Halperin Mikhail Lvovich
EXECUTIVE ACTIONS - LIABILITY MEASURES?
No. 3, 2018

In the article, the author analyzes the limitations of the debtor's rights (enforcement actions) used in enforcement proceedings from the point of view of signs of legal responsibility. Using the example of restricting the right to travel abroad, to use special rights, as well as posting information about the debtor in the public register of enforcement proceedings, it is concluded that in enforcement proceedings, in addition to measures recognized by the legislator and legal doctrine as measures of responsibility, there are a number of measures coercion that is not formally recognized as measures of responsibility, however, based on a number of signs of responsibility, the practice of their application can be recognized as such. The relevant measures are indirect coercive measures, i.e. aimed at forcing the debtor himself to fulfill the requirement of the court order.

Bondarenko Lyudmila Konstantinovna
Scientific aspect in the cognitive process of subjects of expert activity
No. 3, 2018

The problem of the scientific content of legal knowledge is investigated from materialistic positions. Following the concept of N.P. Yablokov about the single nature of knowledge and proof, the factors of the development of the theory of forensic examination at the present stage, which determine the scientific and practical range of the cognitive aspect in expert activity, are investigated.

From the point of view of the very essence of the search and cognitive activity of the subjects of proof, a general methodological platform of expert activity is revealed: “forensic expert epistemology” and “forensic expert epistemology”. On the basis of this, the system of scientific forensic expertise is analyzed, which includes cognitive procedures associated, on the one hand, with the study of the subject of forensic art examination and, on the other hand, with a critical analysis and assessment of the results of the examination from the point of view of their objectivity.

It is proved that forensic epistemology, having an interdisciplinary nature: assimilates new scientific results in several directions, including art history; absorbs and processes both problematic, empirically determined knowledge and reliable knowledge.

In this regard, the periodization of the development of forensic examination as a separate branch of knowledge is given. On the basis of this, it is noted that in the first period, “forensic expert epistemology” was relevant, which was necessary for the formation of a separate branch of legal knowledge. It stands out that forensic epistemology was aimed at the formation of the reliability of the results of the examination. (In this regard, the system of procedural relations of the subjects of expert activity is investigated, which is confirmed in Articles 17, 37, 57, 58, 74, 80, 84, 87, 88, 282 of the Code of Criminal Procedure of the Russian Federation.)

It is noted that in the second phase of development (90s - early 21st century) “non-classical problems” in the development of forensic expertise are actualized. It is argued that in the situation of the development of the integration of special knowledge in legal proceedings, the non-classical concept, in which neo-epistemological tendencies are strengthened, becomes increasingly relevant. It is determined that the identified aspects of scientific knowledge form a system of forensic expert knowledge, in the context of forensic art expertise.

Nikitashina Natalia Alexandrovna
CLASSIFICATION OF PRUMPTIONS IN FAMILY LAW
No. 3, 2018

The article provides a variety of classifications of presumptions in relation to the branch of family law (general legal, sectoral, intersectoral; legal and factual; direct and indirect; refuted and not refuted; material and procedural; imperative and dispositive; obvious and unidentified fact). The author takes into account that in a number of states there is no division into branches of law similar to the Russian legal system, and therefore separate classifications are not suitable for them. Particular attention is paid to factual presumptions, as well as issues of establishing paternity and motherhood in surrogate relationships. At the same time, historical examples from domestic and foreign practice are given. In addition, the author also examines in detail such issues as determining the future place of residence of a minor child in the event of a divorce of his parents, determining the burden of proof in a divorce of spouses, when one of them does not agree with the divorce, and the other insists on it and categorically objects to the provision of a time limit for reconciliation, presupposing the good faith of one of the parties when entering into a fictitious marriage, as well as when disclosing the secret of adoption, etc. P. The author does not limit himself to analyzing the main provisions of Russian family law, appealing to the legislation of countries of the near (Ukraine, Belarus, Kazakhstan) and far (France, Germany, USA, Netherlands, Japan, Muslim states) abroad, analyzing and comparing their experience in solving similar problems with the Russian legal reality. It is concluded that the use of presumptions as a means of legal technique in modern family law in Russia is influenced by such factors, as non-standard of the regulated situation, strengthening of public principles and the absence of legal presumptions. In addition, in a number of cases, the question is raised about the failure of the use of such a means of legal technique as a presumption, and the need to replace it with a legal fiction. The article is of interest not only for specialists in the field of legal theory, but also for a wide range of readers.

Natalia G. Zhavoronkova
Vypkhanova Galina Viktorovna
THEORETICAL AND LEGAL PROBLEMS OF COMPENSATION FOR ENVIRONMENTAL DAMAGE

No. 3, 2018

The modern mechanism of compensation for harm caused to the environment requires a revision of existing and the development of new theoretical and legal provisions and conceptual approaches that take into account its specifics, overcoming conflicts of environmental and civil legislation. Among the controversial issues that need to be addressed at the doctrinal and legal levels, there are still problems of terminological inconsistency, definition and correlation of the concepts of "environmental harm", "environmental damage", "harm to the environment", etc.

The legal nature of the harm caused to the environment and its individual components, its specific features, including the past, necessitate further development of the theoretical substantiation of the current legislation in this area, determining the directions for its improvement on the basis of environmental legislation. Civil law norms are applicable to understanding the harm caused to the health and property of citizens by the negative impact of the environment as a result of economic and other activities of legal entities and individuals, determining the amount and procedure for compensation for such harm, as well as in relation to harm caused by a source of increased danger.

No less problematic are the issues related to compensation for damage caused to the components of the environment. As the analysis of environmental and natural resource legislation shows, there is no legal definition of the concept of harm caused to the overwhelming majority of environmental components. It is necessary to update and improve the calculation methods and practice of compensation for harm as a result of environmental offenses and the implementation of environmentally hazardous activities. It is required to revise the methods for calculating harm to environmental components based on their assessment from the point of view of a unified methodological base, conceptual apparatus, mechanisms for identifying, evaluating, and implementing.

In order to overcome the intra-sectoral collision of environmental and natural resource legislation, it is advisable to develop and adopt a special regulatory legal act in the field of compensation for environmental damage, based and consistent with the provisions of the general theory of the effectiveness of environmental legislation as a whole, ensuring the effectiveness of the most natural resource and environmental activities.

The effectiveness of compensation for environmental damage is influenced by the existing gaps in the regulatory legal acts governing the definition of harm to individual components of the environment, which lead to law enforcement problems, including in the conduct of state environmental supervision and consideration of legal disputes.

The proposed methodological approaches to improving the theory and legislation in the field of compensation for damage to the environment, health and property of citizens will help to increase the efficiency of its compensation.

Bykovsky Vadim Kirillovich
LEGAL REGULATION OF FOREST PROTECTION
No. 3, 2018

Protecting forests from pests and diseases is an urgent problem. A large number of forests have been affected by the typographer bark beetle. An effective legal mechanism is needed to combat forest pests.

The author investigated the current state of legal regulation of forest protection by forest legislation. The forest protection system is aimed at identifying processes and phenomena negatively affecting forests, as well as their prevention and elimination, and has two goals: the first is preventive, preventive, which means taking measures aimed at preventing possible harm to forests, including protective ones, and the second is a suppressive, compulsory one, which consists in bringing violators of forest legislation, who have caused damage to forests, including protective ones, to legal responsibility.

Sychev Vitaly Borisovich
SPECIFIC FEATURES OF CONSIDERATION BY THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION OF CASES ON THE COMPLIANCE WITH THE CONSTITUTION OF RUSSIA OF THE ISSUE PROPOSED TO THE REFERENDUM OF THE RUSSIAN FEDERATION
No. 3, 2018

It is necessary to distinguish between the procedures for checking the constitutionality of issues submitted to the referendum and referendum initiatives, which, in the author's opinion, are independent procedures of constitutional review. The Constitutional Court of the Russian Federation checks the issue submitted to the referendum of the Russian Federation for compliance with the Constitution of the Russian Federation. Only the Supreme Court of the Russian Federation has the right to appeal in this category of cases. The basis for the consideration of the case is the revealed uncertainty in the question of whether the proposed referendum issue corresponds to the Constitution of the Russian Federation; appeal to the Supreme Court of the Russian Federation against the decision of the CEC of the Russian Federation, which approved its conclusion on the inconsistency of the issue of the referendum with the Constitution of the Russian Federation. The reason for considering the case is an appeal in the form of a request. The request is admissible, if the CEC of the Russian Federation made a decision on the inconsistency of the issue of the referendum with the Constitution of the Russian Federation and such a decision was appealed to the Supreme Court. The subject of verification for the category of cases under consideration is the issue proposed for the referendum of the Russian Federation. The main criteria for checking such an issue is its content from the point of view of compliance with the Constitution of the Russian Federation, delimitation of the subjects of jurisdiction and powers between the state authorities of the Russian Federation and the subjects of the Russian Federation. It seems necessary to establish a procedural time limit for the

consideration of this category of cases. Based on the results of the consideration of the case, a decision may be made on the constitutionality or unconstitutionality of the issue proposed for the referendum. The legal consequence of the decision on the constitutionality of the referendum issue, it seems, should be the recognition by the Supreme Court of the decision of the Central Election Commission of the Russian Federation as illegal. The legal consequence of the decision on the unconstitutionality of the referendum issue is the termination of the procedures for the implementation of the referendum. The article concludes that the proceedings on the verification of the constitutionality of an issue submitted to a federal referendum is an independent procedure of constitutional control, which has its own specifics, and therefore it is necessary to introduce a chapter dedicated to this procedure.

Fomina Olga Yurievna

OBJECTIVE AND SUBJECTIVE PREREQUISITES FOR TRANSFORMING THE PROCEDURAL POSITION OF THE PERSONS INVOLVED IN THE CASE

No. 3, 2018

The study of the institution of persons participating in the case is invariably relevant for procedural science and practice. With the active development and modernization of legal relations between the subjects, more and more new legal norms appear, and procedural legislation must comply with dynamically changing material legal relations.

The purpose of this article was to study the prerequisites, in the presence of which, in order to make a legal and well-grounded court decision, it is necessary to bring the procedural status of the persons participating in the case into line with their changed legal interest in connection with the transformation in material legal relations.

The result of the analysis of the reasons contributing to the emergence of the need to transform the procedural position of the persons involved in the case was the classification of prerequisites developed by the author into objective and subjective. Within the framework of the classification under consideration, the author proposes a division of objective prerequisites into substantive ones (making changes and additions to civil legislation, detecting changes in the material component of legal relations in the process of considering a case, etc.) and procedural and legal (the presence of a risk of changing jurisdiction or jurisdiction; erroneous application or interpretation of the rules of procedural law by the court). Speaking about subjective premises, the author divides them into two groups: those associated with good faith delusion (for example, improper legitimation of the plaintiff when filing a claim in court;

The article draws attention to the wide application in the practice of courts of the mechanism for transforming the procedural position of persons participating in the case, despite the lack of legislative consolidation of such a possibility, which

confirms the topicality of the problem and the demand for scientific research in this direction.

Anton
Yan Yuri Miranovich
Goncharova Maria Vitalievna
Kurguzkina Elena Borisovna
MOTHER'S MURDER OF A NEWBORN CHILD: CRIMINAL AND CRIMINOLOGICAL PROBLEMS
No. 3, 2018

Criminal law and criminological issues are investigated, special attention is paid to the reasons for the murder of a newborn child by a mother, while it is suggested that the reason for this crime is the mother's lack of the mother's instinct, which is biological in nature and is a necessary condition for the continuation of the human race. The data characterizing the identity of the perpetrators and the circumstances of the crimes committed by them are given. The external circumstances are highlighted, acting as conditions that push women to this act. Among such circumstances: condemnation of relatives and friends, lack of housing and material resources and other circumstances, allegedly hindering the implementation of maternal functions. All these circumstances are assessed in criminological meaning as conditions. Highlighted socio-demographic data on the personality of women, killed newborns, some of these data are presented in dynamics. Also in dynamics the state of the named murders is given.

Yakovleva Elena Olegovna
The need to research the evolution of metacognitive personality patterns of drivers in emergency conditions
No. 3, 2018

The author has carried out a statistical analysis of modern indicators of road traffic crime. It has been established that the indicators of a high number of road traffic accidents have a detrimental effect not only on the economic component of the country, but also on the level of child road traffic injuries.

Despite the downward trend in the number of road traffic accidents and the number of victims, the level of road traffic accidents in the country remains high. Therefore, overcoming the risks of road traffic injuries, according to the author, should be based not only on the efforts of the public, but also on a stable legislative basis.

It has been established that a person is a complex self-regulating system, capable, depending on the current situation, to flexibly use his capabilities to achieve the required result and to avoid danger. Professional training is one of the guarantees of its reliability. This means that when implementing preventive

measures, the specificity of reckless crimes and the personality of the driver should be taken into account.

The analysis of the main socio-demographic characteristics of the convicts, carried out by the author, made it possible to form a portrait of the personality of a road traffic offender. It has been suggested that if we single out the most significant factors of influence in the life of a driver guilty of an accident, it will be possible to purposefully form a “correct” environment for the development of a law-abiding citizen in advance by eliminating negative elements.

The development of a new approach in criminal policy, associated with the study of the psychological characteristics of the personality of vehicle drivers, as well as with the study of the problems of the evolution of the metacognitive system, formed under the influence of the social environment, is necessary as a study of the driver's ability to analyze his own mental strategies and manage his cognitive activity, especially in stressful situations. situations where every second is important in assessing the situation.

Thus, having conditioned the need for further research, but already from the standpoint of the evolution of metacognitive schemes of the criminal's personality, formed under the influence of the external environment, in dangerous emergency conditions, the author comes to the conclusion that the expansion of such theoretical knowledge will allow scientists to develop new coping strategies that will become correct means of control by the driver himself in stressful situations.

Long Changhai
Alexander Korobeev
Chuchaev Alexander Ivanovich
PRC CRIMINAL CODE: IMPROVEMENT IN THE IMPLEMENTATION PROCESS
(on the 20th anniversary of the adoption)
No. 3, 2018

The article is dedicated to the 20th anniversary of the adoption of the Criminal Code of the PRC - the second Criminal Code in the history of socialist China. It provides a characteristic of its General, Special and Additional parts, with special attention paid to the peculiarities of the relevant criminal law norms, reflecting the Chinese specifics of the criminal law regulation of responsibility for committing crimes. The analysis of amendments and additions to the Criminal Code of the PRC over the past 20 years of its operation is carried out, the main tendencies of China's criminal policy are revealed, which are reflected in the process of improving criminal legislation, and the reasons for the amendments to the Criminal Code of the PRC are shown (the need to strengthen the role of criminal law in countering the criminal challenges of our time ; an increase in the number of criminal law prohibitions, their concretization; humanization of criminal legislation,

The appendix contains an extract from the Criminal Code of the People's Republic of China Ch. 4, integrating norms on crimes against individual rights and democratic rights of citizens.

Ovcharov Anton Olegovich
Ivanova Lidia Nikolaevna
Mazin Nikita Sergeevich
MODERN LEGAL MECHANISMS FOR THE RESOLUTION OF INTERNATIONAL ECONOMIC DISPUTES
No. 3, 2018

The article analyzes the essential features and main approaches to understanding the economic dispute as a legal category. Criteria for separating legal disputes from any other type of dispute are proposed. A functional approach to economic disputes as to private law disputes arising in the course of any economic activity is substantiated. The problem of sectoral affiliation of international economic disputes is investigated. The features of the functioning of the system of consideration of international economic disputes in the Russian Federation are revealed. Particular attention is paid to mechanisms for resolving disputes in the national courts of the Russian Federation with the participation of foreign persons. A number of problems are highlighted, in particular, the excessive dependence of arbitration courts on state authorities and the "overregulation" of arbitration in the Russian Federation. The modern procedures for alternative resolution of international economic disputes are analyzed. Based on the study of international experience, the importance of using mediation procedures as an effective means of out-of-court settlement of private law and public law disputes is substantiated.

Ablaeva Elvira Bekbolatovna
PROFESSIONAL TRAINING OF JUDGES AS ONE OF THE PRIORITY DIRECTIONS OF IMPROVING THE JUDICIAL SYSTEM OF THE REPUBLIC OF KAZAKHSTAN
No. 3, 2018

The modernization of the selection system for judges of the Republic of Kazakhstan is one of the directions of judicial reforms. The modernization of the system for the selection of judges of the Republic of Kazakhstan includes a set of measures for the selection of candidates for the position of judges, professional training, retraining and advanced training of judges, the formation of the judiciary and staffing of the reserve of judges. In the context of the indicated reform, the issues of development and improvement of judicial education are topical. The effectiveness of the judicial system in the administration of justice depends on the forms and methods of training judicial personnel. The highest degree of

professionalism and a deep level of legal culture of judges is, first of all, the image of the rule of law. An obstacle on this path is the lack of professional training programs for judges. In the context of the country's industrial and innovative development, the system of legal education and legal practice needs to be brought in line with international standards of justice. The education of judges must be fundamental, specialized and continuous. At the same time, it is required to revise the procedure for the selection and conditions for the entry into office of judges in the Republic of Kazakhstan through the implementation of primary theoretical and practical training of future judges in accordance with the specialization of courts and judges.

I.A. Isaev

"The mutiny cannot end in luck ...." (legal foundations of the revolutionary myth) Endoment. Start in number 2.

No. 3, 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 to the global significance and permanence, turned into a powerful historical force that influenced the formation of all modern world state and legal systems.,