Marachkin Sergey Yurievich

NEW CHALLENGES - NEW HORIZONS

No. 10, 2016

The article examines the impact of changes in the modern world order on state institutions and law. The corresponding trends inevitably predetermine the development of the content and nature of higher legal education in specific countries, at the regional, continental and global levels. These processes are characterized through the prism of the formation and development of higher legal education in the Tyumen region - the Tyumen region, Khanty-Mansi and Yamalo-Nenets autonomous okrugs, which celebrated its 30th anniversary. It shows the origins and reasons for the creation of the Department of Law at Tyumen State University in 1985, and then the Faculty of Law, when at a certain stage one of the most dynamically developing parts of the country experienced an acute shortage of legal personnel. The faculty gave a new look to the university and the region, played a significant role in their life. Many of its graduates have achieved significant success, work in federal and regional authorities and local governments, in large and medium-sized businesses. The main attention is paid to the characteristics of the Institute of State and Law, which in 1999 merged the former Faculty of Law, as well as the independent Faculty of State Studies, created in the mid-90s . It shows its original and modern structure, the composition of scientific and pedagogical personnel, areas of training and specialties, master's programs, two of which are double degree programs and are implemented in partnership with foreign universities, scientific, expert and grant activities, dissertation council, international contacts and cooperation , scientific legal journals published in English and designed for foreign audiences, participation in international professional associations, student achievements.

Considerable attention is paid to the new stage and new tasks of the Institute in connection with the admission of the university on a competitive basis to the group of 21 universities within the framework of the special program "5-100" implemented by the Ministry of Education and Science of Russia on the basis of

the decree of the President of the country. At the beginning of a new stage and new searches, the Institute sees its main task in maintaining constant compliance with the main trends in the development of higher legal education.

Elfimova Olga Stanislavovna

NATIONAL SECURITY IN THEORY AND LEGISLATION OF RUSSIA

No. 10, 2016

The effective maintenance of national security depends on many factors. The developed theoretical and methodological basis for understanding the phenomenon of national security in domestic science and its normative legal consolidation is of great importance. The role of legislation in the field of ensuring national security is associated with the creation of conditions for the full functioning of the state in the modern rapidly changing world. At present, a legal system for ensuring national security has been created in the Russian Federation, nevertheless, the adoption of regulatory legal acts did not solve most of the theoretical and legal problems in the regulation of national security issues. Duplication, lack of consistency, inconsistency and declarativeness - these are the most frequently cited disadvantages.

Since the mid-90s. XX century. an objective need arose to develop a new security paradigm for the Russian Federation, taking into account a new understanding of its national and state interests and the system of strategic priorities. The formation of the Russian paradigm of national security and the formulation of the concept and strategy have already passed four stages. In general, the security paradigm can be implemented as a security paradigm or as a paradigm of self-affirmation. The “protective” context became the main characteristic of the first three stages of the formation of the paradigm of Russia's national security. The main provisions of the National Security Strategy of the Russian Federation until 2020 indicate a change in trend from the paradigm of security to the paradigm of

self-affirmation, which is focused on development. Among the fundamentally new ideas of the National Security Strategy is the inclusion in the definition of the concept of national security, as well as in the “fabric” of the document itself of the conceptually important category of “sustainable development”. The Federal Law "On Security" adopted in 2010 was undoubtedly a serious step forward compared to a similar law in 1992, but it did not consolidate a certain innovation in the National Security Strategy and, moreover, outlined the existing problems and gaps in the legislation on security in the Russian Federation. First of all, these are discrepancies in concepts, and often the absence of a unified conceptual apparatus in the field of ensuring national security. Therefore, in order to strengthen the national security of the country, it is necessary to monitor the current legislation on the basis of academic expertise and theoretical developments.

Borodach Mikhail Vasilievich

BASIS OF PERSONALITY AND CONSTITUTIONAL EQUALITY OF PUBLIC OWNERS

No. 10, 2016

The article examines the problem of relations between public owners in the property sphere. The modern methodology for understanding the phenomenon of public property is based on civil constructions and axioms, which are far from always applicable in the field where public interests are realized and public functions are performed. The author, on the basis of a synthetic generalization of the phenomenological characteristics of public property, the norms of Russian legislation in force in this area and the practice of its application, as well as various scientific points of view, comes to the conclusion that the nature of the relationship between public owners and other owners cannot be determined by the action of the established in the field of civil rights of the principle of legal equality of participants in the turnover. This is explained by the fact that public owners and private owners have different bases for the personification of their legal

personality: if private owners in civil circulation are personified by means of ideas about their property, then public owners - by means of the nature, volume and direction of public power assigned to them. At the same time, the interaction in property relations between public owners takes into account the fact that for public owners the basis of personification is the same, and therefore such interaction is based on the idea of constitutional equality of public owners, due to the federal nature of the Russian state. The constitutional equality of public owners in property relations between themselves, although it has some external resemblance to legal equality as a principle of civil law relations, is nevertheless based on an essentially different social foundation. The constitutional equality of public entities in this context does not imply the exchange of material goods as an obligatory attribute, and when such an exchange does take place, then its goals are always, one way or another, focused not on the objects of public property being exchanged, but on that social the good around which the corresponding public interests are concentrated - that is, on public authorities, for the purpose of a more rational administration of which

Riekkinen Maria Alexandrovna

SEARCH FOR A CONSTRUCTIVE DECISION (experience in conducting constitutional and legal research in the field of participation in the management of state affairs)

No. 10, 2016

The article highlights the scientific and methodological aspects of the experience of the Department of Constitutional and Municipal Law of the Institute of State and Law of Tyumen State University in the field of collective scientific research of the right to participate in the management of state affairs, guaranteed by Art. 32 of the Constitution of the Russian Federation. The evolution of the methodological approaches of the department staff to the study of this topic is shown: from the writing of collective monographs to the implementation of complex interdisciplinary projects funded by Russian scientific foundations. The

article is of an overview nature. Nevertheless, it highlights the main theoretical approaches to studying the topic of citizens' access to government. The presentation is structured according to three major areas of research: procedural interaction of civil society and the state in a mixed "state-public zone," individuals' access to the implementation of the state's foreign policy; and constructive expression by citizens of dissatisfaction with decisions and actions of public authorities.

Nemchenko Galina Ivanovna

Tokarev Yuri Alexandrovich

Ignatov Evgeny Sergeevich

Institutionalization of economic freedom

No. 10, 2016

Economic freedom in a market economy is a fundamental condition for the fair distribution of benefits and citizens' trust in state institutions. The sequence of the formation of stable, transparent and protected mechanisms that ensure the implementation of the rights and freedoms of economic activity creates a public good "economic freedom" as an imperative to optimize the balance of interests. The benefits and costs arising in the process of specifying economic freedom form the institutional environment for the interaction of economic agents.

The aim of the study is an interdisciplinary approach to the institutionalization of the economic environment for the period 2000-2014. in terms of theoretical, econometric, statistical and legal interpretation.

The generally accepted economic theory, traditionally expanding the epistemological and axeological aspects, focuses on qualitatively homogeneous normative judgments. However, if such an approach is necessary, it is associated with a fairly broad intuitive perception of the category of economic freedom. Therefore, to clarify the category, subordinate features and principles of the free market are added.

In the absence of a universally recognized universal definition, the difficulties of quantifying economic freedom are concentrated. While the content of the category, concepts and definitions are being debated, research centers offer empirical procedures for modeling mathematical indicators. The formal differences in the measurement technique are reduced to the number of observed parameters, the grouping of indicators, the components of the integral index, the dimension of the measurement scale and the differentiation of countries by the quality of the institutional environment.

A forecast of the dynamics of the index of economic freedom for the economy of the Russian Federation until 2020 was constructed. The analysis revealed that the state of economic freedom, if it creates a favorable environment for business, is not a sufficient condition for the growth of the national economy. The hypothesis of the dependence of per capita GDP on the size of "market" taxes and the state of economic freedom is statistically confirmed only in 2006, 2007, and 2014.

The article considers the norms that are related to the support of freedom of economic relations and are legally enshrined in the new Russian legislation regulating the freedom of entrepreneurship and the development of competition. Considered in detail is the legal support of property rights as a relatively new norm in legislation and a "bottleneck" in the structure of the components of economic freedom.

The original analytical position, structuring the institutional aspects of economic freedom, allows us to formulate important conclusions for the theory and assess the obstacles to market development.

The purpose of the study is to assess the fullness of the institutions of the business sector, their effectiveness.

A model of entrepreneurship institutions has been developed. It includes informal restrictions - natural laws, business laws, social norms (religious and social). Formal rules - normative legal acts of different levels of legal significance and lawmaking organizations. Also structures that ensure the implementation of social norms and formal rules.

The sphere of entrepreneurship regulation is full of required instruments. It is dominated by the rules governing commercial entrepreneurship, non-commercial is represented insignificantly. The effectiveness of the implementation of formal rules is not high enough. In the structure of the listed fines to the Federal budget of the Russian Federation, amounts for violations of labor legislation, on fire safety, and antimonopoly legislation prevail. Factors: toughening of the rules for carrying out entrepreneurial activity; low level of efficiency in the adoption and implementation of legislative acts; inconsistency of the rule of law; lobbying by the state of the interests of big capital; increase in the number of procurement participants. Entrepreneurship promotion organizations are ineffective; most entrepreneurs do not take part in their activities.

“ Subsidized ” entrepreneurship is developing in Russia ; there are no fundamentally new initiatives that facilitate the “rules of the game” on the market. By supporting big capital, the state is building up a prohibitive legislative framework for small businesses, declaring that it will "liberate" entrepreneurial initiative. In reality, there is an increase in mistrust between small business and the government.

The activities of the state should be directed to the development of entrepreneurial thinking of the population, the formation of motivation for starting their own business, while simultaneously reducing the level of bureaucracy in adopting laws, improving the conditions for doing business, implementing a policy of supporting the effective demand of the population.

Krasnova Tatyana Vladimirovna

INFLUENCE OF MARRIAGE REGISTRATION ON EXERCISE OF RIGHTS AND PERFORMANCE OF PARENTS

No. 10, 2016

The article refutes the opinion widespread in the science of family law that the legal status of parents does not depend on whether they have a registered marriage, and the birth of a child by parents who are not married to each other does not affect the rights of the child. The features of the legal regulation of relations under the conditions of the presence or absence of marriage between the parents of the child, as well as other relationships with the fact of registration of marriage, are analyzed . The author identifies and summarizes the differences in the grounds for acquiring legal status, the peculiarities of exercising parental rights and fulfilling parental responsibilities. The opinion on the need to change the currently prevailing approach to understanding the grounds for the emergence of the parental relationship is substantiated. The advantages and disadvantages of the current procedure for registering parental rights and the birth of a child, including with the use of assisted reproductive technologies, are noted. The importance of the fact of registration of marriage in establishing the legal status of underage parents and the application of special rules on the participation of underage parents in the upbringing of children is determined. The article considers effective and "non-working" norms of legislation in the field of protecting the interests of children and parents when parents terminate family relations. Particular attention is paid to the problems of the fulfillment of the parental responsibility for the maintenance of the child in the aspect of the conflict of interests of the child and the spouse of his parent, who is not the second parent. The points of intersection in the legal regulation are shown in the case of the coincidence in the person of the alimony payer of two special family legal statuses - parent and spouse . As a result, a conclusion was made about the need to strengthen the legal status of children born out of wedlock and their parents. The directions of scientific search for achieving a balance in protecting the interests of participants in parental relationships, as well

as recommendations for improving law enforcement practice and ways of updating family legislation in the field of protecting the rights of parents and children, including the legislation on alimony, are proposed.

Danilova Natalia Vladimirovna

ENVIRONMENTAL SUPERVISION AND ENVIRONMENTAL LEGISLATION REFORM

No. 10, 2016

The article analyzes the changes in the legal institution of state environmental supervision, introduced from January 1, 2015 by the Federal Law of July 21, 2014 No. 219-FZ "On Amendments to the Federal Law" On Environmental Protection "and Certain Legislative Acts of the Russian Federation". Purpose: to assess legislative innovations in terms of their sufficiency, effectiveness and consistency. Methods: in the course of the study, both general scientific and private scientific methods of scientific knowledge were used: dialectical, formal-logical, formal-legal, comparative-legal, legal-technical. Results: the author comes to the conclusion that it was not possible to avoid numerous legal gaps and conflicts when updating environmental legislation . In particular, the specifics of the organization and procedure for conducting inspections in the implementation of state environmental supervision (with the exception of such a subtype as land) have not been determined . Determination of the object of negative impact on the environment as an object of state supervision creates difficulties in delineating the powers of federal and regional authorities in the area under consideration. It is obvious that one business entity can operate several objects that fall under different criteria - both federal and regional supervision. Accordingly, the new rules will not only lead to an increase in the number of inspections by authorities at different levels. Uncertainty in the issue of delimiting the powers of regulatory bodies in practice will give rise to another wave of cases on challenging actions and

decisions taken following the results of inspections. We believe that the cancellation of the rule to avoid duplication of checks is completely unreasonable . The introduction of new criteria for delineating objects of supervision requires updating the lists of objects subject to federal environmental supervision. Such work has not yet been carried out by the authorized body, which raises doubts about the legitimacy of the inspections conducted since July 2015. Conclusions: the indicated gaps and collisions should be eliminated as soon as possible. Otherwise, the reform of the state environmental management will never take place.

Minin Roman Viktorovich

FORMATION OF A LIST OF CRIMES COMMITTED BY LEGAL ENTITIES

No. 10, 2016

The problem of criminal liability of legal entities has been widely discussed in the domestic legal doctrine from the very beginning of the democratic reforms of the 90s. XX century. One of the projects of the Criminal Code of the Russian Federation provided for the criminal liability of organizations for committing environmental crimes. However, the scientific community categorically rejected this idea, explaining this by the fact that it is impossible to apply the fundamental principles of criminal law to legal entities due to the organization's lack of consciousness and will.

One of the problems faced by scientists in the course of developing the concept of criminal liability of organizations was the list of crimes in which a legal entity can act as a subject. Some authors believe it is possible to determine the general conditions of liability of legal entities, and leave the list of relevant crimes open. This approach, for example, is implemented in the Draft Federal Law prepared by the Investigative Committee of the Russian Federation. Other authors

consider it necessary to define this list as exhaustive. A similar position is set forth, for example, in the Draft Federal Law No. 750443-6.

The article proposes to form an exhaustive list of crimes for the commission of which a legal entity can be held criminally liable, based on the following criteria: 1) the crime must correspond to the legal nature of the legal entity; 2) a legal entity must be a subject in a crime, and not an instrument for committing a socially dangerous act; 3) crimes of legal entities must have increased public danger; 4) the list should include the most frequently committed socially dangerous acts by organizations; 5) the existence of an international treaty providing for the possibility of establishing criminal liability for legal entities.

Sharapov Roman Dmitrievich

PARTICIPATION IN CRIME: LAW, THEORY, PRACTICE

No. 10, 2016

The article reveals the conceptual idea of the basis of responsibility for complicity in a crime in the criminal legislation of Russia. It is argued that responsibility for complicity is based on the combination of the main provisions of the theories of " accessory " and "independence" of responsibility of accomplices, and complicity itself is possible only if there is a reason for the performer's liability, on the contrary, the exclusion of the performer's liability makes it impossible for other persons to be held liable under the rules of complicity, which, however, does not exclude their independent responsibility for an individually committed criminal act. From the standpoint of criminal law, theory and judicial practice, an agreed understanding of the key features of complicity in a crime has been developed , their role in resolving particular issues of qualifying crimes committed with complicity is shown, such as: features of the causal relationship in complicity, time limits of complicity, complicity in crimes with two forms of guilt, form and content of guilt of accomplices, "unsuccessful" complicity.

Byrdin Evgeny Nikolaevich

INTERNATIONAL LEGAL REGULATION AND BOUNDARIES OF STATE SOVEREIGNTY

No. 10, 2016

In the modern era of globalization, the role of international legal regulation of various groups of relations is rapidly growing. As a result, we are witnessing active discussions about the phenomenon of supranationality that has appeared in the field of international relations and its relationship with the category of state sovereignty. This phenomenon provokes many changes in the field of legal regulation of relations on a global scale. As for the question of the influence of supranationality on the sovereignty of the state, the author concludes the following. Observing the transfer by the member states of an international organization as a result of " supranationalization " of only some of their sovereign powers to the bodies of this organization, we are witnessing the deformation of the idea of the sacredness and absolute of state sovereignty in its classical understanding. As a consequence, there is a risk of actually limiting the sovereignty of the state in terms of its completeness and absolute . In addition, as a result of analyzing the positions of researchers on the problem under study and identifying the main features of supranationality (supranationality), it was concluded that of the two existing models of supranationality , the non-institutional one is preferable , which, from the author's point of view, personifies an extraorganizational-contractual form of international integration.

Currently, there is a tendency to increase the role and influence of international law on national legal systems, not only in the field of trade regulation, but also in other areas (for example, in the field of spent nuclear fuel and radioactive waste management). As a result, there is a unification of existing legal systems, contributing to the belittling of the uniqueness and identity of states and peoples, which are an essential condition for ensuring their national security in the modern world. Supranational legal regulation occurs, in particular, under the

auspices of the protection of human rights and freedoms. However, such a slogan, apparently, serves only as a formal signboard of the international legal movement, and, apparently, it has no right to exist due to the inseparable and equal size of the three groups of interests "personality-society-state". The author of the article comes to the following conclusion: in order to resist these processes, which exclude the progressive development of countries and peoples and their prosperity, states need to ensure a reasonable combination of means of national and international legal regulation, preventing confusion of their spheres of action, and to develop internal mechanisms to protect the rights and interests of subjects public relations.

Lits Marina Olegovna

LEGAL ASSISTANCE IN CIVIL AND COMMERCIAL AFFAIRS BETWEEN RUSSIA AND FRANCE

No. 10, 2016

Given the increasing mobility of citizens and the expansion of humanitarian exchanges between Russia and France, there is a growing need to create a legal basis for ensuring bilateral interaction. Accordingly, the subject of this article is the study of the international legal framework for the provision of legal assistance in civil and commercial matters between the Russian Federation and the French Republic. Three main groups of sources of international legal regulation are analyzed. The first includes treaties covering almost all aspects of legal assistance in civil and other categories of cases. The second group is made up of international treaties regulating certain types and / or forms of legal assistance. The third group includes international acts that directly regulate other issues, but contain separate rules on the provision of legal assistance. Conclusions are made on the basis of the analysis. First, contractual relations in this area have a long history and are characterized by well-established legal ties. On the other hand, the issues of rendering legal assistance are regulated fragmentarily, therefore, international

treaty cooperation needs further development and improvement. Since the Russian Federation and the French Republic belong to the states of the Romano-Germanic system of law, the most acceptable option for mutual cooperation may be the conclusion of a bilateral agreement covering the main types and forms of international legal assistance. Legal cooperation can be continued taking into account the approach to this issue of the European Union.

Tordia Inna Valentinovna

Savchenko Svetlana Antonovna

LIABILITY PRINCIPLES (INTERNATIONAL AND NATIONAL ASPECTS)

No. 10, 2016

Forming market relations, the Russian legislator seeks to adapt the principles of the fulfillment of obligations developed earlier to modern conditions, taking into account foreign experience. The article considers the provisions typical for the countries of the Romano-Germanic legal family, including "some general principles that the legislator did not specify in a positive norm" and Russian legislation, based on judicial practice and enshrining "principles of law that have the highest authority and are a criterion and measure for assessing the legitimacy of all normative acts ".

The scientific position on the essence and meaning of the principles of law is investigated, which coincides with the vision of German civilists and practitioners. At the same time, a comparative analysis is given to the principles of the fulfillment of an obligation, the principle of conscientious conduct of subjects, the peculiarities of limiting the principle of the actual fulfillment of an obligation, refusal of a contract (execution of a contract) or from exercising rights under a contract, the principle of cooperation, the principle of efficiency of execution, which, in the authors combined with other principles, including the general principle of good faith in civil law, can provide some guidance in the practical

field. A significant place among the principles of fulfillment of obligations in Russian law is determined - the principle of inadmissibility of unilateral refusal to fulfill an obligation and the ambiguous judicial practice associated with it. The features of the consolidation of the above principles by the CIS countries in standards, and in the laws of foreign countries in directives, are noted, and it is proposed to consolidate in the Civil Code of the Russian Federation the definition of the terms of a standard contract, adopting the experience of Germany, which will serve as a guarantee of the balance of interests of the parties to the contract, as well as a means of protection against abuse of freedom of contract from an economically stronger counterparty.

Teplyakova Olga Andreevna

LEGAL STATUS AND FUNCTIONS OF THE BODIES OF CARE AND GUARDIANSHIP

No. 10, 2016

The article examines the models for the formation of guardianship and trusteeship bodies in Russia: 1) state - as executive bodies of the constituent entities of the Russian Federation, 2) mixed - as local government bodies with transferred state powers for guardianship and guardianship, 3) municipal - as local bodies self-government with its own powers of guardianship and guardianship. The study showed that the practice of legal regulation in the constituent entities of the Russian Federation tends to a mixed model of the formation of guardianship and trusteeship bodies, however, the process of choosing this model is not yet completed. The question is raised of the regulatory and control role of the federal level of state power in the field of guardianship and trusteeship in the light of Russian-American relations on the international adoption of children. In the field of international experience, the municipal model of guardianship and guardianship authorities is also considered on the example of a number of European countries, which is characterized by the granting of broad powers to local governments for

guardianship and guardianship and insufficient control by the state. The author criticizes this model due to the exclusion of the responsibility of the state for ensuring the rights of children. The necessity of approving the state nature of guardianship and guardianship powers is substantiated , which is associated with their importance for ensuring human rights, especially for such a special subject of humanitarian relations as a child. The main functions of the guardianship and trusteeship bodies are considered, which are allocated depending on the subject, whose rights require protection: adult citizens recognized by the court as incompetent, partially capable; minors: a) brought up in a family, b) in a difficult life situation, c) left without parental care, d) left without parental care and placed in a family. The author concludes that the terms of reference of the guardianship and guardianship authorities and the mechanisms for ensuring the rights of children differ depending on the category of minors, since different measures are required to ensure the rights of various categories of children. The author reveals the limits of powers of the guardianship and guardianship authorities in the light of the principle of inadmissibility of arbitrary interference in the affairs of the family.

Smakhtin Evgeny Vladimirovich

THE MECHANISM FOR PROTECTING THE RIGHTS AND LEGAL INTERESTS OF CRIME VICTIMS BY CRIMINALISTIC MEANS

No. 10, 2016

The article is devoted to the analysis of the current state of protection of the rights of the victim by criminalistic means. The author argues that criminology as a criminal law science is faced with the need to determine its relationship with the criminal process through the prism of such conceptual criteria as the goal and task of cognition. The main purpose of forensic science today is to help reduce the number of cases in which the establishment of trace information (and, therefore, the collection of sufficient evidence) did not occur for subjective reasons. It is forensic science that is designed to contribute to the optimization of law

enforcement practice, the introduction of new scientific and technical developments.

SEVRYUGIN Victor Egorovich

KOZLOVA Lyubov Stepanovna

The role of administrative and legal science in the development of the new Code of the Russian Federation on Administrative Offenses

No. 10, 2016

The article analyzes the full text of the draft of the new Code of Administrative Offenses of the Russian Federation from the standpoint of modern understanding and interpretation of the norms of its most important administrative and legal institution - the institution of administrative responsibility. An underestimation of the role of administrative and legal science in the development of a draft law is shown, which did not allow once again to bring its name, form and content in line with modern achievements of administrative and legal science, the legal positions of the Constitutional Court of the Russian Federation and new constitutional and legal realities. It is concluded that, in general, the draft law, if it is adopted by the State Duma of the Russian Federation in this form, is not able to really ensure the unity of purpose, consistency, internal consistency of legal regulation of the entire complex of social relations that make up the institution of administrative responsibility.

Chukreev Andrey Alexandrovich

THE DOCTRINE OF IMPOSSIBILITY TO FULFILL OBLIGATIONS AND IMPROVEMENT OF CIVIL LEGISLATION IN RUSSIA

No. 10, 2016

The article is devoted to the main controversial issues of the doctrine of the impossibility of fulfilling obligations. The author analyzes certain types of impossibility of execution - factual and legal, objective and subjective, accidental and guilty, initial and subsequent. Despite the centuries-old history of the analyzed legal structure, it remains controversial. The subject of this study is the doctrinal ideas about the impossibility of fulfilling obligations and the corresponding norms of the Civil Code of the Russian Federation, which underwent significant changes in 2015.

There are two approaches in theory to the question of the legal consequences of the non-accidental impossibility of fulfilling an obligation. The first approach: with such impossibility of performance, the obligation is terminated, but a new protective obligation arises, within the framework of which certain sanctions should be applied to the party responsible for this. The second approach, a more traditional one, is based on the fact that the obligation is terminated due to the impossibility of performing in full only if the latter is caused by a circumstance for which none of the parties is responsible.

The author comes to the conclusion that the first of these two approaches is more preferable. Within the framework of this approach, it will be fair to conclude that an obligation (regulatory) terminates even when the impossibility of its performance is caused by a circumstance for which one or another party is responsible. Meanwhile, in order to apply this approach in practice, it is necessary to change paragraph 1 of Article 416 of the Civil Code of the Russian Federation, a variant of such changes is proposed. In this regard, the denial of the scientific nature of dividing the impossibility of fulfilling an obligation into objective and subjective, as well as accidental and guilty, is recognized as justified.

The author also subscribes to the position of those scientists who defend the incorrect use of the initial impossibility of fulfilling the obligation as an unconditional basis for recognizing the relevant transaction as invalid.

Some changes made to Articles 416 and 417 of the Civil Code of the Russian Federation in 2015 as part of the implementation of the Concept for the Development of Civil Legislation of the Russian Federation are critically assessed.

Oksana Kursova

Professional risk assessment and management system: problems of legal regulation

No. 10, 2016

The problem of finding ways of conceptual change in the understanding of labor protection as a system for preserving the life and health of workers in recent years can be traced both in the studies of Russian legal scholars and in regulatory documents of a program and legal nature. The main task of the new OSH management system is the transition to the assessment of occupational risks and their management. A qualitative solution to this problem can be achieved by transforming the national institution of occupational risk management in line with the trends recognized by the international community.

The article provides a comparative analysis of models of legal regulation of assessment and control of occupational risks used in the coordinate system of international and European trudopravovyh regulation in the Russian labor legislation, to draw conclusions about the significant differences of these models that have arisen as a result of differences in the interpretation of the concept "occupational hazard" in the European and Russian legal traditions.

The paper discusses the prospects for the development of the national institution of labor protection in the field of occupational risk management, while focusing on the need to update and replenish the existing legal framework that "serves" the occupational risk management system, in terms of introducing procedures for identifying and assessing occupational risks psychophysiological risks) and the dangers associated with the implementation of labor (professional) duties, the conditions for the implementation of internal control (self-control) of

compliance with labor legislation and other regulatory legal acts containing labor law.

The implementation of the new concept of labor protection in labor legislation, based on the idea of managing the risks of damage to the health of workers, will require adjustments to a number of current legal norms that fundamentally contradict it. With the introduction of the procedure for a special assessment of working conditions, the legal norms on the reduction of working hours and the procedure for granting additional vacations to persons working in harmful or hazardous working conditions were changed: "time protection" of persons working in such working conditions can be replaced by monetary compensation, which is not is a satisfactory way to prevent the onset of occupational risk. In conclusion, the importance of achieving the conceptual integrity of legislation in the spirit of the prevalence of a preventive focus in the legal regulation of labor protection is emphasized.

Victoria Korobchenko

RIGHTS THE NATURE OF OFFICE DISPUTES IN THE SPHERE OF THE CIVIL SERVICE

No. 10, 2016

Disagreements may arise between the subjects of relations related to entering the state civil service, its passage and termination, due to their different understanding of their subjective rights, duties and legally significant interests, as well as ways of their implementation. Such disagreements, if it is impossible to settle by the disputing parties themselves, are submitted for resolution by the competent authorities through the procedures established by law and acquire the character of an official dispute. In the literature on administrative law, an office dispute is considered as a type of administrative legal dispute. However, this approach raises serious doubts, since official disputes are not associated with the implementation of public functions by a state body within the framework of its

managerial competence, but with the exercise by it, as a subject of official relations, of the powers to manage the labor of civil servants and the formation of personnel to ensure its own activities. It is proved that the subject composition of office disputes, their subject matter, as well as the procedure for resolving, in essence, do not differ from similar characteristics of labor disputes, therefore there are no grounds for considering office disputes as an independent type of legal disputes. It is noted that the legislative definition of an individual service dispute covers only service disputes on the application of laws, other normative legal acts on the civil service and service contract, that is, "disputes about law", and does not include disagreements over the implementation of the legitimate interests of civil employee who can be satisfied when establishing new or changing the existing terms of the service contract, ie, "disputes about interest", which does not exclude the possibility of such disagreements. As for collective service disputes, the current legislation on civil service does not provide for the concept of “collective service dispute,” meanwhile, the Law on Civil Service does not contain a direct prohibition on such disputes in the field of civil service.

Zolotukhina Natalia Mikhailovna

HISTORICAL AND MODERN SIGNIFICANCE OF POLITICAL AND LEGAL TERMINOLOGY

No. 10, 2016

This article raises the question of the need for historical research to clearly distinguish between the historical and modern content of terms. In this case, we are talking about the terms: autocracy, absolutism and theocracy. The term "autocracy" has a historical and contemporary meaning. In the XII-XVII centuries. they designated only the independence and sovereignty of the state; the bearer of supreme power, called the autocrat, was perceived as a sovereign, independent from any other sovereign who did not pay tribute, that is, a sovereign sovereign.

In this historical period, the term "autocracy" was defined as the independence and sovereignty of the sovereign and the state headed by him, both in internal and especially external relations. Absolute monarchy ("absolutism") as a form of government began to take shape only in the second half of the 17th century, and received its legal form in the first quarter of the 18th century. During this period, the term "autocracy" changes its semantics, moving from a broad meaning - the sovereignty of the state, to a limited one that characterizes the supreme power in its internal functioning, designating it as an unlimited monarchy ("absolutism"). Since that time, the terms "autocracy" and "absolutism" have become synonymous. In this sense, they are used today, therefore, it seems that in order to adequately characterize the stages of state building in Russia, it is necessary to clearly distinguish between the historical and modern meaning of such key terms of medieval legislators and thinkers as "autocracy" and "absolutism".

Soviet and partly modern humanitarian science, basically, perceives the term "autocracy" only in its modern meaning - absolutism, without correlating with the time of occurrence, clarifying the initial meaning, and subsequent evolution, which often leads researchers to assert the emergence of absolutism in Russia already in XV - XVI centuries, while calling the form of government "autocratic despotism" (D.N. Alshits , Y.S. Lurie and others), "unlimited autocracy" (in the meaning of "absolutism" - S.A. Orlov, V. A. Georgiev and others); "Zemstvo autocracy" (A.Yu. Dvornichenko, Yu.V. Krivosheev); "Orthodox autocracy" (RT Mukhaev , YV Puzdrach , I. Ya. Froyanov).

Accordingly, the political doctrines of this period are characterized as "doctrines of Russian autocracy", "autocratic absolutism" (NV Asonov); "Developed doctrine of autocratic autocracy" (AV Karavashkin , AL Yurganov).

The explanation for such an analysis of medieval categories, perhaps, only by adherence to the traditions that took shape in the second half of the 19th century. - at the beginning of the XX centuries, going back to the formula:

"autocracy, Orthodoxy and nationality", adopted and replicated in the Soviet period.

Meanwhile, the point of view on the form of government that took shape in the second half of the 16th - mid-17th centuries, as a representative estate monarchy, is practically shared by all legal historians, and is presented in all training courses on the discipline "History of the State and Law of Russia" and " History of political and legal doctrines ". The root of the disagreement between the researchers seems to have two main reasons: first, ignoring the historical content of the term "autocracy", and extrapolating its modern meaning to the Middle Ages - "absolutism"; the second is the substitution of the elements of the form of the state: the form of government (organization of the supreme power) by the political regime (a set of means of methods of implementing the supreme power in the state). In most of the above statements, both elements of the form of the state are combined: the form of government and the political regime.

The article asserts the long-overdue need to develop a unified methodology for using terms characterizing medieval statehood and the accompanying political and legal ideology, using the terms of the key apparatus of medieval legislators and thinkers in their historical, and not modern, meaning.

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Representatives of an employer who is an individual: gaps and contradictions in legal regulation

No. 10, 2016

The use of legal structures and legal approaches inherent in civil law in labor legislation leads to the emergence of ineffective legal norms. An example of such an unjustified reception can be found in certain norms of the Labor Code of the Russian Federation on the participation of legal representatives of employers from among individuals with vices of will. Representation in labor law exists as an independent legal phenomenon, different from representation in its civilistic understanding. The goals of the employer's representative - an

individual from among minors and with limited legal capacity, on the one hand, by their actions to authorize the emergence of labor relations with their participation (to create a legal fact required by law), on the other hand, is to maximize the protection of their rights and legitimate interests. Part 9 of Art. 20 of the Labor Code of the Russian Federation provides for the right of legal representatives of incapacitated citizens on their behalf to conclude employment contracts with employees in order to provide personal service to these individuals and help them with housekeeping. This legal structure appears to be unviable and ineffective. It does not take into account the private-public nature of labor relations, as well as the parties' labor rights and obligations, both property and non-property.

The norms on additional liability of representatives of employers - individuals with vices of will due to insufficient legal certainty also require further improvement. In particular, on the issues of determining the maximum period of delay in the payment of wages, after which claims for payment should be addressed to the representative. Analyzing the legal norms of the Labor Code of the Russian Federation on the powers of representatives of employers from among individuals with vices of will, it should be concluded that in some cases the representative replaces the person he represents, and in some cases he joins him as a special subject, assisting in the implementation of labor rights and their protection, as well as ensuring guarantees of the labor rights of employees of these employers.