox of the legal system, uncertainty formula, and also contains a critical analysis of the provisions of the system theory based on the positions of V.S. Nersesyants and Y. Habermas . N. Luhmann's examination of social relations through the prism of communications reflects the subordination of man to the soulless logic of social systems in modern society. The fundamental paradox of the legal system, noted by N. Luhmann, turns into the dependence of law on political power, which indicates a refusal to search for an internal system-forming factor of the legal system. The positivist approach threatens the systemic nature of law. The understanding of justice proposed by the system theory does not help the self-development of the legal system. The legal system has no purpose, human rights are viewed from an instrumental point of view as a means of unhindered self-reproduction of social systems. Under this approach, the further development of human rights in order to ensure a decent standard of living is seen as an undesirable distortion. N. Luhmann's legal views express the crisis phenomena of modern society, where law is gradually losing its significance for the everyday life of people. The main drawback of N. Luhmann 's systemic theory of law is the reduction of a norm to a fact in a sociological manner. Libertarian legal theory of V.S. Nersesyants is seen as a more consistent application of a systematic approach to the study of law, which overcomes the paradox of the legal system due to the proper interpretation of the normativity of law, thereby solving the problem of self-justification of law. A legal norm cannot be a fact, because it is a theoretical model of positive law. Libertarian- legal theory understands the legal norm not in the logical sense of a normative statement

with the link “should”, but in the legal sense of a special form of obligation, which differs in the structure “if ... then ... otherwise ...” (hypothesis, disposition and sanction). Here, positive law as a whole is interpreted as one legal norm. This allows us to impart certainty to the systemic nature of law as a regulatory ideal, revealing the meaning of the principle of formal equality as an internal system-forming factor of the legal system.

Yunoshev Stanislav Viktorovich

THE VICTIM AND HIS REPRESENTATIVE AS PARTICIPANTS IN THE CRIMINAL PROCEEDINGS BEFORE THE JUDICIAL REFORM OF 1864

No. 2, 2016

An analysis of the historical development of the forms of participation of the victim (plaintiff) and his representative in domestic criminal proceedings from ancient times (from Russian Pravda) to the Great Judicial Reform of Emperor Alexander II in 1864 is offered. The study is aimed at identifying trends, as well as historical continuity in the regulation of the procedural position of the victim (plaintiff) and his representative, as well as the dependence of the procedural position of the victim on the form of legal proceedings adopted in a particular historical period.

The study was carried out using comparative legal and historical methods based on an analysis of a wide range of historical legal acts - international legal treaties of Russia, Russian Pravda, Sudebniks of 1497 and 1550, Cathedral Code of 1649, Code of Laws of the Russian Empire and others.

It is concluded that the procedural position of the victim at one time or another of the development of the Russian state and law was directly affected by the adopted form of legal proceedings, that is, ultimately, the ratio of private and public principles in the administration of justice. If initially the entire course of the process fully depended on the will and discretion of the victim (plaintiff) , then

with the strengthening of statehood, which in that period inevitably led to an increase in political oppression of the individual, a detective (inquisitorial) order arises and develops, in which the victim loses some or the ability to influence the course of the case.