Laptev Vasily Andreevich

FEDERAL ENTREPRENEURSHIP LEGISLATION: STRUCTURE AND REGULATORY ROLE

No. 12, 2016

The legislation on entrepreneurship at the federal level constitutes a colossal array of laws regulating entrepreneurial and legal relations. The author reveals the category “law” and its content as a special source of law in economics. An overview of opinions on the place of law in the system of sources of Soviet economic law and modern business law is given.

The concepts of "legislation" and "source of law" are separated, the last of which is generic, including all types of sources of legal regulation of entrepreneurship at the present stage.

It is determined that the rule-making competence in entrepreneurial legislation is concentrated in the joint jurisdiction of the Russian Federation and its constituent entities, reflects the constitutional principles and regional specifics of the regulation of entrepreneurial and legal relations, taking into account the geographical, demographic, historical and other characteristics of the constituent entities of the Federation.

The existing system of laws of the federal and regional levels is revealed, which include: the Constitution of the Russian Federation, laws of the Russian Federation on amendments to the Constitution of the Russian Federation, federal constitutional laws, federal laws, constitutions (charters) of the constituent entities of the Russian Federation and laws of the constituent entities of the Russian Federation.

For the convenience of understanding the system of entrepreneurial legislation, it is proposed to distinguish codified and uncodified laws, the latter of which are conditionally divided into regulating (establishing): the legal status of individual subjects of law; entrepreneurial (economic) activity in general and guarantees of its implementation; a specific type of economic activity (in a specific

area); the subject of law and their economic activity; the regime of objects of economic activity and business and legal obligations.

The author draws attention to the correlation of institutions, subsectors and branches of business law. The proposals on the formation of independent branches of law on the basis of the normative array governing the same types of activities (banking, insurance, transport, exchange, etc.), encountered in domestic jurisprudence, are criticized, due to the lack of a common part (general provisions and principles) in such branches of law.

In conclusion, the author proposes to return to the ideas of codification of federal legislation on entrepreneurial activity, namely, the adoption of the Entrepreneurial Code of Russia.

Iglin Alex Vladimiovich

LANGUAGE OF INTERNATIONAL LAW

No. 12, 2016

The article examines the system of the language of international law, a special phenomenon in comparative legal science. For international communication, it is necessary to create artificial, universal languages as tools for the unity of the terminology of normative acts. The author comes to the conclusion that international law itself can be considered the language of interstate communication. Through international law, civilized countries agree on mutual directions of politics, trade and security. At the same time, international law is a special field of activity of states , international organizations and special participants in international relations, each of which has its own legal system, interests, population, culture, etc. The commonality of these elements is necessary for the harmonious development of interstate norms based on uniform standards of legal technology - otherwise they will not be effectively implemented. Consequently, for international law in the context of globalization, a universal instrument of communication is needed, which should become a single

language. This language is a collective concept of linguistic, interethnic, legal and professional ethical norms. In particular, linguistically it is English, interethnic - lingua de planet, legally - the language of legal terms (glossaries), and ethically - legal order.

Hilyuta Vadim Vladimirovich

WHAT TO BE A CRIMINAL LAW METHODOLOGY

No. 12, 2016

The article raises the question of the modern role of methodology in criminal law and criminal law research. The essence of the methodology in criminal law and its significance, research approaches to the definition of the methodology and its current state are revealed. The author pays special attention to materialistic dialectics and the formal dogmatic method of cognition, their specificity and manifestation in criminal law. Pluralism in the methodology of criminal law does not contribute to its development. The current situation within the framework of the methodology of criminal law testifies to the contradiction between the new factual data of law enforcement practice on the application of criminal legislation and the old ways of explaining them. These contradictions can lead to the distraction of the legal abstraction existing in the criminal law from a specific legal reality, as well as to the accumulation of only a certain amount of knowledge about a specific criminal law phenomenon at the empirical level. It is stated that the methodology of criminal law should be defined as a system of principles and methods of organization, construction and implementation of theoretical and cognitive legal activity in the field of crime and punishment research. The methodology of criminal law should not be identified today only with the formal dogmatic method of cognition and should not be taken as the basis of scientific research. The core of the methodology of criminal law is the unity of the interconversion of dialectics, epistemology and legal dogma. The methodology of modern criminal law science is a complex and multifaceted education, which

covers: problems of the structure of scientific knowledge in criminal law and scientific theories (constructions); laws of origin, functioning and change of scientific legal theories and doctrines in criminal law; conceptual framework of criminal law; structure and operational composition of research methods used in criminal law; analysis of the language of criminal law. In the future, the methodological foundations of criminal law should be associated with the possibility and cognitive prospects of combining a number of methodological approaches to the knowledge of crime and punishment or their components.

Vladislav Kachalov

CRIMINAL LIABILITY OF LEGAL ENTITIES: CRITICAL ANALYSIS OF ARGUMENTS AGAINST

No. 12, 2016

The article analyzes the main arguments of opponents of the introduction of criminal liability of legal entities. The issues of its social conditioning and international obligations of Russia in this area are considered. The historical prerequisites for the introduction of criminal liability of legal entities in our country are touched upon. The conceptual possibilities of establishing the criminal liability of legal entities, its compliance with the principles of Russian criminal law, and the relationship with administrative responsibility have been investigated. The author analyzes the possibility of a crime committed by a legal entity, the ratio of the criminal liability of a legal entity and an individual, issues of the system of punishments for legal entities, the possibility of using foreign experience in this area. The possibility of integrating the norms on the criminal liability of legal entities into the current Criminal Code of the Russian Federation is being studied. The conclusion is made about the fundamental refutability of the arguments of opponents of the criminal liability of legal entities. The arguments for its introduction are given and the objective necessity of its establishment in the Russian criminal legislation is substantiated due to various factors. It is indicated

that this should be taken into account. It is noted that the positive consequences of its establishment can cover all potential problems.

Marina Borisovna Kostrova

THEORETICAL MODEL OF THE LANGUAGE FORM OF THE NEW CRIMINAL CODE OF RUSSIA

Part 2

General characteristics of the language of criminal law and the main methodological approaches to the development of a theoretical model of the language form of the new Criminal Code of Russia

No. 12, 2016

The general characteristics of the language of criminal law and the main methodological approaches to the development of a theoretical model of the linguistic form of the new Criminal Code are considered.

Based on the natural language approach, the author believes that the language of the criminal law is a system of lexical and grammatical means of expressing the content of the normative legal prescriptions of the criminal law (criminal law prescriptions). The ontological status of the language of criminal law is predetermined by its belonging to a natural (for the Criminal Code of the Russian Federation - Russian) language and genre adaptation to the sphere of criminal law regulation. It is proved that the language of the criminal law must have two main characteristics - accuracy and clarity. Accuracy is defined as the most complete correspondence between the legislative thought (legislative will) and the expression of this thought (will) in the formulations of the law; clarity means certainty, distinctness of the expression of legislative thought (legislative will) in the formulations of the law. It is argued that the language of criminal law is a specialized language designed mainly for legal professionals, and citizens who are addressed by criminal law prohibitions need only have a general idea that under the threat of punishment it is impossible to do what is named in the Special Part of

the Criminal Code as crimes. However, this judgment should not be regarded as absolute, as in the domestic criminal law includes a number authorizes regulations, gives people the right to harm while respecting the established criminal law terms, in connection with which these conditions must be prescribed by a natural, everyday language understandable their main addressees - "ordinary people", without using unknown, little-known, highly specialized criminal law terms.

The main methodological approaches to the development of a theoretical model of the linguistic form of the new Criminal Code of Russia are proposed, based on both legal methods proper (comparative legal and historical legal) and methods inherent in linguistics (linguistic description, contextual analysis, interpretive method).

Lutkova Oksana Viktorovna

PUBLIC DOMAIN IN CROSS-BORDER COPYRIGHT RELATIONS

No. 12, 2016

The article examines the institution of the public domain: the basics of its content and regulation in international copyright law, as well as the implementation in the national law of the states parties to universal international agreements in the field of copyright. The general features of securing the institution of the public domain in the national copyright law of states, formed under the influence of the process of harmonization of law, are identified: the definition of the conditions for the transfer of a work into the public domain and the limits of use of such a work on the basis of the conflict of laws linking “the law of the state of protection of the work” (lex loci protectionis), consolidation in as a legal basis for the transfer of a work into the public domain, the criterion for the termination of the validity of precisely exclusive rights; legal awareness of the public domain as an element of the culture of society, which should be available to everyone. For an in-depth study of the issue, the institution of the public domain in copyright is considered in more detail on the example of the legal order of the United States, France and Russia. The problems characterizing the operation of

the institution of the public domain in modern transboundary relations, caused by the unequal level of economic and cultural development of states and the territoriality of international copyright law , are noted : different understanding of the object composition of the public domain, different approaches to determining the moment of transition of a work into a public state, lack of elaboration of questions about the regime of public property and sanctions for its violation, almost complete rejection of the extraterritoriality of the norms of the institution of the public domain.

As a result of the study, proposals were formulated to improve the legal regulation of the public domain in the Russian Federation. For authors wishing to transfer their work into the public domain, it is proposed to establish a legal basis for order; it was proposed to establish the rules for choosing the applicable law when determining the owner of the exclusive rights transferred under a cross-border agreement and restored after the transition into the public domain on the basis of the conflict of laws linking "the law of the country of origin of the work" (lex origin); it was proposed to clarify the rights of authors of derivatives from works that were previously in the public domain and later restored under protection.

Savoskin Alexander Vladimirovich

REVIEWS ON THE ACTIVITIES OF AUTHORITIES: FROM PRACTICE TO THEORY

No. 12, 2016

The article is devoted to a massive, but not yet studied social and legal phenomenon - leaving feedback on the activities of government bodies and their officials. The main issues covered: the problem of using the term "recall" in jurisprudence; the practice of leaving feedback on the Internet, the legal consolidation of feedback on the activities of authorities; the issue of recognizing reviews as a kind of citizens' appeals; the problem of spreading the legislation on

appeals to reviews; the problem of efficient processing and accounting of information coming from reviews.

The main results and proposals: 1) the concept of recall was formulated as corresponding to a certain form of citizen's appeal, containing an assessment of the activities of public authorities or local self-government bodies, as well as their officials; 2) the ways of leaving comments available to citizens were analyzed: through the state Internet portals "Your control" and "State services", using electronic terminals in the premises of government bodies and multifunctional centers, as well as by phone; 3) analyzed the regulatory framework and the practice of implementing each of the ways to leave feedback; 4) based on the analysis of signs of citizens' appeals as a generic category, it has been proved that reviews are a special variety of them, which differ in their purpose (assessment of the activities of the authority) and do not entail the obligatory direction of responses to them; 5) formulated the advantages of feedback as a form of feedback in comparison with traditional applications (proposals, statements and complaints); 6) based on the analysis of the existing legal acts on recalls, it was concluded that the bylaw regulation of the institution of recall is insufficient, which is a form of implementation of the constitutional right to appeal and the right to manage the affairs of the state of the Russian Federation (Articles 32 and 33 of the Constitution of the Russian Federation); 7) the provisions of the draft Federal Law "On the Assessment of the Activities of State Power and Local Self-Government Bodies" were formulated in terms of regulating the institution of revocation and its differentiation from other types of citizens' appeals.

Kizilov Andrey Yurievich

THE DEATH PENALTY AS A VARIETY OF MONOPOLY ON VIOLENCE

№12, 2016 city of

Discussion of the death penalty only as a legal category does not lead to a correct understanding of its phenomenon and entails an endless discussion for centuries about the admissibility / inadmissibility of using this type of criminal punishment. The issue of the use of the death penalty should be considered from the standpoint of the interests of state sovereignty, characterized not only by the independence of the state in the international arena, but also by its supremacy within the country. The supremacy, in turn, is ensured by the state's monopoly on the use of legitimate violence, a variety of which is criminal punishment as a specific means of combating crime. Accordingly, in case of refusal to use the death penalty, the most severe and most serious measure of state coercion in terms of social and legal consequences for the individual is removed from the range of criminal law, and therefore the political organization no longer has a "monopoly on violence" in society and cannot be considered fully sovereign. This approach to understanding the nature of the death penalty is consistent with the widespread in sociology understanding of the state itself as a "monopoly on violence", within which the legitimate use of violence is recognized only for the state. It is also confirmed by the studies of the French philosopher Michel Foucault, in which the author, analyzing the mechanism of public execution, comes to the conclusion that public execution is not so much an act of justice as a demonstration of strength and absolute sovereign power. With this understanding of the nature of the death penalty, the latest legal approaches developed by the Constitutional Court of the Russian Federation when considering disputes with the "international legal" element, in which the court recommends to take into account the norms of the Constitution of the Russian Federation, securing the sovereignty of Russia, the supremacy and supreme legal force of the Constitution of the Russian Federation in the Russian legal system , create real prerequisites for the use of the death penalty. In this regard, the work gives a new assessment to such traditional arguments of opponents of the death penalty as; 1) the death penalty is savagery, barbarism, anachronism; it contradicts the ideas of progress and civilization; 2) only the Most High has the right to take life, for it is He who gives it to a

person; the state does not have the right to do this, which means that the death penalty is deeply immoral; 3) the death penalty as a type of criminal punishment has an extremely low preventive value, so it is not needed.

Gracheva Yulia Viktorovna

Evdokimov Andrey Andreevich

THE DEATH PENALTY: THE VIEWS OF RUSSIAN CRIMINALISTS

(review of the criminal law literature of the XIX century.)

No. 12, 2016

The article provides an overview of the views of Russian criminologists of the 19th century. on one of the most complex and acute problems of criminal law - the possibility and admissibility of the use of the death penalty as a form of criminal punishment. I must say, as long as the death penalty exists as a form of punishment, so much time and discussions about its admissibility and expediency have been going on. And it's not just lawyers who are arguing ; philosophers, psychologists, sociologists, theologians, publicists, specialists in other branches of science take an active part in the discussion of the problem. Throughout this time, the positions (rather, some authors change their point of view), which are located at diametrically opposite points of the continuum , do not change either : some believe that this type of punishment is possible (permissible); others, on the contrary, consider the death penalty as an unjustified measure (moreover, doing more harm than good). The authors show the positions of scientists who denied the expediency of this criminal law measure. In particular, the points of view of well-known specialists are presented - P.D. Kalmykov, V.D. Spasovich , A.F. Kistyakovsky and N.D. Sergeevsky . Particular attention is paid to the legacy of the last two authors, as they investigated the problem on purpose. Moreover, A.F. Kistyakovsky did this before N.D. Sergeevsky , therefore, the latter analyzes his arguments, believing that the scientist, to some extent, was not convincing enough, speaking out against the death penalty.

Toskina Galina Nikolaevna

EVOLUTION OF THE INSTITUTE OF THE DEATH PENALTY IN THE RSFSR AND THE USSR (1917-1926)

No. 12, 2016

The subject of research in this article is the evolution of the institution of the death penalty in the RSFSR and the USSR in the period from 1917 to 1926. A detailed analysis of the acts of revolutionary law-making, the Guidelines for the Criminal Law of the RSFSR in 1919, the Criminal Code of the RSFSR in 1922, and the Criminal Code of the RSFSR in 1926, which established or abolished the death penalty in the period under study, are given. The article also analyzes the reasons for the introduction or abolition of the death penalty in the early years of Soviet power, which made it possible to identify patterns in changing the understanding of the role of the death penalty in transforming the goals and objectives of state policy.

Serebrennikova Anna Valerievna

Trefilov Alexander Anatolievich

CRIMES AGAINST PERSONALITY UNDER THE CRIMINAL CODE OF THE PRINCIPALITY OF LICHTENSTEIN: GENERAL DESCRIPTION

No. 12, 2016

The article briefly analyzes the system of the Special Part of the Criminal Code of the Principality of Liechtenstein in 1987, considers its main features. The work emphasizes that the system of the Special Part of the Criminal Code of Liechtenstein, like most modern Criminal Code, is built on the basis of a certain

sequence of objects of criminal law protection: first, the compositions of crimes against the individual are set out, then against society and, finally, against the state. This approach reflects the criminal law ideology, which considers personality as the main and most significant value. The article deals with issues related to criminal liability under the Criminal Code of the Principality of Liechtenstein for crimes against the person. Crimes against life and health, against future life, against freedom, against honor and against inviolability of private life are analyzed. The key features that are characteristic of the relevant criminal law institutions of Liechtenstein are identified. The current official statistics are provided. Where necessary, a comparison was made with the Russian legislation. It is shown that the Criminal Code of Liechtenstein distinguishes between "murder" and "murder" and its varieties. In this case, the first composition is de facto the main one, and the subsequent ones are privileged. Since gross murder presupposes a sanction up to life imprisonment, the legislator did not consider it necessary to allocate additional elements of qualified murders. The authors draw attention to the fact that Liechtenstein provides not three, but a four-tier system of degrees of severity of harm to health, which is aimed at differentiating responsibility for crimes against health. It is shown that the criminal law of this country provides for a fairly wide range of criminal acts unknown to the Russian Criminal Code. This is largely due to the specifics of the legal thinking of the developers of the criminal code in neighboring Austria, from which they were received and transferred to Liechtenstein . It has been substantiated that the norms of the Liechtenstein Criminal Code, which provide for liability for crimes against the person, can be used by the Russian legislator when carrying out further reforms, and can also be taken into account in the domestic criminal law science.

Bakishev Kairat Alikhanovich

ENVIRONMENTAL OFFENSES IN THE NEW Criminal Code of the REPUBLIC OF KAZAKHSTAN

No. 12, 2016

The article examines the problem of legal regulation of offenses in the field of ecology in the new criminal legislation of the Republic of Kazakhstan, adopted on July 3, 2014. The chapter "Environmental Criminal Offenses", the expansion of the scope of criminal responsibility, the construction of certain criminal articles of the Criminal Code, as well as the normative the decision of the Supreme Court of the Republic on cases of environmental crimes. The problem of criminalization and penalization of reckless acts in the field of ecology, the establishment of the subjective side of offenses in which the form of guilt is not indicated, taking into account the different socio-political essence of intentional and reckless crimes in the design of articles is also considered, the need for precise regulation of evaluative signs in criminal law is substantiated.

Taking into account the theoretical provisions of the science of criminal law, the Concept of legal policy in the Republic for the period 2010 to 2020, legislative and law enforcement experience of past years, conclusions and proposals are formulated for further improving the specified group of socially dangerous acts in the Criminal Code and judicial practice.

Khatov Eduard Borisovich

IN DEALING WORK WITH YOUNG SPECIALISTS IN THE PROSECUTOR'S OFFICE: CONCEPT AND LEGAL FRAMEWORK

No. 12, 2016

The article examines the legal basis and content of educational work with young professionals in the prosecutor's office. The author summarizes the legal sources regulating the issues of educational work with young specialists, defines its essence and directions, and also proposes measures to improve it. As a result of the analysis, it has been established that the essence of educational work with young

specialists and its directions is due to the multifunctionality of the prosecutor's office, the specifics of the public service in the prosecutor's office, expressed in special requirements for prosecutors, the need to secure them in the service, as well as in the accelerated and complete acquisition of professional knowledge by them. , skills and moral and volitional qualities.

The sources of normative regulation of the process of educational work with young specialists in the system of the prosecutor's office are systematized ; it is also proposed to normatively consolidate the concept of a young specialist in the bodies and organizations of the prosecutor's office by order of the Prosecutor General of the Russian Federation or the Law on the Prosecutor's Office. The features of educational work in the system of the prosecutor's office with young specialists have been determined . The conclusion is made about the need for normative consolidation of the criteria for the effectiveness of this work at the departmental level. It was emphasized that the priority direction of educational work with young specialists is the prevention of corruption and other offenses.

Roller Alexander Ivanovich

THE SUBJECT OF DRUG CRIMES: APPROACHES TO ITS DEFINITION

No. 12, 2016

The article discusses controversial issues of determining the subject of crime in general and drug crime in particular, the relationship between the object and the subject of crime. The positions on this issue in the theory of criminal law are revealed, and their critical analysis is given. Particular attention is paid to the study of the subject of illegal drug trafficking and other drugs and substances specified in the Criminal Code of the Russian Federation, including new potentially dangerous psychoactive substances, which are also a sign of the composition of drug crimes . The content of their medical, social, physical and legal properties is revealed. The author believes that it would be unreasonable to abandon the

established approach to recognizing the corresponding analogs as the subject of the acts in question, as some criminologists suggest, in the fight against modern, constantly mimicking drug- related crime . At the same time, he emphasizes that at present the institute of analogues of narcotic drugs and psychotropic substances is practically "dead", in judicial practice such cases, with rare exceptions, do not occur; in order to revive this institution, it is necessary not only to clarify the concept, but also to regulate the mechanism of its implementation in detail in a number of normative legal acts. The characteristics of plants containing narcotic drugs or psychotropic substances (narcotic plants) are given. The author comes to the conclusion that the normative legal acts unreasonably limited the range of the specified crime subject only to plants, and proposes to include mushrooms in it as a special class of living organisms that combine the characteristics of plants and animals. Signs of precursors are considered . Disclosed signs of tools and equipment used for the manufacture of narcotic drugs or psychotropic substances.

Bychkov Vasily Vasilievich

PORNOGRAPHY : RELATIONSHIP OF GOVERNMENT AND SOCIETY, REGULATORY COUNTERACTION

No. 12, 2016

The article analyzes the attitude of the authorities and society in Russia to pornography for almost a century - from 1917 to the present. Investigated the normative acts of the RSFSR and the USSR, which established prohibitions in the sphere of circulation of pornographic materials and objects: the decrees of the Soviet government of November 24, 1917 "On the court" and March 7, 1918 No. 2 "On the court "; from 18 (31) December 1917 "On civil marriage, on children and on keeping books of acts of state"; on December 16 (29), 1917 "On the dissolution of marriage"; Saratov Provincial Council of People's Commissars "On the abolition of private ownership of women"; Vladimirsky Council of Deputies of January 1,

1918 "On the emancipation of women." The indifferent attitude of the Soviet authorities to the distribution of pornography in the country and the cultivation of pornography by society were noted. The theories of the sexual revolution, widespread in Soviet Russia in the first quarter of the 20th century, are considered: “glasses of water” and the theory of “winged Eros”. The moment of creation in the mid-1920s is highlighted. last century, the "sexual platform" of the revolutionary proletariat in the form of the "Twelve Sexual Commandments" and the establishment of control of the ruling party over sex life. The analysis of the criminal legislation of 1922, 1926, 1960 and 1996, as well as the International Convention "On the suppression of the circulation of pornographic publications and their trade" of 1923 and the resolution adopted after it by the Central Executive Committee of the Council of People's Commissars of the USSR "On responsibility for the production, storage and advertising of pornographic publications , images or trade in them ", on the basis of which the Criminal Code of the RSFSR in 1926 was supplemented with a rule providing for liability for the production, distribution and advertising of pornographic works, printed publications, images and other items, as well as their trade and storage for the purpose of selling or distributing them ...

With the adoption of the Criminal Code of the RSFSR in 1960, the punishment for these acts was reduced. At the same time, the disposition of the article, which established responsibility for the circulation of pornography, remained unchanged until the adoption of the Criminal Code of the Russian Federation.

Loshkareva Maria Evgenievna

CRIME AND PUNISHMENT IN MEDIEVAL WALES

No. 12, 2016

The article is devoted to the analysis of the provisions of the Welsh Law of Howel the Good, related to criminal law regulation. Law remained the main

source of law in Wales until the conquest of the principality by King Edward I of England and the introduction of the Chritlan Statute in 1284 . The creation of the Law is attributed to the Welsh King Howel the Good (10th century), although the earliest surviving manuscripts of the Law date from the 13th century. Particular attention is paid to the content of the third part of the Law - "Book for Judges", a kind of manual , the knowledge of which was mandatory for the discharge of the duties of a judge. The presence of this part distinguishes Howell's Law of the Good from contemporary medieval vaults. The “Book for Judges”, which is a set of norms of criminal and procedural law, consists of subsections devoted to murders, thefts, fires, compensation for damage to property, harm to health. The main part of the text of the "Book for Judges" is devoted to the procedure for the payment of various kinds of compensation and fines associated with the commission of a crime. The author emphasizes the role of the clan in Welsh society: all fines and compensation payments were imposed on the shoulders of the offender and his relatives.

The most important issue raised in the article is the process of proving the commission of a crime by the accused. The author draws attention to the process of calling and the procedure of the code to a third party, aimed at finding an unscrupulous acquirer of property recognized as stolen. It is interesting that a similar norm is found in the Russian Truth and the Swedish Westgetalag . The author comes to the conclusion about the prevalence of compensation payments for harm over punishment in Welsh law, explaining this by the relative weakness of state power on the one hand and the stability of the legal tradition on the other, because even the strengthening of the power of the Welsh princes in the XII-XIII centuries. did not lead to significant changes in the norms.