Igor Andreevich Isaev

"The mutiny cannot end in luck ...." (legal foundations of the revolutionary myth)

No. 2, 2018

The article attempts to identify and analyze the impact of a revolutionary idea, taken at the deepest ontological level of its existence, on the processes of state and law-building. The "revolutionary world" or the ideology of the revolution is realized in the current legal norms and legal policy. Trial analysis allows you to discover a certain algorithm and patterns common to all historical revolutions. Clarifying legal differences in assessments of such phenomena as "riot", "rebellion", "uprising", etc. it is possible to denigrate more definitely the legal framework of the very phenomenon of revolution.

The political aspects of this phenomenon became decisive in assessing revolutionary actions and transformations, depending on the results of the revolutionary struggle, its legitimacy was also determined. As for the legal grounds for the revolution, their relative nature was obvious. The changing legal terminology through which the actual revolutionary acts and events were written, to a determining degree depended on the actual balance of power and the position of the legislative branch.

The struggle of the authorities marked the beginning of a revolutionary stage of development, at which the principles of state administration, forms of government and the legal system of the state changed significantly. The desire for renewal was combined with the use of constituent and statutory violence. The natural result of the struggle is the civil war and the onset of the dictatorship, which can also, to a certain extent, be described in the language of law and jurisprudence. The revolution, which presented its global significance and permanence, turned into a powerful historical force that influenced the formation of all modern world state and legal systems.

Golovina Anna Alexandrovna

Conflicts of legal ideas and concepts: constructive and destructive aspects

No. 2, 2018

In the legal sphere, a conflict often begins with a conflict of legal ideas and concepts, which can be defined as a contradiction in the legal system, expressed in the opposition of some legal ideas and concepts to others. The influence of conflicts of legal ideas and concepts is especially strong in societies that can be classified as "ideocratic". The article discusses the main characteristics of conflicts of legal ideas and concepts, the levels of such conflicts, possible causes, their constructive and destructive aspects. It is noted that if some ideas and concepts can coexist more or less successfully, others by their nature are forced to compete for the right to become dominant. As a typical example, the article examines the conflict of legal ideas about which legal system the countries of the post-Soviet

space belong to. The article considers the competition in the post-Soviet space of ideas about the following legal families: the Romano-Germanic legal family, the Anglo-Saxon legal family, the Slavic legal family, the post-Soviet legal family, the Muslim legal family, the Byzantine legal family, the Eurasian legal family. Competition of legal paradigms is considered as an example of the conflict of legal ideas and concepts at the fundamental scientific level. The author's classification of legal paradigms into normative and metanormativism is proposed, the presence of a paradigm question is substantiated, depending on the answer to which the belonging of a particular legal idea or concept to the legal paradigm is determined. In the light of the concept of legal paradigms and their competition developed by the author, the author considers the problems of the integrative concept of legal thinking. The article proposes two main ways of resolving conflicts of legal ideas and concepts - either the one that has the greatest constructive potential is selected from the competing concepts, or a new concept is developed on the basis of competing concepts that combines the most positive features of all competing concepts. It substantiates, in particular, that a concept capable of consolidating modern Russian society, reconciling liberal and conservative vectors of its development, can be the concept of "progressive conservatism", or a kind of "retrofuturism" in a new way. This ideology implies all-round innovative development of the economy and modern technologies (“forms” of social life) while maintaining the traditional, conservative approach to social and spiritual values (“essence” of social life). On the basis of competing concepts, a new concept is developed that combines the most positive features of all competing concepts. It substantiates, in particular, that a concept capable of consolidating modern Russian society, reconciling liberal and conservative vectors of its development, can be the concept of "progressive conservatism", or a kind of "retrofuturism" in a new way may become.

Sitnik Alexander Alexandrovich
Payment system of the Bank of Russia
No. 2, 2018

This article is devoted to the consideration of the issues of legal regulation of the payment system of the Bank of Russia. The paper determines that the payment system of the Bank of Russia is the central element of the national payment system, which is determined by the total volume of funds transferred through this system, its role in maintaining the stability of the national payment system and organizing cashless payments. On the basis of the study, the elements (subsystems), which together constitute the payment system of the Bank of Russia, have been identified. The article analyzes the features of the organization and functioning of the payment system of the Bank of Russia, consisting in the normative consolidation of the rules of this payment system, the combination of the functions of the operator of the payment system by the Central Bank of the Russian Federation, money transfer operator and payment infrastructure operator,

use of a whole range of money transfer services, etc. The paper pays special attention to the upcoming changes in the mechanism of legal regulation of the payment system of the Bank of Russia, which are associated with the adoption of the Regulation of the Bank of Russia dated 06.07.2017 No. 595-P “On the payment system of the Bank of Russia”. It was determined that the new regulation is aimed at modernizing the mechanism for transferring funds through the introduction of a new technological platform, improving the categorical apparatus, expanding the circle of participants in this payment system, as well as introducing other changes in the procedure for organizing and functioning of the payment system of the Bank of Russia, which will contribute to increasing stability as the payment system of the Bank of Russia itself, and the national payment system as a whole. In addition, the article examines the management system and the powers of the structural divisions of the Central Bank of the Russian Federation to manage the payment system of the Bank of Russia, the composition of its participants, analyzes the specifics of settlements, studies the types of settlement documents used when transferring funds in various services of the payment system of the Bank of Russia. , provides statistical data that allow to assess the place of the payment system of the Bank of Russia in the national payment system.

Elena Bogdanova

DEFINITION AND CONTENT OF THE CREDITOR'S RIGHT TO PROTECTION

No. 2, 2018

In the presented article, the author substantiates the conclusion that the introduction of the principle of good faith into civil legislation stipulates that the right to protection of subjective civil law should be constructed not as an element of it, but as an independent civil law. In case of unfair exercise of the right to defense, adverse consequences are provided only for this right, as a result of which the person is denied protection of the subjective civil law. In relation to the protected subjective civil law, adverse consequences do not occur. If the right to defense is included in the subjective civil law itself as an element, adverse consequences would have to occur in relation to the entire subjective law, which will not contribute to the stability of civil circulation.

Voronov Evgeny Nikolaevich

SYSTEM AND PRINCIPLES OF JUDICIAL LAW

No. 2, 2018

The article is devoted to one of the topical and most controversial problems of modern Russian legal science - the study of the problems of constructing judicial law. The author's analysis of judicial reforms in recent years has shown that they are carried out in a very chaotic and inconsistent manner, often in the

interests of the current political and legal situation. The reason for this is seen in the absence of: first, consistency in their preparation and implementation; secondly, the perception of the judiciary as a single organization consisting of closely interrelated elements; third, an integrated approach to the implementation of the reform of judicial legislation. According to the researcher, the development of the concept of judicial law, which gives a holistic picture of the legal regulation of the activities of the judiciary in its organizational, could help in overcoming this state of affairs, according to the researcher.

The author studies the main approaches to understanding judicial law, on the basis of which an attempt is made to define its system. The work of such specialists in the field of judicial law as: I.Ya. Foinitsky, N.N. Polyansky, M.S. Strogovich, V.M. Savitsky, A.A. Melnikov, E.M. Muradyan, A.P. Guskova, N.G. Muratova, M.N. Marchenko.

In this paper, the conclusion is that the system of judicial law can be composed of three groups of norms, combined into a general (which mainly includes provisions on the judiciary), a special (consisting of judicial procedural norms) and a special (regulating the execution of judicial acts) parts. The article also provides an analysis of some of the problems of reforming legal provisions that make up individual parts of the system of judicial law.

The basis for building a system of judicial law, according to the author, should be the principles that determine the organization and functioning of the judiciary, including: the priority of human and civil rights and freedoms; the principle of separation of powers; the principle of the independence of the judiciary; the principle of the unity of the judiciary; the principle of legality; the principle of publicity. An analysis of these principles is also carried out in this work.

Zhavoronkova Natalia Grigorievna
Vypkhanova Galina Viktorovna
LEGAL PROBLEMS AND DIRECTIONS FOR IMPROVING PUBLIC ADMINISTRATION IN THE FIELD OF FOREST RELATIONS
No. 2, 2018

The modern system of public administration in the field of forest relations requires a revision of existing and the development of new theoretical and legal provisions and conceptual approaches that ensure the achievement of a balance of economic and social guidelines for forest management along with the preservation of the ecological potential of forests. In the context of the intensification of forest use, management activities encompass a complex complex of social relations, including not only forest management, reproduction, conservation and protection of forests, but also the forestry complex, which includes forestry and timber industry sectors of the economy for harvesting and processing timber. Accordingly, state management in the field of forestry relations must be considered in conjunction with the management of the forestry complex.

Similarly, it is necessary to approach the understanding and legal mediation of the state forest policy, which forms the basis of state forest management. Along with the use, protection, protection and reproduction of forests, it is necessary to include the forest complex in the sphere of state forest policy. This approach requires the improvement of strategic planning documents and other political and legal documents, in which the state policy in the field of forestry relations and the forestry complex received an objectified expression, the interconnection and coordination of the provisions contained in them. The institutional framework of the state forest policy also requires an integrated approach to further improve the management system in these areas.

Among the key problems of regional forest management are forestry and forest parks, which are the main territorial units of management in the field of use, protection, protection, reproduction of forests. In the absence of the concepts of "forestry" and "forest park" in the Forest Code of the Russian Federation, the subjects define their legal status in different ways, including the organizational and legal form, structure, competence and powers. Along with the determination of the legal status of forestries and forest parks, the legal status of foresters, it is necessary to improve the activities for the implementation of federal state forest supervision (forest protection). It is also required to solve the problems of implementing the functions of state management in the field of forest relations, such as forest management, development, approval and implementation of forest plans, information support of forest management, forest certification, etc. In order to increase the investment attractiveness of the use of forest areas, it is necessary to improve the legal framework for multipurpose forest use. The effectiveness of public administration in the field of forestry relations and the forestry complex requires the improvement of forestry and related (natural resource, environmental, tax, etc.) legislation.

Artyomenkov Sergey Viktorovich
Kravets (Rudakova) Victoria Dmitrievna
Liability of the majority shareholder in the event of a forced redemption of shares: enforcement issues
No. 2, 2018

Based on the analysis of judicial practice, the article discloses the conditions of liability of the majority shareholder for improper determination of the redemption price of shares as part of the procedure for compulsory redemption of shares (Article 84.8 of the JSC Law). The courts consider losses to be reimbursed to a minority shareholder in the event of an underestimation of the redemption price of shares, solely as a measure of responsibility, in connection with which, when considering a case, the following legally significant circumstances are subject to establishment: the unlawfulness of the actions of the majority shareholder, the presence of losses, a causal relationship between the admitted majority shareholder. the shareholder violations and losses of minority

shareholders, the fault of the majority shareholder. The article discusses the specifics of establishing these circumstances, analyzes modern law enforcement practice.

Particular attention is paid to the need to take into account the presumption of good faith in the behavior of participants in civil legal relations when establishing the unlawfulness of the actions of the majority shareholder. In this regard, the authors raise the question of the qualification of the behavior of the majority shareholder in a situation when he determined the redemption price of shares in strict accordance with the current legislation, but on the basis of a report in which the appraiser committed significant violations.

The article discusses the issue of the possibility of bringing the majority shareholder to responsibility for violations committed by a third party - an appraiser.

The authors analyze the judicial practice on the establishment of a causal relationship and make an attempt to explain the contradictions identified in it.

According to the authors, the responsibility of the majority shareholder requires guilt, and the general provisions of the Civil Code of the Russian Federation, in particular, Articles 401 and 10, apply to the relations considered in the work.

The paper formulates a number of provisions of judicial practice related to the study of the appraiser's report, on the basis of which the majority shareholder carried out the redemption of securities.

The authors analyze the most frequently used methods of proving the underestimation of the redemption price of shares, as well as the dishonesty of the majority shareholder as part of the procedure for compulsory redemption of shares.

Vera Nemtseva

Peculiarities of a court decision in cases on challenging regulatory legal acts

No. 2, 2018

The article examines the legal nature of a court decision in cases on challenging regulatory legal acts, its features in comparison with court decisions in other categories of cases. This decision is an act of mandatory official regulatory interpretation, and in this capacity is considered both as a law enforcement act, and, in certain cases, as an act of lawmaking. The revealed legal nature of the court decision allows to outline the limits of its legal force: to extend it to the motives of the court, as well as in relation to derivative or repeated normative legal acts; state that the subjective limits of the legal force of a court decision in cases on challenging regulatory legal acts cover the range of persons whose relations are regulated by the challenged regulatory legal act.

Mammadov Uzeyir Yusuf oglu

LEGAL FRAMEWORK AND PRACTICE FOR ENVIRONMENTAL PROTECTION OF HUMAN RIGHTS IN CONNECTION WITH ARMED CONFLICTS

No. 2, 2018

The state of the environment in general and the negative impact on it of armed conflicts in particular are issues that need to be addressed. The impact of these factors on human rights is obvious. The purpose of this article is to analyze the norms of international law and practice to determine the possibility of protecting environmental human rights in relation to armed conflicts. Analysis of international legal norms reveals a lack of special norms providing for the protection of human rights related to the environment in connection with armed conflicts. The scope of international law that directly protects the human right to a healthy environment is extremely limited.

The current state of international legal regulation of this issue dictates the need to refer to the practice of international judicial and non-judicial bodies. In this context, the practice of the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights, as well as the acts adopted by the convention bodies on human rights relating to the protection of certain human rights due to environmental damage may be relevant. An analysis of such practices and acts shows that the protection of the environmental rights of the individual is possible in the context of other human rights, namely: the right to life, the right to an adequate standard of living, the right to the highest attainable standard of health, property rights, etc.

In general, the protection of environmental human rights in the context of other human rights is also possible in situations of armed conflict, taking into account the particularities of the latter. Consequently, such an approach can ensure the protection of environmental human rights in relation to armed conflicts.

Lutkova Oksana Viktorovna

Special conflict of laws principles for regulating cross-border copyright relations

No. 2, 2018

The article proposes an original classification of the principles of legal regulation of cross-border copyright relations, including three types of groups of guiding norms, isolated on the basis of a number of essential criteria: systemic principles, special substantive and special conflict principles. A group of special conflict-of-law principles was subjected to detailed research, structurally including the following two types of main regulators: the law of the state where the protection of the work is requested (lex loci protectionis) and the law of the state of origin of the work (lex loci origins).

The analysis of cross-border copyright relations is carried out not only from the standpoint of the systems of national law and copyright relations that are

separately regulated by them, as reflected in most modern scientific research in the field of copyright, which are scattered by virtue of the national regime of international legal protection. The author of this study uses a systematic approach, which made it possible to identify the general fundamental foundations for regulating the relevant groups of relations on the scale of the community of states participating in the international copyright protection system. The analysis was carried out through the operation of the norms of international agreements on copyright in tandem with the national legal orders of the states participating in these agreements, as well as, at the same time, through a comparative analysis of the copyright of modern states among themselves.

Savvina Olga Vladimirovna
Impact of "reproductive tourism" on legislation regulating surrogacy.
No. 2, 2018

The article examines the plight of women - surrogate mothers from the lower castes of India, which is caused by the legislative regulation of surrogate motherhood. The low cost of surrogate mothers services and legal regulation beneficial to genetic parents attract clients from abroad, making India a world center for surrogacy. The consequences of this are the humiliated position of surrogate mothers, their insecurity, which also contradicts the declared democratic values enshrined in the Constitution of India. The protection of democratic values and the consolidation of the old caste system are characteristic of India, which is also enshrined in legislation. In November 2016, a new bill was introduced prohibiting commercial surrogacy. The bill is currently pending. The article shows that if the bill is adopted, although it will solve some of the problems associated with the humiliated position of surrogate mothers, it will not solve the problems associated with 1) the autonomy of surrogate mothers; 2) protection of the rights of women of lower castes who resort to the work of a surrogate mother.

In addition, the bill could create new social and economic problems. First, the implementation of the bill will hit "reproductive tourism" in India hard, severely shrinking the industry. Secondly, the ban on surrogacy on a commercial basis will leave a considerable part of the medical staff of IVF clinics unemployed. The new bill will require a lot of executive and police force, as the ban applies to a well-developed, internationally renowned medical industry. Otherwise, the introduction of the bill may provoke the emergence of a shadow market for surrogacy. The article provides a number of alternative measures in order to solve the problems caused by "reproductive tourism", such as diagnostics, medical care for surrogate mothers after childbirth, control over the maintenance of surrogate mothers and the protection of their rights. Such measures have long and successfully been used in the field of experiments with human participation, and have an international legal basis.

Kleimenov Mikhail Petrovich

CRIMINOLOGICAL LEGISLATION AND CRIMINOLOGICAL LAW IN RUSSIA

No. 2, 2018

Criminology is a legal science that reasonably claims to form its own branch of law. Criminological legislation as a system of international, federal and regional normative legal acts of criminological content and orientation exists and is actively developing. The subject of criminological law as a branch of legislation is public relations regulated by regulatory legal acts in connection with the study and analysis of negative social phenomena and processes by criminological examination of regulatory legal acts; the establishment and implementation of measures to ensure the security of the individual, society and the state from threats of a criminal nature; organization of complex activities of states, national authorities, public organizations, religious associations and citizens to counteract socially dangerous acts, negative social phenomena and processes. There are three types of criminological legal relations, which together form the subject of criminal legal regulation: 1) expert and analytical legal relations arising between state bodies and subjects of anti-corruption expertise of regulatory legal acts and draft regulatory legal acts, between customers and performers of criminological research; 2) preventive relationships that exist between the subjects of activity to eliminate (limit) criminogenic factors and objects of preventive action; 3) protective legal relations arising in the public and private spheres in connection with the provision of criminological security, the subjects of which are government agencies, corporations, and other business structures. In modern conditions, criminological legislation and criminological law are called upon to play an integrating role for other branches of law in solving the problems of criminalization of public relations, corruption, extremism, terrorism, drug addiction, transnational organized crime. The increasing importance of criminology in the modern world, due to the total criminalization of public relations, indicates the importance of clarifying its subject. The traditional understanding of the subject of criminology as a science of crime, its causes, the personality of the criminal, crime prevention is clearly outdated.

Strelnikova Irina Yurievna

JUDICIAL POWER IN THE POLITICAL AND LEGAL VIEWS OF M. M. KOVALEVSKY

No. 2, 2018

The article is devoted to the analysis of the views of a legal scholar of the late 19th - early 20th centuries. MM Kovalevsky on the judiciary. In his numerous works devoted to state and legal issues, he considers such issues as the role and importance of the court in the state, the functions of the judiciary and the fundamental principles of justice. As a result of the analysis of the views of M. M. Kovalevsky on the judiciary, we come to the following conclusions. First, the

Russian state, borrowing foreign experience in the organization of courts, was not a "slavish imitation" of foreign models. Legal institutions, such as the institute of justices of the peace, as well as the principles of justice were introduced taking into account national characteristics, preserving the originality and customs of the Russian people. Secondly, M.M. Kovalevsky could not imagine a legal democratic state without an independent court, established on the basis of equality before the law and the court, irremovability of judges, transparency, competition, people's participation in the administration of justice. Thirdly, the scientist considers the court as a guarantee of ensuring personal rights, on the one hand, and as a limiter of state power, on the other. Evaluating the court as the main guarantee of human rights and being a zealous defender of freedom, MM Kovalevsky at the same time understands that, on the one hand, justice is a guarantee of freedom, and on the other, freedom can be limited in the interests of justice. Fourth, MM Kovalevsky spoke in favor of the creation of administrative justice in the state, focusing on the right to appeal against the actions of officials, including ministers, in court, as well as the creation of administrative courts.

M. M. Kovalevsky raised issues in the field of judicial power, which are extremely important for building a constitutional state, many of which ("free" court, the establishment of administrative courts, the responsibility of officials before the court, the irremovability of judges) are also relevant in modern legal science.