Biryukov Sergey Viktorovich

DEFINITION OF THE LAW BETWEEN JURISPRUDENCE AND SOCIOLOGY

No. 9, 2017

The problem of the difference between sociological and legal understanding of law is considered , the objective nature of such a difference and, at the same time, the need for a minimum conceptual consensus for the development of the sociology of law (sociological jurisprudence) is revealed. It is shown that such a consensus is possible on the basis of considering law as a due and being, a dialectical approach to law, allocation of legal and other social law, consideration of the essence of law.

The gap between "law in books" and "law in life" can be mastered using a system of coordinates (formal norms (due) - social institutions (existing); legal law - another social law). Such a scheme meets both the subject of interests of sociologists and the practical needs of lawyers. It corresponds to the desire to understand the relationship, the interdependence of various regulators (social institutions), to identify the social aspects of legal activity, the degree of effectiveness of law, the relationship of jurisprudence with other humanities. This scheme can be supplemented with one more coordinate, which reflects the degree of achievement in the law of formal equality of subjects.

Galchenko Andrey Igorevich

HISTORICAL ASPECTS OF THE ACTIVITIES OF THE RUSSIAN PROSECUTOR'S OFFICE ON PREVENTION OF VIOLATIONS OF LAWS

No. 9, 2017

Since the establishment of the prosecutor's office in Russia by Peter I in 1722, the prosecutors, in contrast to the previously created fiscal service, were aimed not so much at identifying violations of laws as at preventing them. In the

future, the prosecutor's office experienced different times, the structure of the prosecutor's office and the competence of prosecutors changed, as well as the degree of influence of the prosecutor's office on the state of legality in the state. Nevertheless, the activities of the prosecutor's office have almost always been aimed, among other things, at preventing violations of laws. At the same time, the words about the prevention (prevention, prophylaxis, etc.) of violations in the legislation on the prosecutor's office, as a rule, were not directly indicated, but the preventive orientation of its activities followed from the duties assigned to prosecutors, the essence of which was precisely to ensure compliance with supervised by their bodies and persons to the requirements of laws. This article, with references to specific provisions of regulatory legal acts, examines the history of the activities of the Russian prosecutor's office to prevent violations of laws from the moment of its establishment to the present day. At the same time, it is noted that recently this direction of the prosecutor's office is becoming more and more in demand. The author also proposes to establish normatively the priority of this approach in the Federal Law "On the Prosecutor's Office of the Russian Federation".

Zholobova Galina Alekseevna

CHANGE OF COURSE IN THE LEGAL REGULATION OF THE COMMERCIAL CAPACITY OF PERSONS OF THE JEWISH BELIEVE IN THE CONDITIONS OF THE TRANSITION TO THE POLICY OF "COUNTERREFORM" OF ALEXANDER III

No. 9, 2017

The article raises the problem of subjective restrictions on the principle of "free trade" proclaimed in the Russian Empire in the second half of the 19th century. The chronological framework of the article covers the 1880s, when the liberalism of Alexander II was replaced by the reactionary course of Alexander III, aimed at strengthening the autocracy and ensuring public safety. The presented

documentary substantiations of officials who formed state policy during the period of political reaction and "counter-reforms" of Alexander III: N. Kh Bunge , N. P. Ignatiev, D. A. Tolstoy, I. A. Vyshnegradsky , S. Yu Witte, give an idea of motives for tightening legal restrictions on persons of the Jewish faith. The author showed that, in contrast to the medieval persecution of Jews for reasons of a religious nature, at the end of the 19th century, claims of a moral, and, as a consequence, an economic and political order began to be presented to this people. In addition to the expansion of legislative restrictions on persons of the Jewish faith who carry out commercial activities both within the boundaries of the general Jewish settlement and in the inner provinces of the Russian Empire, restrictions were everywhere intensified at the level of implementation of the existing legislation. The solution of questions about the commercial rights of persons of the Jewish faith was increasingly shifted from the legislative sphere to administrative regulation.

Akchurina Anna Vladimirovna

INSTITUTE FOR STATE REGISTRATION OF REGULATORY LEGAL ACTS OF THE EXECUTIVE BODIES OF STATE AUTHORITIES OF THE RUSSIAN FEDERATION SUBJECTS: PROBLEMS AND PROSPECTS

No. 9, 2017

The article is devoted to the analysis of the existing in a number of constituent entities of the Russian Federation the legal institution of state registration of normative legal acts of the executive bodies of state power of the constituent entities of the Russian Federation. The sources of its formation, the content and procedure for its implementation in those constituent entities of the Russian Federation where it was introduced are revealed.

The article evaluates the positive and negative aspects of the application of this institution, reveals its significance for the legal system of a constituent entity

of the Russian Federation and the role in ensuring the unity of the legal space of the Russian Federation.

The author examines the problem of the prospects for preserving the institution of state registration of normative legal acts of the executive bodies of state power of the constituent entities of the Russian Federation, taking into account the trend towards unification of legislation in general, the need to take into account the specifics of sectoral lawmaking aimed at reducing the time interval between the adoption of an act and the beginning of its entry into force, as well as in connection with the development of mechanisms of federal constitutional control and supervision, including the practice of strengthening the role of the prosecutor's office and justice bodies in the rule-making activities of state authorities of the constituent entities of the Russian Federation. Examples of emerging regulatory collisions that impede the functioning of this legal instrument are given, and the points of view found in the legal literature on ways to prevent the possibility of publication, entry into force and implementation of illegal regulatory legal acts of public authorities of the constituent entities of the Russian Federation are summarized.

Based on the analysis of theoretical and normative material, the author has made proposals for resolving the problems indicated in the article that arise in the practical activities of the executive authorities of the constituent entities of the Russian Federation. In particular, the expediency of considering the issue of amending the Federal Law dated 06.10.1999 No. 184-FZ "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation" bodies of state power of the constituent entities of the Russian Federation and its relationship with the official publication and entry into force of these acts.

Bakishev Kairat Alikhanovich

Transport administrative and criminal offenses

No. 9, 2017

Using the example of transport offenses in the Criminal Code of the Republic of Kazakhstan in 2014, the author states the biased approach of the legislator to the differentiation of administrative and criminal law acts in the process of legal reform. It is noted that a number of transport offenses were erroneously classified as criminal offenses without taking into account the method of their commission, the nature of harmful consequences and other significant legal signs. The conclusion is substantiated that the main criterion for distinguishing between crimes, criminal offenses and administrative offenses is the degree and nature of their public danger. This criterion should be at the heart of the legislative definition of an administrative offense (Article 25 of the Administrative Code) and taken into account when building a system of transport criminal offenses.

The existence in the administrative legislation of torts in the field of family and household relations, public order and morality, the rights and freedoms of minors, ensuring traffic safety, labor protection and other administrative offenses led to the oblivion of their criminal-legal nature, an incorrect assessment of the various nature and degree of public danger offenses and errors in law enforcement. In this regard, it is proposed to develop a Code of “minor” offenses or minor offenses, which, along with the Criminal Code, should be recognized as a source of criminal law.

Ghazaryan Kristine Vasakovna

Legal adaptation and integration of labor migrants

No. 9, 2017

The article analyzes the modern Russian legislation in the field of adaptation and integration of migrants.

The problems of adaptation and integration of labor migrants in modern Russia are shown , the resolution of which will optimize the ongoing legal and socio-economic processes, will contribute to a deeper study of the legal, economic,

social, cultural structure of modern Russian society, the development of a competent migration policy, taking into account modern realities.

The theoretical and methodological analysis of the concept of integration is carried out.

It is indicated that the use of the integration model of interaction between labor migrants and the receiving state is the most optimal model. The need to expand the participants in integration processes by including not only the state, but also actively non-state entities is recognized .

The article examines the issues of delimitation of powers between different territorial levels of the implementation of public power in the field of adaptation and integration.

It is proposed to adopt a federal law on social and cultural adaptation and integration of migrants, which would define the system of bodies regulating these relations and the powers of each of them.

An essential vector for the development of legislative regulation is the need for a clearer delineation of the powers of public authorities in the field of adaptation and integration of labor migrants.

In conclusion, for the effective functioning of the institution of adaptation and integration of labor migrants, it is proposed to take a number of measures.

Obukhova Galina Nikolaevna

Consistency in the construction of disciplinary and material liability procedures and the need for their harmonization in Russian labor legislation

No. 9, 2017

The article examines the problem of law enforcement due to the high degree of gaps in the system of procedural legal norms in the Labor Code of the Russian Federation, in particular in the norms on the responsibility of an employee for failure to perform or improper performance of his labor duties. As part of the industry's labor law types of employee responsibility unites

them trudopravovyh character. The basis for bringing to it is the uniform disciplinary offense for the material and disciplinary responsibility of the employee, with some exceptions. However, regardless of the institutionalization of the norms on the employee's responsibility to the employer, labor legislation describes the procedure for bringing the employee to such responsibility very in detail, and therefore there are many law enforcement problems, sometimes quite insignificant at first glance, but in the aggregate significant for the resolution of a particular dispute . Analyzing the norms of labor legislation, scientific literature and judicial practice, it is possible to identify a fairly large number of problems that arise when attracting an employee to labor law liability, the presence of numerous evaluative concepts, and procedural errors of employers. In this regard, the question is raised of revising the current legislation in order to unite within one institution the norms on the employee's responsibility to the employer and to include in it the concept of “the procedure for bringing an employee to labor law liability” or “the procedure for bringing an employee to responsibility for non-performance or improper performance of his labor law. duties ”, providing also a single or general procedure for conducting a disciplinary (official) investigation with the formation of the evidence base (case) in writing. A unified procedure for holding employees accountable in the field of labor relations should go beyond one or two articles. In the Labor Code of the Russian Federation, a chapter or a group of norms should be created containing procedural principles and norms that regulate in detail the involvement of employees in labor law .

Borisova Olga Valentinovna

LEGAL REGULATION OF THE EXECUTION OF THE JUDICIAL PENALTY

No. 9, 2017

A court fine is characterized not only by criminal-legal features, as a measure of a criminal-legal nature, and the procedural order of imposition, but also

by special rules of execution. The article, based on the Federal Law "On Enforcement Proceedings", analyzes the functions of a bailiff and a person exempted from criminal liability on the basis of Article 762 of the Criminal Code of the Russian Federation. With the involvement of materials from judicial practice, the rules for setting the deadline for the payment of a court fine are considered. It is concluded that, taking into account the time period for the entry into force of the court decision and to ensure the possibility of its appeal, the time limit should be set not by the limit date, but by the number of days calculated from the date of entry into force of the court decision. The article analyzes the differences between a court fine and a fine-criminal punishment. It is proposed in the ruling or ruling of the court to first explain to the released person the obligation to provide information on the payment of the court fine, and then - the consequences of non-payment. On the basis of the conditional nature of this type of exemption from criminal liability, the construction of evasion from the payment of a court fine is considered. It is argued that non-payment of the court fine should unconditionally, regardless of the reasons for the evasion, entail the cancellation of the decision to release from criminal liability. It is proposed to regulate the execution of a court fine not by the law "On Enforcement Proceedings", but by the Criminal Executive Code of the Russian Federation.

Panokin Alexander Mikhailovich

COMPARATIVE CHARACTERISTICS OF APPEAL AND CASSATION PROCEDURE FOR CONSIDERATION OF CRIMINAL CASES

No. 9, 2017

The article analyzes the correlation between appeal and cassation proceedings in criminal cases. A comparison is made between the object and the subject of the appeal and cassation review. The author highlights the criteria, including those established by the ECHR and the Constitutional Court of the

Russian Federation, which make it possible to delimit the appeal procedure for considering a criminal case from a cassation review. The features of the initiation of appeal and cassation proceedings, as well as their impact on the effectiveness of the review of court decisions are considered. The features of the organization of the judicial system that provide cassation review of court decisions are analyzed. The factors that will allow the Supreme Court of the Russian Federation to ensure the unity of judicial practice and legality to a greater extent are highlighted. The author notes the importance for the system of control and verification stages of the criminal process of the principle of legal certainty as the basis of the truth of the court decision. As the boundary between the appeal and cassation proceedings, the possibility of a separate verification of the factual circumstances of the criminal case and legal issues, the impact of these factors on the participation of the convicted, acquitted, person in respect of whom the criminal case has been terminated in the court session of the appeal and cassation instance is determined; grounds for canceling or changing a court decision; the procedure for reviewing court decisions; decisions taken by the courts of appeal and cassation. A comparative analysis of the peculiarities of the turn for the worse in the court of appeal and cassation instance is carried out. The relationship between the terms of the appeal and cassation appeal, as well as the impact of the latter on the ECHR's assessment of the Russian cassation proceedings as an ineffective remedy, is considered. As a result, an effective remedy to be exhausted on the basis of paragraph 1 of Art. 35 ECHR, recognizes appellate review of judgments. The article examines the special powers of the Chairman of the Supreme Court of the Russian Federation and his deputy in the cassation review of court decisions (part 3 of article 401.8 of the Criminal Procedure Code of the Russian Federation). The features of cassation proceedings are highlighted, indicating its extraordinary nature, which allows ensuring legal stability and legal certainty.

Elena Ilyinichna Popova

ON THE NEED TO CREATE CRIMINALISTIC METHODS BASED ON THE PRINCIPLE OF COMPROMISE

No. 9, 2017

According to official statistics, today in Russia, on average, about 60% of crimes are investigated and then considered by courts using forms of criminal proceedings that involve a compromise between the prosecution and the defense. The content of the rules governing such forms of legal proceedings and the peculiarities of their implementation in practice give grounds for many representatives of the legal community to note the decline in the quality of investigation and trial, to pay attention to the related violations of the rights and legitimate interests of participants in criminal proceedings. Attention is drawn to the fact that the use of the considered forms of criminal proceedings often lead to the violation of the rights and legitimate interests of the participants in the process. It is indicated that circumstances of this kind are not so much due to the design of the rules governing law enforcement in the order of Ch. 32.1, 40, 40.1 of the Code of Criminal Procedure of the Russian Federation, but also the practice of their application.

It is noted that, despite the long period of existence of criminal procedural institutions, involving compromise procedures, researchers do not pay enough attention to the forensic support of the considered forms of legal proceedings. The author points out that it is forensic science that can improve the quality of investigation in the considered categories of criminal cases by creating appropriate applied recommendations. Attention is focused on the need for forensic support for the implementation by the investigator of the rights and legitimate interests of the victim in criminal cases with the prospect of being considered by the court in a special order. The necessity of creating forensic recommendations for overcoming the existing and predicted counteraction to criminal prosecution by reaching a compromise between the prosecution and defense parties on the basis of the norms of criminal procedure and criminal law is substantiated. The author's definition of

the "principle of compromise" is proposed, the necessity of including it among the principles of the implementation of forensic techniques is argued. It is argued that forensic support for compromise procedures can help improve the quality of the investigation, ensure the real protection of the rights and legitimate interests of participants in criminal proceedings, and therefore is a promising area of scientific research.

Anufrieva Lyudmila Petrovna

ON SOME THEORETICAL APPROACHES TO THE LAW OF EURASIAN INTEGRATION AND ITS INSTITUTIONALIZATION

No. 9, 2017

The article examines an important theoretical issue that acts as a starting point, which concerns the approach to understanding the law of Eurasian integration from the point of view of international legal science and its place in the system of international law. The problem of the forms of institutionalization of Eurasian integration is inextricably linked with this . The main dilemma appears: is the modern integration association an international organization in its "classical" outline or is it a specific entity that cannot be put on a par with international interstate organizations. From this perspective, the question of whether the integration associations have international legal personality comes to the fore . In this regard, particular emphasis is given to the views expressed on this score in the domestic doctrine.

Slepak Vitaly Yurievich

Trubacheva Kristina Igorevna

REMEDIES ON AN APPEAL OF THE EUROPEAN UNION RESTRICTIVE MEASURES

No. 9, 2017

The presented article analyzes the theoretical, practical and comparative features of legal protection when appealing against the restrictive measures of the European Union. The legal basis for the application of restrictive measures and certain specific legal provisions are considered. Attention is paid to individual mechanisms and methods of legal protection by third countries from the application of restrictive measures by the European Union.

Borovskikh Roman Nikolaevich

CRIMINALISTIC CHARACTERISTICS OF ORGANIZED CRIMINAL ACTIVITIES IN THE FIELD OF INSURANCE

No. 9, 2017

the article examines the forensic problems of combating organized crime 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 (in line with the designated problems) analysis of official statistics on convictions for crimes under Art. 159.5 of the Criminal Code of the Russian Federation ("Fraud in the field of insurance"). The publication also proposes for discussion the author's typology of crimes in the

insurance sector and provides arguments in favor of the chosen criterion for this typology . In accordance with the "point of view" from which the issues of the selected problematic are considered in the publication, the author considers it appropriate to distinguish four types of crimes in the insurance sector: simple (domestic, single-handed, non-group), group, organized and organized-corrupt. The author provides brief examples of the respective types of crimes. Taking into account the above typology and based on the study of materials of law enforcement practice, the article identifies the main directions of organized criminal activity in the insurance sector, examines the issues of the forensic characteristics of organized criminal activities related to the commission of fraud and other crimes in the field of insurance, as well as related crimes

Golubev Stanislav Igorevich

ENVIRONMENTAL CRIME: IN THE LABYRINTH OF DEFINITIONS

No. 9, 2017

The article is devoted to the definition of the concept of "environmental crime", which is debatable. The author examines in detail all the approaches available in the literature to establishing the essence of this act, identifying its typical features and formulating an appropriate definition. The content of the specific object of the crime is revealed, as it is proposed to recognize environmental safety - a set of social relations characterizing the functioning of natural ecological systems, natural and natural-anthropogenic objects, natural elements of the human environment (living conditions), excluding harm to his health, property and other vital interests. Environmental safety characterizes a favorable environment that does not experience the negative impact of economic and other activities, man-made emergencies and their consequences. Based on this, an environmental crime is defined as a socially dangerous, guilty, criminally punishable act that infringes on environmental safety (favorable environment) and

entails (or creates a threat of occurrence) the consequences provided for by the criminal law. The article also discusses controversial issues of the subject of environmental crime. The author comes to the conclusion that the environment acts as a set of components of the natural environment, natural and natural-anthropogenic objects, as well as anthropogenic objects. Recognition as such of the vital interests of a person, the rules of environmental protection, which is encountered in the literature, is erroneous , which entails both a distortion of the essence of these circumstances and their significance as part of a crime in general and environmental in particular.

Ershova Inna Vladimirovna

SMALL AND MEDIUM BUSINESSES: WE INVITE YOU TO THE INTERACTIVE EXPERT SITE

No. 9, 2017

The article highlights the results of the work of the 2nd Interactive Round Table, dedicated to topical problems of legal regulation and practice of activities of small and medium-sized businesses. A palette of opinions of leading experts in this field is presented, as well as conclusions and recommendations aimed at creating a favorable business climate, creating an educational environment for training personnel for small and medium-sized businesses. The results of the survey conducted at the University named after O.E. Kutafin (Moscow State Law Academy) and showed that students and graduate students have the potential for independent entrepreneurial activities, but additional work is needed to attract students to small business. Taking into account the results of the conducted surveys will improve the content of academic disciplines related to the legal regulation of small business, as well as the methodology for teaching them. It is concluded that the principles of legal regulation in the field of small and medium-sized businesses, enshrined in the Strategy for the Development of Small and Medium-Sized Businesses until 2030, are generally socially fair, but their implementation will be

very difficult. Attention is drawn to the fact that Russia has created a solid infrastructure for supporting small and medium-sized businesses, corresponding to the world level and including several development institutions. At the same time, most of the problems, mainly of a financial nature, have not been eliminated. In this regard, it is proposed to shift the emphasis from state support to small and medium-sized businesses in Russia to support the diversification of the economy, which is largely achieved through the creation of a layer of strong small and medium-sized businesses. It was emphasized that the task of supporting small and medium-sized enterprises should not be limited to supporting individual business entities, it is the task of building a strong self-sufficient economy in Russia.