Chernavin Yuri Alexandrovich

Human rights and society rights as a system: a philosophical view of the problem

No. 5, 2018

The formation and development of the institution of human rights is the main political and legal project of the postmodern era. However, he sins of one-sidedness - in principle, the interaction of man and society gives rise to rights on both sides. A specific social system arises, the comprehension of which is the main task of the article. Relying on the philosophical essence of human rights, the dialectic of individuality and collectivity, the author develops a theoretical construct “mutual rights and obligations of a person and society” as an element of legal reality. It is based on a system-forming feature - mutual saving and development of a person and society, which determines the self-adjustment of this structure. The methodological method for solving a scientific problem is the systematization of the provisions in force in the philosophical and legal theory and legal practice, reflecting different approaches to solving the issues of the domination of human rights or the rights of society in different historical epochs; about the tendency to absolutize human rights in modern conditions; about the possibility of a "golden mean", allowing you to avoid extremes and take into account the interests and rights of both individuals and society. An analysis of positions of this kind indicated the absence of a system in modern law-making practice that enshrines the rights of collective subjects: the rights of society are either predominantly political in nature, or reflect the civilizational specifics of a number of societies and states, or ensure the interests of individual social groups, strata, minorities. The current situation is largely the result of the inattention of the philosophical, legal and legal theory to the understanding of rights in the "person - society" system. Its change is even more necessary in connection with the appearance in the modern law-making practice of a number of Latin American states of the rights of nature - the rights of "Mother Earth". The benchmark in research activities of such an orientation today are human rights of the third generation, collective in nature, which can be realized only in the course of joint activities aimed at saving and developing both individuals and society.

Marchenko Mikhail Nikolaevich

The main trends in the development of the Russian state and law at the present stage

No. 5, 2018

The article examines a range of issues related to the main trends in the development of the Russian post-Soviet state and law. The article also analyzes socio-economic, political and other factors influencing the formation of trends in the development of the modern Russian state and law from 1992 to the present. The paper classifies the trends under consideration on the basis of various criteria.

Igor Andreevich Isaev

"The Mystery of Lawlessness", or Revolutionary Justice. Part 1

No. 5, 2018

The article is devoted to one of the most important problems of legal theory - the problem of "fair law". All great revolutions set themselves the goal of achieving social justice, which was associated primarily with the equality of all before the law. To a large extent, this explains the amazing coincidences of the algorithms by which these revolutions developed, going through the same stages of formation. During the revolution, the idea of equality often replaced the idea of freedom. The collision of the old outgoing legal order with the new revolutionary norms of legislation created a specific situation, a state of emergency or anomie, in which the operation of any law was suspended, but the state itself, despite the change in its form, continued to exist. The need to create a new law demanded the registration of a new legal order, the result of legal construction was the adoption of constitutive, normative acts that consolidated the established order. The author of the article focuses on the historical experience of the English and French revolutions, correlating it with the experience of other revolutions.

Aminov Ilya Isakovich

Methodology of historical and legal research of Russian-Turkmen relations

No. 5, 2018

The article argues that the progress of any science is determined by the state of its theory and methodology, and any scientific research begins with the development of a methodology. Thanks to a methodologically competent verified approach to the study of various civilizational-cultural, socio-economic, state-legal phenomena and processes, it is possible to identify and substantiate state-legal patterns that are to a certain extent universal in nature. Consequently, the positive experience of relations between Russia and Turkmenistan, as a socio-political reality, can be used in establishing, building and strengthening relations between other countries and peoples.

The experience of developing a methodology for the study of Russian-Turkmen relations leads the author to the conclusion that an impartial, objective, comprehensive study of these relations in the historical and legal science seems to be an elusive ideal. This circumstance leads to the need to be involved in the search for exact methodological approaches to a scientific problem, to remain faithful to the principles of historical and legal research, to substantiate the advisability of using various research methods that correspond to the current state of development of science and society.

The article states that the “weak point” of the methodology of the historical and legal study of the organizational and legal foundations of Russian-Turkmen

relations is the “gap” of certain time periods, the inconsistency, subjectivity of existing scientific positions. This circumstance leads to the need to unify the available data, to recreate the real nature and essence of the Russian-Turkmen relations of the imperial period.

The author concludes that any historical and legal research needs serious, methodological support. A significant contribution of modern researchers can be the use of both traditional methods and approaches that have repeatedly shown their effectiveness, and testing, the introduction of new, including those borrowed from other scientific disciplines, methods of cognition. Their application will significantly expand and enrich the modern boundaries of legal regulation, reveal new research problems, and substantially supplement previous knowledge.

Shkarevsky Denis Nikolaevich
Repressive transport policy in the first half of the 1930s.
No. 5, 2018

The author in this article analyzes the repression of transport in the first half of the 1930s. The study of this topic is complicated by the lack of complete statistical data, as well as the inaccessibility of archival documents. Nevertheless, based on the available materials, the author comes to the following conclusions.

In the first half of the 1930s. in transport, mass repressions were organized, which were distinguished by the use of punitive measures, mainly not related to imprisonment. This led to the fact that the presence of a criminal record among transport workers has become commonplace. Therefore, in 1935-1936, the leadership sought to reduce the number of repressed in transport and at the same time to tighten the applied measures of repression. According to the author, the repressive policy of the first half of the 1930s. resembles the principle of a pendulum, since as a result of managerial mistakes of the leadership, the transport justice authorities either spun the flywheel of repression, then stopped them. In addition, the author notes that this policy was carried out within the framework of Campanian justice.

Attention is drawn to systematic failures in the execution of the instructions of the center by the transport justice bodies on the ground up to the end of 1934. Therefore, the activities of the justice bodies in transport, in the author's opinion, began to satisfy the country's leadership only from the middle of 1935, i.e. it took about 5 years to organize and establish the system of transport justice bodies.

The author comes to the conclusion about a large number of violations of Soviet legislation during the repressions of the first half of the 1930s. on transport, as well as on the creation of a "double bottom" in Soviet law. According to the author of the repression of the first half of the 1930s. were "training" for the transport justice authorities in order to prepare the repressions of the second half of the 1930s.

Romanova Olga Alexandrovna

ON THE DEVELOPMENT OF SELF-REGULATION IN THE SPHERE OF NATURAL USE AS ONE OF THE FACTORS OF SUSTAINABLE DEVELOPMENT OF TERRITORIES IN THE RUSSIAN FEDERATION

No. 5, 2018

The article deals with the development of self-regulation in the field of environmental management in Russia as one of the factors for ensuring sustainable development of territories. The relevance of the topic is due to the insufficient efficiency of the Russian natural resource legislation, the need to search for new ways to improve it, the increased attention of the state to the institution of self-regulation of entrepreneurial activity as an alternative to state regulation in various fields of activity, including in the field of environmental management. The author investigated the features and possibilities of the sphere of environmental management for the development of self-regulation, assessed the current legislation in the field of self-regulation and environmental management, showed the current state of self-regulation in the field of environmental management, conclusions are drawn about possible and promising forms and directions of development of self-regulation in the field of environmental management in the Russian Federation. Alternative forms of self-regulation in the field of environmental management, including the systems of voluntary environmental certification of certain natural resources existing in the world and in Russia, are considered, their effectiveness for ensuring rational environmental management and the prospects for their further development are shown. The conclusion is substantiated that self-regulation in the field of environmental management, taking into account the specifics of natural resource relations, can develop in various forms and models, and not only in the form of the creation and activities of self-regulatory organizations in accordance with the current Federal Law "On Self-Regulatory Organizations".

Timoshenko Ivan Vladimirovich

CONSIDERED AS A PARTICIPANT IN ADMINISTRATIVE AND LEGAL PROCEEDINGS: MYTH OR REALITY?

No. 5, 2018

Through the prism of history, theory and law enforcement practice of the formation, development and functioning of the institution of attesting witnesses in the Russian administrative-jurisdictional process, an attempt is made to determine the role and place of attesting witnesses in the general system of subjects (participants) of administrative proceedings of a jurisdictional type in terms of their functional purpose, as well as the potential ability and real ability of those understood as participants in a particular proceeding to influence the solution of

the tasks of the administrative-jurisdictional process. On the example of the institution of attesting witnesses, it is stated that the development and improvement of the administrative-jurisdictional process, unfortunately, still often goes “in the wake” of its so-called “older brother” - the criminal process. A number of proposals are made to improve both the current regulatory model of the institution of attesting witnesses in the administrative-jurisdictional process, and the corresponding law enforcement practice with the participation of attesting witnesses. The thesis is substantiated that any indicated improvement is only a so-called "half measure" and that the institution of attesting witnesses, without any prejudice to solving the tasks facing any administrative-jurisdictional proceedings, should be abolished altogether as it has long lost its procedural role and functional purpose.

Nam Kirill Vadimovich

History of the principle of good faith (Treu und Glauben) before the adoption of the German Civil Code

No. 5, 2018

Treu und Glauben (the principle of good faith) in German law is today the fundamental principle for almost all legal relations, both between equal subjects of law in private law and between persons who are among themselves in relations of power and subordination in the field of public law. Today, Treu und Glauben serves as a general legal principle for the most diverse areas of law - obligations, property, labor, family, etc., procedural and public law. Recently, good faith as a principle of civil law was introduced into the Russian civil code. It remains to be understood, comprehended and learned how to effectively use the principle of good faith in Russian law. For a better understanding of conscientiousness, it is necessary to know and understand how this legal phenomenon developed historically in German law. In Germany, the attitude towards honesty was ambiguous throughout the existence of §242 GGU. But the fact that "Treu und Glauben" is of invaluable importance not only for civil law, but for the entire legal system of Germany, is not disputed in German law. This article, based on the study of German legal literature, examines the history and development of legal approaches to good faith, which led to the emergence of the provision of §242 “Treu und Glauben” in the German Civil Code. The historical periods starting with Roman law and the legal category bona fides, the Middle Ages and the appearance and meaning of the German term Treu und Glauben are considered. An important milestone was the 19th century, when the first codifications appeared, containing norms that predated §242.

Nuriev Anas Gaptraufovich

THE INFLUENCE OF THE OCTOBER 1917 EVENTS ON THE DEVELOPMENT OF THE RUSSIAN NOTARY AND ITS MODERN HUMAN RIGHTS POTENTIAL

No. 5, 2018

The presented article analyzes the development of the Russian notary taking into account the events of 1917, as a result of which the Russian notary was liquidated as a Latin-type notary with its subsequent "rebirth" as a state notary. However, the liquidation of the Latin type notary with the subsequent formation of the state notary did not interrupt the traditions of the domestic human rights institution and in 1993, with the adoption of the Fundamentals of the legislation of the Russian Federation on notaries, consolidated the dualism of the notary profession in the Russian Federation and ensured the progressive development of the notary, taking into account the traditions and accumulated experience of the pre-revolutionary period of Latin notaries, and the Soviet period of the state notary. The article also analyzes the place and role of the modern Russian notary in the legal system of the Russian Federation. Attention is paid to procedural safeguards which are created both for participants in material and procedural legal relations. The article examines the doctrinal provisions in the area under consideration and the practical experience of implementing innovations in the field of notarial activity, carried out by the Federal Notary Chamber. Separately, the latest relevant innovations in the area under consideration are analyzed and some of the existing negative aspects are noted.

Maleina Marina Nikolaevna

Early termination of educational relations at the initiative of the university (nature of the sanction, grounds for application, procedure for implementation)

No. 5, 2018

The expulsion of a student from a university at the initiative of an educational organization is by nature a responsibility. The article provides a legal description of five grounds for early termination of educational relations. Violation of local acts of the university on the organization and implementation of educational activities does not apply to disciplinary sanctions, since the educational relationship between the student and the educational organization is not labor. The use of deductions for non-fulfillment by a student of obligations for the conscientious development of the educational program and the implementation of the curriculum should be differentiated depending on the type of violation (academic debt or other violation). It is necessary in the law to establish the application of expulsion on this basis, depending on the reason and extent of non-fulfillment of the curriculum. The introduction of compulsory expulsion of a student for violation of the procedure for admission to a university, which led to his illegal enrollment through the fault of the student, is substantiated. Since, in the event of a delay in payment of paid educational services, the university has the

right (and is not obliged) to expel the student, the inaction of the university cannot be qualified as the creation of artificial debt (abuse of the right).

All cases of termination of educational relations in the form of student expulsion are proposed to be fixed in one place in Chapter 6 "Grounds for the emergence, change and termination of educational relations" of the Law on Education. It is justified to leave as the grounds by virtue of which educational relations can be terminated early on the initiative of an organization carrying out educational activities -

1) failure or violation by students who have reached the age of fifteen years, local acts of the organization carrying out educational activities on the organization and implementation of educational activities; 2) non-fulfillment by students of a professional educational program of obligations for the conscientious mastering of such an educational program and (or) the implementation of the curriculum without good reason; 3) delay in payment for paid educational services.

It has been proved that educational relations should be terminated early on the initiative of an organization carrying out educational activities in the event of 1) violation of the procedure for admission to an educational organization, which, through the fault of the student, entailed his illegal enrollment in an educational organization; 2) non-liquidation of academic debt by students in basic professional educational programs within the established time frame.

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