Isaev Igor Andreevich

Phantom state, or imaginary empire ("northern" motives)

No. 4, 2017

The article examines an important and, as it seems, still urgent problem of the imperial state form. The historical retrospective examines the main aspects and tendencies inherent in both the very idea of the imperial form and the methods of its implementation. The author analyzes in detail such a historical and legal phenomenon as the " nomos of empire", its legal and organizational substance and process. The Roman Empire, the "Holy Roman Empire of the German Nation" and other imperial formations constituted a kind of unified phenomenon in the political and state-legal history of Europe. Unlike the ancient polis or city-state that existed in a confined space, the empire is oriented towards infinity and does not want to recognize firm boundaries. At the same time, its origins lay in localized territorial units such as “family”, “house”, “yard”, etc., the largest of which was “state”. The territorial and national character of the state stood in the way of the empire's boundless aspirations. Here two principles collided - locality and expansion. At the legal level, this clash turned into a struggle of sovereignties, the empire rejected sovereignty in the same way as territorial boundaries. The imperial idea rose above real relations in politics, demonstrating a powerful willful impulse and spatial passionarity . The imperial " nomos " was not only a form of legislation , it combined normative features with elements of deionism and imperativeness, and this inevitably led to the revival of authoritarian and dictatorial forms of government: "an empire cannot be weak." The complexity of imperial formation does not allow the empire to be unambiguously attributed to the forms of government, forms of government or political regimes. Nevertheless, this form still retains its relevance and effectiveness.

Fomicheva Olga Anatolievna

THE MECHANISM OF THE EXERCISE OF CONTROL POWER BY THE PARLIAMENT

No. 4, 2017

The article examines the issue of legislative regulation of the practice of embedding the mechanism of control power in the competence of the legislative body. The content of the term "parliament" is revealed, the relationship between the concepts of "parliamentary power" and "control power", "representative power" is determined.

An analysis of the law "On parliamentary control" revealed an imbalance in the competences of the chambers of the federal parliament. Federal legislation establishes an open list of control functions for legislative (representative) authorities in the constituent entities of the Russian Federation. Therefore, regional parliaments expand their control powers by their own legislation. The practice of legislative regulation of the control activity of the legislative (representative) bodies of the constituent entities of the Russian Federation gives rise to problems with the compliance of the control function. The problems of understanding the content of the essence of parliamentary control determine the adoption by the constituent entities of the Russian Federation of legislation specifying the forms of control, but in fact they are not.

The legislative regulation of parliamentary control and the corresponding control function of the activities of parliaments in the constituent entities of the Russian Federation does not meet the requirements of the control function of the parliament as an element of the power system. In conclusion, it is concluded that it is necessary to establish a uniform procedure for determining the limits of the parliament's control activities in law enforcement practice.

Mikheeva Irina Evgenievna

LEGAL NATURE OF LOAN AGREEMENT COMMISSIONS

No. 4, 2017

The article examines the legal nature of the commissions for loan agreements, taking into account the position of the judiciary. The author analyzed the judicial practice and concluded that the fees are different in nature payments of the borrower under the loan agreement. The contradictory position of the courts is due to the fact that Russian legislation does not have a legal concept of “commission on credit agreements”. The lender and the borrower can agree on any condition on the commission in the loan agreement by virtue of Art. 421 of the Civil Code of the Russian Federation and Art. 29 of the Federal Law "On Banks and Banking Activities", in connection with which banks often charge commissions that are not conditioned by the provision of any independent service on their part, for example, a commission for opening a loan account or issuing a loan.

Based on judicial practice, the commissions charged by banks from borrowers under loan agreements can be divided into commissions that cover the interest for using a loan, and commissions that are payments for additional services (property benefit, beneficial effect);

Certain commissions, such as a commission for reserving and booking funds, for changing the conditions of a loan, for early repayment of a loan, are recognized by some courts as a payment for providing the borrower with a beneficial effect or property benefit, and by other courts as losses. Commissions that are paid periodically and accrued on the balance of the debt are, by legal nature, recognized as payments covering interest on the loan. In such a situation, borrowers have the illusion that the loan is provided at a lower interest rate, while part of the interest payment is hidden in the commission. It is difficult to get these commissions back from the bank.

The paper concludes that the parties in the loan agreement must agree on the size of the commission or the procedure for determining it, otherwise the collection of such a commission may become impossible for the bank, which is confirmed by judicial practice.

Oksana Gutnik

INSTITUTE OF COURT INDEPENDENCE IN CRIMINAL PROCEEDINGS OF THE RUSSIAN FEDERATION

No. 4, 2017

One of the fundamental principles of the court's activities in the Russian Federation is its independence. Only a court that is independent of any influences and influences can make a lawful, reasoned and fair decision. But in modern society, guarantees of the independence of the court need constant improvement. This, in turn, obliges researchers to pay attention to a number of controversial issues noted in the article, in particular, the independence of the court and procedural guarantees of its independence, taking into account international legal standards for the administration of justice, state protection of judges in criminal cases, legal means of preventing the implementation of the institution in question. The latter circumstance is due to the fact that the legislation lacks systemic regulation of the institution of court independence, contains a large number of separate uncoordinated norms on the powers of courts, which creates difficulties and obstacles for law enforcement . Information on extra-procedural appeals to the judges is new to the domestic legal system of procedural independent mechanism and more objective procedural guarantee of counteract independent court. However, the theoretical and practical interest in these issues is due not only to the shortcomings of legal regulation, but also to the low degree of knowledge of this area by the scientific community, the absence of a real legal mechanism to ensure the independence of judges and their protection. Consequently, for the effective implementation of these measures, it is necessary to comprehensively predict their study, theoretical and legal substantiation and the development of appropriate proposals for improving the current legislation and organizing practical application.

Churkin Alexander Vasilievich

PROCEDURAL COSTS AS AN INCENTIVE FOR THE FAIR USE OF PROCEDURAL RIGHTS

No. 4, 2017

The article highlights a brief historical excursion to the national legislation of Russia, starting from the Code of Laws of 1497 to the present day, the legislative experience of foreign countries, modern judicial practice, the results of a sociological survey of practitioners, economic indicators of the cost of individual criminal procedure institutions.

The institution of procedural costs can be an economic incentive for the conscientious use by participants of their procedural rights both in criminal proceedings and in legal relations provided for by the Federal Law "On Operational Investigative Activities". In connection with the above, the following legislative innovations are proposed: 1) Art. 11 of the Criminal Procedure Code of the Russian Federation "Protection of human and civil rights and freedoms in criminal proceedings" shall be supplemented with part 1 ^ 1 of the following content: "Participants in criminal proceedings must conscientiously use all procedural rights belonging to them and not abuse their rights"; 2) Art. 132 of the Code of Criminal Procedure of the Russian Federation "Recovery of procedural costs" shall be supplemented with clause 6 ^ 1 of the following content: its procedural rights and did not interfere in any of its forms with the proceedings ”; 3) in part 2 of Art. 131 of the Code of Criminal Procedure of the Russian Federation to expand the concept of procedural costs, supplementing it with a new clause 9 of the following content: “the amounts spent in connection with the search for a suspect and (or) an accused who fled from the criminal prosecution authority and (or) the court, as well as incurred when bringing the persons listed in part 1 of Art. 113 of this Code "; 4) h. 2 of the same Art. 131 of the Code to supplement a new paragraph 10 with the following content: “the amounts paid to citizens, specialists and lawyers participating in the conduct of public operational-search

measures, which in their legal essence are identical to the procedural costs provided for in paragraphs 1-4 of part 2 of Art. 131 of this Code ".

Knyaginin Konstantin Nikolaevich

SUBJECT-TERRITORIAL STRUCTURE OF FEDERATIVE STATES

No. 4, 2017

The material is divided into two parts. In the first part of the article, the subject-territorial structure of federal states is analyzed on the basis of Russian and foreign, primarily German, materials on the territorial structure of federations existing in the modern world (India, Canada, Nigeria, Russia, USA, Germany, Switzerland, etc.), as well as some federations that ceased to exist in the XX-XXI centuries. (German Reich, USSR, Sudan, SFRY, Czechoslovakia, etc.).

The second part of the study examines the dependence of the stability of the subject-territorial structure and the federal structure as a whole on the peculiarities of the internal territorial division of federations, and also evaluates the possibilities of using territorial reorganization as a tool for harmonizing federal relations. The factors of "risk" for federations are territorial and structural models that provide for the existence of a "clearly dominant" constituent entity of the federation; models that allow for the existence of subjects with a markedly different level of socio-economic development; models suggesting the retreat of the boundaries of the subjects of the federation from the boundaries of the "natural" historical settlement of ethno-confessional communities.

Laptev Vasily Andreevich

LOCAL LEGAL CUSTOMS AS A SOURCE OF REGULATION OF BUSINESS RELATIONS

No. 4, 2017

With the development of social relations in domestic jurisprudence, views on the role and place of individual forms of law in the system of sources of law are changing. The evolution of forms of law testifies to the replacement of some forms of law by others. In particular, legal customs began to be replaced by legislation and other regulatory legal acts. As a result, the sources of law under consideration acquired a subsidiary character.

Many legal scholars reduce these tendencies to a natural process, seeing in this the elements of progress. At the same time, the author tries to draw the reader's attention to the fact that such fundamental sources of law as customs do not lose their significance to this day.

The presented article reveals the legal customs of the local level. It is proposed to classify them by territory and sphere of economic activity of an economic entity.

The author separates the production and corporate customs of the organization. Production customs regulate relations associated with the implementation of production and economic activities, including the direct production and sale of products (goods, works and services). Corporate customs determine the issues of participation in or management of corporate organizations.

It is proposed to highlight the following signs of local customs: designed for repeated use; the scope of their application is limited to the framework of the activity of a particular economic entity; are addressed to an indefinite circle of persons associated with the production and economic activities of the organization and corporate relations; are universal and are formed by the behavior of the participants in the relationship, as well as adapted to a specific economic entity; sanctioned and provided by the state; must comply with the provisions of the law.

The article provides an overview of opinions on this issue in pre-revolutionary Russia, Soviet jurisprudence, as well as modern views of scientists. In the study of this form of law, the relationship of legal customs with business customs and routine is analyzed. As a result, these concepts are

delineated. So, customs are a form of law, and business habits and routine are established rules for the fulfillment of obligations (contractual or corporate) by participants in a legal relationship.

The analysis carried out helps to build a holistic picture of the sources of law governing business relations in Russia.

Baev Valery Grigorievich

ECONOMIC CONSTITUTION OF NAZI GERMANY

No. 4, 2017

The article presents an analysis of the economic and legal structure of the national economic model of Nazi Germany. Having come to power, Hitler did not abolish the Weimar Constitution. With the help of a number of normative legal acts, he "connected" to it his Nazi constitution: political and economic. The first was the Law on Emergency Powers, the legal basis of the economic constitution was the Law on the preparation of the organic construction of the national economy. It included a certain relatively homogeneous set of institutions, instruments and their interpretations, which is applied within the framework of market, socialist and transitional economic models for their constitutional design. The constitutional model of the economy of Nazi Germany consists of a combination of the most important features, principles and features of the economic order of the Third Reich. The author argues that the Nazi state did not become a "notary" that legally fixed the decisions of the large monopoly capital of Germany. It made itself the owner of the means of production, single-handedly determining industrial policy, the purpose of which was to prepare for a world war.

Dmitry Agashev

ESSENCE AND STRUCTURE OF SOCIAL SECURITY PROVISION

No. 4, 2017

The article is devoted to the consideration of social security provision as one of the key and least studied categories in social security law. The relevance of the topic is explained by its direct connection with the qualitative and quantitative aspects of the rights of citizens to social security, with a clear imperfection of the corresponding branch legal toolkit, both in theoretical and applied sense. The work emphasizes the importance and integrative properties of social security provision for the system of social security law and its conceptual apparatus. Based on the analysis of modern legislation, as well as regulatory legal acts of past years, the author concludes that the general qualities of social security provision are largely similar, including in different historical epochs and in different states, have the same properties. In the work, through modeling, logical, systemic and structural methods, it is substantiated that these factors, including the principles of the functioning and development of this phenomenon in the law of social security, are due to certain patterns. The qualitative properties of social security provision are stable and are inherently dependent on its internal structure. This explains the objective limitation of measures of state influence on the state of need. At the same time, the social security provision contains the properties of social security itself as a system of a higher order. The author proposes a definition of the concept of social security provision, analyzes the elements of the structure of this phenomenon, and also draws attention to the need for legislative consolidation at the federal level of the corresponding legal structure. The paper presents a model of the normatively formed modern system of social security provision. The opinion is expressed that social security provision is included in the structure of the subjective right of a person in need, which, as a result, requires the improvement of the existing system of his protection. In particular, it is noted that the specificity of the sectoral mechanism of legal regulation, expressed in a combination of elementary procedural and material legal ties of the subjects, makes it necessary to fix the combined (complex) method of protecting the rights of a needy person. This method is characterized by the combination of requirements for the recognition of

rights with the simultaneous obligation of the social security authority to take specific factual actions when a person applies to a jurisdictional authority.

Zubarev Sergey Mikhailovich

IMPROVING THE LEGAL REGULATION OF PUBLIC CONTROL

No. 4, 2017

The article analyzes certain provisions of the draft federal law "On Amendments to the Federal Law" On the Foundations of Public Control in the Russian Federation ". This draft law is aimed at improving the legal framework for organizing and exercising public control over the activities of state authorities, local self-government bodies, state and municipal organizations, other bodies and organizations endowed with certain state or other public powers.

The adoption in 2014 of the Federal Law "On the Foundations of Public Control in the Russian Federation" became an important stage not only in the development of public control, but also on the path of the formation of civil society in the Russian Federation. However, law enforcement practice has shown the presence of numerous gaps and conflicts with other federal laws.

The proposals of the developers should be recognized as legislative innovations: on expanding the composition of subjects of public control by including individual citizens and their associations in the corresponding list; on the introduction of the category "public interests as the goal of public control" into legislative circulation; on the establishment of the obligation of bodies and organizations, whose activities in the implementation of the state or other public powers assigned to them are subject to public control, to take into account the results of public control; on the creation of a federal state information system (electronic democracy system), which ensures the collection, processing, accumulation, storage, search and transmission of information about the activities of subjects of public control and persons whose activities in the exercise of state or other public powers assigned to them are subject to public control; on the

introduction of open licenses, on the basis of which it is proposed to disseminate information on public control.

In the article, these proposals are subjected to critical analysis, the positive and negative aspects of the draft law are noted, ways of harmonizing the legal regulation of relations in the field of public control are proposed.

Rarog Alexey Ivanovich

RUSSIAN CRIMINAL CODE AGAINST TERRORISM

No. 2017

The article raises the problem of the quality of criminal law norms designed to counter the terrorist threat. Scientifically verified definitions of terrorism and terrorist activity should underlie the formation of a criminal-legal mechanism for countering terrorist activities. The article offers a working (as material for further polishing) definition of terrorism as a social phenomenon. Emphasizing the genetic connection between extremism and terrorism, the author expresses the idea of the advisability of creating an independent chapter in the Criminal Code of the Russian Federation, combining the norms on extremist and terrorist activities. Unfortunately, multiple attempts by the legislator to improve the quality of the criminal law norm on a terrorist act have not been completely successful. Noting the existing shortcomings of this norm, the author makes proposals for further improving its quality: to include among the subjective signs of a terrorist act its commission based on political, ideological, racial, national or religious hatred or enmity, or on the basis of hatred or enmity in relation to any social group; exclude from the list of qualifying signs careless, and from the number of especially qualifying signs - willful infliction of death. Taking into account the insufficient scientific groundlessness of the inconsistency of the later "anti-terrorist" norms and the inconsistency of the amendments made to them, the article substantiates proposals to change their wording, as well as to exclude Article 2055 from the Criminal Code of the Russian Federation and to transfer the

norm enshrined in Art. 2056 of the Criminal Code of the Russian Federation, in the chapter on crimes against justice.

Khutko Tatiana Vladislavovna

FINANCIAL AND MATERIAL AND TECHNICAL SUPPORT OF WORLD JUDICIAL INSTITUTIONS IN TAURIC PROVINCE (60-80s of the XIX century)

No. 4, 2017

The revival of world justice in the new constituent entities of the Russian Federation in the Republic of Crimea and the federal city of Sevastopol made it necessary to refer to the historical and legal experience of the formation and development of the institute of justices of the peace according to the Judicial Reform of 1864, organizational support of their activities. The article examines the issues of financial and material and technical support for the activities of magistrates' courts and congresses of justices of the peace in the Tauride province as a result of the implementation of the provisions of the Judicial Charters in the 60s-80s of the XIX century. It was established that the world justice of the province was fully supported by the county zemstvos, and the costs of judicial world institutions were among the compulsory zemstvo duties. On the basis of the analysis of the estimate documentation of the monetary expenses and income of the county zemstvos, the articles of financing the activities of the world judicial institutions of the Tauride province were studied, the role and material capabilities of the county zemstvos of the province in matters of their financial support were revealed. Local zemstvo institutions were obliged to allocate annually in the cost estimates from zemstvo fees for the salaries of district magistrates, the maintenance of the congress of justices of the peace, the arrangement and maintenance of premises for those arrested by the judges of the magistrates, provision of prisoners. It was revealed that the county zemstvos spent an average of 6,000 to 13,200 rubles on the maintenance of district justices of the peace. in

year; congresses of justices of the peace - from 1,190 to 8,450 rubles. in year; for the maintenance of houses of detention and the provision of food for prisoners on the verdicts of justices of the peace - from 600 to 3,788 rubles. in year. Most of all for the maintenance of judicial world institutions were allocated by the zemstvo assembly of the Feodosia district (on average 24,300 rubles per year), and the least funds for the maintenance of world justice were allocated by the Yevpatoria district zemstvo (7,600 rubles per year). For the maintenance of magistrates' courts, the county zemstvos of Crimea allocated an average of 15.3% of the funds from the expenditure side of the county budget. Among the factors that influenced the monetary costs of the judicial-world institute, the following were highlighted: the number of judicial-world units in the county, the number of residents as payers of county zemstvo fees, the development of agriculture, industry and trade, which ensured the corresponding income of county zemstvos ... At the same time, some problems of financial support of the judicial and world justice are identified, which had objective reasons. In the course of the study, it was found that the financial and logistical support of the activities of justices of the peace in the province was directly dependent on the sources of income of the zemstvo budgets, the rational distribution of which influenced the efficiency of their work.

Yurchenko Irina Alexandrovna

CRIMINAL LEGAL SUPPORT OF THE PRINCIPLE OF INFORMATION TRANSPARENCY OF CORPORATE GOVERNANCE

No. 4, 2017

The article is devoted to the study of signs of the composition of malicious evasion from disclosure or provision of information determined by the legislation of the Russian Federation on securities, the direct object of which is public relations based on the principle of information transparency of corporate governance. In order to ensure the transparency of the corporation's activities, publicly available corporate information and insider information is subject to

mandatory disclosure, and information of an official nature, to which only a certain circle of persons has access, is subject to provision . It is concluded that the subject of the crime under Art. 185¹ of the Criminal Code is corporate information of two types: 1) information determined by the legislation of the Russian Federation on securities, subject to mandatory disclosure; 2) information determined by the legislation of the Russian Federation on securities to be provided. It is noted that, depending on the subject matter, the objective side of the crime in question is characterized by two types of action: in relation to information of the first type, the legislator establishes responsibility for inaction in the form of malicious evasion from its disclosure or provision, and in relation to information of the second type - for action in the form of providing deliberately incomplete or false information. The article analyzes the concept of evasion as a special type of failure to fulfill obligations imposed on a person within the framework of certain legal relations. A correlation is made between the signs of "malice", "repetition" and "systematic". Moreover, it is proposed in Art. 185¹ of the Criminal Code to refuse to indicate the malice of the evasion, replacing it with repeated, i.e. the commission of an act by a person subjected to administrative punishment for a similar act during the period when it is considered to be subject to an administrative punishment. In addition, the content of such actions as the provision, distribution and disclosure of information determined by the legislation of the Russian Federation on securities is compared. An opinion is expressed about the change in the structure of the composition of malicious evasion from disclosure or provision of information determined by the legislation of the Russian Federation on securities, by excluding from its mandatory signs a socially dangerous consequence in the form of large damage.

In conclusion, a new version of Art. 185¹ UK.

Elena Gerasimova

Coercion to the removal of organs or tissues

No. 4, 2017

The article is devoted to the problematic issues of the criminal- legal assessment of compulsion to the removal of human organs for tissue transplantation, as well as trafficking in persons in order to remove organs from the victim .

There are difficulties in applying Art. 120 of the Criminal Code of the Russian Federation, due to the imperfection of the legislative structure. So, in science, the question of the victim in coercion to remove organs and (or) tissues of a person for transplantation is ambiguously resolved. Based on the literal interpretation of the norm, it can be concluded that in this crime it will not be the one from whom the organ or tissue is going to be removed, but the one who should perform such an operation, i.e., as a rule, the doctor performing the transplant. The legislator, on the other hand, pursued a different goal: he tried to provide criminal law protection primarily to those who were forced to donate their organs or tissues for transplantation to another person or to conclude a commercial transaction that contradicted the law related to their disposal.

Considering the methods of compulsion to the removal of human organs and tissues, the question of the boundaries of mental compulsion as one of the constructive signs of the corpus delicti specified in Art. 120 of the Criminal Code of the Russian Federation. The question is raised about the possibility of recognizing as mental coercion the threat of using violence against relatives of the coerced person. In connection with the theoretical problems of interpreting the signs of corpus delicti, enshrined in Art. 120 of the Criminal Code of the Russian Federation, its insufficient "performance" is noted. A new version of Art. 120 of the Criminal Code of the Russian Federation.

The ratio of the purpose of transplantation of human organs and tissues and the purpose of removal of human organs and tissues is determined. As part of the analysis of signs of corpus delicti, enshrined in paragraph "g" of Part 2 of Art. 1271 of the Criminal Code of the Russian Federation, the issue of competition of goals is investigated: the exploitation of a person and the removal of organs and

tissues of a person. Such competition can only be talked about in relation to acts of recruiting, transporting, transferring, harboring and receiving. The article analyzes the rules of qualification of human trafficking, combined with the subsequent removal of human organs and (or) tissues for further use. It is noted that the use of organs and (or) tissues is not covered by the corpus delicti, enshrined in paragraph "g" of Part 2 of Art. 1271 of the Criminal Code of the Russian Federation, which makes it necessary to establish criminal liability for trade and other transactions with human organs and tissues, regardless of the purpose of such actions.

Shkarevsky Denis Nikolaevich

Special camp courts in the USSR (second half of the 1940s)

No. 4, 2017

The article examines the formation and activity of special judicial bodies - camp courts in the USSR in the second half of the 1940s. The author comes to the following conclusions: special camp courts were created in a hurry; the jurisdiction of the camp courts was deliberately not clearly defined; in the judicial leadership there was a personnel leapfrog and " undercover " struggle.

In addition, the activities of these bodies were imprinted with confusion and "liquidation sentiments" that existed in the Camp Courts Administration. The fact is that the People's Commissar of Justice N. Rychkov had a very negative attitude towards the camp courts and, at any opportunity, indicated that they were needed only by the Ministry of Internal Affairs as their “pocket courts”, moving on to a discussion on the inexpediency of the existence of camp courts, which “disorganized their work. "

It should be noted that personnel confusion took place in the management apparatus of the Department. The formation of special camp courts took a fairly long period of time and did not quite correspond to the plans of the leadership.

Ensuring the activities of the camp courts and the life of the camp court employees were entirely dependent on the heads of the places of detention, which violated the constitutional principle of the independence of the judiciary and did not contribute to the effective work of these special courts. In addition, the activities of the special camp courts were clearly negatively affected by the excessive classification of their activities.

The share of appealed and contested sentences of the camp courts was quite high, which clearly indicates the low qualifications of the judges of the special camp courts. Thus, the judicial collegium for camp courts of the Supreme Court of the USSR overturned in 1947 18% of sentences in cases considered in cassation. According to the official data of the Supreme Court of the USSR, 69.9% of the convictions of the camp courts were left in effect in 1948; in 1949 - 68.1%; in the first half of 1950 - 66.5%.