Isaev Igor Andreevich
"The Mystery of Lawlessness", or Revolutionary Justice (part 3)
No. 7, 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.

Rossinsky Boris Vulfovich
EXECUTIVE POWER AND PUBLIC ADMINISTRATION
No. 7, 2018

The development of ideas about government bodies, which for many years have been identified with executive and administrative bodies of different levels, is considered. At the same time, no other state structures, regardless of the nature of their work and real contribution to the provision of state activities, were not recognized by the state administration bodies. The issue of the need for a broad understanding of public administration came to the fore in the second half of the last century with the development of cybernetics.

As shown by the author, large systems, which include the system of public administration, are characterized by the presence of information channels with a different, very complex structure. Incomplete accounting by public administration entities of information that should come to them through feedback channels leads to the development of suboptimal management decisions and inefficiency of the management process. This necessitates the implementation of state administration through the use of many autonomous information circuits inherent in different branches of government and other state bodies.

The Constitution of the Russian Federation, having established the division of state power into three branches and their independence, abandoned the term "government bodies", and government itself began to be understood in a broad sense as the activities of all government bodies and other government bodies. At the same time, the executive power system is a powerful subsystem of the entire public administration system. The features of this subsystem are considered, which distinguish it from other subsystems of the public administration system. In

particular, it is shown that the subsystem of executive power structurally models the system of state power, has great inertia and performs the main part of the administrative functions of the entire system of public administration. When unstable, abnormal,

The provisions expressed in the article are illustrated by the practice of state administration in the USSR and post-Soviet Russia.

Pikurov Oleg Nikolaevich

TRANSFORMATION OF THE INSTITUTE OF ASSISTANCE IN SOVIET AND RUSSIAN CRIMINAL LAW

No. 7, 2018

The effectiveness of the implementation of criminal policy largely depends on the relationship between legislation, theory and practice. Using the example of complicity as one of the institutions of criminal law, the article traces the mechanism of their mutual influence over several historical eras: from the moment of a radical change in the development of criminal law associated with the revolution of 1917 to the present. The author analyzes changes in legislation for the specified period. It is noted that after the refusal in the Criminal Code of 1922 from the open list of complicity, laid down in the Guidelines for Criminal Law of the RSFSR in 1919, in all sources of criminal law there is a constant increase in the list of criminalized methods of complicity. According to the author, the reason for this is the objective needs of practice, since the variety of options for social relations (and, accordingly, socially dangerous acts aimed at destroying them) cannot fit into the legislative framework. Such conclusions are confirmed by decisions on specific cases, considered by courts of various levels, starting from the 1920s. and up to now. In addition, the main doctrinal positions on the issues under consideration are given. Conclusions are made about the possibility of applying certain methods of legislative regulation used by Soviet criminal law to the solution of modern problems. In particular, using examples of specific socially dangerous acts (assistance to terrorist activities, mediation in bribery,

Kurchenko Oleg Sergeevich

Improvement of legislation O.S. Kurchenko

RETURN OF MATERNAL (FAMILY) CAPITAL FUNDS TO THE BUDGET OF THE RUSSIAN PENSION FUND: GROUNDS, PROCEDURE, LEGAL CONSEQUENCES

No. 7, 2018

The article substantiates the need to supplement the Federal Law "On Additional Measures of State Support for Families with Children" with norms establishing the grounds, procedure and legal consequences of the return of maternity (family) capital funds to the budget of the Pension Fund of the Russian Federation after the authorized person has exercised the right to dispose of them ...

The need for such regulation arises in cases of recognition of a contract aimed at improving housing conditions as invalid, its termination and in other cases when the entitled person has the opportunity to use maternity (capital) funds for purposes other than those provided by law. In the absence of relevant provisions in the legislation on social security, the return of maternity (family) capital in such situations is ensured through the application of civil law, taking into account the specifics of maternity capital as a type of social security. At the same time, the potential of civil law in regulating these relations is limited. The return of maternity (capital) funds to the budget of the Pension Fund of the Russian Federation inevitably raises the question of the possibility of re-disposing of them. Based on the analysis of judicial acts in cases of "restoration" of the right to additional measures of state support, the author comes to the conclusion that there is a need for legislative regulation of the conditions and procedure for the re-implementation of this right. "Restoration" of the right to maternity (family) capital should be allowed only after the actual return of funds to the budget. The legal consequences of such a return should be differentiated by the legislator depending on whether the entitled person acted in good faith at the initial disposal of the maternity (family) capital. Unfair use of the right to additional measures of state support should be taken into account when the legislator determines the possibility or establishes additional conditions for its re-implementation.

Barkhatova Ekaterina Nikolaevna

ISSUES OF LEGISLATIVE STRUCTURE AND FEATURES OF APPLICATION IN PRACTICE OF ARTICLE 3141 OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

No. 7, 2018

The article is devoted to the study of the problems of applying the norms of the criminal law, which provides for liability for evading administrative supervision. The analysis of the legislative structure of Art. 3141 of the Criminal Code of the Russian Federation, identified shortcomings associated with different interpretations of the term "conjugation" in relation to this article. The explanations of the Plenum of the Supreme Court of the Russian Federation on the application of the rule on responsibility for evading administrative supervision are analyzed. The problems arising in the process of implementation of activities on administrative supervision and the establishment in the actions of supervised persons of signs of a crime under Art. 3141 of the Criminal Code of the Russian Federation. In particular, questions were raised related to the need to find a supervised person at the place of residence or place of stay, in this connection, attention is focused on the employment opportunities of the supervised in another locality. On the example of the Irkutsk region, data on the employment of supervised persons are analyzed. The content of such an evaluative feature as "good reasons" is disclosed. The criteria for "arbitrariness" in leaving the place of residence or place of stay under supervision have been determined. Special

attention is paid to the subjective side, in which the goal of evasion is a mandatory feature. The features of judicial practice of application of the norm on responsibility for evading administrative supervision have been investigated. Recommendations for improving legislation in this area were developed, the author's version of the article was proposed. Clarifications are offered regarding the interpretation of such terms as "repetition", "repetition", "maliciousness", "conjugation". The questions of delimitation of administrative supervision as a measure of post-penitentiary influence from such type of punishment as restriction of freedom are touched upon. Arguments in favor of the equal existence of these two institutions are presented. The position on double imputation in the event of placing a person who has served a sentence under administrative supervision has been refuted. Attention is drawn to the time from which the supervised person is considered to have committed this or that administrative offense. The features of qualification of evasion from administrative supervision as a crime of a prejudicial nature have been studied. Recommendations for the application of the studied norm have been developed, including in the author's edition. Arguments in favor of the equal existence of these two institutions are presented. The position on double imputation in the event of placing a person who has served a sentence under administrative supervision has been refuted. Attention is drawn to the time from which the supervised person is considered to have committed this or that administrative offense. The features of qualification of evasion from administrative supervision as a crime of a prejudicial nature have been studied. Recommendations for the application of the studied norm have been developed, including in the author's edition. Arguments in favor of the equal existence of these two institutions are presented. The position on double imputation in the event of placing a person who has served a sentence under administrative supervision has been refuted. Attention is drawn to the time from which the supervised person is considered to have committed this or that administrative offense. The features of qualification of evasion from administrative supervision as a crime of a prejudicial nature have been studied. Recommendations for the application of the studied norm have been developed, including in the author's edition. The features of qualification of evasion from administrative supervision as a crime of a prejudicial nature have been studied. Recommendations for the application of the studied norm have been developed, including in the author's edition. The features of qualification of evasion from administrative supervision as a crime of a prejudicial nature have been studied. Recommendations for the application of the studied norm have been developed, including in the author's edition.

Gracheva Yulia Viktorovna

ILLEGAL ARMED FORMATION: STATE AND PROSPECTS OF CRIMINAL REGULATION

No. 7, 2018

The article examines the genesis, evolution and state of the criminal law regulation of responsibility for an illegal armed formation (Article 208 of the Criminal Code of the Russian Federation). In connection with the increase in the number of illegal armed groups in Chechnya and the intensification of their confrontation with the federal authorities in 1995, the Criminal Code of the RSFSR in 1960 was supplemented by Art. 772, which stipulated responsibility for the creation and participation in an illegal armed formation not provided for by federal law. From that moment, the history of the existence of this norm began. The statement is substantiated that an illegal armed group is a kind of an organized group, different points of view on this matter are considered, arguments are given confirming that it cannot be classified as a kind of a criminal community. Changes, occurred in the criminal legislation after the adoption of the Federal Law of 02.11.2013 No. 302-FZ "On Amendments to Certain Legislative Acts of the Russian Federation", the prevailing judicial practice in specific cases in connection with the application of Art. 208 of the Criminal Code of the Russian Federation, as well as the explanations of the Plenum of the Supreme Court of the Russian Federation, set out in the decree of February 9, 2012 No. 1 "On some issues of judicial practice in criminal cases on terrorist crimes", lead to conclusions about the doubtfulness not only in the correctness of the application, but also the validity existence of Art. 208 of the Criminal Code of the Russian Federation; on the need to decriminalize the crime in question, as well as the acts under Art. 209, 210, 2054, 2055 of the Criminal Code of the Russian Federation and others; on the introduction to Ch. 10 of the Criminal Code of the Russian Federation of an additional article, providing for a rule on the mandatory increase of punishment when committing a crime in a group manner, similar to that set forth in Art. 68 of the Criminal Code of the Russian Federation.

Kanashevsky Vladimir Alexandrovich

Banking secrecy and the use of information security outsourcing services by banks

No. 7, 2018

The author investigates the legal aspects of maintaining the banking secrecy regime when providing information security outsourcing services. The article concludes that information related to bank secrecy can be transferred to a third party, including a person providing information security outsourcing services, provided that the credit institution retains control over the relevant infrastructure of the supplier, and the outsourcing service provider does not have the opportunity to access to relevant information.

The author analyzed the norms of Russian laws on banking and commercial secrets - on banks and banking activities, on the national payment system, on commercial secrets, etc., as well as the provisions of the Bank of Russia Standard STO BR IBBS-1.4-2018, dedicated to information security risk management when outsourcing. In the course of the study, it was established that the Standard STO

BR IBBS-1.4-2018 de facto allows outsourcing information related to bank secrecy to service providers (i.e. third parties), which is contrary to current legislation. To eliminate contradictions in Russian laws, it is necessary to make the appropriate changes.

Martynenko Sergei Borisovich

On the issue of the evolution of criminal procedural regulation of preliminary verification of reports of a crime

No. 7, 2018

The article examines the key points and highlights the main trends in the criminal procedural regulation of the preliminary verification of reports of a crime as the most meaningful and long-term stage of the criminal case initiation stage. Such tendencies are the expansion of the time limits and the range of methods of this verification, as well as the scope of the principle of protection of human and civil rights and freedoms in criminal proceedings at the stage of initiation of a criminal case (Article 11 of the Code of Criminal Procedure of the Russian Federation). The author traces the chronology and analyzes the dynamics of the development of legislative regulation in the current Criminal Procedure Code of the Russian Federation of the methods and timing of the preliminary check, as well as the legal status of its participants. On this basis, the article formulates proposals for further improving the normative regulation of public relations in this area, first of all, through the introduction of appropriate amendments and additions to Art. 144 of the Code of Criminal Procedure of the Russian Federation. At the same time, the author considers that, in principle, it is permissible to proceed at the stage of initiation of a criminal case of any procedural, including investigative, actions, provided that the RF Code of Criminal Procedure is established: 1) proper legislative regulation of the procedure for the production of relevant actions; 2) reasonable timing of their production; 3) a prohibition on the use of procedural coercion against citizens, as well as leaders and representatives of non-state structures involved in the preliminary inspection;

Zhavoronkova N.G.

Agafonov V.B.

Modern trends in legal support of strategic planning of environmental management in the Arctic

No. 7, 2018

The article examines the legal problems of improving state policy and strategic planning of environmental management in the Arctic. Based on the results of the study of the current documents of state strategic planning, the conclusion is proved that for the Arctic, acts (strategies) of spatial development should represent a special role, which should simultaneously take into account the economic aspects of development through the creation of "ecosystem management of human activities", as well as environmental aspects that provide for legal the possibilities

of preserving the Arctic ecosystem in the implementation of nature management, taking into account all the Arctic threats and challenges in the implementation of the main directions of the development of the Arctic region.

Gavrilova Yulia Alexandrovna

JUDICIAL PRACTICE AND LAW ENFORCEMENT SENSE FORMATION IN THE RUSSIAN FEDERATION

No. 7, 2018

The article is devoted to the consideration of judicial practice within the framework of the general concept of law enforcement meaning formation. It is substantiated that judicial practice is an atypical source of modern Russian law, regardless of the legislative consolidation of this status, and regardless of the terminological expression of its final results. The article analyzes the relationship between the institutional (link of the judicial system) and content (legal significance of judicial acts) parties of justice. It is noted that the issue of judicial precedent is finally undecided at the doctrinal level, presented in the Russian version as a definition (change) of the practice of applying a legal norm. In a controversial vein, a legislative solution is being discussed in the form of an institution of revision of judicial acts that have entered into legal force on new circumstances. Particular attention is paid to the classification of forms of expression of rights in judicial activity into unconditional, presented by decisions of the Plenum and the Presidium of the Supreme Court of the Russian Federation, and conditional, acquiring legal properties in the process of subsequent positive perception of the practice of higher courts, to which any court decisions with the point of view of the law-making potential available in them. Three main models of interaction between judicial practice and legislation are proposed and analyzed: “court is an assistant to the legislator”, “court is a negative legislator”, “court is a positive legislator”. acquiring legal properties in the process of subsequent positive perception by the practice of the higher courts, to which, in the end, any court decisions can be attributed from the point of view of the law-making potential available in them. Three main models of interaction between judicial practice and legislation are proposed and analyzed: “court is an assistant to the legislator”, “court is a negative legislator”, “court is a positive legislator”. acquiring legal properties in the process of subsequent positive perception by the practice of the higher courts, to which, in the end, any court decisions can be attributed from the point of view of the law-making potential available in them. Three main models of interaction between judicial practice and legislation are proposed and analyzed: "court is an assistant to the legislator", "court is a negative legislator", "court is a positive legislator".

Alexander Korobeev

Chuchaev Alexander Ivanovich

THE DEFINITION OF THE CONCEPT OF DRINKING IS RECOGNIZED NON-CONSTITUTIONAL

No. 7, 2018

The article deals with the constitutionality of Note 2 to Art. 264 of the Criminal Code of the Russian Federation, which, on the initiative of the Presidium of the Ivanovo Regional Court, became the subject of consideration by the Constitutional Court of the Russian Federation, which came to the conclusion that the legal definition of the state of intoxication does not comply with the Constitution of the Russian Federation, violates a number of principles of criminal law. The authors show the legal positions of these courts, provide scientific conclusions prepared by them at the request of the relevant officials. Starting from this particular case, an attempt was made to show the state of the Russian criminal legislation, characterized by a violation of its consistency (both internal and external), caused, among other things, by inconsistent criminal policy in the field of combating crime in general and transport crime in particular,

In connection with the recognition of the definition of intoxication, formulated in note 2 to Art. 264 of the Criminal Code of the Russian Federation, unconstitutional, the authors propose legislative solutions aimed at establishing and accounting for this circumstance both in the Criminal Code of the Russian Federation and in law enforcement practice.