Huseynov Abdusalam Abdulkerimovich
MORALITY AND LAW: THE LINE OF DEFINITION
No. 8, 2018...

The article provides a brief overview of historical approaches and modern views on the problem of the relationship between morality and law. It is shown that both in the current domestic literature and in the public consciousness, the prevailing view is that morality, being broader and higher than law, acts as its limit and limitation. The author shows the historical conditioning of this point of view. An approach is proposed according to which morality and law, dealing with the same subject - the actions of living individuals and personally fixed relations between people, are independent from each other, autonomous forms of obligation. It is concluded that the law considers relations between people as a two-way process and mediates them by a universal norm and independent justice,

Galkin Ivan Viktorovich
METHODOLOGICAL PROBLEMS OF LEGAL SCIENCE IN NEW TIME (1600-1850)
No. 8, 2018

The article is devoted to the methodological features of legal thought and legal science in modern times (around 1600-1850). New time is a turning point not only in the history of the entire world civilization, but also in the history of philosophical knowledge and positive sciences, and equally in the history of methodology that arises and functions at the junction of philosophy and science. Methodology is a philosophical discipline that establishes effective methods, approaches, methods of cognition and forms the tools necessary for the implementation of scientific research, including in the field of legal sciences. The main task of the methodology is to organize and regulate knowledge as a purposeful process of obtaining and processing new and reliable scientific facts. The special significance of the New era for the development of methodology lies in the fact that that it was at this historical stage that the fundamental foundations of the methodological matrix of scientific knowledge were developed, since science then acquires the functions of a planned and systematic production of knowledge on the basis of a comprehensive empirical study of reality given in feelings. New time gives impetus to the formation of scientific knowledge of the modern type, which has acquired an institutional character and industrial scale and has become the most important non-economic factor of the industrial revolution in the West, which opened the way for scientific and technological progress and industrial production of the newest time. The modern era was the period when, thanks to the theoretical efforts of thinkers and legal scholars, in general terms, the methodological basis of jurisprudence was formed, which continues to exist at the present stage of its development. At the same time, the foundation was laid for the formation of individual legal disciplines: the philosophy of law, the encyclopedia of law, somewhat later than the general theory of law, as well as the theoretical

aspect of certain branch disciplines. In the context of the methodology of jurisprudence, two opposite tendencies are clearly distinguishable, which competitively coexisted in the philosophical discourse of the modern era - the rationalistic and empirical approaches. The methodological matrix of jurisprudence, influenced by both rationalistic and empirical epistemology, is enriched by the use of many methods, a number of which have been known since antiquity, but have not found application in the field of legal science. Thus, this article sheds light on a rather controversial problem of the methodological foundations of the cognitive sphere of jurisprudence in the modern era.

Zolotukhina Natalia Mikhailovna

FORMATION OF LEGAL UNDERSTANDING AND ITS TERMINOLOGICAL DESIGNATION IN RUSSIAN MEDIEVAL LEGAL CULTURE

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The article examines the process of formation and evolution of legal thinking at various historical stages of state and legal construction in Russia during the early (X-XIII centuries, Kievan Rus) and late (XIV-XVI centuries, Moscow State) Middle Ages. Jurisprudence has its own characteristics of the formation of concepts and their terminological designation, without understanding which it is difficult to objectively find out the content of normative acts and political and legal doctrines.

The article shows the changes that took place with the adoption of Christianity by Russia in the 10th century. (988) and the assimilation of Orthodox religious philosophy, dogma of doctrine, ritual rules of worship and the terminology corresponding to all these concepts. In this regard, significant changes took place in the very conceptual apparatus of legislators and thinkers, as well as in the consciousness of the entire ancient Russian society. According to the Byzantine religious tradition, the term "law" was used to denote concepts of a higher order: the Law of God, the Laws of the Old and New Testaments, the Laws of Jesus Christ, the Laws of the Ecumenical Councils, etc., but at the same time, the use of the term "law" is also encountered in Byzantine political practice. in a generalized legal sense - the laws of the emperors.

Since in Russia before the adoption of Christianity for a long time the word "law" denoted specific rules of behavior, for the violation of which material and physical responsibility was envisaged, a certain peculiarity arises in its further already Christian interpretation, under the influence of which the term "law" expanded the scope of its content for account of sacred motivation, but at the same time it has not completely lost its usual legal meaning. The gradually emerging law enforcement practice has led to the combination in the concept of "law" of a broad (moral and religious) and narrow (legal) content, giving it a meaning corresponding to both senses.

Volodina Svetlana Viacheslavovna

DIALOGUE AND TRUST: LEGAL STANDARDS AND POLITICAL PRACTICES

No. 8, 2018

The author's research focus is on dialogue as the most important mechanism for building trust in politics. A detailed appeal to modern social and political realities makes it possible to identify the reasons for the dynamics of trust, which depends on the socio-cultural environment, political processes and legal regulation. On the one hand, dialogue mechanisms of trust presuppose openness, creativity, dynamics, thanks to which trust turns into a “constructor” of the political and legal space. This allows the dialogue to be a flexible structure, adaptive to external risks, and on the other hand, trust in the socio-political environment is institutional and impossible without following clear rules, norms, and procedures. The article examines the factor of distrust, which plays not only a destructive, but a positive role, "Insuring" the subjects of political and legal relations. The “right to distrust” is one of the elements of democracy, and the “inevitability” of trust is manifested in the need to find compromises in a pluralistic environment of a democratic society. Highlighting a homogeneous and heterogeneous environment of trust, the author substantiates the priority of the latter. At the same time, the democratic environment of trust presupposes the effects of “forced” trust when it is formed under conditions of limited choice. An indicator showing trust / distrust on the part of the authorities in relation to civil society and vice versa is the electoral system. Highlighting a homogeneous and heterogeneous environment of trust, the author justifies the priority of the latter. At the same time, the democratic environment of trust presupposes the effects of “forced” trust when it is formed under conditions of limited choice. An indicator showing trust / distrust on the part of the authorities in relation to civil society and vice versa is the electoral system. Highlighting a homogeneous and heterogeneous environment of trust, the author substantiates the priority of the latter. At the same time, the democratic environment of trust presupposes the effects of “forced” trust when it is formed under conditions of limited choice. An indicator showing trust / distrust on the part of the authorities in relation to civil society and vice versa is the electoral system.

Matskevich Igor Mikhailovich

Geometry of the criminal law

No. 8, 2018

In theoretical jurisprudence, there is a certain methodological crisis, the essence of which boils down to the fact that modern research practically does not enrich the methodology of legal science with new approaches, and the existing ones are variations, and not always successful, that are already known. The current state of affairs is reflected in the objectivity of the results of the study of legal problems, their reliability, scientific character. Meanwhile, the study of social

processes, in particular those related to the operation of the rule of law, the formation and necessary change of the system of law, can be presented in a new light, taking into account the analysis of the dynamics of the implementation of legal norms, the establishment of non-linear patterns, the study of various and multi-vector manifestations of legal relations in public coordinate system,

In the article, in relation to jurisprudence, the following mathematical methods are distinguished for modeling social and legal phenomena: 1) law-making; 2) legal interpretation; 3) enforcement; 4) law enforcement; 5) legal education.

In a more specific form, mathematical logic is used to explain the criminal behavior of a person, search for a criminal and expose him, in case of an attempt to avoid responsibility for what he did.

Using the theory of probability, it was possible to develop a forensic portrait examination, and a little later - to come to a fingerprint examination. Mathematical laws made it possible to establish the objectivity of the conclusions of handwriting examinations. Today, mathematical methods in jurisprudence have led to the formation of an independent complex scientific direction - forensic examination.

At the same time, with the help of legal statistics, it was possible to identify stable patterns in crime as a massive socially negative phenomenon.

The geometric idea had a significant impact on the structure of scientific knowledge in the legal world and on the structure of legislation, since the presence of common parts in codes, as well as the placement of norms on the principles of law at the beginning of some laws, represent an unconditional tradition of geometric planar jurisprudence.

The article concludes that the system of criminal legislation cannot be ideal and cannot be set once and for all. We live in a Euclidean system of criminal legislation, although another more complex geometric system has long been known - the imaginary geometry of Lobachevsky or spatial geometry.

Rossinsky Sergey Borisovich

Reflections on the legal nature of the actual detention and delivery of a suspect

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This article raises the problems of the legal nature of the actual detention and delivery of a person to the body of inquiry or to the investigator, preceding his arrest on suspicion of committing a crime in the order of Ch. 12 of the Criminal Procedure Code of the Russian Federation.

A systematic analysis of doctrinal sources, provisions of national legislation, some normative legal acts of states that have arisen in the post-Soviet space, and the practice of the European Court of Human Rights allows us to conclude that neither actual detention nor delivery can be recognized as objects of criminal procedural regulation due to the heterogeneity of the relevant legal relations. with the "classic" public-law relations emerging in the field of criminal proceedings. In

addition, neither the actual detention nor the delivery can be recognized as elements of an exclusively administrative activity of law enforcement agencies.

The author comes to the conclusion that the actual detention of a potential suspect and his delivery are of a complex nature, which is expressed in the constitutional and legal basis and the intersectoral mechanism based on it for limiting the individual's right to freedom and personal inviolability, including administrative, operational-search, penitentiary and other aspects.

Consideration of the actual detention and delivery in a constitutional, legal and cross-sectoral context should lead to the formation of a certain unified mechanism for the implementation of these powers in various forms of jurisdictional activity by various law enforcement agencies.

On the other hand, this will contribute to the leveling or rethinking of many problems of the theory and practice of criminal proceedings that have been maturing over the years, in particular questions about the moment of actual detention, about providing the detainee with a lawyer, about the legal nature of the so-called civil detention, etc.

Starostin Sergey Alekseevich

Modern problems of legal regulation of administrative procedures in business

No. 8, 2018

The article deals with an important form of administrative and legal regulation of public relations - administrative procedures. Analyzes the normative legal sources that regulate the material and procedural aspects of administrative procedures. In particular, the Federal Law of 2010 “On the organization of the provision of state and municipal services.

On specific examples of the granting of quotas for the extraction of hunting resources and the regulation of tariffs for energy resources, the problems of the development and implementation of administrative regulations in business are shown. The article proves that the ambiguity inherent at the level of federal and regional legislation negatively affects the activities of the law enforcement officer, his correct understanding of his functions and boundaries of authority. The decisions of the courts of the Russian Federation are given as examples of challenging the adopted normative legal acts.

Damme Irina Alexandrovna

ANTI-CORRUPTION STANDARDS OF BEHAVIOR OF WORKERS OF EDUCATIONAL ORGANIZATIONS OF HIGHER EDUCATION

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The subject of the research is the norms of the anti-corruption legislation of the Russian Federation, bylaws and departmental regulations, as well as local

regulations and provisions of the codes of ethics that enshrine anti-corruption standards of conduct for employees of educational institutions of higher education.

The article examines the emerging trends in the formation of anti-corruption standards of behavior in the field of education. Methods of consolidating such basic anti-corruption standards of behavior as the obligation to notify about the fact of incitement to commit a corruption offense, the obligation to take measures to prevent and resolve conflicts of interest, and the prohibition on receiving gifts in connection with the performance of official duties are discussed in detail.

The author used the dialectical method of cognition, as well as the system-structural, formal-logical and other methods of scientific cognition.

The study made it possible to conclude that unified anti-corruption standards of conduct for employees of educational organizations have not been established. Anti-corruption standards of behavior are enshrined in by-laws and departmental acts of the Ministry of Education and Science of the Russian Federation only in relation to a narrow circle of persons exercising managerial functions in an educational organization. With regard to other categories of employees of an educational organization, anti-corruption duties, prohibitions, restrictions and recommendations are established at the discretion of the educational organization in the relevant local regulations and codes of ethics.

Among the negative trends in the formation of anti-corruption standards of behavior in educational institutions of higher education, the author considers the lack of a unified approach to the consolidation of anti-corruption obligations, prohibitions and restrictions. The difference and inconsistency of the forms of presentation of anti-corruption standards of conduct, the place of their consolidation (local normative act or code of ethics), as well as the independent choice of lists of such standards of conduct do not contribute to the formation of a single, clear and definite legal space that ensures effective prevention of corruption.

Andreeva Galina Nikolaevna

CONSTITUTIONAL LEGAL DOCTRINE ON SECESSION IN THE EU MEMBER COUNTRIES (ON THE EXAMPLE OF SPAIN, GERMANY, ITALY, GREAT BRITAIN)

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There is no constitutional and legal doctrine of secession uniform for the EU countries, although there are some general approaches to argumentation in scientific research and when making decisions by constitutional courts. According to experts, EU law does not allow and, at the same time, does not directly prohibit secession. The national constitutions of the EU member states do not contain provisions expressly prohibiting or permitting secession. National constitutional and legal doctrines are based on the peculiarities of the wording of constitutional

provisions, which are interpreted in different ways by supporters and opponents of secession. Since the written constitutions of the EU countries are silent on issues of secession, and the bodies of constitutional control are inclined to interpret this as an unconditional prohibition of secession, a tense situation is created in the event of conflicts. In this situation, the unwritten and flexible constitution of Great Britain turned out to be more suitable for solving this complex problem. The science of constitutional law is in search of a combination of various theories and a balance of the fundamental principles of a modern democratic constitutional state. These searches are currently determined to a large extent by the choice of priority values: the preference for the principle of unity, the integrity of the state and the principle of sovereignty entails the denial of the right to secession; focusing on human and peoples' rights makes us look at secession as one of the ways to realize these rights. According to the author, the doctrine of secession should be developed at the junction of international and national constitutional law. The search for a modern doctrine on secession issues is in its infancy.

Artemov Vyacheslav Mikhailovich

METHODOLOGICAL FOUNDATIONS OF MORAL AND PHILOSOPHICAL EXAMINATION OF LAW IN THE CONTEXT OF THE PROSPECTS OF ITS IMPROVEMENT

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The article substantiates the high importance for society and the state of a regular and purposeful moral and philosophical (ethical) examination of law. It is shown that law itself needs this analytical-critical work, and morality, thus, acquires a serious assistant in the person of the latter. The thesis is argued that the method of cognition and activity should not be considered too narrowly: it should also be about some more general worldview, ethical guidelines, a certain paradigm of thought and action aimed at cultivating the human in a person. It also affirms the relevance of teaching ethics, especially in relation to higher education, which provides preparation for the proper performance of professional duties.