Siberian Law Herald 2022. № 4

Ganusenko Irina Vladimirovna

Peculiarities of the legal status of subjects of entrepreneurial activity as a military person responsible in the Russian Empire

Abstract

The issues of the features of the legal regulation of the military duty of male by military obligations are considered to be taxed in the field of entrepreneurial activity, in the Russian Empire of the XVIII – early XX centuries, due to the presence of spaces in the domestic law sci-ence on the study of these issues. Features of the legislative practice of the formation of certain institutions of military law and the devel-opment of the system of industry military legislation in Russia during the government of military reforms in the first quarter of the XVIII centuries were revealed. General trends in interaction in the domestic legal system of military law and entrepreneurial and tax law were identified in terms of the specifics of the regulatory security of legal persons who fulfill national obligations at the same time: military and paying tax for the right to engage in professional entrepreneurial activity. Based on the analysis of the accumulated historical experience of the Russian Empire, a conclusion was concluded about the effectiveness and the advisability of providing benefits for the performance of military duty for entrepreneurs.

Keywords

Russian Empire, military law, military reform, military service, recruitment, military service, entrepreneurs, entrepreneurial activity, merchant certificate, taxation, and industrial tax

Kazarin Victor Nikolaevich

Scientific legal heritage of professor Sergey Vladimirovich Shostakovich. To the 120 anniversaries since birth

Abstract

Are considered scientific heritage of the historian, lawyer and orientalist, professor of the Irkutsk university S. V. Shostakovich. Its role in reconstruction of the higher legal education in Eastern Siberia is noted. The main attention is paid to the analysis of historical and legal questions in research of antique Greece, the countries of the Middle East, Central Asia and China during modern and latest times. It is noted that S. V. Shostakovich made a scientific contribution in studying the legal dependent population and patriarchal family in Ancient Greece, problems of the feudal monarchy in Persia of the end XVIII – the first half of the 19th centuries, international law, a problem of exterritoriality of foreigners in China of the beginning of the 20th century, international legal position of the state Tannu-Tuva in the 20th of the 20th century. It one of the first considered also political and legal views of the prominent Russian diplomat A. S. Griboyedov. The conclusion is drawn that S. V. Shostakovich carried on scientific traditions of a historical and legal perspective of the Irkutsk legal school of the 1920th, made an original contribution to studying problems of history of state and law, a political and legal thought.

Keywords

S. V. Shostakovich, Irkutsk university, legal education and science, historical and legal researches, traditions

Samusevich Alexey Gennadievich

Digital law enforcement: Theory and practice

Abstract

The problems of theoretical understanding and practical development of digital law enforcement are considered. Various modern scien-tific approaches to the concept and features of digital law enforcement, as well as to the digitalization of individual stages of the law enforcement process in various legal procedures are analyzed. The characteristic of digitalization of the stages of law enforcement is given. It is concluded that the process of law enforcement can be digitalized only at some stages (stages) of law enforcement activity. When making legal decisions, the use of digital tools today seems difficult due to a variety of theoretical and technical circumstances. The author comes to the conclusion that it is premature to talk about the complete digitalization of the law enforcement process at the present time.

Keywords

law enforcement, law enforcement activity, artificial intelligence, electronic justice, electronic judge, digital law enforcement

Shveyger Aleksandr Olegovich

Problems of implementing the necessary defense against administrative offenses

Abstract

The article deals with the issue of necessary defense. The conclusion is made about its universal character. Its intersectoral nature is noted. The sign of the public danger of encroachment is analyzed, as a result of which the author comes to the conclusion that the legislator deliberately does not use it in relation to administrative offenses, seeking to differentiate offenses related to criminal law in this way. It is also concluded that the correct approach is applied by the legislator to exclude the sign of public danger from administrative offenses. The peculiarity of administrative offenses and the possibility of using the necessary defense to protect against them are analyzed. The conclusion is made about the possibility of applying the necessary defense against administrative torts and the need to include this institution in the number of circumstances excluding the delinquency of the act.

Keywords

administrative offense, necessary defense, public danger, circumstances excluding the composition of an administrative offense

Shishkin Sergey Ivanovich, Khertuev Roman Yurievich

State registration of regulations legal acts of the executive bodies subjects of the Russian Federation

Abstract

The article deals with certain topical issues related to the implementation in the constituent entities of the Russian Federation of the mechanism for state registration of regulatory legal acts of executive bodies. The main issue that the constituent entities of the Russian Federation need to resolve when regulating these public relations is the establishment of the obligation to conduct a legal examination of registered regulatory legal acts. According to the authors of the article, legal expertise must be present during the implementation of state registration, since it is it that allows you to improve the legal quality of the adopted regulatory legal acts, and thereby achieve the goals of introducing the institution of state registration of regulatory legal acts of executive bodies in all constituent entities of the Russian Federation. At the same time, legal expertise can take place both before the moment of state registration, in fact acting as a prerequisite for the latter, and after the state registration of a normative legal act. The article identifies certain problems associated with the implementation of the mechanism of state registration of regulatory legal acts of the executive bodies of the constituent entities of the Russian Federation. So, for example, in many regulatory legal acts of the constituent entities of the Russian Federation, the rule is fixed, according to which state registration is carried out only in relation to certain categories of regulatory legal acts, i.e. state registration in these constituent entities of the Russian Federation is partial. In this regard, it is noted that it is necessary to correct federal legislation in terms of ensuring a uniform approach to the legal regulation of issues of state registration of regulatory legal acts of the subjects of the Russian Federation. It is necessary to consolidate the legal norm in the federal law, according to which state registration should be carried out in relation to all adopted normative legal acts, i.e. in perfect order.

Keywords

state registration of normative legal acts, register of normative legal acts, legal examination, preliminary legal examination, subsequent legal examination, register of normative legal acts, registering authority, registration number

Kovalenko Yulia Nikolaevna

Problems of determining the shape in the right of common shared ownership of common property in an apartment building

Abstract

It is established that in order to implement effective decisions of meetings of co-owners in the right of common shared ownership, it is extremely important to provide a single and understandable way of counting votes and the principle of expenses commensurate with the share in the right of common ownership corresponding to

this method. The main legal problems arising in connection with the quantitative calculation of the size of the shares of co-owners in the right of common shared ownership of the common property of an apartment building are identified. The leading approaches to the study of this problem are dialectics, analysis, synthesis, deduction, formal legal and comparative legal methods. It is concluded that when calculating the share, it is necessary to take into account the ratio of the size of the area of a certain room to the total area of all residential and non-residential premises in the aggregate, without taking into account the total property of an apartment building, in connection with which it is recommended to amend paragraph 1 of Article 37 of the Housing Code of the Russian Federation. To date, it is relevant to investigate the regulation of the share in the right of common ownership, because, despite the presence in the Housing Code of the Russian Federation of the norm on the definition of the share, law enforcement practice is not uniform and contradictory, applying different approaches to the calculation of the share. At the same time, this issue is of great practical importance, since it is related to the counting of the number of votes at the general meeting of co-owners, and also directly affects the rights and legitimate interests of co-owners in terms of redistributing the burden of expenses for the maintenance of common property in an apartment building in accordance with the size of the share.

Keywords

decision of the meeting, general meeting of co-owners, common shared ownership, common property of an apartment building, share in the right of common ownership

Rainikov Artem Sergeevich

The practical significanceof the definition of the element of combined contracts

Abstract

The article considers practical aspects of applying the definition of the element to regulation of combined contracts and contracts which are not combined but can be fallaciously qualified as such. It is determined fallacious to qualify a named contract as a combined contract when it is complicated by rights and obligations, which are provided for another named contract but are not essential for it. It is concluded that the typical qualifying mistake is to consider as a combined contract the document which involves two or more agreements as legal relationships. In the case of the contract determining rights and obligations in regard to civil defense facilities it is shown how the identification of the element through the essential rights and obligations for any named contract helps to solve the problems of using combined contracts. It is proposed to refrain from absolutization of the concept of essential contract`s performance when distinguishing between unnamed contracts and combined contracts in so far as agreement combining the elements of various named contracts sometimes can be qualified as unnamed contract. It is found that in addition to a composition of basic elements of contract it is necessary to take into account the constancy of the composition from one contract to another, which becomes an indicator of the unique legal purpose of such contracts. It is concluded that the example of the combined contract with the unique legal purpose is a distribution agreement that has gone from contract with random set of elements to unnamed contract characterized by a stable combination of elements and the legal purpose that is unique to this contract.

About the Authors

Keywords

combined contract, unnamed contract, element of combined contract, essential performance

Belov Andrey Nikolaevich

Some aspects of the criminal law analysis of violations of fire safety requirements

Abstract

Some aspects of the characteristics of the violation of fire safety requirements in the doctrine of criminal law and in criminal law are presented, taking into account the blank nature of the relevant provisions and norms. The emphasis is placed, first of all, on the objective signs of the corpus delicti provided for in Article 219 of the Criminal Code of the Russian Federation. Fire safety is analyzed as an object of the crime under consideration. Attention is paid to the correlation of fire safety with such categories as public safety and national security. Special attention is paid to the analysis of such a phenomenon and category as “fire”, its place and role in relation to the composition of the crime under consideration. It is concluded that fire is inevitably an obligatory objective sign of this corpus delicti. A proposal is made on the need to supplement the resolution of the Plenum of the Supreme Court of the Russian Federation with an appropriate instruction.

Keywords

public safety, fire safety, fire safety requirements, violation of fire safety requirements, source of increased danger, fire, fire hazards

Zhilkin Maksim Gennad'evich

To the question of the time of the end of the crime

Abstract

A study was made of the relationship between the actual and legal moments of the end of a crime in criminal law and judicial practice. Based on a comparison of the legislative structures of various types of crimes and the legal provisions of judicial practice, it has been proved that the actual end of a crime may not coincide with its legal definition, which leads to problems in criminal law assessment in such situations. The role of clarifications of the highest court in determining the moment of the end of crimes and their importance for the correct application of the criminal law is shown. On the example of certain types of crimes, the features of determining the moment of the actual and legal end of crimes with formal, truncated and material constructions are analyzed. The problems of establishing the moment of the end of crimes depending on their legislative structure are identified and positions on their solution are substantiated, which contributes to the development of the doctrinal provisions of criminal law on completed and unfinished crimes and allows directing law enforcement practice along the path of a uniform understanding of the criminal law.

Keywords

criminal liability, completed crime, the moment of the end of the crime, the end of the crime, the legislative structure, the corpus delicti

Oreshkin Maksim Ivanovich

Some problems of qualifying crimes related to corporate takeovers (based on judicial practice). Part 1

Abstract

The article deals with certain problems of applying the norms of criminal law in the field of counteracting raider seizures. A brief analysis of the dispositions of part one of article 170.1 and part one of article 185.5 of the Criminal Code of Russia is given, attention is drawn to certain shortcomings in the structure of offenses and contradictions that arise in law enforcement. Statistical data for the last three years on the number of persons convicted of these crimes are given. The judicial practice in criminal cases considered under the indicated articles in various regions of Russia is summarized, excerpts from court verdicts and judicial acts of the appellate and cassation instances are given. The problems of qualification of socially dangerous attacks committed with the aim of seizing the management of organizations, and their competition with the elements of crimes provided for by Articles 159, 327 of the Criminal Code of the Russian Federation, are touched upon. The points of view of some scientific and practical workers on the issues of the topic are given and the author's personal position on solving the problems that have arisen is expressed in order to avoid mistakes in law enforcement practice.

Keywords

raider takeover, criminal statistics, crimes in the field of economic activity, falsification of decisions of the governing bodies of a legal entity, entering deliberately false information into the Unified State Register of Legal Entities, fraud in the field of corporate governance

Parkhomenko Svetlana Valerievna, Lazuk Darya Sergeevna

Commenting on distinction of minor acts (part 2 art. 14 of the Criminal Code of the Russian Federation) and other offenses

Abstract

This research is devoted to the issue of distinction between minor acts (p. 2 of Art. 14 of the Criminal Code of the Russian Federation) and other offenses. As an example, the author analyzes the complexity of application Art. 256 of the Criminal Code of the Russian Federation and p. 2 of Art. 8.37 of the Code of Administrative Offenses of the Russian Federation. During the research it becomes clear that population of the Russian Federation, including justice officials, does not perceive illegal fishing as a crime. In this regard, there are a lot of controversial issues considering ways of distinguishing an administrative offense from a criminally

punishable act. Based on the results of the study, the author made an attempt to improve the legislation, specifically we propose to introduce the new concept of a “criminal offense” in order to bring the legislation in line with social and economic forces.

Keywords

insignificance, minor acts, social danger, criminal liability, administrative liability, illegal fishing

Koziychuk Pavel Nikolaevich, Kuznetsov Evgeny Viktorovich, Shapochansky Vladimir Nikolaevich

Search for persons who have lost contact with close relatives: retrospective analysis and legal aspects

Abstract

The article examines the issue related to the lack of a legal basis for the search by Russian law enforcement agencies for persons who have lost contact with close relatives. Attention is focused on the fact that there are currently no regulatory legal acts regulating the procedure for declaring the above-mentioned persons on the federal wanted list, and therefore the function of the police, which implemented it from 1993 to 2018, has become illegitimate in this part. The thesis is made that the absence of clear norms in Russian legislation regulating the procedure for searching for persons who have lost ties is a significant legal gap that has a negative impact on various public relations. At the same time, it is stated that the Russian society feels the need to search for the above-mentioned persons. Within the framework of the study, the categories “missing person” and “person who has lost family ties” were correlated. In retrospect, individual reasons are described that cause both the loss of family ties and the appeal of relatives to law enforcement agencies with statements about the search for loved ones. Statistical data in the area under consideration are studied. The latter were correlated with information about persons who were put on the wanted list as missing persons, and data on the number of operational records opened in connection with the discovery of unidentified corpses. Direct correlations between various indicators in the field of search have been revealed. The overall result of the work was to determine the methods of legal regulation of the activities of competent subjects of public relations in the field of establishing the locations of persons who have lost contact with close relatives.

Keywords

persons who have lost contact with close relatives, investigative activities, search, operational search activities, missing persons, causes of disappearance of people, unidentified troupes, statistical indicators in the field of search

Koisin Alexander Anatolyevich

Evaluation of the expert's opinion: Criminalistic and criminal procedural aspects

Abstract

The process of proving in criminal cases consists of many factors, one of which is the use in the process of proving evidence obtained during the investigation of a criminal case or consideration of a criminal case on the merits. As evidence, according to Article 74 of the Code of Criminal Procedure of the Russian Federation, the testimony of the suspect, the accused, the testimony of the victim, the witness, the conclusion and testimony of an expert, the conclusion and testimony of a specialist, physical evidence, protocols of investigative and judicial actions and other documents can act. At the same time, none of the evidence has a predetermined force and is evaluated in aggregate along with other evidence. The subjects of proof – the investigator (inquirer), the prosecutor, the court, as well as the defense attorney must evaluate any evidence in terms of their admissibility, relevance and reliability, and all in aggregate – their sufficiency for the consideration of a criminal case. Evaluation of the expert's opinion causes the greatest difficulties in practice for all participants in the proof process, since they have to face evidence, the study of which requires certain skills and knowledge. Based on this circumstance, an attempt has been made to reveal in the article the criminalistic and criminal procedural aspects of such an assessment. Special emphasis is placed on the typical mistakes and shortcomings that experts make when preparing their conclusions, as well as mistakes made by participants in the proof process when studying the text of the expert opinion. Recommendations for correcting such errors are proposed, as well as a recommendation for changing the current criminal procedure legislation.

Keywords

заключение эксперта, доказательство, субъекты доказывания, допустимость, экспертная деятельность, методика экспертного исследования, критерии оценки доказательств, процесс доказывания, выводы эксперта

Lyubozhenko Igor Anatolyevich

Organizational and tactical aspects of obtaining criminalistically significant information by an investigator from a forensic specialist during an inspection of the scene

Abstract

In the article, the author considers the issues of obtaining forensic information during the inspection of the scene of the incident and the problems arising in this regard. The priority role of forensic experts as part of the investigative task force was noted and recommendations were made regarding the solution of individual problems of the investigative task force during the inspection of the scene. The author notes such an important component of the professional activity of a forensic expert as psychological training and increased motivation. The current directions of forensic research involving a specialist of the Forensic Center to inspect the scene of the incident are outlined. Attention is focused on the elimination of the “human factor” in the activities of the investigative task force.

Keywords

inspection of the scene, investigator, expert, specialist, criminologist, investigative action, investigative team, collection of evidence

Rossinsky Sergey Borisovich

Independence of the investigator in the criminal procedure: myth or reality?

Abstract

The reasons that influenced the significant limitation of the procedural independence of the investigator due to a sharp increase in the volume of procedural-administrative and procedural-control powers of the head of the investigative body are identified. One of these reasons is explained by attempts to overcome the consequences of the well-known law enforcement crisis of the 1990s, which led to a decrease in the quality of the preliminary investigation. The second reason is connected with the administrativeization of the Soviet preliminary investigation, with the assignment of classical jurisdictional (judicial-investigative) powers to the executive authorities. As a result, the conclusion is formulated that at present the procedural independence of the investigator is nothing more than another doctrinal myth. Attention is drawn to the fact that discretionary powers in the arsenal of the investigator are actually reduced to a minimum, and the possibility of their use rests on the procedural omnipotence of the head of the investigative body. In conclusion, the prospects for the further development of the preliminary investigation bodies in the context of the subject of this article are analyzed.

Keywords

pre-trial proceedings; powers of the investigator; preliminary investigation; procedural independence of the investigator; head of the investigative body; investigator; investigator status

Shishkina Natalia Eduardovna, Gorbacheva Elena Vasilievna, Shishmareva Ekaterina Vladimirovna

Criminalistic characteristics of female crime as the basis for the formation of the investigation methodology

Abstract

The analysis of women’s crime as an independent type of criminal activity with specific criminalistic properties and features that allow them to talk about the need to form a private investigation methodology. It is revealed that quantitative indicators of the considered type of crime have an unfavorable trend and are characterized by an increase in the share of criminal acts committed by women in the overall structure of crime. The structure of the criminalistic characteristics of female crime is presented, the elements of key importance for the investigation process are identified. The features of the personality of women who commit crimes are considered, their typology is given, taking into account the most important signs for the production of investigative actions.

For citation

Shishkina N. E., Gorbacheva E. V., Shishmareva E. V. *Kriminalisticheskaya harakteristika zhenskoj prestupnosti kak osnova formirovaniya metodiki rassledovaniya* [Criminalistic characteristics of female crime as the basis for the formation of the investigation methodology] *Sibirskij yuridicheskij vestnik* [Siberian Law Herald]. 2022, no 4(99), pp. 123 - 127. DOI 10.26516/2071-8136.2022.4.123. (in Russian).

Keywords

psychological features, tactical features of the interrogation, female crime, typology of the personality of women who commit crimes, investigation of crimes committed by women

Lisauskaite Valentina Vlado

Early warning as a strategic element in the international framework for disaster risk reduction: causes and needs

Abstract

The article presents an analysis of international cooperation of States on the formation of early warning systems for disasters. The author considers terminological features, legal regulation, and also identifies problems that exist in the practice of states and the world community as a whole. The study is based on the analysis of the Sendai Framework for Disaster Risk Reduction for the period 2015-2030, as well as other international documents. At the end of the article, the final conclusions are presented.

Keywords

international cooperation on disaster risk reduction, protection against disasters, early warning, UN Office for Disaster Risk Reduction

Meshcherikov Viktor Alexandrovich

The arctic zone of the Russian Federation: international cooperation and development prospects

Abstract

The Arctic plays in international cooperation, due to its geographical location and the wealth of natural resources. The international legal regulation of the Arctic regime is fixed at the level of international multilateral and bilateral agreements. Multilateral international agreements are aimed at regulating the Arctic marine spaces and protecting the environment in this region. Bilateral agreements are aimed at the settlement of border disputes between the Arctic States, as well as economic cooperation. Analysis of bilateral international agreements concluded between the Russian Federation and countries such as Canada, the Kingdom of Norway, the United States of America, as well as the United Kingdom allows us to come to the following conclusions: the issues of international cooperation between the Russian Federation and Canada in the field of trade and commercial relations, environmental protection have been most fully worked out., issues of joint economic activity in the Svalbard archipelago, fishing were resolved and territorial disputes were settled between Russia and Norway. International agreements with other mentioned countries are mainly aimed at establishing territorial borders

Keywords

Arctic, Arctic states, bilateral international treaties, Russia, Canada, Kingdom of Norway, USA