Belov Valery Alexandrovich

The legal essence of the concepts of "consumer" and "weak side" in civil legal relations

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Annotation. This article is devoted to the issues of comparing the concepts of "consumer" and "weak side" in the legal relationship, as well as the definition of ideas and criteria for the use of the corresponding conceptual apparatus.

When writing this article, such particular scientific methods of cognition as formal legal, comparative legal, technical and legal were used, which made it possible to formulate the following conclusions regarding the subject of research: a consumer is a person who acquires an object of civil turnover for its use as an end user (end user); the fact that a person has the status of a “consumer” does not make him a non-professional in the relevant field and does not initially endow him with special rights, but the counterparty with corresponding duties, in order to restore the violated imperative principles of civil legislation - the principle of equality; The “weak side” of the commitment is the person who which, due to the specifics of the actually emerging legal relationship, cannot fully assess and meaningfully accept the possible negative consequences arising from the adoption and execution of the relevant duties; the presence or absence of the status of an entrepreneur (merchant) does not play a predetermined value for qualifying a person as a “weak side” of legal obligations; as signs of relations in which it is permissible to qualify one of its participants as a "weak" entity, it is permissible to single out: the contractor of a person is an entrepreneur (merchant), for whom the activities carried out are professional and one of the main ways of increasing profits; there is a clear impossibility of influencing the essence of the contractual terms, i.e. there is an inequality in negotiation opportunities, including for reasons that the person does not have the appropriate knowledge and cannot predict the corresponding risks; One of the key factors affecting the possibility of using the arsenal of rights and protection methods inherent in the “weak side” of legal obligations is the proactive behavior of a professional entity, which consists in informing, as well as receiving assurances from a person about the awareness of the entire riskiness of the transaction being concluded.

Lagutin Igor Borisovich

Monetary law in the system of Russian financial law

No. 6, 2018

This article is devoted to the legal regulation of monetary relations in the Russian Federation. The paper analyzes the concepts used in the law of monetary circulation, scientific approaches to the definition of its elements, the system of monetary relations of the Russian Federation. The author's approach to the content of monetary law is proposed, an additional element of monetary relations, dedicated to alternative monetary circulation, is highlighted. Currently, monetary relations are regulated by a wide variety of branches of law, such as civil law, since

money is an obligatory element of the sale and purchase; criminal law - money is property, which this right is intended to protect, and so on. Moreover, the article raises the question of the need for a scientific substantiation of the relations arising from the circulation of money and the isolation of those relations from these relations, which relate directly to the subject of financial law. An attempt has been made to correlate the concepts of "monetary law" and "right of monetary circulation". In this regard, it is determined that the law of monetary circulation regulates the process of circulation of national and foreign currencies on the territory of the Russian Federation, and monetary law acts as a complex legal entity, which includes not only the legal mechanisms of currency circulation and the legal nature of money, but also monetary surrogates and alternative currencies. , whose circulation is not regulated by the norms of Russian financial law. The article concludes that at present in the Russian Federation a unified state approach to the system of monetary relations has not yet been fully formed, and the question is also raised about what is worth betting on - on the national currency, or continue to actively use the world's reserve currencies to develop the economy. Also, the conclusion is made that a more detailed and high-quality development of monetary law is required within the framework of the science of financial law, its content and composition of elements. This article is an attempt to formulate a new approach to monetary law as a section of financial and legal science, to set vectors for its further development and to determine new directions for improving the science of financial law at the present stage.

Donchenko Alexander Grigorievich
Tokareva Alena Anatolievna

Accountability for crimes of sexual exploitation and sexual abuse of minors in modern legal systems

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The article analyzes the criminal legislation of states belonging to the Anglo-Saxon, Romano-Germanic and Muslim legal families, in terms of establishing responsibility for crimes related to sexual exploitation and sexual abuse of minors. This analysis is aimed at improving the domestic criminal legislation regarding countering the analyzed crimes, taking into account the positive experience of solving these problems in the legislation of foreign countries. The methodological basis was the dialectical method as a universal tool of cognition in combination with such general scientific and specific scientific methods as formal-logical, legal-technical, comparative-legal, systemic, as well as the method of interpretation. Conclusions are formulated, that many foreign countries are characterized by a broad specification of the offenses of sexual exploitation and sexual abuse of minors, as well as a detailed approach to the differentiation of criminal responsibility for these crimes. As a result, proposals were formulated regarding the criminalization of an act of harassment of a minor for sexual purposes in the

Russian criminal law, and the author's version of the definition of “sexual purpose” was presented, which is proposed to be consolidated in a note to Article 135.1. In addition, it is proposed to supplement with a qualifying type of act, provided for in Art. Articles 131,132,134, 135, 240, 242.1, 242.2 of the Criminal Code of the Russian Federation, in terms of their commission by close persons and other persons living in the same family with a minor and engaged in his (her) upbringing, as well as persons obliged to supervise him (her). The above study allowed us to conclude that the amendments and additions made to Chapters 18 and 25 of the Criminal Code of the Russian Federation will protect the rights and interests of children from sexual exploitation and sexual abuse, since the premature onset of sexual life harms their moral, physical and mental development.

Vera Kotlyarova

COMPLETE AND INCOMPLETE APPEALS IN CIVILISTIC AND JUDICIAL ADMINISTRATIVE PROCESSES

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The article is devoted to issues related to full and incomplete appeal in the theory of procedural law, each of which has certain characteristic features that make it possible to distinguish one from the other. A comparative analysis of the norms of civil procedural and arbitration procedural law indicates the presence and combination of distinctive features of the two types of appeal, which allows us to speak of a mixed model of appeal in the domestic civil law process. It is noted that a mixed appeal is also more characteristic of a judicial administrative process, which has absorbed the features of its two types, but qualitatively different from the previous one for the better due to the positive step taken by the legislator to empower the appellate court to overturn the court decision and send the administrative case for new consideration to the first instance court in three exhaustive cases. The author shares the point of view regarding the need for a normative expansion of the number of grounds for referring the case for a new consideration by the court of appeal. The analysis of two types of appeals allows the author to come to the conclusion about the acceptability of the incomplete appeal model for domestic procedural law to a greater extent, and, as a result, the need for theoretical elaboration and improvement of legislation regarding the Russian mixed model of appeal in the civil law process. The need to make legislative adjustments is dictated by the fact that the normative establishment of the repeated consideration of the case by the court of second instance leads to the loss of the meaning of the appeal as a verification instance, and the legal confirmation of the authority to refer the case for a new trial is simply obvious. In the light of the forthcoming reform of procedural legislation, it seems that the noted gaps and shortcomings can be filled and corrected in a new unified codified act by empowering the court of appeal with the power to cancel the judicial act and refer the case for new consideration to the court of first instance in an exhaustive

list of cases, including and when establishing the fact of violation of jurisdiction, taking into account that

Rudenko Artem Valerievich

Compliance with legal certainty in the legislation of the constituent entities of the Russian Federation on administrative offenses in decisions of the Supreme Court of the Russian Federation

No. 6, 2018

Close attention is paid to the legislation on administrative offenses, since bringing to legal responsibility is always associated with the restriction of the rights and freedoms of persons brought to justice. The legislation on administrative offenses in the Russian Federation is presented at the level of federal legislation and the legislation of the constituent entities of the Russian Federation. The constituent entities of the Russian Federation have the right to establish administrative responsibility for violation of regulatory legal acts of the constituent entities of the federation and municipal legal acts. Both federal and regional legislation must fully comply with the basic principles of law. One of them is the principle of legal certainty. This has been repeatedly emphasized by both the European Court of Human Rights and the Constitutional Court of the Russian Federation. The article analyzes the legal positions of the Supreme Court of the Russian Federation concerning the observance of the principle of legal certainty by the legislators of the constituent entities of the Russian Federation when adopting laws on administrative responsibility, elaborated recommendations, the observance of which will allow avoiding violation of the principle of legal certainty when adopting laws on administrative responsibility by the constituent entities of the Russian Federation. The article also analyzes the current regional legislation for its compliance with the requirements of the principle of legal certainty. Most of the laws of the subjects of the federation contain provisions that do not comply with the principle of legal certainty. At the moment, the norms that are similar or even similar to those that the Supreme Court of the Russian Federation canceled as such continue to operate, that violate the principle of legal certainty. At the same time, analyzing the needs and capabilities of the regional legislator in protecting the norms of the subjects of the federation and the norms of municipal legal acts, one can come to the conclusion that compliance with the principle of legal certainty, in some areas, is practically impossible. First of all, this is due to the need to protect municipal legal acts that have a common scope of regulation, but different content. When establishing administrative responsibility, the federal legislator also does not ensure compliance with this principle in all cases. Therefore, the problem of compliance with the principle of legal certainty in the establishment of administrative responsibility at all levels of legislation requires the development of common approaches. It is necessary to develop new mechanisms of lawmaking technology,

Osipov Artem Leonidovich

Execution of judgments of the European Court of Human Rights during the resumption of criminal proceedings on new circumstances: problems of law enforcement

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The article analyzes the topical issues of the execution of decisions of the European Court of Human Rights (ECHR) when reviewing criminal cases on new circumstances. The article provides an overview of procedural models of this form of revision of final judicial acts in foreign legal systems, as well as the author's classification of the conditions for such revision in criminal proceedings of the Russian Federation, highlighting the substantive and formal conditions for the cancellation or amendment of court decisions that have entered into legal force. The phenomenon of the legal positions of the ECHR as a special kind of new circumstances for the revision of interim and final court decisions in Russian jurisdiction is investigated, on the basis of an analysis of the practice of the Supreme Court of the Russian Federation, the problems of the effective execution of decisions of the ECHR when reviewing cases under new circumstances are highlighted. including the effect of the "nullification of legal positions" of the ECHR on the part of the Russian courts. The reason for this phenomenon may lie both in the absence of high-quality translations of the ECtHR judgments, and in the distorted understanding by the domestic law enforcement officer of the essence of the "margin of appreciation" doctrine, which provides him with a certain margin of appreciation in assessing the applicable methods of execution of the ECtHR judgments. Changes to the law are proposed aimed at improving the procedural practice of applying the decisions of the ECHR in Russian criminal proceedings, including through the introduction of provisions that create a legal basis for the participation of interested parties in the procedure for considering by the Presidium of the Supreme Court of the Russian Federation the issue of the need to revise the sentence. The reason for this phenomenon may lie both in the absence of high-quality translations of the ECtHR judgments, and in the distorted understanding by the domestic law enforcement officer of the essence of the "margin of appreciation" doctrine, which provides him with a certain margin of appreciation when assessing the applicable methods of execution of the ECtHR judgments. Amendments to the law are proposed aimed at improving the procedural practice of applying the decisions of the ECHR in Russian criminal proceedings, including through the introduction of provisions that create a legal basis for the participation of interested parties in the procedure for considering by the Presidium of the Supreme Court of the Russian Federation the issue of the need to revise the sentence. The reason for this phenomenon may lie both in the absence of high-quality translations of the ECtHR judgments, and in the distorted understanding by the domestic law enforcement officer of the essence of the "margin of appreciation" doctrine, which provides him with a certain margin of appreciation when assessing the applicable methods of execution of the ECtHR judgments.

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Lipkina Nadezhda Nikolaevna

UNIVERSAL JURISDICTION: INTERNATIONAL LEGAL FRAMEWORK AND PROBLEMS OF ESTABLISHMENT IN RELATION TO TERRORIST CRIMES

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The growing threat of terrorism in the modern world is forcing the world community to improve the legal framework for combating it, in particular by expanding the legal capabilities of states to establish criminal jurisdiction over persons involved in the commission of relevant crimes. The article is devoted to the analysis of the problem of establishing universal criminal jurisdiction in relation to terrorist crimes through the prism of identifying and studying the legal grounds and legal nature of such jurisdiction, as well as the conditions for the legality of its establishment. The study results in the following conclusions. First, the principle of universal jurisdiction, being aimed at preventing impunity, occupies a special place in the system of principles for establishing extraterritorial criminal jurisdiction, due to the subsidiary nature of universal jurisdiction. Second, the establishment of universal jurisdiction in cases where a State's obligation to prosecute is enshrined in customary or treaty international law is, given its subsidiary nature, an obligation and not simply a State's right to establish such jurisdiction. Thirdly, the most justified at present is this approach to determining the legal nature of universal criminal jurisdiction as recognition of its conditional or limited nature, since the development and consolidation in international law of the conditions for the establishment of universal criminal jurisdiction can help to

find the proper balance of the relevant affected interests of the international community and reduce possible political tensions when applying the principle of universal jurisdiction. The paper also substantiates the thesis on the applicability of the principle of universal jurisdiction to the establishment of criminal jurisdiction in relation to terrorist crimes.

Savenko Oksana Evgenievna
The concept of marriage in private international law
No. 6, 2018

The research of the problems of defining the concept of "cross-border marriage" in the science of private international law is very difficult due to the ambiguity of approaches to understanding the very social and legal phenomenon of "marriage". Not all states have taken the path of legislative consolidation of this term. In the legal literature, many authors point out both the impossibility and the absence of the need to unify the concept of "marriage" due to the large differences in historical, legal, family, religious traditions that have developed in the field of marriage and family relations between states belonging to different legal systems. In the Russian legal science there is no unified approach to the definition of the concept of "marriage". Analysis of the legal literature revealed several significant approaches to solving this issue. So, marriage is also defined as the union of a man and a woman, as a special family law contract, as a civil law contract. In the science of private international law, the author uses the terms "international marriage", "cross-border marriage", "international marriage" as identical concepts, while the term "marriage" is not disclosed. The author in the presented article made an attempt to define the concept of "cross-border marriage" through the relationship between the concepts of "international relations" and "cross-border relations". The traditional approach is that international relations arise between states, between peoples and are of a socio-political nature and constitute the subject of legal regulation of public international law. The term "cross-border relations" is considered as a synonym for "international private law relations", which arise between individuals and legal entities in the private law sphere - civil law relations, investment, trade, labor, etc. Therefore, defining the concept of "marriage" in private international law, the author uses the term "cross-border marriage". In addition, the author revealed the absence of universal criteria (as signs, grounds for assessing the phenomenon) for classifying relations as transboundary. So, the author found that such criteria in different sources include the subject composition of legal relations and their status, political and geographical location and movement of subjects, the presence of a foreign element, connection with various legal systems or foreign legal order. In the author's opinion, the use of the term “foreign element” is the most successful and justified to characterize cross-border relations.

Kolotkov Mikhail Borisovich

Anti-terrorist potential of extradition in the Russian Empire in the second half of the 19th - early 20th centuries.

No. 6, 2018t

The article is devoted to the institution of extradition of criminals in the Russian Empire in the second half of the 19th - early 20th centuries, which by this time had not yet found its full form in international law. The state of the Russian legislation on the issues regulating the extradition procedure has been investigated. In the second half of the 19th century, unlike some European countries, Russian legislation did not have regulations governing the procedure for the extradition of criminals. It was only with the adoption of the new Criminal Code in 1903 that norms appeared in national legislation that partly regulated this procedure. The main extradition treaties concluded by Russia with European countries in the second half of the 19th century are studied. Since 1866 the Russian government has become quite active in concluding special conventions with European countries on the extradition of criminals. Particular attention is paid to the analysis of the order of extradition of political criminals. It is noted that the principle of non-extradition of political criminals, although it was generally recognized, seemed very controversial and controversial both for specialists in criminal law and for international lawyers, especially in the 70s - 90s. XIX century, when many civilized countries were faced with the problem of countering terrorism. The legislation of almost all European countries prohibited the extradition of political criminals, which was reflected in the relevant international treaties. Russia, which often extradited political criminals earlier only after 1866, namely, from the moment of the conclusion of the first cartel conventions with European countries, she began to refuse extradition for committing political crimes. As part of the assessment of the antiterrorist potential of extradition in the Russian Empire, it is concluded that, regardless of the fact that in the second half of the 19th century, many generally recognized norms of international law were unambiguously formalized, in the conventions, albeit infrequently, an individual approach to the issue of extradition of political criminals continued to be traced.

Irkhin Igor Valerievich

Constitutional and legal status of tribes and reservations of US Indians (in the context of the institution of territorial autonomy)

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This article defines the nature of reservations, examines the features of the legal categories "sovereignty" and "sovereign powers" of Indian communities.

To identify the similarities and differences between reservations and territorial autonomies, it is proposed to consider autonomies comprehensively in three dimensions: as a principle, a form of territorial organization of a community

and a legal regime. The proposed criteria for determining autonomy are used as qualifiers for the constitutional and legal nature of reservations.

It is pointed out that the sphere of self-government of Indian communities is subject to high risks of transformation by decisions of the federal authorities, with at the same time minimal resources for configuring their own legal orders. An analogy is drawn with the approach to modeling the constitutional and legal statuses of the unincorporated territories of the United States.

In conclusion, the conclusion is formulated that the constitutional and legal status of reservations can be characterized from two positions.

Taking into account the institutionalization of tax and financial preferences, special rights in the field of natural resources for Indian tribes, they have advantages over the population of states and municipalities in certain spheres of life (gambling, retail trade, taxes, special rights to use natural resources). These indicators, together with national and cultural identity and the possibility of forming legislative, executive and judicial bodies, brings reservations closer to the institution of territorial autonomy.

The second aspect of their constitutional and legal status is the permanent state of "suspension" and total dependence on the federal authorities, due to the defectiveness of guarantees of independence in the field of internal self-government. This approach is a characteristic feature of the state policy to preserve in full at the federation level the levers for the management of the Indians and their territories in its jurisdiction and control over them.

These factors characterize the limited resources of tribes to independently configure their own legal order (in comparison with states), which in turn separates reservations from territorial autonomies. On this basis, it is stated that reservations are independent forms of intrastate formations, which, nevertheless, have signs of territorial autonomy.