Lyutov Nikita Leonidovich

DISTANCE WORK: THE EXPERIENCE OF THE EUROPEAN UNION AND THE PROBLEMS OF LEGAL REGULATION IN RUSSIA

No. 10, 2018

The article examines the legal regulation of distance work in the context of the transformation of labor relations in the modern world and the emergence of new, atypical, forms of employment.

The article describes the experience of regulation of remote work in the European Union. In particular, the framework agreement of the social partners at the level of the European Union on "telework", concluded in 2002, is considered, as well as the transformed approaches to mobile work using ICT, reflected in the documents of the European Fund for the Improvement of Working and Living Conditions (Eurofund).

Further in the article, an assessment of the existing legal norms on distance work in the Russian Federation is carried out. Defects in the legal regulation of remote work in Russia, carried out by chapter 49.1 of the Labor Code of the Russian Federation, are revealed.

In particular, the author proposes to eliminate the following problematic aspects of legal norms on distance work: the impossibility of concluding labor contracts for work that is only partially remote; the need to protect the privacy of employees by securing the right not to be in constant contact with the employer during their free time from work (the so-called right to be offline); excessive complexity of formalizing relations on distance work by means of an enhanced qualified digital signature; the lack of norms ensuring the possibility of protecting the collective labor rights of workers; the possibility of dismissing teleworkers on the grounds provided for by the employment contract, not justified by objective necessity; lack of legal norms regarding distance labor relations, complicated by a foreign element, etc.

Grin Elena Sergeevna

Selected issues of using the results of creative labor as part of complex objects of intellectual property rights

No. 10, 2018

The article discusses the issues of using the results of creative labor as part of complex objects of intellectual rights in the field of show business, theatrical art, design, etc. The author notes the need for legal regulation of individual objects of creative labor, which have become an integral part of a complex object and currently the legal regime which is not fully defined. The article indicates that, taking into account the development of digital technologies, foreign experience, it is necessary to analyze the domestic practice of legal protection of objects of creative labor, which have become an integral part of complex objects (both objects of copyright and objects of patent rights) in order to improve the legal protection of authors, the possibilities successful commercialization of the results

of intellectual activity created by them. The author concludes that in conditions of intense competition between manufacturers (both Russian and foreign), the protection of domestic authors who are able to create original and creative models from copying and borrowing their work should be a priority in supporting and developing the light industry. The article discusses the possibility of introducing additional protection for industrial designs and notes the need for the proposed mechanisms of legal protection to comply with the international obligations of the Russian Federation and meet international standards for the protection of such products. In the conclusion, it is noted that paying attention to the legal protection of the results of creative work (in particular,

Naruto Svetlana Vasilievna

CERTAINITY OF LEGISLATION AS A GUARANTEE OF HUMAN RIGHTS AND FREEDOMS IN THE CONSTITUTIONAL JUDICIAL DOCTRINE

No. 10, 2018

... The article discusses issues related to legal certainty, which, according to the author, is one of the essential conditions for the constitutionality of legislation, as well as a natural human right.

Attention is drawn to the fact that uncertainty is not always a defect in legislation, and in some cases serves as a kind of method of legal regulation, since it provides the law enforcement officer with freedom to use the flexibility of legal regulation in a specific situation in order to achieve an optimal result.

However, most often the lack of certainty is perceived as a defect in legislation, since it entails contradictory and arbitrary law enforcement practice, leading to the violation of the rights, freedoms and legitimate interests of citizens. The article substantiates this conclusion.

The author reveals the content of the certainty of legislation from the point of view of legal technique through the prism of the legal positions of the Constitutional Court of the Russian Federation.

It is concluded that the ambiguity and inconsistency of legal constructions is most often due to an increase in the number of scientific terms, special expressions in the normative material, a constant increase in the total number of acts of a "correction" nature. It is proposed to give the right of legislative initiative not to individual deputies, but to a group of at least 25 deputies. Along with this, it is advisable to give the right to legislative initiative to such legally sound bodies as the Ombudsman for Human Rights in the Russian Federation, the Prosecutor General.

The author refers to the question that, despite the surplus of legislative regulation, some important social relations remain unregulated in a timely manner, which leads to a violation of the rights and freedoms of citizens, the impossibility of implementing the norms of the Constitution. The article analyzes the practice of the Constitutional Court of the Russian Federation, which helps to overcome legal

uncertainty, to correct defects in legislation, however, according to the author, this does not contribute to the authority of the legislator and the law.

Mohrabyan Armine Samvelovna

CURRENT PROBLEMS IN THE SPHERE OF PROVIDING COSMETOLOGY SERVICES: PRIVATE LEGAL ASPECT

No. 10, 2018

Проведен комплексный анализ мнений ученых-правоведов, нормативно-правового регулирования и судебной практики, складывающейся в процессе оказания физическим лицам услуг по изменению или улучшению их внешнего облика. Выявлен ряд проблем, связанных с защитой прав пациентов, подготовкой специалистов и лицензированием соответствующих организаций, оказывающих услуги в сфере медицинской косметологии. Сделан вывод о необходимости детальной нормативно-правовой регламентации условий договора о возмездном оказании косметологических услуг с включением в него конкретных планируемых к проведению услуг и противопоказаний к ним, а также положений о конкретных результатах оказываемой услуги. На основе анализа действующего законодательства, разграничены понятия косметологических услуг и косметических услуг с точки зрения их отнесения к категории медицинских услуг. Особое внимание уделено вопросу о критериях определения размера возмещения морального вреда вследствие некачественного оказания косметологических услуг. Наряду с имеющимися в науке и законодательстве, предложен дополнительный критерий, связанный с необходимостью учета срока, требуемого для восстановления прежнего внешнего облика физического лица. В действующем законодательстве Российской Федерации отсутствуют какие-либо возрастные ограничения на оказание косметологических услуг, в том числе пластических операций, для несовершеннолетних граждан. В связи с этим, констатирована необходимость нормативного установления возрастных ограничений на некоторые виды услуг, связанных с изменением и (или) улучшением внешнего облика физического лица. С целью решения проблемы криминологического характера, предложено установить на законодательном уровне требование о ведении фотоархивов пациентов для пластических хирургов.

Rossinsky Sergey Borisovich

The problem of using the results of operational-search activities in the criminal process requires final resolution

No. 10, 2018

This article once again raises the problem of the possibility and forms of using information obtained in the course of operational-search activities in proving criminal cases.

Based on the results of his previous research in the field of evidence law, analyzing the norms of current legislation, doctrinal positions on this issue, modern judicial and investigative practice, the author comes to the conclusion that the current scientific approaches and the applied technologies of forming evidence based on the results operational-search activities are of a pseudo-procedural, artificial nature and, in fact, are nothing more than a cover for operational-search information, the most convenient type of evidence without analyzing their epistemological nature and essence.

The author invites his colleagues to admit that today the only possible solution to the problem of using the results of operational-search activities in proving the results is to legalize the mechanisms of their direct, direct introduction into the criminal process without the need for any imaginary, illusory procedural registration.

Taking into account the possible negative consequences of the proposed proposals, realizing the probable risks and potential danger of the lack of control and permissiveness of law enforcement officers, the author simultaneously formulates criteria for the admissibility of using the information collected in the course of operational-search activities in proving. These, in his opinion, are: a) non-reproducibility of the results obtained by investigative or judicial means; b) the possibility of checking and assessing the relevance, admissibility and reliability of the results obtained by criminal procedural means; c) the existence of a strictly formalized regime for conducting operational-search measures, which is not inferior in terms of the level of guarantees to the regime established by criminal procedure law.

Sergey Alekseevich Yurlov

THE CERTAINITY OF THE REGULATION OF SPORT AS A PRECONDITION FOR ESTABLISHING CLEAR LIMITS OF THE AUTONOMY OF SPORTS ORGANIZATIONS AND EFFECTIVE PROTECTION OF THE RIGHTS OF ATHLETES

No. 10, 2018

The domestic Law on Physical Culture and Sports does not clearly distinguish between the subjects of "state regulation" and "self-regulation". The provisions of the regulatory documents of sports organizations do not contain restrictions on the powers of the latter in terms of the regulation of a particular sport. Thus, the provisions of the legislation and regulatory documents of sports organizations are not specific, which leads to the existence of uncertainty in the regulatory regulation of sports. This, in turn, results in the absence of limits to the rule-making of sports organizations. In such a situation, the rights of athletes are

violated. The author of this work formulates the principle of normative certainty in the field of sports, which means the existence of such provisions of national legislation, international legal acts, as well as regulatory documents of sports organizations, a simple reading of which allows any subject who becomes familiar with them to understand what specific rights and obligations each of the subjects of sports has, as well as what is the procedure for their implementation, what responsibility for action and / or inaction can be imposed on each of the subjects of sports, what are the limits of the rule-making of sports organizations, and also what are the powers of the state in the field of normative regulation of a particular sport. The author of the article believes that the concept of autonomy of sports organizations can exist only if this does not lead to a violation of the rights and legitimate interests of athletes. According to the author, the limits of the autonomy of sports organizations should be formulated,

Idrisov Khusein Vakhaevich

Problematic issues of pre-contractual liability: doctrinal approaches and positions of judicial practice

No. 10, 2018

The article is devoted to the characteristics of a new type of civil liability - pre-contractual liability. The classical division of liability, depending on the method of its occurrence, into contractual and non-contractual has undergone a change. This is due to the addition of the Civil Code of the Russian Federation with new provisions governing the issues of negotiating the conclusion of an agreement, as well as issues of liability in connection with unfair negotiation, which led to the occurrence of losses for one of the parties.

Within the framework of the stated topic, a study was carried out of the positions in relation to the institution of pre-contractual responsibility that have developed in the doctrine of civil law. In modern civil science, there are two main points of view that formulate pre-contractual responsibility depending on the nature of contractual or non-contractual obligations. A separate theory is the so-called dualistic view of the nature of pre-contractual liability, which presupposes the contractual-tort nature of liability.

Within the framework of this article, for a more comprehensive understanding of the phenomenon under study, judicial practice is also given on controversial issues arising when the courts apply norms in the field of pre-contractual liability of participants who entered into negotiations to conclude an agreement, but did not conclude it. An analysis of judicial practice has shown that the courts, when considering cases arising from disputable situations related to negotiations on the conclusion of an agreement, proceed from the fact that the subjects of pre-contractual legal relations must adhere to the obligatory condition of negotiating the conclusion of an agreement - the observance of the principle of good faith. Failure to comply with this principle, which led to losses in the property sphere of one of the parties, implies in the future its responsibility.

The result of considering issues of pre-contractual liability is the author's conclusion that it is a separate and special type of civil liability, which is consolidated by bringing the author's wording of pre-contractual liability, based on its special legal nature and the specific properties of the subjects of pre-contractual legal relations.

Shakhnazarov Beniamin Alexandrovich

The territorial principle of intellectual property protection and the effect of state sovereignty in the digital space No. 10, 2018

The author investigates the theoretical aspects of the implementation of the territorial principle of intellectual property protection in the digital space. It is noted that the active development of the digital space by participants in cross-border relations in the field of protection and use of rights to intellectual property objects, the popularization of the Internet and the expansion of the areas of legal relations implemented on the network are accompanied by the emergence of new problems of protection of intellectual property objects due to their intangible nature and the emerging opportunity in one action violate intellectual property rights in different countries. The identified problems persist due to the operation of the territorial principle of the protection of exclusive rights, as well as the serious importance of the sovereignty of states, as in the classical territorial understanding, and its new forms, first of all, informational sovereignty. The author, examining the provisions of international treaties in the field of protection of various objects of intellectual property, considers the peculiarities of the development of the territorial principle of the protection of intellectual property, the digital space as an environment for the implementation of this principle. The issue of the boundaries of the territorial sovereignty of states in the digital space is proposed to be resolved through the development of clear criteria for determining the "territory for the implementation of relations." As universal such criteria, it is proposed to use the “territory of validity of rights” and “territory of permitted use of rights”, which, in cases with international registration, specify the territory of validity of rights. examining the provisions of international treaties in the field of protection of various objects of intellectual property, considers the peculiarities of the development of the territorial principle of protection of intellectual property, digital space as an environment for the implementation of this principle. The issue of the boundaries of the territorial sovereignty of states in the digital space is proposed to be resolved through the development of clear criteria for determining the "territory for the implementation of relations." As universal such criteria, it is proposed to use the “territory of validity of rights” and “territory of permitted use of rights”, which, in cases with international registration, specify the territory of validity of rights. examining the provisions of international treaties in the field of protection of various objects of intellectual property, considers the peculiarities of the development of the territorial principle of protection of intellectual property, digital

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In the absence of an international treaty that would regulate the actions of states on the administration of various segments of the Internet, including for the purpose of effective protection of intellectual property in cross-border relations, taking into account the action of the security (administrative and judicial) systems of other states, it seems appropriate to use the principle of non-interference in realization of rights to intellectual property objects outside the limits of national action of rights

Igor Ponkin
Redkina Alena Igorevna
FOREIGN SPORT FANS IDENTIFICATION LEGISLATION
No. 10, 2018

The article is devoted to the study of the problem of ensuring law and order at mass sports events through the introduction of personality identification systems for sports fans. The article shows the results of the study of the experience of 9 foreign countries (Argentina, Bulgaria, Brazil, Spain, Italy, Poland, Slovakia, France, Chile) in some main areas, the reference topic of the article. The article examines the provisions of foreign legislation on the collection of data about spectators by the organizers of sports competitions, on the maintenance of information registers, on the storage of information about visitors to sports events.

Dolgieva Madina Mussaevna

Foreign experience of legal regulation of relations in the field of cryptocurrency turnover

No. 10, 2018

The article examines the foreign experience of regulating cryptocurrencies since the beginning of their widespread use by the example of countries such as the United Kingdom, the United States of America, Canada, Australia, Ukraine, Japan, China, and Latin American countries. One look at a map that highlights the status of cryptocurrencies in the world shows that most countries are positively expectant, such as Venezuela, the United States, Canada, Australia, part of the European Union, as well as such giants of financial and technological thought like China and Japan. The neutral position of a number of countries (the European Union led by Germany, the countries of Latin America) is due to the lack of developed legislation regulating cryptocurrency relations. Cryptocurrencies are prohibited in Ecuador, Thailand, Vietnam, Iceland and Bangladesh. Venezuela became the first country in the world to create its own national cryptocurrency - Petro. Its cost is secured by the country's natural resources, and the price is tied to a barrel of oil. With Petro's help, the Venezuelan government hopes to bypass US sanctions to attract billions of dollars in investment and overcome the economic crisis. Venezuela's national cryptocurrency is built on a blockchain platform. It can be used for payments within the country and exchanged for other cryptocurrencies. Accordingly, for Russia, the accumulated international experience in the field of regulating cryptocurrency relations and determining the status of cryptocurrency as such, determines the early adoption of a law on the regulation of cryptocurrency activities and the possible emergence, in the next stage, of a national cryptocurrency - the crypto-ruble. Its cost is secured by the country's natural resources, and the price is tied to a barrel of oil. With Petro's help, the Venezuelan government hopes to bypass US sanctions to attract billions of dollars in investment and overcome the economic crisis. Venezuela's national cryptocurrency is built on a blockchain platform. It can be used for payments within the country and exchanged for other cryptocurrencies. Accordingly, for Russia, the accumulated international experience in the field of regulating cryptocurrency relations and determining the status of cryptocurrency as such, determines the early adoption of a law on the regulation of cryptocurrency activities and the possible emergence, in the next stage, of a national cryptocurrency - the crypto-ruble. Its value is secured by the country's natural resources, and the price is tied to a barrel of oil. With Petro's help, the Venezuelan government hopes to bypass US sanctions to attract billions of dollars in investment and overcome the economic crisis. Venezuela's national cryptocurrency is built on a blockchain platform. It can be used for payments within the country and exchanged for other cryptocurrencies. Accordingly, for Russia, the accumulated international experience in the field of regulating cryptocurrency relations and determining the status of cryptocurrency as such, determines the early adoption of a law on the regulation of cryptocurrency activities and the possible emergence, in the next stage, of a national cryptocurrency - the crypto-ruble. With Petro's help, the Venezuelan government hopes to bypass US sanctions to attract billions of dollars in investment and overcome the economic crisis. Venezuela's national cryptocurrency is built on a blockchain platform. It can be used for payments within the country and exchanged

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Dmitry Knyazev

Actions of the Parties to a Civil Dispute in the Case of Mandatory Mediation: Analysis of the US Experience

No. 10, 2018

In the case of the institution of compulsory mediation, the court is forced to assess the actions of the parties to the dispute before and (or) during the mediation session. The US experience shows that the development of uniform criteria for the proper performance of such a duty is a difficult task, and the US judicial system has not yet been able to solve it. The requirement of good faith participation in mediation is enshrined in US law and local court rules. Taking into account the fact that the parties take part in the conciliation procedure not of their own free will, it is intended to encourage them to treat it carefully, to exclude abuse during the procedure. However, there is no legal definition of conscientiousness, it has not been established at the level of precedents, there are disagreements in the doctrine. Judicial practice allows, almost without reservations, to recognize as signs of good faith the presence of written explanations provided by the parties to the mediator in advance on the merits of the dispute, attendance at the mediation session and ensuring the participation of such a representative who has sufficient authority to discuss and conclude an agreement. Aspects such as participation in several mediation sessions, as well as the length of the session, are evaluated differently by the judges. There are cases when American judges qualify the unilateral refusal of a party from further participation in mediation as a basis for imposing sanctions. who has sufficient authority to negotiate and conclude an agreement. Aspects such as participation in several mediation sessions, as well as the length of the session, are evaluated differently by the judges. There are cases when American judges qualify the unilateral refusal of a party from further participation in mediation as a basis for imposing sanctions. who has sufficient authority to negotiate and conclude an agreement. Aspects such as participation in several mediation

sessions, as well as the length of the session, are evaluated differently by the judges. There are cases when American judges qualify the unilateral refusal of a party from further participation in mediation as a basis for imposing sanctions.

In the opinion of most legal scholars, the requirement for bona fide participation only harms the mediation procedure, since the relationship between the participants in mediation is distorted, the adversarial principle intensifies, which contradicts the nature of mediation; there is an implicit coercion of the parties to conclude an agreement; there is an opportunity for the emergence of additional litigation - about responsibility for improper behavior during mediation; the role of the mediator is being eroded due to the need to assess the actions of the parties; a conflict with the principle of confidentiality of the procedure is inevitable.

Nikolay Alekseevich Kolomytsev
Lyubov Nikolaevna Odintsova
Ethics of law and problems of female crime in Russia
No. 10, 2018

The article deals with the actual problems of female crime and law. The features of female criminals are reflected, associated with her historically determined place in the system of social relations, social roles and functions, biological and psychological specifics. The dynamics and trends in the development of female crime are revealed. A significant role in this regard is given to the end of the last century. The types of crimes committed by women are listed, which include violent acts: murder and murder by a mother of a newborn child, in particular, causing harm to health of varying severity, infection with a venereal disease; theft in the form of theft of someone else's property, simple robberies, fraud, appropriation and waste; acts in the field of illegal traffic in narcotic drugs, psychotropic substances and their analogues; robberies and extortion as part of complicity. A new crime of women was revealed - murder, that is, murder by order.

A comparative analysis of female and male crime and a sufficient number of points of view of specialists in this area is carried out. The author's own position is expressed. Theoretical provisions and conducted own research are confirmed by specific examples from investigative and judicial practice.

The analysis of the normative legal acts regulating the fight against this social phenomenon is presented. The influence of alcohol and drug addiction on legal relations with the state is highlighted. It has been established that women in a state of alcoholic and drug intoxication are much more likely to commit crimes than in a sober state. Proposals for improving the activities of law enforcement agencies and the public in countering female crime by improving the norms of the current criminal executive legislation have been substantiated.

Avdeev Vadim Avdeevich
Avdeeva Ekaterina Vadimovna
THE MECHANISM OF CRIMINAL LEGAL REGULATION OF CRIMES AGAINST LIFE AND HEALTH IN THE HISTORY OF RUSSIAN LAW
No. 10, 2018

The article poses the problem of studying the process of formation and development of domestic criminal law policy in the field of protecting human life and health. The study is based on comparative legal and formal legal methods, which made it possible, on the basis of the ratio of the formula of legal regulation of crimes against life and health, to trace the formation of the mechanism of criminal legal protection of human life and health. On the basis of a retrospective approach to the analysis of criminal law regulation of crimes against life and health, conclusions are formulated about the purposes of punishment assigned for crimes against life and health. As a result of the study, a conclusion was made about the peculiarities of the state's criminal law policy during the period of its formation. Taking into account the ongoing changes in the socio-economic and political-legal spheres, the evolution of the criminal-legal policy is traced, the analysis of the factors determining the mechanism of the criminal-legal protection of life and health is given. The article reflects the process of consistent regulatory legalization in the course of the development of the Russian statehood of crimes against life and health. The methodological principles of protecting the inviolability of life and health of an individual in Russia have been determined. The problem of the problems of the implementation of the criminal law policy in the sphere of life and health protection, conditioned by the adequacy of the measures of criminal punishment, is outlined. An opinion was expressed on the principles of the implementation of criminal punishment, coupled with the need to take into account a set of factors: the social danger of the crime committed and the personality of the offender, circumstances, influencing the measure of state coercion, order and conditions of detention of convicts. The effectiveness of criminal law policy in the field of ensuring the human right to life and health requires the improvement of the legislative formula, which presupposes the consistency of criteria for assessing and qualifying criminal law norms, differentiation of punishment based on the degree of damage caused to a person, society and the state by these types of crimes.

Skorobogatov Andrey Valerievich
Rybushkin Nikolay Nikolaevich
ESTABLISHMENT OF A SYSTEM OF CRIMINAL LEGAL BANKS IN THE SOVIET LEGAL DISCOURSE
No. 10, 2018

The article is devoted to the study of the role of prohibitive norms of criminal law in legal regulation in the first years after the establishment of Soviet power in Russia. Based on the analysis of normative legal acts regulating criminal

legal relations and the legal doctrine of this period, the authors prove that despite the revolutionary nature of Soviet criminal law, an element of continuity occupies a large place in it. This is expressed both in the formal dogmatic method of constructing prohibitive norms, and in law enforcement practice, where it was allowed to use the laws of the overthrown governments if they corresponded to the revolutionary legal consciousness. The article emphasizes that the combination of legal traditions and innovations is a traditional phenomenon for Russia. The Bolsheviks were unable to construct a completely new law. Basically, Soviet criminal law is based on the prohibitive type of legal regulation, which is traditional for Russian civilization. The prohibitive nature of the Soviet criminal law of the period of "war communism" was at the same time consistent with the archetype of the patriarchal-paternalistic state, formed back in Kievan Rus, and the Bolshevik idea of the need to destroy "bourgeois" law and form a socialist law, the application of which in the transitional period to communism would be ensured by the coercive power of the state ...

Antipov Alexey Nikolaevich

PROBLEMS OF EVALUATING THE ACTIVITY OF COMPLICATED SYSTEMS

No. 10, 2018

Evaluation of the performance of an employee, a team, the entire complex system, to which any federal authority belongs, is a complex problem. In recent years, it has become more and more obvious that the existing systems of indicators do not reflect the objective picture in the analyzed system. The effectiveness of the functioning of government bodies often raises many questions among citizens, and the legality of the activities of individual officials, including leaders, is in doubt. All this does not contribute to raising their image, strengthening confidence. The authorities periodically become the object of criticism and corruption scandals.

One of the reasons for the current state of affairs is the ineffectiveness of the existing criteria and indicators for assessing the activities of both individuals and divisions as a whole. This is predetermined by the established practice of forming criteria and indicators for assessing activities by the evaluated structures themselves. In such conditions, departmental interest is laid, a number of indicators have an ambiguous meaning - under certain conditions, the same indicators can be considered both positive and negative. The question of improving this toolkit is quite objectively raised. Departmental isolation and disunity of state bodies predetermines and normatively fixes the discreteness of statistical data evaluating the analyzed structure, the lack of continuity of the tasks being solved. There is no dependence between the efficiency of employee performance and the amount of their material incentives. Often, assessment criteria create the illusion of positive dynamics, show a biased picture, thereby increasing risks and dangers, increasing the degree of latency of negative processes, which leads to incorrect management decisions.

We note the problems of control over the activities of government bodies in solving state problems, their non-integration into society.

In the article, in theoretical and practical terms, the main approaches to the assessment of activities are considered, the problems that determine the ineffectiveness of the existing criteria and indicators are identified, and the directions for improving the legal and organizational support of this activity are formulated.