Tumurova Anna Timofeevna

CONCEPT OF USUAL LAW

(functional approach)

No. 11, 2017

The article defends the idea of defining the concept of customary law from the standpoint of differentiating the forms of legal formation , and its functions - based on the differentiation of public and private law. The functions of law as a regulator of social relations with regularity give rise to two forms of law - ordinary law as the implementation of the static function of law and legislation as an expression of the dynamic function of law. Historical and comparative legal research methods of law indicate that in the field of private law, the legislative powers of the state were limited and were due to the prohibition to go beyond the boundaries outlined by the measure of social freedom achieved by society itself . Lawmaking functions in this area were reduced to fixing by the state only those norms that reflected the social relations developed by practice. When comparing the features, the time uncertainty of the customary law is revealed, which is generated by the internal contradiction inherent in law as a whole, which is resolved by a set of special rules and techniques - legal technique that determines the originality of legal systems. Contradictions between the old and the new in Anglo-Saxon law are resolved by judicial precedent, in Romano-Germanic law - by codification, and in Muslim law - by the institution of kias . The fundamental difference between a rule of law and a rule of customary law lies in different mechanisms for the implementation of one or the other rule in the legal behavior of an individual. The rule of law, being implemented in the behavior of a specific participant in social relations, acts as a visual model. In turn, for other participants in public relations, this act of implementation will be an example of an implemented legal norm, carries information of a dual nature: firstly, about the content of a legal norm, and, secondly, about its assessment - legitimate or illegal. In everyday life, people are most often guided by a clear example of lawful behavior and refer to a written document only if there is no obvious personal or

someone else's experience of implementing a legal norm. And the legislative norm acts in its pure form as an abstract model.

Vitaly M. Stepashin

CONTENT OF THE PRINCIPLE OF ECONOMY OF REPRESSION

No. 11, 2017

Independent dissertation and monographic studies of the content of the idea of economy of repression, its conditionality and place in the system of principles of criminal law have not been carried out. In modern legal doctrine, its different names are used. The traditional term “economy of repression” (“economy of criminal repression”) seems to be more accurate.

Often there is an unreasonable identification of a) the sphere of implementation of the analyzed principle, b) its content, and c) the forms of implementation or even manifestations of the idea of saving repression in separate normative prescriptions. The analysis of the content and scope of the principle of economy of repression is replaced, as a rule, by the study of the principles of humanism and differentiation of responsibility, as well as the principles of criminal policy.

The content of the criminal law principle of economy of repression in a broad sense is to prosecute only if the goals of correction and prevention are otherwise unattainable. In a narrow sense, the economy of repression consists in the use of punishment only as a last resort, when it is impossible to use other repressive measures of criminal law. At the same time, the applied repressive measure of criminal law influence, including punishment, should be minimally necessary and sufficient to achieve the objectives and goals of criminal law influence.

In other words, the principle of economy of repression presupposes 1) rejection of repression - if it is possible to use it, or 2) minimization of repression - if more intense punitive influence is possible. The use of the criteria of necessity

and sufficiency in determining the optimum of the punitive effect of repression is justified. Their subsequent concretization is carried out when constructing a system of punishments, a system of sanctions, general principles and special rules for imposing punishment, measures of a criminal-legal nature.

The economy of repression has certain characteristics:

1. The economy of repression is based on the presumption of the validity of a criminal law prohibition and the presumption of the validity of the very application of repressive measures of criminal law;

2. Economy of repression presupposes the possibility of choosing a law enforcement solution;

3. The economy of repression should be conditional;

4. Saving also involves minimizing the negative impact of the applied repression on the legal (and actual) position of other participants in the resulting relationship (victim, family members of the convict, etc.).

The phenomenon of "forced repression" and "imaginary economy of repression" (" pseudo-economy ") is noted .

Khatuaeva Victoria Vladimirovna

The concept and essence of the institution of revision of court decisions that have not entered into legal force in the context of reforming the criminal procedure legislation of the Russian Federation

No. 11, 2017

The article discusses the problems of appeal proceedings, its place in the general system of stages of the criminal process, signs that identify the stage of revision of court decisions that have not entered into legal force. The problems of practical implementation of the provisions of Ch. 45.1 of the Code of Criminal Procedure of the Russian Federation, related to the possibility of submitting new evidence to the court of second instance, the composition of the appellate court, revision of decisions made by the jury. The author's definition of appeal

proceedings is proposed, which is proposed to be understood as an independent stage of criminal proceedings, during which the court of second instance, in an audit procedure, upon the complaint (presentation) of the parties, verifies the legality, validity and fairness of the court of first instance that has not entered into a legal decision in court with compliance with the principles and general conditions of the trial, by examining the evidence, both available in the criminal case and presented by the parties, and makes a decision in the criminal case within its competence.

Natalia Sokolova

THE EURASIAN UNION: THE LEGAL NATURE AND THE NATURE OF LAW

No. 11, 2017

The article deals with the issues of the international legal personality of the Eurasian Union and the formation of the EAEU law. The EAEU was established by an international treaty, based on the analysis of the content of which it is obvious that the powers of the EAEU and the legal order it creates distinguish the Union, although it is a union of sovereign states, from many well-known international intergovernmental organizations. The points of view on the type of organization of the EAEU presented in the article reflect the complex structure of modern international relations governed by international law, an attempt to explain not quite familiar phenomena on the basis of well-known legal structures. The activities within the competence of the Union are based on principles that can be conditionally divided into three groups, which explains the international legal nature of the EAEU and contributes to the development of integration, while protecting the sovereignty of states. The fundamental issue when creating an integration association is the issue of the transfer of powers by the state to such an association. The article analyzes the practice of transferring powers on the basis of the constitutions of the member states of the Union and acts of constitutional

control. Regional economic integration evolves through the implementation of a coordinated, coordinated or unified policy in the sectors of the economy defined by the Treaty on the EAEU and international treaties within the Union. EAEU law, which form the Treaty on the EAEU; international treaties within the Union; international agreements of the Union with a third party; decisions and orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission require analysis in relation to several important aspects: correlation with international law, hierarchy of sources and resolution of conflicts, the role of acts of the EAEU Court, place in the EAEU legal system of the so-called norms. "Soft" law.

Alekseeva Elena Sergeevna

PROBLEMS OF IMPLEMENTATION OF RESPONSIBILITY FOR VIOLATION OF BUDGETARY LEGISLATION

No. 11, 2017

The article analyzes the current state and dynamics of violations of budgetary legislation. The data of control measures of the TU Rosfinnadzor in the Republic of Buryatia, the Office of the Federal Treasury in the Republic of Buryatia have been investigated . A decrease in the offenses established by the regulatory authorities was revealed.

Attention is drawn to the contradictory interpretation of "budgetary responsibility". The place of budgetary responsibility in the system of types of legal responsibility is determined, the essence of budget violations and budgetary enforcement measures is analyzed. State coercion measures can be preventive, suppressive , law restorative and punitive. Punitive measures are recognized as legal liability. Legal liability arises as a result of a person committing an offense. Other measures are applied regardless of the existence of an offense.

Measures of budgetary coercion are the law enforcement activities of authorized bodies. The application of measures of budgetary coercion is carried out in a certain procedural form.

The RF Budget Code uses the concept of “budget violation”. The composition of the budget violation differs from that generally accepted in legal science. There are differences in the subject, the subjective side of the offense and budget violation.

Guiltiness in the application of budgetary coercive measures for budget violations is irrelevant. Understanding budgetary funds as information about the powers of the participants in the budgetary process, containing the purpose and name of the responsible person, to a certain extent removes the need to prove guilt for many violations of budgetary legislation.

The subjects of "budgetary responsibility" are collective subjects - participants in the budget process, endowed with the status of a financial body, the main manager of budgetary funds, the manager of budgetary funds, the recipient of budgetary funds, the chief administrator of budget revenues, the chief administrator of sources of financing the budget deficit. The participants in the budgetary process are institutional units of government, parts of a single mechanism.

It is senseless to apply punitive measures to such persons. It makes no sense to apply to such persons measures that are of a compensatory nature, since the participants in the budget process are public authorities, state institutions functioning at the expense of the budget and endowed with public property. Any collection from them means collection from the budget to another budget or even to the same budget. Budgetary coercive measures can have the appearance of a compensatory nature only if the view is narrowed only to the interest of the financial authority.

Vasilieva Maria Ivanovna

Powers of local self-government bodies in the field of use and protection of water bodies

No. 11. 2017 Nov.

The role of local governments in water resources management is not as significant as the activities of federal and regional authorities, which is explained by federal ownership of all water bodies, with the exception of ponds and watered quarries. At the same time, it is at the municipal level that important socially significant issues are resolved.

Local self-government bodies participate in water relations in the form of exercising the powers of the owner of municipal ponds and watered quarries, carry out norm-setting activities in the field of management of the use and protection of water bodies, resolve issues of local importance in organizing the use and protection of water bodies, participate in state management of water resources.

The most important rule-making authority of local self-government bodies of a municipal district and an urban district is to establish rules for the use of public water bodies for personal and domestic needs. A number of municipal regulations have been analyzed from the point of view of the presence in them of the goals of general water use, permits, and prohibitions. A proposal has been made to amend the wording of Part 4 of Art. 6 of the Water Code of the Russian Federation.

Such a socially significant authority as ensuring free access of citizens to public water bodies and the coastal strip is carried out by local governments when providing land plots within the coastal strip for lease, conducting municipal land control, and establishing public easements.

Participation of local self-government bodies in the state management of the use and protection of water bodies is carried out through participation in the work of basin councils, in the implementation of schemes for the integrated use and protection of water bodies, in determining the boundaries of flooding and flooding zones.

The article deals with the issues of participation of local self-government bodies in the fulfillment of international obligations arising from agreements on the protection of transboundary water bodies, as well as the problems of violations of water legislation by local self-government bodies.

To overcome the existing exclusion of local self-government bodies from participation in solving generally significant water problems, a proposal is made to determine specific forms of their interaction with federal and regional authorities, and the possibilities of vesting them with certain state powers are being considered.

Filyushchenko Lyudmila Ivanovna

PROBLEMS OF APPLICATION OF THE LEGISLATION ON PROFESSIONAL TRAINING OF EMPLOYEES

No. 11, 2017

The aim of the study is to analyze the legislation on additional vocational training, advanced training of workers. Analyzed scientific points of view on this issue, legislation, judicial practice. As a result of the study, it was revealed that the existing mechanism of legal regulation of the relations under consideration does not fully meet the needs of modern production and the interests of workers. Some proposals for improving the legislation have been formulated. The author considers that the employee's right to additional vocational training is insufficiently guaranteed. Proposes to consolidate the employer's obligation to organize advanced training of employees every three years. In case of failure to fulfill the obligation and the subsequent dismissal of employees, it is necessary to oblige the employer to reimburse the costs incurred by the employment service for the retraining of citizens. It is advisable to define in the law the conditions under which an employee can initiate a referral to additional vocational training (long work experience with an employer, no violations of labor discipline, etc.), which would facilitate the exercise by employees of the right to additional vocational training. It is concluded that the conclusion of an additional contract on professional training

is carried out if there is no obligation of the employer to organize advanced training. If the employer has such an obligation by virtue of the instruction of the law, other regulatory legal acts, the employee cannot be required to work for a certain period of time with this employer. It would be against the law. Accordingly, the employee has no obligation to reimburse training costs. The need to clarify the concept of "competence" and to harmonize it with the term "qualifications" is emphasized.

Esakov Gennady Alexandrovich

Responsibility of commanders in Russian criminal law from the point of view of de lege leta *

Command Responsibility in Russian Criminal Law De Lege Lata

No. 11, 2017

The article is devoted to the issue of the current reflection in Russian criminal law of a specific concept of international humanitarian law - command responsibility. The emergence of such a specific criminal-legal structure is due to the need to hold commanders (chiefs; regardless of civil or military status) accountable for conniving at the commission of a crime. The latter, by virtue of their superior position over their subordinates, obviously have the ability to prevent them from committing crimes. Accordingly, their failure to take appropriate measures to prevent such an obstacle, which, directly or indirectly, may even encourage subordinates to violate the norms of international humanitarian law, should be punishable. The author turns to the history of this construction in international humanitarian law and analyzes the admissibility of the direct action of the norms of international humanitarian law in this part. It is concluded that bringing the commander to responsibility under the Russian criminal law is possible only after the establishment (or identification) in it of an appropriate norm that fully fulfills the corresponding obligation assumed by Russia, i.e. in the context under consideration, criminalizing to the extent assumed by international

humanitarian law, the corresponding act of the commander. Further, the author proceeds to the issue of the implementation of the relevant norms in Russian and Soviet legislation and then turns to the Criminal Code of the Russian Federation of 1996. It is concluded that there is no complete scheme of such responsibility in the current Criminal Code, since neither the General Part in terms of complicity, nor the Special Part in connection with individual compositions do not provide for the criminal liability of commanders. It is impossible to justify the responsibility of the commander through the institution of complicity. Art. 42 of the Criminal Code of the Russian Federation on the execution of an order or instruction as a circumstance precluding the criminality of an act. Articles 286, 293, 316 and 356 of the Criminal Code of the Russian Federation also do not cover the entire spectrum of situations related to the responsibility of the commander. However, there are complex criminal cases in which criminal liability could be properly justified only using the concept of command responsibility.

The article is concerned with the current status in Russian criminal legislation of a specific concept of international humanitarian law - command responsibility. The author traces the implementation of such norms in pre-1917 and Soviet legislation, and then turns to the current Criminal Code of 1996. He concludes that there is no overall scheme for such liability in the Russian Criminal Code because neither the general part of it with regard to complicity no the special part in its specific crimes provide the criminal responsibility of commanders. As a consequence there are difficult criminal cases where the penal responsibility of the accused might be properly established only on the basis of command responsibility.

Terekhova Lidia Alexandrovna
JUDICIAL ACTS OF VERIFICATION INSTRUCTIONS
No. 11, 2017

The set of acts adopted in the appellate, cassation and supervisory instances is: 1) court rulings that ensure the progress of the case (definitions of an intermediate nature; definitions of a transitional nature); 2) the final act of the court of the verification instance (based on the results of the consideration of the complaint with the case) and the final rulings that complete the process without considering the case on the merits. The article notes the violation of the rules of the institutional independence of judicial acts, which, in particular, is reflected in the terminology used to designate the acts of the court. Transitional definitions are a necessary prerequisite for changing (in cases established by law) the nature of the activities of the court of the verification instance and the issuance of final acts in the appropriate instance. The rulings of the appellate court on the transition to consideration according to the rules of the court of first instance did not resolve all the problems that were once identified by the Constitutional Court of the Russian Federation: violation of the rules of jurisdiction, violation of the principles of equality and equality of the parties. The law has been amended only in respect of the issue of jurisdiction, other problems remained unsolved, moreover, he did not insist on COP the full realization of their resheniy.Opredeleniya rendered by courts of appeal and supervisory authority, refer the case for consideration of the complaint in the hearing of the corresponding courts do not have an exact guideline on the grounds for making such determinations. The judge who filters complaints acts at his discretion, the scope of which is not established by law; for a judge in this matter, it is only possible to focus on the grounds entailing the cancellation of the decision. The final judicial acts of the courts of verification instances must not only be decided, but also made public, familiarize the persons participating in the case with them by sending them copies of the adopted acts, and explain the possibility / impossibility of further appeal and the procedure for appeal. In this part, the legislation is not specific, which entails a violation of the rights of participants to information about the progress of the case and information about their own rights in relation to further actions.

The work is devoted to the study of such problems as the controversial issue of the transition of the court of appeal to the consideration of the case according to the rules of the court of first instance; different legal regulation in the procedural codes of the issue of the possibility of sending a case to the court of first instance; lack of criteria for the discretion of the judge (criteria for admissibility of the complaint), filtering cassation and supervisory complaints; insufficient attention to the final procedures for familiarization with the judicial act and to clarifying the possibility and procedure for further appeal.

Isaeva Klara Asangazyevna

Kamalova Leila Narimanovna

Shimeeva Zhibek Sherovna

Some aspects of the complex characteristics of the criminal activity of organized crime in the economic sphere of the CIS countries at the present stage

No. 11, 2017

The article provides a characteristic of modern trends in economic crime with the participation of organized criminal groups (hereinafter OPF) in the CIS countries, the components of which can affect the formation of methods for investigating crimes in this area. In this regard, the article reflects the main directions of the criminalization of economic sectors that are an urgent problem for the activities of law enforcement agencies; the main conditions that contribute to the manifestation of organized economic crime (hereinafter EOC) in the CIS countries are stated , the specific features of the complex characteristics of the economic crime committed by the OPF are shown. The authors gave a critical analysis of the main parameters of the complex characteristics of organized economic crime in modern conditions. Moreover, it is given taking into account the specifics of the personal components that form the OPF in this area. Based on the above approach, the following are reflected: the tendency of the development

of organized crime; shows the gaps of a legislative nature affecting the counteraction to the image intensifier, the influence of the corruption component in the area under consideration; weakening of the role of the state in the legal regulation of the economy; the emergence and formation of OPF relatively new areas of the criminal business, the specifics of the formation and functioning of the image intensifier in modern conditions are outlined. From the point of view of the authors, the specificity and degree of social danger of organized crime in the economic sphere are substantiated. Thus, the proposed comprehensive characteristic of the criminal activity of the OPF at the present stage in the CIS countries makes it possible to include the outlined parameters in the criminal characteristic of economic crime, which is an integral part of the methodology for investigating this category of crimes, and also serves to supplement the already existing theoretical provisions

Smirnov Alexander Mikhailovich

LOVE AS A DETERMINANT OF PUBLIC DANGEROUS ACTIVITIES

No. 11, 2017

The work actualizes such a negative manifestation of the feeling of love as its ability to act as a determinant of the commission of socially dangerous acts. It is substantiated that love can act as an independent reason (motive) for committing such acts, and condition their implementation through the emotions it causes: jealousy, compassion, revenge, an autoaggressive state. The article presents the results of the author's sociological research, proving the criminal essence of love. Understanding the highly spiritual nature of the feeling under consideration, the legislator provides for mitigation of punishment for the commission of these crimes, committed out of compassion, as well as due to the immoral behavior of the victim. Within the framework of the considered problems, the article raises the problem of euthanasia. The author of the work adheres to the point of view of the

admissibility and expediency of resolving this procedure, citing as reasoning the results of sociological research, according to which society supports its implementation. In this regard, the idea is expressed about the need for normative regulation of euthanasia in Russia. The study concludes that the crimes of the motivational basis of which is the feeling of love, called the author of "crime of love" (eng . " Love Crimes "), must be recognized as an object of scientific study, which has all the attributes of an independent direction in the development of modern criminological thoughts. Love, in spite of its perception as a generally positive, life-affirming and socially approved feeling, ontologically also has a fairly high criminal potential, which determines various kinds of criminal encroachments due to an irresistible desire to harm the offender of the object of this feeling, to protect a loved one (close, dear) person from something, or the desire to improve its quality of life. Unfortunately, work on the prevention of “love crimes” is very difficult due to the difficulties of suppressing feelings in a person (for example, such as jealousy, revenge, etc.) aimed at protecting and saving his love (the object of love experiences); the preference of most people not to let unauthorized persons, including the state, into the sphere of resolving their interpersonal intimate relationships.

Zagidullin Marat Rashidovich

LEGAL RESPONSIBILITY IN THE CIVILISTIC PROCESS BEFORE AND AFTER THE GREAT OCTOBER REVOLUTION OF 1917.

No. 11, 2017

The article analyzes the civil procedure norms and views of scientists in the period before the Great October Revolution of 1917 and in the first decade after it. It is noted that by the beginning of the 20th century, the institution of legal responsibility in litigation was a fairly developed system of property, disciplinary and criminal measures in relation to all participants in civil proceedings: from parties and persons promoting justice to judges. After the Great October

Revolution, the previous system of measures of legal responsibility in the civil process was destroyed and rebuilt over the next decades. This was connected not so much with the Revolution itself, as with the emergence of a fundamentally new ideology, which changed the very approach to the relationship between the court and the people. The most interesting novels are the emergence of such a category as “party responsibility” as a kind of alternative to the disciplinary responsibility of judges and state bodies, for the first time the legislative consolidation of compensation for the actual loss of time. Responsibility for the abuse of procedural law in the first procedural laws of the Soviet regime was also not yet developed, although the very requirement for the conscientiousness of the behavior of participants in civil proceedings has already appeared.

Bondarenko Lyudmila Konstantinovna

Clarification of the concept of " creativity" in the context of the subject of forensic art examination

No. 11, 2017

The problem of uniformity of understanding of the basic concepts of forensic art criticism is revealed. The concept of “ creativity” is investigated in the context of the subject of forensic art criticism. On the basis of the study of the legal, philosophical art criticism, socio-psychological, socio-cultural aspects of creativity, its main features are identified . It is determined that creativity is the highest stage of the cognitive process, which meets the need to create a new intellectual product for solving a set of theoretical and practical problems; implemented in methods, approaches to creating a new intellectual product; is a process of overcoming intellectual, mental and emotional barriers, in the form of aesthetically determined artistic activity; characterized by the presence of a creative personality with pronounced psychological properties: abilities, special knowledge for high-quality processing of specific information; the skills of reproduction of information necessary to create an artistic image. The purpose of

the creative process is (in the case of using special methods and artistic means, according to the type, style, direction of the fine arts), the creation of an artistic image that has an artistic form and artistic content.

It is proved that the revealed signs make it possible to differentiate the actions of subjects seeking to level the boundaries of artistic creativity and delinquency.

Based on the study of the main provisions of the concepts: the evolutionary theory of G. Spencer, the heuristic psychologist Ya. S. Ponomarev; personality psychology S. Ya. Rubinstein; information theory of V. I. Vernadsky, neurodynamic theory of K. V. Anokhin, the definition of creativity is given. On the basis of practice, it is proved that there is an objective level of understanding of creativity, which is enshrined in jurisprudence, and a subjective level, which is revealed within the framework of artistic creativity. It is established that the legal concept of "creativity" in the aggregate reflects its main aspects. It is argued that the degree of adequacy of the legal content of this concept to the classical (basic) interpretation, in the context of forensic art examination, is relevant when establishing the subject of evidence; choosing the type of forensic art criticism; correct definition of the subject of forensic art examination (as a class of forensic examinations).

Parunova Yulia Dmitrievna

LEGAL ASPECT OF THE DYNAMICS OF VALUE ORIENTATIONS OF THE CRIMEAN YOUTH IN THE CONTEXT OF THE CONTEMPORARY ECOLOGICAL SITUATION IN THE REGION

No. 11, 2017

In the article, on the basis of the declared topic of the legal aspect of the environmental problem in modern society, a variant of its solution is proposed through the formation of environmental consciousness in a modern format, which

is based on a change, primarily in value orientations, from the position of the consumer's attitude to nature to the position of partner interaction with it.

Through the awareness of the importance of the objects of the surrounding world, a person, a social group, and society as a whole find themselves, create their own system of moral values, principles, norms, ideals, goals, and, accordingly, their practical attitude to the world. Only by perceiving nature as an intrinsic value can a person form ecological consciousness. It includes the perception of nature as a subject on an equal footing with man, the awareness of the limited resources of its resources, the value of life, the need to preserve it, the awareness of the environmental crisis, primarily as a social and global crisis, the need to develop an environmental , environmentally oriented development strategy as a prerequisite for preserving life on the ground.

Nature as an intrinsic value begins to be perceived precisely in the postmodern era, and this perception with the values of human self-realization, his creative development, freedom and, accordingly, a favorable ecological space, in conditions when the problem of physical survival is no longer relevant. The formation of environmental awareness is especially important for young people as the most dynamic part of society. The article compares the data of the 2006 and 2016 surveys, which concerned the value orientations of the Crimean youth. As a result, it was found that anthropocentric ecological ideas prevail in her mind, and the possibilities for improving the ecological situation are associated, rather, with a position of non-interference than with any active actions based on the skillful application of domestic environmental and natural resource legislation. This indicates that at present, the issue of educating modern environmental consciousness is especially acute, which would fully take into account the achievements of modern environmental and legal philosophy, environmental ethics, environmental psychology and pedagogy, the science of environmental and natural resource law.

This requires special trainings, programs to involve young people in environmental actions, special courses in universities and special subjects in

schools. And the entire education system as a whole should be environmentally oriented, relying on a solid foundation of modernized environmental and natural resource legislation.