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Law under the light of philosophical interpretations of pluralism

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Abstract

The article deals with the systematisation of the existing ideas about legal pluralism. There are various teachings on law in the article and they are correlated with different philosophical approaches to pluralism (extreme subjectivism, subjective idealism, extreme objectivism, dialectical approach), and the legal pluralism is considered as a reflection of social pluralism. There is confirmed the inadmissibility of the absolutization of ideas about legal pluralism, in which the systemness of law as such is denied, and at the same time the productivity of its consideration as an inevitable aspect of the development of law. There is esablished the possibility of combining the dialectical approach to law with the ideas of legal pluralism. It is concluded that legal pluralism cannot be reduced only to situations of a combination of official and unofficial (authorized) law within the state. It represents complementary and substituting forms of pluralism of law (the presence of several systems (subsystems) of law in society) and pluralism in law (consideration of the interests and values of various social groups in a specific system (subsystem) of law at the level of principles of law, legal norms, legal relations). From a practical point of view, this conclusion means the applicability of the concept of legal pluralism not only to the legal “exoticism”, but also to the political and legal reality of many modern societies.

Keywords

legal pluralism, pluralism of law, pluralism in law, dualism of law, system of law, subjects of law, social pluralism

The bank of Russia and compliance issues human and civil rights and freedoms in the Russian Federation

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Abstract

The norms of the Constitution of the Russian Federation and the Federal Law “On the Central Bank of the Russian Federation (Bank of Russia)” were used to study the status of the Central Bank of the Russian Federation, since the status of the Central Bank of the Russian Federation is not clearly defined, including based on the organizational and legal forms of legal entities known to Russian science. It is revealed that, on the one hand, the Bank of Russia acts as a public authority, and on the other hand, as a commercial organization with elements of a state enterprise. It is concluded that the legally uncertain status of the Central Bank of the Russian Federation with the right granted to it to make individual decisions at the state level has led the Bank of Russia to issue acts restricting the rights and freedoms of individuals residing in the Russian Federation. The article has achieved its goal – to determine the legal status of the Central Bank of the Russian Federation, and also revealed violations by the Bank of Russia (in the course of its activities) of human and civil rights and freedoms. The materials for the study were the Constitution of the Russian Federation, federal laws, regulatory legal acts of the State Duma and the Government of the Russian Federation, as well as individual decisions of the Bank of Russia. General and private scientific methods were used in the work – analysis, synthesis, analogy, formal legal, comparative legal, interpretation of legal norms, etc. As a result of the conducted research, the definition of the state organization “Central Bank of the Russian Federation” was formulated, as well as violations by the Bank of Russia of the right to free use of money belonging to a person and a citizen, which is property, were identified, and proposals were developed to amend the Federal Law “On the Central Bank of the Russian Federation (Bank of Russia)” and the Federal Law “About the Prosecutor’s Office of the Russian Federation” to determine the state body, which should exercise control (supervision) over the observance by the Bank of Russia of human and civil rights and freedoms in the Russian Federation.

Keywords

the Constitution of the Russian Federation, human and civil rights and freedoms, restriction of rights and freedoms, Central Bank of the Russian Federation, state organization, control (supervision)

The form of objective (positive) law and the legal force of its content

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Abstract

An analysis of the category “form of law” as an alternative to using the more ambiguous and controversial concept of “source of law” is made; the difference between the forms of positive law and the forms of objective law is determined. The problem of the possible use of the category “form of positive law” as a stable legal category in the general and branch theory of law is posed. The phenomenon of legal force is investigated and the dependence of this phenomenon, which is fundamentally important for understanding the nature of the law itself, is determined not from the external forms (shells) of law, but from their content - specific legal norms. The dependence of legal force on the level of expression in the disposition of the legal norm of one of the three modes of regulation of social interaction is established: prohibition, obligation or authorization. The necessary conclusions about the nature of the legal force derived from the regulatory significance of legal norms are drawn. Particular attention to the problem of transforming the forms of objective law into forms of positive law is drawn, the key element of which is the acquisition of a formalized sign of public authority by the form of positive law. On the basis of the performed analysis, the main problems of belonging of legal force to modern forms of positive law (in fact, to their internal normative content), as well as to acts of law enforcement and official interpretation of law, are determined. The issue of the origin and transformation of legal force as a conceptual phenomenon is touched upon, attention is drawn to the ethical problem of the correlation between the legal and moral force of the norms. Conclusions about the practical significance of using the categories “form of law”, “form of positive law”, “legal force of the legal norm” in modern legal science and in practice are drawn.

Keywords

source of law, form of law, form of positive law, form of objective law, legal force, content of the form of positive law, legal norms, act of application of law, act of official interpretation of law

Information technologies in the activities of the prosecutor’s office of the Russian Federation on supervision of the implementation of the laws

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Abstract

The presented article analyzes some of the historical prerequisites for the digitalization of the prosecutor’s activities, and also considers the information resources that were planned to be introduced into the work of the Soviet prosecutor’s office, which made it possible to draw analogies with modern information systems used in the activities of the prosecutor to oversee the implementation of laws. The use of various modern information technologies by prosecutors is considered both in traditional verification activities and in the implementation of supervisory support for the implementation of laws used in the framework of ensuring the rule of law in the implementation of national projects. According to the results of the study, the current problems in the digital transformation of the prosecutor’s office were identified, both technical (quality of communication, the possibility of providing communication as such) and legal (lack of legislative regulation of the so-called remote prosecutorial checks using information resources), and in order to solve the problem of opposition from the audited persons who evade obtaining the documents necessary for the audit or refuse to comply with the requirements of the prosecutors, it was proposed to develop a new information service for

entrepreneurs, which would level the existing difficulties in the interaction of the prosecutor with supervised persons

Keywords

supervision over the execution of laws, prosecutorial review, supervisory support, digital transformation, information systems

Expenditures of local budgets for the provision of municipal services (performance of works): legal characteristics

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Abstract

The issues of financial and legal support of municipal services (performance of works) are investigated. Special attention was paid to the analysis of municipal legal acts in the studied area. At the same time, it was revealed that the expenditures of local budgets for the provision of municipal services, the performance of works play an important role in solving issues of local importance, improving the quality of life of citizens. The necessity of their uninterrupted implementation is noted, which is possible only with detailed legal regulation of the specifics of financial provision of municipal services by public authorities at all levels. The conclusion is made on the issue concerning the return of the subsidy for the provision of municipal services in violation of the conditions for its receipt. In accordance with paragraph 3.1 of Article 78 of the Budget Code of the Russian Federation (hereinafter referred to as the BC of the RF), if the recipients of subsidies violate the terms of their provision, the corresponding funds are subject to return to the local budget. As the Constitutional Court of the Russian Federation noted, the provisions of paragraph 3.1 of Article 78 of the BC of the RF on the return of the subsidy allow the establishment of such requirements for the provision and return of the subsidy, which imply the need to return part of the subsidy provided that in the remaining part the goals for which the subsidy was allocated will be fully achieved. However, Article 78 of the BC of the RF, as a general rule, does not apply to municipal institutions and does not concern the provision of subsidies for the provision of municipal services in the social sphere (Article 78.4 of the BC of the RF). It is proposed to apply the approach of the Constitutional Court of the Russian Federation in relation to non-profit organizations, as well as to entities that are recipients of subsidies under Article 78.4 of the BC of the RF.

Keywords

expenses, local budget, service, municipal service, municipal task, institution, subsidy, legal regulation

Tax relief as a financial and legal category: problems of defining the essence

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Abstract

The issues of application of tax reliefs that provide advantages established in the tax legislation are considered. Tax relief is defined as a financial and legal category, which has a complex nature. In this connection the purposes and character of tax relief application are essential for financial and legal policy of a public subject. The main problematic moments that arise in the application of the concept of tax relief established by law were revealed. The necessity of resolving the identified shortcomings of legal regulation by means of defining the features of the tax relief that characterize its legal essence was substantiated. As a result of the research a comprehensive theoretical and legal concept of tax reliefs as a way of legal regulation aimed at leveling the position of a particular category of subjects, as well as to stimulate their lawful behavior was formulated.

Keywords

tax relief, benefits, categories of taxpayers, legal benefit, method of legal regulation

Prohibition of activity in Russian Civil Law (article 1065 of the Civil Code of the Russian Federation) and injunction in the law of foreign countries: comparative legal aspect

Senotrusova Evgenia Mikhailovna

Abstract

The article examines the socio-economic prerequisites for the formation and development of the institute of prevention of harm in Russian civil law and permanent prohibitory injunction as a similar institution in the law of foreign countries (USA, England, Germany). The current state of these legal phenomena, the practice of their application by courts is considered. It is concluded that it is necessary to receive some legal positions developed in foreign doctrine and law enforcement practice. The possibility of fixing in Russian civil law the payment of monetary compensation for future harm as a method of protection is substantiated. It is indicated that it is possible to take into account the nature of the area in which it is carried out in cases of banning activities.

Keywords

prevention of harm, injunction, prohibition and suspension of activity, danger of harm

Methods and forms of legal protection of an employee from discrimination

Filchakova Svetlana Yurievna

Abstract

The relevance of the study is due, on the one hand, to a high degree of discrimination in the sphere of labor, and on the other hand, to the extremely low interest in them from the state in general and the judicial system, in particular. The existing potential of modern labor legislation in the field of methods and forms of protecting the labor rights of citizens, which remains unrealized, is stated. Many provisions of the Labor Code of the Russian Federation are practically not applied to protect against discrimination in the sphere of labor, while cases of such discrimination are very common. In the structure of judicial statistics there are relevant cases, but as a rule, with decisions made not in favor of the employee or failed employee. It was recognized as inappropriate to use in the labor legislation the vagueness of the grounds for discrimination in such blanket provisions as “other circumstances not related to the business qualities of the employee”. Judicial bodies use the norm of Article 3 of the Labor Code of the Russian Federation extremely rarely due to its blanket nature. It is concluded that there are difficulties in implementing the mechanism of judicial protection of the rights of an employee from discrimination, including when hiring and, in this regard, creating a thematic review of the Plenum of the Supreme Court of the Russian Federation with a list of circumstances that it is advisable for courts to study when resolving cases of discrimination.

Keywords

protection of labor rights, discrimination, self-defense of labor rights, judicial protection

Unfinished extortion

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Chekmezova Elena Ivanovna

Abstract

The authors of the article critically comprehend a common in the theory of criminal law thesis postulating the impossibility of the existence of unfinished extortion (as well as other so-called formally defined crimes or inchoate crimes). Practical examples of criminal prosecution for preparing for extortion and attempted

extortion have been demonstrated. It has been revealed that significant difficulties in distinguishing between unfinished extortion and completed extortion are caused by the subjects of law enforcement at the moment when extortion ends. A separate part of the article is devoted to the doctrinal approaches to the legal assessment of unfinished forced extortion. The controversial aspects of qualification of unfinished forced extortion in practice are analyzed. Based on the analysis of the materials of judicial practice, the authors propose features that form an objective side of preparation for extortion and attempted extortion. The issue of voluntary refusal to bring extortion to the end is also under consideration.

Keywords

extortion, unfinished extortion, preparation for extortion, attempted extortion, voluntary refusal

Socio-legal and information-technological conditions of criminalization and problems of qualification of fraud in the sphere of computer information

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Abstract

An analysis of the socio-legal and information technology conditionality of the criminalization of fraud in the field of computer information and some qualification problems is presented. The study made it possible to establish that the social and legal conditionality of the criminal law protection of information and economic security is a consequence of the development of the digital economy in the modern world. Information and technological factors of conditionality, in turn, are associated with the formation of the information society. In the light of new objective patterns, it is necessary to change the paradigm of criminal law protection in relation to property and focus on the protection of property and other economic relations in the field of information and communication technologies from illegal interference. It is concluded that the poorly formulated legislative norm of Art. 1596 of the Criminal Code of the Russian Federation contradicts the traditional concept of “fraud”, as a result of which various problems arise, ranging from searching for signs of deception in the composition of fraud in the field of computer information, ending with the distinction between this composition and other elements of crimes, including computer ones. It is noted that most researchers do not support the introduction of a special composition of fraud in the field of computer information. Consistent investigation of the crime under Art. 1596 of the Criminal Code of the Russian Federation leads to the idea of the uselessness of this composition in the current criminal law

Keywords

computer information fraud, computer fraud, cyber fraud, computer information, computer crimes

Modern criminological characteristics of digital crime (digital criminal and his victim)

Sidorova Ekaterina Zakarievna

Abstract

A number of relevant criminologically significant characteristics of digital crime (cybercrime) are highlighted. A criminological portrait of a digital criminal is presented, its characteristic features are determined and differences from an ordinary attacker are revealed. The determinants of digital crimes (cybercrimes), the main motives of the cyber-criminal are determined. A portrait of a potential victim of cybercrime is compiled, the criminogenic role of the behavior of a victim of digital crimes in the mechanism of their commission is determined, and the classification of such victims is given.

Keywords

digital crimes, cybercrimes, victim, criminological portrait, determinants, digital space, victimization, victim, victim, cybercriminal, ITT, social engineering

Modern problems of prevention and suppression of socially dangerous acts committed by persons with mental disorders who have previously committed similar acts

Skoblikov Petr Alexandrovich

Abstract

Through the analysis of the characteristic events of recent years and judicial statistics, the article shows the law enforcement practice in Russia in cases of socially dangerous acts committed by persons with mental disorders. The article also analyzes criminal legislation and its related branches on the prevention of these acts. The author concludes that the rights and vital interests of the individual, society and the state are insufficiently protected from such acts. In conclusion, proposals on appropriate changes in criminal, criminal procedure, administrative and labor legislation, as well as legal policy are formulated and substantiated.

Keywords

compulsory medical measures, mental disorders, socially dangerous acts of the insane, protection of the rights of victims, informing potential victims about existing threats, latency of socially dangerous acts

Subsumption as a model of judicial reasoning in disputable cases: arguments of H. Hart

Kasatkin Sergei Nikolayevich

Abstract

In the light of problems of a proper theoretical description of adjudication, the views of an authoritative British jurist, Herbert Hart are considered. Particular emphasis is placed on his substantiation of the role of subsumption in judicial reasoning against the background of the polemics between legal formalism and (American) legal realism. As a basis of the analysis the author's essay "Theory and Definition in Jurisprudence" (1955) is taken, being the most expository on the topic, and little studied in Western and Russian literature. The conclusion is drawn, according to which for H. Hart subsumption, on the one hand, does not exhaust the composition of legal reasoning on a case and is not identical to mechanical law-enforcement, on the other hand, it acts as a basic and universal element of adjudication as following legal rules both in clear and in controversial cases.

Keywords

subsumption in law, judicial decision, judicial reasoning, legal indeterminacy, H. Hart, legal formalism, legal realism, legal positivism

Peculiarities of application of specialist knowledge of a specialist in investigation of facts of illegal production of narcotic drugs, psychotropic substances and their precursors

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Unzhakova Svetlana Vladimirovna

Zaer Evgeniya Valerievna

Abstract

Some features of the application of certain forms of special knowledge at various stages of the investigation of the illegal production of narcotic drugs and their precursors are shown. The emphasis is on the procedural

forms of using the special knowledge of a specialist, the features of their application and their significance for the process of investigating the illegal production of narcotic drugs and their precursors. Attention is paid to the participation of a specialist and his role in the production of individual investigative actions. The conclusion is formulated and substantiated that the safety and effectiveness of investigative actions depend on the participation of knowledgeable persons in them, using technical and forensic tools and methods in order to detect, fix, seize and study various traces and objects.

Keywords

specialist, special knowledge, narcotic drugs, psychotropic substances, precursors, illegal production of narcotic drugs

On the need to ensure interrelation of criminal and environmental legislation: analysis on the example of regulation in the republic of Belarus

Gashnikova Tamara Vladimirovna

Abstract

On the example of regulation in the Republic of Belarus the issues of interrelation and mutual influence of the norms of criminal and environmental legislation are analyzed. The existing contradictions in the legal regulation, which may negatively influence on the effectiveness of the application of criminal legislation concerning environmental crimes, are identified. The facts of violation of environmental standards are considered as possible grounds for qualifying actions as criminal in cases of land, water, air pollution, infringement of environmental safety requirements. Possible directions for improving criminal and environmental legislation have been identified to ensure their proper interrelation.

Keywords

environmental standardization, environmental crimes, ecocide, environmental catastrophe, environmental quality standards, standards for permissible environmental impact

The impact of the world heritage protection system on the regulation of land relations

Kolobov Roman Yurievich

Abstract

The article examines the impact of the World Heritage protection system on the regulation of land ownership relations in Russia and foreign countries. In the framework of the study the provisions of the Guidelines for the Implementation of the Convention Concerning the Protection of the World Cultural and Natural Heritage and other normative documents of the World Heritage protection system in terms of the regulation of land relations are analyzed. The characteristics of the regulation of the right of ownership of land resources in international legal sources are given. Socio-historical reasons which made it impossible to regulate the ownership relations directly in the Convention Concerning the Protection of the World Cultural and Natural Heritage are defined. Particular attention is paid to the legal positions developed in the practice of the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage (World Heritage Committee). The raised problems are considered with the use of different methods, one of which is the comparative legal method of research. The impact of the World Heritage protection system on the regulation of property relations within the World Heritage site “Belize Barrier Reef Reserves” is analyzed in detail. The results are correlated with the legal regulation and practice of protection of the World Heritage Site “Lake Baikal”. In conclusion of the work the results of the analysis are summarized, and some recommendations on possible ways to improve certain provisions of the Russian legislation are formulated. It is proposed to introduce amendments into the Federal Law “On Specially Protected Natural Areas” in terms of fixing the peculiarities of legal protection of the World Heritage sites, as well as to prepare a strategy for the protection of unique natural sites of global significance.

Keywords

land relations, international law, world heritage, international treaties, protected areas