Isaev Igor Andreevich

State in revolution: imaginary transformations

No. 8, 2017

The article analyzes the most important aspects of the process, which is commonly called a revolution. In this process, statehood undergoes transformations, in which the state interest, as the essence of the state, induces and inspires through a series of coups and transformations, develops new forms, while this essence itself remains unchanged. Coup d'état, dictatorship, states of emergency and terror remain the main stages of the revolutionary transformation carried out in various historical conditions. Legality as an external form of the process retains its significance at different stages, changing its normative outlines. Legitimacy is in constant search of its source, completing it again within the boundaries of statehood. An important instrument of transformation is violence, which alternately takes the form of “divine”, “ mythological ”, normative and provides the regime of a dictatorship (an emergency that becomes chronic, permanent) with the necessary means. The "sovereign" dictatorship is opposed to the "commissar" one, and the sovereign violence, as a law- establishing one, is opposed to the law-enforcing violence . The legal aspects of the revolutionary process seem to be the most articulated and significant, which should attract the attention of historians of revolutionary events and ideas to them.

Dudikov Mikhail Vladimirovich

PLACE OF MINING LAW IN THE SYSTEM OF BRANCHES OF LAW

No. 8, 2017

The article shows the importance of mining law, as well as legal regulation of the mining industry as the basis for the development of the social and industrial base of the Russian Federation. The research of leading scientists in the field of natural resource and environmental law devoted to the concepts of mining law is

considered. The position is formulated on the definition of the place of mining law in the system of branches of law, as well as on the definition of the concept of "mining law". An attempt has been made to reveal the semantics of the subject of mining law. The content of mountain legal relations has been investigated.

Luneva Elena Viktorovna

RATIONAL USE OF NATURAL RESOURCES : CONCEPT AND LEGAL CRITERIA

No. 8, 2017

The article analyzes the concept of "rational use of natural resources" in environmental law. It is shown that both in legislation and in legal science it is unreasonably used in the following meanings: sustainable use of natural resources; use of natural resources that does not hinder their exploitation; the use of natural resources that does not lead to violation of legislation, etc. Two general legal criteria for the rational use of any natural resources have been identified: the achievement of maximum efficiency of their use at the current level of development of technology and technology; with such a volume of negative impact that the environment is able to independently process. On the basis of these criteria, it is proposed to understand the rational use of any natural resources as the use of natural resources, characterized by maximum efficiency in terms of the balance of private and public interests in environmental law at the current level of development of technology and technology and with such a volume of negative impact that the environment is able to independently process by virtue of her assimilating ability.

The article formulates the legal differences between the rational use of natural resources and sustainable use. Additional legal criteria are formulated that separately characterize the rational use of renewable and non-renewable natural resources. An additional legal criterion for the rational use of renewable natural resources is to increase the sustainability of natural ecological systems, natural and

natural-anthropogenic objects. Additional legal criteria for the rational use of non-renewable natural resources include: their fullest use and / or extraction; economical expenditure with the least losses at the current level of development of technology and technology.

Under the rational use of renewable natural resources, it is proposed to understand their use, which leads to an increase in the sustainability of natural ecological systems, natural and natural-anthropogenic objects. Rational use of non-renewable natural resources is their maximum full use and / or extraction, economical use with the least losses at the current level of development of technology and technology and with such a volume of negative impact that the environment is able to independently process.

Greydin Oleg Igorevich

TRANSFER OF STATE FUNCTIONS TO SELF-REGULATORY ORGANIZATIONS AND THEIR NATIONAL ASSOCIATIONS: PROBLEMS OF THE TRANSITION PERIOD

No. 8, 2017

In the article, self-regulatory organizations are considered as subjects directly involved in the systemic regulation of the economy through the implementation of their functions aimed at streamlining relations in relation to self-regulatory activities. In certain sectors of the economy, federal laws provide for national associations of self-regulatory organizations: the procedure for their creation, functions, rights and obligations. Before the emergence of self-regulatory organizations, some of these functions, including regulatory, disciplinary, interim, control, were performed by state bodies.

The transfer of state functions to self-regulatory organizations and their national associations is one of the priority directions of the state in the framework of the administrative reform, fraught with problems of both objective and subjective nature. Objective problems include legislative restrictions on the

number of self-regulatory organizations in a particular sector of the economy, gaps in the regulatory regulation of the processes of creating national associations of self-regulatory organizations, determining their legal status, rights and obligations. The problems of a subjective nature include the improper fulfillment of powers by individual officials of the executive bodies of state power, contradictions within professional communities.

According to the author, in order to overcome these problems, it is necessary to consistently adhere to the main directions of the Concept for improving self-regulation mechanisms, for which it is necessary: first, to form unified approaches to regulating the activities of the institute of national associations of self-regulatory organizations, legislatively defining the concept of "national association of self-regulatory organizations", its legal status; secondly, to avoid unreasonable restriction of the rights of members of professional communities to unite in self-regulatory organizations.

Lushnikov Andrey Mikhailovich

"ECONOMIC ANALYSIS OF LAW" AND JURISPRUDENCE: DIFFERENCES AND GENERAL APPROACHES

No. 8, 2017

The article analyzes general approaches to the research program and academic discipline "economic analysis of law". The author defends the point of view according to which it is necessary to distinguish between such areas of scientific research as "law and economics" and "economic analysis of law". Arguments are provided to support this distinction. Further, the author's main characteristics of "economic analysis of law" are given. In the most general sense, the methodological and ideological foundations of this scientific direction are determined. It is argued that "economic analysis of law" is one of the manifestations of a broader phenomenon called "economic imperialism." According to the author, "economic imperialism" is an attempt to

extend the phenomena of neoclassical economic theory and neoinstitutionalism to the spheres of social relations not related to economics (ie, an economic approach to all social issues). The key concepts of "economic imperialism" are scarcity, price, opportunity costs, benefits.

Further, the attitude of domestic legal scholars to the "economic analysis of law" is investigated. At the same time, three groups of scientists are conditionally identified who are either skeptical about it, or accept it, but with a critical bias, or treat it positively, but interpret it somewhat differently than it is traditionally accepted in Western science. The author proves the need for research covering the borderline themes of law and economics. Arguments are presented to support this point of view.

In conclusion, it is concluded that the need for research at the junction of law and economics is currently obvious, and this applies not only to legal, but also equally to economic science. At the same time, the interaction of sciences should be carried out on an equal footing, and adjustments should concern both branches of knowledge. In this regard, the prospects for research "law and economics" can become one of the most promising areas of development both in the framework of jurisprudence and economics.

Andrey A. Aryamov

Rueva Evgeniya Olegovna

FORMULATION OF LEGAL DEFINITIONS (on the example of the anti-corruption legislation of the Russian Federation)

No. 8, 2017

... The article examines some errors in the definition of legal concepts on the example of the anti-corruption legislation of the Russian Federation. In particular, the legal concepts of "corruption" and "conflict of interest" were the subject of critical scientific analysis. The formation of Russian legal concepts is analyzed taking into account the intersectoral links of the Russian legal system and their

compliance with the norms of international law. The authors show such errors of definition as redundancy of legal terms, ambiguity and inaccuracy of legal formulations, use of “ equal volume ” (synonymy) of concepts, discrepancy between the volume of a concept and its content, tautology, inadequacy of legal definitions.

An analysis of domestic legislation (its retrospective and current state) made it possible to conclude that “technically,” the Russian legal field can well be adapted to the perception of international law and best practices of foreign legislation concerning the most effective means of combating corruption.

Nazarenko Gennady Vasilievich

FORCED MEDICAL ACTIONS: PUBLIC SECURITY SECTION

No. 8, 2017

The draft section "Measures of public safety" is formulated in accordance with the author's concept of compulsory medical measures, according to which compulsory treatment has no criminal law character, since by its legal nature, like other medical measures, it is a security measure that is regulated by prescriptions , traditionally included in the Criminal and Criminal Procedure Codes of the Russian Federation, and the basic provisions are enshrined in the Law of the Russian Federation dated 02.07.1992 No. 3185-I "On psychiatric care and guarantees of citizens' rights during its provision."

The draft reflects the basic requirements of the legislative technique concerning the structure of the normative text and the clarity of the statement of normative prescriptions. As a result of their observance, new articles, parts of articles and a note appeared in the chapter "Compulsory measures of medical influence". A number of articles have changed their location. When constructing the headings of the section, chapter, articles and criminal law regulations, the recommendations of legislative textual criticism aimed at improving their quality were taken into account. The headings that generalize the normative texts of the

chapter are given in strict accordance with their content. In the initial article of the chapter, the definition of the key concept of "compulsory medical measures" is formulated. As the basis for the appointment and application of compulsory medical measures, the danger of persons who have committed socially dangerous acts or crimes due to mental disorder is indicated. For the first time, within the framework of a separate article, the criteria for the appointment of compulsory treatment in medical organizations of various types that provide psychiatric care are indicated . Separate articles distinguish the sub-institute for the examination of a person who is subject to compulsory treatment, and the sub-institute for the extension, change and termination of compulsory treatment. Within the framework of this section, a holistic theoretical model of the chapter "Compulsory Measures of Medical Impact" has been developed and a brief legislative and textual characteristic of each article and its structural elements has been given.

Shesler Alexander Viktorovich

Olga Belareva

VANDALISM DONE BY A GROUP OF PERSONS

No. 8,

The article reveals the content of such a qualifying feature of vandalism, provided for in Part 2 of Art. 214 of the Criminal Code of the Russian Federation, as the commission of an act by a group of persons. Establishing the qualifying feature under consideration, the legislator proceeded from the greater public danger of group vandalism not only in comparison with vandalism carried out by one person, but also in comparison with vandalism committed in complicity with the legal division of roles, in which, in addition to the perpetrator of vandalism, the organizer, instigator and accomplice. It is noted that vandalism should be classified as committed by a group of persons only in cases where the accomplices of the crime are co-perpetrators, i.e. fully or partially perform actions that are part of the

objective side of the corpus delicti under Art. 214 of the Criminal Code of the Russian Federation.

Based on the legislative definition of the perpetrator of the crime (part 2 of article 33 of the Criminal Code of the Russian Federation), it is noted that co-execution can be formed by the actions of only those accomplices who were directly involved in the desecration of buildings or other structures, damage to property on public transport or in other public places, or committed these actions through the use of other persons who are not subject to criminal liability due to age, insanity and other circumstances provided for by the Criminal Code of the Russian Federation. Co-performers can act simultaneously, the actions of co-performers can be sequential, it is also possible for co-performers to perform different actions. However, the common thing for all co-perpetrators is that their actions fully or partially correspond to the description of the objective side of vandalism specified in the law.

The article critically evaluates the practice of qualifying as the commission of a crime by a group of persons of the actions of those accomplices of vandalism who, during and at the scene of the crime, only assist the perpetrator of the crime; such decisions are also encountered when qualifying vandalism. Based on the analysis of judicial practice, clarifications of the Supreme Court of the Russian Federation, it was established that this practice contradicts the generally established practical understanding of a group crime.

Borovskikh Roman Nikolaevich

STANDARD MECHANISMS AND PRACTICE OF COUNTERING ORGANIZED CRIMINAL ACTIVITIES IN THE FIELD OF INSURANCE

No. 8, 2017

The article examines the forensic problems of combating organized criminal activity in the field of insurance in modern Russia. The author clearly shows the degree of development of this issue at the level of theoretical and applied forensic

research, and as a result of the generalization carried out on the topic, he gives a general description of the revision review "Methods of investigating crimes in the insurance sector and related methods, methodological recommendations" ... The article also describes the state of modern law enforcement practice to identify, disclose and investigate fraudulent and other organized criminal activities in the field of insurance. It is indicated that the content of the relevant law enforcement practice is made up of a number of forensically significant trends, which the author identifies and justifies. With regard to the latter, a generalizing conclusion is made that the degree of effectiveness of combating organized fraudulent and other organized criminal activities in the field of insurance cannot be considered satisfactory at the present time.

The article provides a meaningful analysis of official statistics on convictions for crimes under Art. 1595 of the Criminal Code of the Russian Federation. The author proposes for discussion the typology of crimes in the insurance sector and provides arguments in favor of the selected criterion of this typology , according to which four types of crimes in the insurance sector are distinguished: simple (domestic, single-handed, non-group), group, organized and organized-corrupt. Brief examples of the respective types of crime are provided. Based on the materials of law enforcement practice, the article outlines the main directions of organized criminal activity in the field of insurance, considers the issues of the forensic characteristics of organized criminal activity related to the commission of fraud and other crimes in the field of insurance, as well as related crimes.

Tsymbal Evgeny Iosifovich

Dyachenko Anatoly Petrovich

PSYCHOLOGICAL AND PSYCHIATRIC EXPERTISE OF YOUNG VICTIMS ON SEXUAL CRIMES

No. 8, 2017

Comprehensive forensic psychological and psychiatric examination of victims plays an important role in the investigation and trial of cases of sexual crimes against minors. According to the authors, the state of expert practice in this category of cases does not always meet the needs of the investigation and the court. Courts tend to trust the opinion of experts and do not always assess the validity of expert conclusions on the merits, ignore the inconsistency of these conclusions with other evidence collected in the case. To change the current situation, the authors propose the following measures. Taking into account the advances in victimology and legal psychology about the peculiarities of the psychological consequences caused to children by previous sexual abuse, to expand the range of questions that can be posed to experts in the investigation of sexual crimes against minors. Determine the range of questions that it is advisable to pose to experts when appointing an examination at the stage of initiating a criminal case. To empower expert psychiatrists and psychologists with the right, within the framework of the examination, to independently interrogate witnesses in order to obtain information about the life and development of the subjects. At the same time, establish criminal liability of experts for knowingly distorting information received from witnesses. Recognize that it is acceptable for experts to formulate alternative probable conclusions. The need to formulate alternative conclusions will induce experts to put forward not one, but several expert hypotheses, to analyze the circumstances that confirm and refute each of these hypotheses. This practice will sharply reduce the number of expert errors caused by emotiogenic distortions of the formation of an expert's inner conviction. When developing legal regulation of the production of complex forensic psychological and psychiatric examinations of juvenile victims in cases of sexual crimes and the methods of these examinations, it is advisable to rely on international legal standards and the experience of foreign countries.

Antonyan Yuri Miranovich

OBSESSION OF IDEAS AS A MOTIVE OF CRIMINAL BEHAVIOR

No. 8, 2017

The article is devoted to the motive, which in the domestic scientific literature has not yet stood out in this quality and has not been studied. This is largely due to the fact that domestic criminology did not attract due attention to crimes generated by totalitarian regimes (an exception is the monograph of V.N. Kudryavtsev and A.I. Trusov "Political Justice in the USSR, 2002) and the church. The article consistently investigates the concept of obsession with an idea, identifies the types of obsession that will be the subject of study in this article: in connection with the practice of religious faith, the establishment of a totalitarian dictatorship, fanaticism of football fans. There are numerous data on the atrocities of the Catholic Church, the role of obsession in the establishment of a new (totalitarian) system and the retention of power. The role of the crowd is emphasized, in connection with which it substantiates its division into a crowd-flock and a crowd, as a certain stratum of society. The possessed stimulate the crowd and at the same time identify fanatics in it, ready to carry out any orders in it, fanatics, ready to carry out any orders, including the bloodiest ones. The required arguments are provided.

Golik Yuri Vladimirovich

LIABILITY FOR HOLIGANCY: CHANGE OF LEGISLATION

No. 8, 2017

The article is devoted to hooliganism - one of the corpus delicti, which has long been known to our (and not only our) legislation and which is constantly being changed. This is partly due to the fact that the legislator seeks to bring the wording of the law as close as possible to the requirements of practice, partly by the fact that our life today is changing rapidly, and new forms and types of hooliganism appear, which until recently did not exist and could not even exist: telephone hooliganism, hooliganism in social networks of the Internet

system. Something else will appear tomorrow. In the past few years, cases of gratuitous disturbance of public order in planes in the air, in trains and on sea and water transport have sharply increased. Very often, such actions of hooligans pose a threat to the safety of the vehicle and endanger the life and safety of passengers and others who are in the vehicle.

On April 3, 2017, Federal Law No. 60-FZ introduced the corresponding amendments to the Criminal Code regarding liability for hooliganism and crimes related to hooligan motives. There are two such changes. First, part 1 of Art. 213 was supplemented with clause "c": "on rail, sea, inland waterway or air transport, as well as on any other public transport"; secondly, a new article 2671 "Actions threatening the safe operation of vehicles" was introduced into the Criminal Code. The article analyzes these changes.

Ilyinskaya Olga Igorevna

FORMATION OF THE PRINCIPLE FOR THE PROHIBITION OF AGGRESSIVE WARS BEFORE THE CREATION OF THE UNITED NATIONS

No. 8, 2017

The first international legal acts of a universal scale, aimed at limiting the right of states to war, began to be developed only in the late 19th and early 20th centuries. The author conducts a legal analysis of all such international legal acts, paying special attention to the Charter of the League of Nations adopted in 1919, which contained very significant restrictions on the traditionally recognized right of states to war. Nevertheless, the logical interpretation of the Charter of the League of Nations leads to the conclusion that there was a kind of procedural trick in it, the use of which opened up ample opportunities for states to turn to war.

Considering the Paris Treaty on the Renunciation of War as an instrument of national policy of 1928 (the Briand- Kellogg Pact) as the first universal international treaty that prohibits aggressive war, the author draws

particular attention to its significant shortcomings, one of which was that the said prohibition dealt exclusively with war in the proper sense of the word, while other forms of the use of armed force in the international relations of states were, in fact, outside the scope of its action. This circumstance necessitated the development of a definition of aggression and the consolidation of such a definition in an international act. Efforts in this direction are also highlighted in this article. Other (in addition to the two above-mentioned) multilateral and bilateral international treaties, which paved the way for the formation of the principle of the non-use of force in international relations, later enshrined in the UN Charter, are also subject to detailed research. In addition to the relevant international norms, doctrinal developments have also become the subject of research, in particular those that relate to the period of the emergence of the science of international law and testify to the gradual rooting in the legal consciousness of the idea of the need to restrict the right of states to war.

Skachkov Nikita Gennadievich

RESPONSIBILITY OF SHIP OWNERS IN THE TRANSPORTATION OF OIL AND ITS PROCESSING PRODUCTS

No. 8, 2017

The transportation of crude oil and its refined products traditionally belongs to the category of costly and dangerous activities. The insurance of such cargo is no less difficult. Pooling of capital of ship owners is required. At the same time, the fault for the occurrence of the insured event, as a rule, lies with the actual carrier. Insurance solvency is based on the costs preceding the formation of insurance benefits. Whereas the calculation of the insurance value is easier to entrust to a consolidated group of insurers. Only in this case the limitation of liability is then impeccable, and the nature of the risks corresponds to the maximum level of insurance coverage. As a result, the limits of liability are resistant to any of the losses. However, mutual insurance is the creation of new

insurance products, where compensation and protection are strongly linked. The emergence of a powerful financial trust leads to the accumulation of assets and their targeted distribution. As a result, the extreme disunity of operational risk indicators is overcome. Fixed- term contracts are being concluded to bring the commencement of compensation payments closer to the primary risk alone. Upcoming coverage guarantees are free to set, and the risk liability is incorporated into the direct cost of the premium. IOPC funds increase asset liquidity.

Galkin Ivan Viktorovich

METHODOLOGICAL FEATURES OF ANTIQUE JURISPRUDENCE

No. 8, 2017

The article is devoted to the methodological features of ancient jurisprudence. Antiquity is undoubtedly an extremely important period not only in world history, but no less in the history of the development of philosophical knowledge and positive sciences, and, consequently, in the history of methodology that arises and functions at the junction of philosophy and science. Methodology is a philosophical discipline that establishes the correct methods, approaches, methods of cognition, and also creates the necessary tools for scientific research, including in legal sciences. The key task of the methodology is to effectively organize and regulate knowledge as a purposeful process of obtaining and processing new and reliable scientific facts. The special significance of the ancient period of the development of methodology lies in the fact that it was at this historical stage that the fundamental foundations of the methodological matrix of cognitive activity were laid. Of course, one should objectively speak only about the elements of scientific knowledge and methodology in the period of antiquity, since science in that era could not yet act as a method of systematic and systematic production of scientific knowledge based on a comprehensive study of

reality. Nevertheless, it was in ancient times that the methodological basis of legal science began to take shape, especially thanks to the theoretical efforts of Greek thinkers and outstanding Roman jurists. It is safe to speak about the multidirectional cognitive efforts of the legal scholars of ancient societies: Greek thinkers took upon themselves the development of the theoretical side of political and legal issues, and Roman lawyers became widely known due to their practical activities in the field of state and law. Roman law was not only the final stage in the evolution of ancient jurisprudence, but also became the result of the development of the entire legal theory and practice of antiquity, drawing into its orbit many important achievements of legal thought in most of the advanced countries of the Ancient world. Thus, this article sheds light on a rather controversial issue of the methodological foundations of the theory and practice of jurisprudence of ancient times.

Morozova Ludmila Alexandrovna

F.N. Plevako: life and work

(to the 175th birthday anniversary)

No. 8, 2017

The famous Russian lawyer Fyodor Nikiforovich Plevako acquired the common name "Moscow Zlatoust" during his lifetime . Contemporaries noted his ability to have a magical effect on the court and the jury, the ability to turn the trial in favor of the accused. He could establish an invisible contact with the audience , show ingenuity and wit in time, resorting to a figurative comparison or instantly parrying a remark from the opposite side of the process. As the modern Russian lawyer G. Reznik rightly emphasizes, Plevako was a professional lawyer of the highest class, a deep psychologist, penetrating into the innermost recesses of the human soul, an expert on social customs and life of different social strata. Those who personally knew F.N. Plevako noted his inherent sense of proportion, which is characteristic only of a truly intelligent person. He showed

deep respect for all participants in the trial: he did not see enemies either in the judges, or in the prosecutor, or in witnesses, or in the jury, whom he never challenged, but on the contrary, ranked himself among them as the thirteenth with an advisory voice. In support of this conclusion, the article provides examples from Plevako's speeches at many trials. There is an idea of Plevako as an exclusively practicing lawyer, not at all a public figure, since he did not participate in political processes such as the case of Vera Zasulich. The author of the article destroys this idea, referring to the cases of lutoric peasants, Sevsk peasants, workers' strike at the factory of Savva Morozov, etc., noting the fullness of his speeches with social and political meaning, deep civic spirit and a sense of compassion for the people.

Plevako participated in the commission working on the draft reform of the legal profession, together with A.F. Koni, V.D. Spasovich , N.S. Tagantsev, I. Ya. Foinitsky and other prominent Russian lawyers. Plevako's social activities are evidenced by his election in 1907 to the State Duma.

In the final part of the article, the enormous role of Plevako in the practical and theoretical jurisprudence of Russia is emphasized, it is noted that his legacy is subject to careful and in-depth study. It is also necessary to create his school among practicing lawyers, equipping its students with the subtlety of psychological analysis, expressiveness and richness of the legal language, brightness and vitality of images, brilliance of style and depth of thought.