Siberian Law Herald 2024. № 1

Functional characteristics of limitations in modern public and private law: comparative aspect

Amelchakova Anastasia Vyacheslavovna

Abstract

The article examines the functional characteristics of legal restrictions in modern public and private law. The relevance of the research topic is due to the fact that in the scientific literature the question of the functional characteristics of legal restrictions is posed extremely broadly, the scope of their application is defined by the framework of the mechanism of action of law. Raising the question about the functional characteristics of legal restrictions in modern public and private law involves finding out how their realization and implementation affect the achievement of goals. It claims that the functional characteristics of restrictions in modern public and private law have both similarities and differences. As the author notes, legal restrictions in the mechanism of public and private law can perform a fairly diverse range of functions. It is argued that in public and private law restrictions perform a number of general (universal) functions. It has been revealed that the presence of general functions of legal restrictions in public and private law is due to the fact that restrictions are universal means of legal regulation aimed at ensuring interests recognized by law. It is justified that due to the features inherent in public and private law, restrictions in them also have specific functions. Analyzing the latter, the author comes to the conclusion that in modern public law restrictions have auxiliary functions, but in private law restrictions do not have such functions. The article examines the features of the manifestation of the functions of legal restrictions identified by the author within the framework of the mechanism of action of modern public and private law.

Keywords

restrictions, functions of restrictions, functional characteristics of restrictions, private law, public law

Interaction of election commissions with other public authorities: legislative innovations

Kotelnikov Alexey Dmitrievich

Abstract

A number of changes made to Russian electoral legislation since 2020 have been studied, significantly changing the procedure for interaction of election commissions with other public authorities both during election campaigns and in the inter-election period. It has been established that the corresponding connections are of a complex nature and are manifested in various forms, the number of which increases as new electoral and legal reforms are implemented. It is noted that trends in the legal regulation of this area of relations are contradictory. Attention is focused on strengthening and complicating the connections of election commissions with executive bodies of state power while simultaneously removing local governments from participation in the electoral process as independent eligible subjects while maintaining their organizational and technical responsibilities. It has been established that the system of election commissions is becoming more isolated and increasingly acquiring the features of a hierarchical structure, in which the leading role belongs to the Central Election Commission of the Russian Federation. A significant increase in recent years has been revealed in the volume of rule-making powers of the Russian Central Election Commission in the field of by-law regulation of relations in the preparation and conduct of elections, as well as the expansion of atypical functions of election commissions, especially manifested in conditions of emergency legal regimes. It is concluded that in the considered legislative innovations there is a single purposeful logic of the federal legislator, the implementation of which will most likely continue in the coming years. It is recommended to ensure that a balance is maintained in the relations of public authorities when carrying out further reforms of the electoral legislation.

Keywords

electoral legislation, election commissions, legislative reform

Enactment of federal codes: practice and problems of legislative support

Petrov Aleksei Aleksandrovich

Abstract

The practice of legislative activity on issues of ensuring the implementation of codes – system-forming federal legislative acts – is studied. Two models of legal support for the implementation of codes are identified: one of them presumes adoption of a separate federal law regulating these issues, while within the framework of the other, relevant regulations are included in the final and transitional provisions of the codes themselves. Analysis of the regulating practice of typical issues arising in connection with the adoption of codes is provided (including streamlining of the legal basis of relations in the relevant legal area, transformation of the legal statuses of subjects and objects of relations within the matter of the adopted code, etc.). It has been established that inclusion of provisions which, in terms of the subject of regulation, should relate directly to these codes, into introductory laws represents the most widespread and typical defect of legislative regulation ensuring the implementation of codes. It is proposed – in light of the discussed drafts of new codifications in Russian legislation – to adhere to a model within which federal laws on the implementation of codes are adopted. It is concluded that such laws should be strictly transitional in nature, while permanent regulations should either be integral part of the codes themselves, or be established by separate federal laws.

Keywords

code, codification, transitional regulation, implementation of the code, subject of legislative regulation, legislative technique, effect of the law

General plans of new cities 1960s–1980s

Roy Roman Olegovich

Abstract

The features of the general plans of new cities that were built in the USSR in 1960–1980s are studied. The features of the general plans of such cities were due to the fact that the construction of the city was caused by the construction of an industrial facility. The plans were commissioned not by local authorities, but by the directorates of the enterprises under construction or by central departmental institutions. The customers financed the development of master plans. This approach led to a lag in the design of housing and public facilities. The main normative acts on master plans are identified, the state bodies that issued them are indicated. The order of coordination and approval of general plans of cities is studied. The order of approval of master plans of new cities was the same as that of the capitals of the Union republics. The volume of materials that were included in the master plan of the city was analyzed. A reference plan of a new city was developed to accelerate urban planning. Design organizations from all over the country were involved in drawing up master plans of new cities. Master plans of new cities were given great importance. They reflected the requirements to ensure comfortable living conditions for the employees of enterprises, population resettlement in the territory of the country, application of advanced construction and architectural solutions. Master plans of new cities were not only technical, but also legal documents.

Keywords

new cities, general plans of cities, urban planning, Soviet state, Soviet law, normative legal act

Estological study of the state symbols of Japan

Yurkovskiy Alexey Vladimirovich

Abstract

The study of problems of constitutional and legal regulation using estological methods continues. The origin, development and operation of the constitutional and legal status of the state symbols of Japan is considered (an estological study of one of the institutions of Japanese constitutional law). Empirical materials and authentic documents (sources of law, acts of interpretation of law, acts of implementation and application of law) of Japan are introduced into scientific circulation. Conclusive constitutional and legal norms that have significant signs of legal and linguistic uncertainty are subject to esthological research. Based on the study of the patterns of existence of interests in constitutional law and the interests of constitutional legal regulation in Japan, conclusions are synthesized about the meaning and content of state symbols, its legal and technical features. As a result of the study, the presence of a phenomenology of interests of constitutional and legal regulation is revealed. The hypothesis is confirmed that the interests of legal regulation differ from the political interests of subjects of constitutional law.

Keywords

estology, estological research, research methodology, mechanism of state power, mechanism of legal regulation, political system, value, interest, subject of constitutional and legal relations, objects of interest of constitutional and legal regulation, state symbols, flag, coat of arms, anthem, Emperor, Japan

Current issues of protection of public interests by the prosecutor in administrative proceedings

Dashieva Ayuna Dugarzhapovna Mikhina Elena Gennadyevna

Abstract

It has been established that the Prosecutor’s Office is a unified federal centralized system of bodies that supervise compliance with the Constitution of the Russian Federation and the implementation of laws, supervise the observance of human and civil rights and freedoms in accordance with their powers, and also perform other functions. The prosecutor has to go to court in order to protect the interests of citizens, society and the state protected by regulations, since the means of prosecutorial response cannot always achieve the desired result. The article analyzes the powers of the prosecutor to protect public interests in administrative proceedings, identifies the areas in which the prosecutor’s office managed to achieve visible success, and identifies problems in the implementation of powers. Existing scientific approaches to the definition of the concept of “public interest” and its content are studied in detail. Taking into account the conducted research, the need to expand the powers of the prosecutor in administrative proceedings in terms of judicial challenge of illegal actions and decisions of an individual legal nature of public authorities and their officials is justified. The work also draws conclusions and the expediency of the need to expand the list of grounds for protecting the rights of citizens and other persons by the prosecutor in court.

Keywords

Prosecutor, judicial protection, acts of prosecutorial response, public interest, unlimited circle of persons, administrative proceedings

Functional decentralization of public administration: the relevance of borrowing the experience of foreign countries

Chagin Ivan Borisovich, Makieva Tamara Gochevna

Abstract

The paper undertakes a comparative legal analysis of the legal status elements of the Russian Federal Service for Supervision of Communications, Information Technology and Mass Media and the French National Commission on Informatics and Liberty (Commission nationale de l’informatique et des libertés; hereinafter – CNIL, Commission). The purpose is to activate the deficient researchers’ attention to the problem of functional decentralization of public administration. The authors propose a definition of functional

decentralization of public administration. The paper notes the contradiction between the commodification of services provided by CNIL and its democratic nature. Particular attention is paid to the possibility of vesting independent administrative authorities with legislative powers. It is argued that the peculiarities of CNIL's human resource capacity should be explained through intentionality of the state. It is emphasised that the sanctions imposed by CNIL do not have the force of res judicata, which entails the authors' conclusion on untenability of the theory proclaiming jurisdictional immunity of independent authority. The explicable impossibility of absolute independence of the commented de-etatisation phenomenon is substantiated in terms of correlation of autonomy and autarky. It has been revealed that a possibility of hypertrophied conceptualisation of autonomy of independent administrative bodies serves to be a structural drawback of the concept of functional decentralization of public administration. It is asserted that the direct linkage between the subject of governance and the managed object should be considered as a substantive feature of functional decentralization of public administration. It has been established that the introduction of the institute of independent authority in the public administration system should be preceded by consideration of relevant factors. The paper notes the deficit of theoretical studies on functional decentralization in the legal literature of the Russian Federation. The ensuing conclusion is that the development of the discussed concept within the framework of the Russian institutional landscape is possible at present only at the theoretical level.

Keywords

decentralization; independent administrative bodies; CNIL; Federal Service for Supervision of Communications, Information Technology and Mass Media, public administration

On the question of the subject of social security law

Komkov Sergey Aleksandrovich

Abstract

It is noted that Russia, being a social state, guarantees a decent standard of living for a person and the free development of the individual. It is indicated that social security is divided into state and non-state social security systems. It is noted that traditionally the subject of social security law includes only social relations arising in the state social security system. An example is given when none of the parties to the social security relationship is a public agent - a government body, a local government body, a state or municipal institution, etc. Cases are highlighted when the subject of social security law includes social relations that are fully remunerative for the authorized person. It is indicated that one of the defining principles of social security law should be ensuring a decent standard of living for citizens. The ways in which the Russian state is trying to resolve the crisis of the social security system are analyzed. The need is established to include the non-state social security system in the system of social security law. There is a close relationship between social security law and such private-public branch of law as labor law. It is indicated that in economically developed countries, social support measures have long been of a mixed public-private nature. The difficulties of using foreign experience in the legal regulation of social security relations are noted. The reasons why the Russian state periodically carries out pension reforms are indicated. The conclusion is substantiated that in order to level out crisis phenomena in the social security system, a comprehensive solution to the socio-economic problems of the domestic state and society is necessary, including private legal regulation of social relations that constitute the subject of social security law.

Keywords

social state, decent standard of living, social security system, public agent, funded pension, insurance pension, principles of social security, living wage

Criminal and legal characteristics of extremist crimes committed by migrants (using the example of hooliganism)

Kurovsky Vladimir Mikhailovich

Abstract

In this paper, the author addresses the coverage of the criminal law characteristics of such a crime as hooliganism. Based on official statistics, the author emphasizes that hooliganism is one of the most common extremist crimes committed by foreign citizens and stateless persons (migrants). According to the author, the analysis of Article 213 of the Criminal Code of the Russian Federation will help to more effectively apply this rule in practice, and competent law enforcement practice on this issue will have a positive impact on the overall prevention of crime in general.

Keywords

hooliganism, migrants, foreign citizens, extremist crimes, criminal prohibition

Legislative aspect of countering corruption crimes related to giving and receiving bribe and other types of illegal rewards

Nikonov Pavel Vladimirovich

Abstract

The issues of development of legislation establishing criminal liability for corruption crimes related to giving and receiving bribes and other types of illegal remuneration are considered, the main regulatory legal acts that established criminal legal prohibitions on bribery are studied. The attitude of the state and society to these issues in various historical periods of the Russian state is determined. The main trends in this attitude have been identified, the causes and consequences of the transformations that have taken place, and their impact on society have been established. It is noted that at different times, prohibitions related to giving and receiving bribes and other types of illegal remuneration were determined by different social demands, which significantly changed the legislative response from the state. At the end of the article, the results of the development of legislation establishing criminal liability for corruption crimes related to giving and receiving bribes and other types of illegal remuneration are summed up, the main factors determining their social danger and differentiation of criminal liability for their commission are identified, the main directions for the subsequent development of the norms under consideration are identified.

Keywords

corruption, bribery, bribery, malfeasance, corruption crimes

Criminological risks and qualification issues of public display of pornographic materials using the internet

Rodivilin Ivan Petrovich, Kolominov Vyacheslav Valentinovich

Abstract

During the analysis of the phenomenon of “webcams” within the context of the criminal legislation of the Russian Federation, its social danger was investigated. Judicial practice was analyzed, and the author provided comments regarding its interpretation and understanding. Directions for further research and study of “webcams” from a legal perspective are proposed. The problem of illegal distribution of pornographic materials, especially involving minors, in the context of the development of digital and information-telecommunication technologies was identified. The author notes that such websites often have short lifespans and use additional or backup sources to avoid being blocked by law enforcement agencies. These crimes are difficult to detect and prosecute due to the anonymity provided by the Internet. Methods of combating illegal distribution of pornographic content in the information sphere were identified, including responding to user complaints, reacting to signals from Roskomnadzor (Russian Federal Service for Supervision of Communications, Information Technology and Mass Media), and independent monitoring and removal of unlawful content. However, the author emphasizes that social networks are merely information intermediaries, and the content is created by users. The development of digital technologies,

such as online broadcasts and webcam shows, has contributed to the expansion of the porn industry and facilitated users' access to pornographic websites.

Keywords

webcams, qualification, pornography, pornographic materials, intimate services, the Internet, lewd actions, porn sites, sexting, porn, cybercrime

Modern concept of criminal holiganity

Rybakova Anastasia Sergeevna

Abstract

A systematic analysis of the object of hooliganism is presented, the responsibility for which is provided for in Art. 213 of the Criminal Code of the Russian Federation. The objects of criminal hooliganism are studied in accordance with the existing classifications of crime objects in the science of criminal law: "vertically" and "horizontally". Attention is focused on the need to consider the object of hooliganism in several aspects: as an element of a crime, as an object of a criminal attack when committing hooliganism and as an object of criminal legal protection regulated in the text of the criminal law. The influence of legislative changes in the wording of Art. 213 of the Criminal Code of the Russian Federation on the range of legal relations that determine the object of criminal hooliganism. In this regard, a conclusion was made about the need to revise the theoretical provisions regarding the criminal legal nature of hooliganism and the possibility of classifying hooliganism as a crime against the person is substantiated.

Keywords

Art. 213 of the Criminal Code of the Russian Federation, hooliganism, object of crime, public relations, object of encroachment, object of criminal legal protection, public order, public safety, personal protection

Excess of power by a private detective or employee of a private security organization, completed with the use of weapons or special means and resulting in serious consequences: qualification issues

Fedorova Elena Leonidovna

Abstract

Based on scientific material and law enforcement practice, the issues of qualification of abuse of power by a private detective or an employee of a private security organization holding a private security guard certificate in the performance of their official duties, committed with the use of weapons or special means and resulting in grave consequences, are analyzed. It is stated that quite often in practice this crime has a group nature. Suggestions are made related to editing the existing provisions of Art. 203 of the Criminal Code of the Russian Federation, as well as the addition of new provisions. In particular, it is proposed to partially specify the content of the concept of grave consequences in relation to Part 2 of Art. 203 of the Criminal Code of the Russian Federation, and also further consolidate such a qualifying feature as the commission of this crime by a group of persons and an organized group, by formulating a new part 3 of Art. 203 of the Criminal Code of the Russian Federation.

Keywords

official crimes, official powers, buse of authority, private security guard, private detective, grave consequences, weapons, special means

The importance of crime indicators in assessing the activities of the internal affairs bodies of the Russian Federation

Malykhina Tatiana Anatolievna

Abstract

The article deals with issues related to the analysis of quantitative and qualitative indicators of crime and their role in assessing the effectiveness of the activities of the internal affairs bodies of the Russian Federation. The issues of ensuring the effectiveness of anti-crime measures are highlighted. The analysis of the state and dynamics of crime in modern Russia and its detection is given. The problematic issues of the effectiveness of the applied norms, primarily criminal legislation, and its relationship with crime indicators are considered. An assessment of the role of latent criminal in this regard is given. Quantitative indicators of crime are studied from the position of indicating the effectiveness of the application of normative legal acts directly aimed at combating crime.

Keywords

crime, latent crime, crime indicators, crime prevention, internal affairs bodies of the Russian Federation, the effectiveness of modern legislation, the effectiveness of the application of regulatory legal acts

The relationship of the timeliness and reasonability of the charges and the conditions for the legality of choosing a measure of prestression

Rossinsky Sergey Borisovich

Abstract

A critical analysis has been made of one of the conditions for the legality of the use of preventive measures in criminal proceedings, which presupposes the priority of their election only in relation to the accused. Attention is drawn to the established understanding of this condition as an immutable postulate that does not cause critical assessments, to its indisputable obviousness for scientists and practitioners. At the same time, it speaks of a significant legal conflict, expressed by its inconsistency with the grounds for pre-trial criminal prosecution and leading to the vicious practice of bringing forward premature and not properly substantiated charges. It is argued that a two-stage applied technology for formulating criminal legal claims has become widespread in law enforcement practice, which boils down to bringing forward two different charges in time, volume, degree of proof and content: “pilot” and final. In order to properly understand the analyzed problems, the reasons for their occurrence are diagnosed, which are seen in the ill-considered transfer of a number of provisions of pre-revolutionary criminal procedural law into Soviet and modern legislation without their adaptation to the corresponding mechanisms of criminal procedural activity. As a result, a legal condition is called that links the possibility of using preventive measures with bringing charges against a person and is assessed as a normative anachronism subject to abolition. At the same time, it is proposed to choose a preventive measure on a general basis in relation to the suspect.

Keywords

house arrest, detention, choosing a preventive measure, preventive measure, accusation, accused, suspect, bringing in as an accused

Using transactional analysis for establishing and maintaining psychological contact during interrogation. Part 1

Shaevich Anton Aleksandrovich

Abstract

The problem of psychological contact is considered in the context of forensic interrogation tactics and the conclusion is drawn that "psychological contact" is more of a legal term than a psychological one. Further, the essence of psychological contact is revealed through examples of situations that any person living in society has had to face. Thus, avoiding dry formulations of general words, an idea is given of what the state of psychological contact is in the process of communication, through the reader's personal experience, the state and sensations that he can remember from his life experience. Thus, transferring this concept from the field of abstract book formulations into your own cognitive space, which already allows you to use it more consciously in modeling various situations and choosing strategies and tactics during interrogation. The possibility of using transactional analysis to establish and maintain psychological contact during interrogation is also discussed. For this purpose, the basic provisions and concepts of transactional analysis proposed by Eric Berne are briefly revealed: the concept and mechanism of transactions, the meaning and main characteristics of "ego states" or positions from which a person enters into dialogue. A way to use this theory to establish and maintain psychological contact during interrogation is proposed. It is concluded that for a more effective interrogation, the investigator must understand from which ego state of the interrogated the transactional stimulus came and return the appropriate response, encouraging the development of psychological contact and further productive communication interaction, for which it is necessary to control one's ego state in order avoid overlapping transactions that could be perceived as rudeness, insolence, or other manifestation of disrespect on the part of the interrogator.

Keywords

interrogation tactics, psychology of interrogation, interrogation tactics, psychological contact, communicative contact, transactional analysis

Corporate standards in the activities of state corporations: theoretical and comparative legal aspects

Druzhinin Gleb Viktorovich

Abstract

The problem of implementing corporate norms in the activities of state corporations is analyzed. It is noted that there are two types of state corporations: legal entities established in the organizational and legal form of state corporations, and legal entities established by the state in the organizational and legal form of business companies. It has been established that legal entities established in the organizational and legal form of a state corporation have a public legal nature. In the activities of such entities, corporate norms do not regulate intra-organizational relations, since the role of the main regulator is assigned to legal norms. It is noted that state corporations may have an extensive system of controlled legal entities, relations between which can and are regulated, among other things, by corporate norms. It is indicated that in the activities of state corporations established in the organizational and legal form of business companies, corporate norms are implemented in the regulation of intra-organizational relations.

Keywords

corporate norms, state corporations, legal norms, legal regulation, corporate regulation

Problems and prospects for the development of the world heritage protection system

Kolobov Roman Yurievich

Abstract

The trends in the development of the system of protection of unique sites of global significance, created in accordance with the Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, are analyzed. The significant contribution of the considered legal and institutional mechanisms in the conservation of such sites and the need to strengthen them in the crisis of international relations are noted. The existing problems in the World Heritage protection system are analyzed on the example of the Declaration of principles to promote international solidarity and cooperation to preserve World Heritage, adopted in 2021 at the twenty-third session of the General Assembly of States Parties to the Convention. The persistent imbalance between cultural and natural heritage sites, which is also reflected in the text of the Declaration, is highlighted. A tendency to shift the focus on the selection and inscription processes is identified. There is a divergence between the provisions of the Convention and the practice of its application with regard to the role of the List. One of the serious problems threatening the sustainability of the World Heritage protection system is the systemic divergence between the positions of the World Heritage Committee and its Advisory Bodies. It is stated that there are shortcomings in the work of the Advisory Bodies of the Committee and the need to strengthen the quality of their scientific expertise. The necessity to create a comprehensive national normative-legal framework for the protection of World Natural Heritage in Russia is substantiated. On the example of Lake Baikal the necessity of preliminary scientific assessment of the consequences of changing the protection regime of World Heritage sites is shown. Based on the results of the study, proposals are formulated to improve the list of principles enshrined in the Declaration.

Keywords

world heritage, international law, world heritage list, world heritage committee, UNESCO

Legal labyrinths of fatal processes (Review of V. V. Bronshtein’s monograph “political technologies of the steel age. Marshal Beria and politicrucian Khrushchev”)

Tirskikh Maksim Gennadievich

Abstract

A critical analysis of the scientific and popular science publication of the honorary professor of Irkutsk State University V. V. Bronstein. The methodology of work is analyzed. Features of the selection of a database of scientific sources and empirical material, including archival documents, formulation of a scientific problem, features of argumentation within the framework of the narrative. A detailed analysis of the organization of the state apparatus, including law enforcement agencies, is assessed as positive. The position of the author of the monograph regarding the peculiarities of Soviet legislation is supported, and a deep study of issues of political repression is noted. Attention is paid to other state and legal features of the work. The opinion of the author of the monograph regarding the fictitious nature of the trial of Marshal Beria is critically assessed. At the same time, it is recognized that the totality of the facts shows the presence of serious violations of procedural legislation during the trial of L. P. Beria.

Keywords

Soviet legislation, law enforcement agencies, political repressions, forced deportation, organization of public administration, Soviet state building