Siberian Law Herald 2024. № 3

Political and legal aspects of the management of the foreign population of the Russian empire: the charter on the management of foreigners

Nikitin Fyodor Ivanovich

Abstract

The article analyzes the main provisions of the Charter on the management of the foreign populations – the main document of tsarist Russia whose provisions were aimed at regulating relations between state and indigenous peoples of the territories of the North, Siberia and the Far East developed by it. The theoretical and methodological basis of the study was formed by analytical, dialectical, intersectoral, synthetic, systemic-structural, comparative legal, formal legal and historical legal methods, which assume a comprehensive and unbiased approach to the study of this issue. In conclusion, it is noted that legal norms contained in this document designed to regulate the complex system of relations between tsarist government and the indigenous inhabitants of the Russian outskirts, were quite progressive for their time, in contrast to similar norms existing in other countries.

Keywords

indigenous peoples, foreigners, aborigines, charter, self-government, M. M. Speransky, North, Siberia, Far East

Institutionalization and legal regulation of fire protection in Russia in the 16th–19th centuries

Chernykh Vladimir Vasilievich

Abstract

The article traces the origins and development of the country's fire safety institute, and the formation of an organizational structure for its improvement. The article covers the period from the functioning of peasant communities to the beginning of the 19th century, when the Ministry of Internal Affairs was formed in 1802, which noted the creation of a number of social institutions, including a structure for ensuring fire safety in the country, which, in the author's opinion, can be considered basically established from this period. The contribution of people who ensured fire fighting, including heads of state, is noted. The validity and consistency of regulatory creativity in fire fighting, its continuity and transformation due to technological growth and new methods of counteraction are analyzed. The solid experience of legal legitimizations laid down in the documents of Ancient Rus' is emphasized: in the Russian Truth, the Truth of the Yaroslavichi, the Extended Truth, the Novgorod Judicial Charter, the Pskov Judicial Charter, and the continuity of rule-making in the area under consideration during the periods of formation of the centralized state and during the formation of the Russian Empire. It is indicated that the danger factor is associated with Russia's possession of forest resources, among which coniferous forests prevail, which have increased flammability, and the preference for the construction of houses and structures from this flammable material. It is concluded that this is precisely what caused the special attention of our ancestors to the problem of fire safety. The following research methods are used: cognition: dialectical, hermeneutics, comparative-historical, logical, formal-legal, as well as the principles of historicism, objectivity and consistency.

Keywords

fire fighting, legislative acts, structuring of fire protection

The history of the development of the legal concept “digital state” in Russia

Shabaeva Olga Aleksandrovna

Abstract

It was established that it was the USSR that was the leader in the development of the theory and practice of the digital state and the digital economy. The “Red Book” projects and the National Automated System were the world’s first projects to create a digital state. It was revealed that the development of the theory and practice of the digital state is based on a powerful foundation laid by Soviet scientists, in the first row of which are A. I. Kitov and V. M. Glushkov. Their projects “Red Book” and OGAS, work on the theory and practice of creating computers, programming, mathematical modeling and the use of computers in various fields of activity, laid the foundations for the development of the digital state and the digital economy and ensured the leadership of the USSR in this area. It is concluded that the concept of the digital state is constantly developing and supplemented by scientists and practitioners. The creation of a digital state in Russia and other countries continues on new technological foundations using new and emerging digital technologies, such as artificial intelligence, big data, blockchain, new production technologies, Internet of things and industrial Internet, virtual and augmented reality, neurotechnology, robotics, sensing, wireless communication, quantum technologies. Based on the analysis of the development of the legal concept of the “digital state’ in Russia, a proposal is made to distinguish the following periods: pre-revolutionary (until 1917); Soviet (1918–1992); post-Soviet (1993–2006); modern (2007 – present).

Keywords

state, digitalization, digital state, e-government, digital transformation, public administration

On the financing of forest management activities

Kraskova Aleksandra Nikolaevna

Abstract

It was found that one of the results of the large-scale work carried out by public authorities in 2021 was the reform of the forest inventory system. The performance of forest inventory works remained among the expenditure obligations of the Russian Federation, meanwhile, the changes affected the subjects of realization of this authority, respectively, the financing mechanism has undergone changes. The analysis is presented regarding the efficiency of the organization of forest inventory works in the period preceding the reform, aspects of financing of forest inventory activities in this period, as well as after the entry into force of changes in forest legislation in the field of forest inventory, introduced in 2021; in particular, cases of inaction of authorized public authorities were identified, as a result of which the work on forest inventory was not carried out properly. A conclusion was made as to the reasons for failure to conduct forest inventory on the lands of the forest fund, among which the key position is taken by insufficient financing. At the same time, cases of financing forest inventory activities from sources not envisaged by the legislation in force in the relevant period of time were revealed. The need for forest inventory is determined based on the need to obtain complete, comprehensive and up-to-date information on the state of forests (both quantitative and qualitative characteristics of forests, their territorial location) for rational management in this area. Taking into account the volume of forest inventory works to be carried out, as well as financial constraints, it is proposed to introduce a public-private partnership system, which will make it possible to ensure the achievement of objectives in the field of forest inventory, taking into account the limited budgetary funding.

Keywords

financing, expenditure obligations, budget, forest planning, state forest management, forest management plan

Expanding the scope of application of party autonomy in private international law

Moskvitin Yuriy Mikhailovich

Abstract

The research of the trend of expanding the scope of application of the party autonomy in private international law is presented using the example of considering the features of the regulation of family and inheritance relations, complicated by a foreign element. The emphasis is on the study of the norms of law of the Russian Federation and the law of the European Union, but is not limited to these sets of norms. An analysis of the party autonomy is conducted at a theoretical level: a definition of the concept is given, a criticism of the application of this legal structure is briefly considered. The features of the functioning of the party autonomy in regulating family and inheritance relations are studied, indicating the limits of the rules on the choice of law. It is concluded that the party autonomy in private international law tends to expand the substantive scope of action, however, the specificity of the relations regulated by it determines the current limitations on the application of this legal structure.

Keywords

private international law, party autonomy, foreign element, theoretical analysis, modern trends in private international law

Digital currencies in the electronic money system: legal aspects (part 2)

Parkhomenko Svetlana Valerievna, Mikhailov Ivan Nikolaevich

Abstract

The article examines the legal nature of the relations that arise when owning digital currencies and cryptocurrency as its variety is studied, as well as the place of various digital currencies in the system of objects of civil rights in Russian and foreign legislation. Within the framework of legal science, a scientific discussion regarding approaches to the legal regulation of the circulation of digital currencies has been explored, developed in the following three main areas: civil law, financial law and criminal law. Taking into account the theoretical and practical aspects of the emerging legal regulation of digital currencies, as well as taking into account the economic and technical features of this institution and its subtypes, the corresponding concept and classification have been formed. Based on the results of the study, conclusions were drawn that during the period from 2014 to the present, the Russian regulator changed the direction of its policy in terms of legalizing the legal status of digital currencies from a prohibitive nature to a neutral one, while to date there have been no systemic decisions or framework regulations such as and was not accepted, as a result of which digital currencies continue to be in the “gray zone,” thereby generating legal uncertainty in the field of enforcement. It is concluded that due to the implementation digital ruble as the digital currency of the Central Bank of Russia, by analogy with foreign jurisdictions, the issue of forming basic civil legislation in Russia will be worked out, which will create a regulatory framework for the institutions under consideration, as well as develop a unified approach in terms of legal assessment and interpretation of legal relations arising in this area.

Keywords

digital currency, cryptocurrency, digital currencies of central banks, electronic money, private money, object of civil rights, non-cash funds, cash

Disadvantages of the general-purpose presumption of good faith by example of contract negotiations

Raynikov Artem Sergeevich

Abstract

It is established that the distinctions between good faith in the objective sense and good faith in the subjective sense provide for different ways of proving relevant circumstances. It is proved that there can be no presumption regarding good faith in the objective sense. The study revealed that good faith in the subjective sense, by contrast, is based on the assumption that the subject is bona fide. The difference in proof of two types of good faith is demonstrated by example of contract negotiations. It has been proven that there is no legal sense to place the burden of proving a good faith with regard to breach of duty to inform and termination of negotiations contrary to good faith and fair dealing. It is found that the rule under which such burden is placed is random and has no analogues in civil law countries. A conclusion has been formulated according to which the general-purpose presumption of good faith becomes the cause of erroneous legislative decisions in various fields.

Keywords

presumption of good faith, good faith in the objective sense and good faith in the subjective sense, problems of proving, contract negotiations

The characteristics of criminal activity of the Chinese mafia in eastern Siberia

Anisimov Andrey Gennadievich

Abstract

The mythology and typology of Chinese organized crime, which engages in active illegal activities within the region, are explored through a historical and cultural context. The characteristics of the formation, hierarchy, and behavior of these criminal groups are examined. The methods by which Chinese citizens illegally enter the East Siberian region are highlighted. The criminal infrastructure established to serve the interests of Chinese organized crime is analyzed in detail, as well as the methods used to conceal their true objectives and intentions. The means of recruiting individuals into the sphere of influence of the Chinese mafia, the establishment of control over Russian and Chinese citizens to achieve their goals, and the mechanisms for acquiring, distributing, and controlling large financial flows by the Chinese mafia are described. Based on the provided description, conclusions are drawn regarding the primary activities of Chinese organized crime groups in the region. It is noted that the current level of law enforcement response is insufficient. The conclusion includes a list of recommendations for counteracting this type of crime.

Keywords

organized crime, criminal communities, Chinese organized crime, green crimes, illegal logging, deforestation, criminal psychology

Socio-legal nature of the public danger of ecological crimes and its impact on criminalization and penalization

Zabavko Roman Alekseevich

Abstract

The public danger of environmental crimes is considered. It is argued that this legal category is subject to change due to socio-political and economic transformations of society. It is noted that the public danger of encroachments on the natural environment and the established procedure for the use of natural resources is increasing, which is associated with the increasing role of nature in the life of society, the growing need to preserve it in the highest quality condition. It is indicated that public danger directly influences the construction of elements of environmental crimes, as well as the determination of the type, size and duration of punishment for their commission. The fact is stated that the social danger of the acts in question is influenced not only by the fact of its harmfulness, but also by other circumstances, in particular, the repetition of the commission. General conclusions are made that there is a need to specify the assessment

categories characterizing the harm caused by environmental crimes; active use of mechanisms of administrative prejudice, special recidivism and other forms of recording the repetition of environmentally hazardous behavior; the need to formulate elements of crimes involving delayed environmental harm as elements of a real threat; it is necessary to take into account the consequences of the “first” level in crimes where the main harmful impact is indirect; There is an urgent need to tighten sanctions for environmental crimes in proportion to the increased importance of protected social relations.

Keywords

environmental crimes, public danger, criminalization, penalization, harm, differentiation of responsibility

Cancellation of conditional exemption from punishment for military servants (article 80.2 of the Criminal code of the Russian Federation)

Karpov Kirill Nikolaevich

Abstract

The article analyzes the new grounds for exemption from punishment of military personnel participating in a special military operation, as provided for in Article 80.2 of the Criminal Code of the Russian Federation. The norm under study currently does not contain a full-fledged cancellation mechanism that would take into account the interests of the participants in these specific legal relations. It is pointed out that the mandatory elements of the effectiveness of the institution of exemption from punishment are the availability of legal means of control over the behavior of the convicted person in terms of fulfilling the conditions of the granted release, as well as differentiated grounds for its cancellation in the event of violation of the established conditions. In order to eliminate this contradiction, it is proposed to include in the disposition of Article 80.2 of the Criminal Code differentiated grounds for the cancellation of conditional release based on the behavior of the person, as well as the nature and degree of public danger of the new crime committed by the person.

Keywords

military man, exemption from punishment, category of crime, conditional release, martial law

Digital crime: concept, criminological characteristics, prevention (part 2)

Sidorova Ekaterina Zakarievna, Usov Evgeny Gennadievich

Abstract

This scientific work is a continuation of a previously published scientific article: if the first part of the study revealed the concept and criminological characteristics of digital crime, then the second part of the work is devoted more to the prevention of digital crime. The analysis of such a concept as a crime committed using information (digital) technologies shows that in the scientific literature there are different points of view regarding the content of this concept, however, each of the definitions is more or less based on the norms of current legislation in the field of information. The key purpose of this scientific research and the tasks arising from this goal are formulated as the disclosure of the definition of digital crime, the description of its types and the presentation of common positions on the issue of digital crime prevention. The research methodology is based on the use of general scientific and private scientific methods of cognition, in particular, the method of induction, deduction, generalization, analysis, research of official information sources, the method of expert assessments, etc. The resolution of the issue of the prevention of such crimes is of the greatest practical importance. The largest amount of authority in the fight against digital crimes is vested in specialized subjects of the prevention of digital crimes. However, only all actors together can ensure the systematic implementation of all prevention measures. In the fight against digital crimes, the subjects of prevention must act together and build an effective mechanism for interaction and exchange

of necessary information. Countering the crimes in question includes a full range of operational and technical, search, operational and investigative measures, including explanatory and preventive means of general and individual prevention of offenses, which are provided for by current legislation.

Keywords

digital crimes, cybercrime, information technology, digitalization, prevention of digital crimes

On the issue of countering information terrorism (using the example of the Telegram messenger)

Shpak Alyona Alekseevna

Abstract

In the course of the analysis of information terrorism, its essence, public danger and the complexity of detection and investigation by law enforcement agencies are investigated. The review of judicial practice on terrorist crimes is presented. The problem of using social networks and messengers for criminal purposes has been identified using the example of Telegram, with which criminals can communicate, recruit accomplices, train them, and create so-called "sleeping cells" of terrorist groups. It is noted that such messengers encrypt messages, the decryption of which will require considerable time, and as a result such information may become uninformative. The system of prevention of information terrorism in the Russian Federation has been identified, which should be based on four approaches: socio-economic, organizational and technical, legal, and external (international). It is concluded that the development of digital technologies, namely social networks (Facebook, Twitter, VKontakte, Odnoklassniki), messengers (Telegram, WhatsApp, Viber, Line) and other Internet platforms contributed to the expansion of crimes in the information sphere, especially information terrorism.

Keywords

information terrorism, social networks, messengers, measures to prevent information terrorism, information technology, the Internet, criminological crime prevention

Implementation of public legal mechanisms for alternative dispute resolution in the context of ensuring accessibility to justice

Roze Mikhail Andreevich

Abstract

A study of individual public legal mechanisms for alternative dispute resolution was carried out. The content of the concept of alternative dispute resolution is revealed, a conclusion is formulated about the need to develop public legal mechanisms for alternative dispute resolution as the obligation of the state to ensure adequate protection of rights and legitimate interests in the context of these mechanisms. The content and features of individual public mechanisms for resolving disputes are revealed using the example of adjudication, dispute resolution by the state ombudsman, as well as courts of aksakals and councils of biys. The conclusion is made about the admissibility of the reception of foreign models of public legal mechanisms for alternative dispute resolution through the prism of the established practice of dispute resolution and the use of alternative methods of dispute resolution, as well as, taking into account ethnic and cultural aspects, the compliance of public legal mechanisms for alternative dispute resolution with the values of society and the presence of potential the demand for such procedures among citizens.

Keywords

accessibility of justice, right to defense, alternative dispute resolution, adjudication, ombudsman, aksakal court, council of biys

Indictment: current issues of form and content

Rossinsky Sergey Borisovich

Abstract

The results of the next stage of the author's scientific research, devoted to indictments as law enforcement acts that complete pre-trial proceedings in criminal cases and predetermine their referral to the courts for consideration on the merits, are summed up. Attention is drawn to rather destructive approaches to the form and content of indictments that have emerged due to a number of reasons, which complicate the law enforcement practice of preliminary investigation bodies, lead to an imbalance of procedural functions, and an unreasonable balance of investigative, prosecutorial and judicial powers. In addition, it is said that these approaches do not correspond to the true purpose of indictments, and therefore attention is drawn to the need for the development, introduction to the subject of criminal procedural regulation and the gradual introduction into law enforcement practice of new approaches to the preparation of these documents.

At the same time, a position is substantiated that links the possibility of solving the set tasks with normative and practical restoration, which existed for a short time and then were officially recognized as unsuitable for use by the requirements for the form and content of indictments reflected in the original wording of Art. 220 of the Criminal Procedure Code of the Russian Federation. In this connection, it is proposed to again reduce the volume of information included in indictments, turning them into brief "annotations" to the materials of completed pre-trial proceedings, which do not imply a detailed coverage of the results of investigative activities, primarily a detailed presentation of the available evidence.

Keywords

pretrial proceedings; closing indictment; completion of the preliminary investigation; investigative act; powers of the investigator; being put on trial; investigator's decision

Information and communication technologies in the mechanism of criminal activity

Usachev Sergey Igorevich, Usacheva Ekaterina Anatolievna

Abstract

The possibilities of information and communication technologies and their impact on society, including the transformation of criminal activity, due to the active use of ICT capabilities by individuals and legal entities, as well as criminals for illegal purposes, are presented. It has been established that the spread of ICTs into everyday life has a number of undeniable advantages, however, along with this, such technologies are increasingly becoming an instrument of criminal activity. The emergence of innovations in the digital environment naturally entails the emergence of new ways of committing crimes. It is concluded that increasing the level of citizen involvement in the use of modern technologies and platforms often produces many vulnerabilities in the digital space that are used by criminals. It has been established that in this regard, countering crimes committed using ICT will be effective only in the case of an integrated approach: studying the mechanism and methods of criminal activity, increasing the level of "computer literacy" of individuals - users of the Internet space, increasing the level of knowledge of law enforcement officers, improving legislation, etc. It has been revealed that modern ICT capabilities directly affect the mechanism of criminal activity. It is concluded that the disclosure, investigation and prevention of crimes committed using ICT requires a full and comprehensive analysis, while the activities of law enforcement agencies will differ significantly for different areas.

Keywords

information and communication technologies, mechanism of crime, Internet, confidentiality, anonymity, user IP address, TOR browser

Macroprudential regulation in the EU and the EAEU: an organizational and legal mechanism

Valiev Taimuraz Murtazovich

Abstract

The comparative legal analysis is focused on the system of legal regulation of macroprudential regulation and supervision of the European Union (the “EU”) financial system and the regulation of coordinated macroeconomic policy in the Eurasian Economic Union (the “EAEU”). The significance of the research is explained by the increasing systemic risks in the presence of the structural changes in the international economy. The subject of the research is the key norms of the primary and secondary law of integration associations, which define the key elements of macroprudential (macroeconomic) supervision of integration associations. There is defined the similarity of European regulation with international legal regulation of financial stability, and there are specified similarities and differences of the organizational mechanism of the EU and the EAEU and its capabilities in the context of soft law.

Keywords

The EU, the European Central Bank, the European Council on Systemic Risks, macroprudential supervision, the EAEU, the Eurasian Economic Commission, Coordinated macroeconomic policy, financial stability

Trafficking in persons: international legal features of victimological aspects

Lisauskaite Valentina Vlado, Fomina Inna Anatolievna

Abstract

The article considers the international legal consolidation of one of the areas of cooperation of states in the fight against human trafficking — protection of victims of these crimes. The authors disclose the characteristics of the provisions of several international documents, participant of which is Russia. Particular attention is paid to the features of the content and the possibility of applying the established protection measures in practice. Therefore, the UN guidance documents are marked, designed specifically for the protection mechanism. Regional international legal regulation within the CIS of protection of victims of trafficking in human beings is analyzed. The authors refract all the analyzed documents to the Russian legislation. The presented final conclusion indicates the insufficient level of participation of our country in the creation of a national mechanism for the protection of victims and the implementation of the measures considered as international obligations of the state.

Keywords

victim of human trafficking, victimology, international treaty, protection of victims, combating trafficking in persons

Statements of heads of state as one of the types of international agreements: problems and suggestions

Salamov Natig Mukhtar oglu

Abstract

Using the example of the Statement of the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation dated November 9, 2020, the legal nature of statements by heads of state was studied. The relevance of the research topic is emphasized, due to the problems of statements by heads of state as one of the types of international treaties. It was

revealed that when adopting this Statement, the contracting parties committed legal flaws related to the content, the expression of consent to be bound by its provisions, registration and publication. It has been established that statements by heads of state establishing, changing or terminating mutual rights and obligations, formalized in writing, are international treaties. Taking into account the principles of international law, it is concluded that, being international agreements, the Declarations fall within the scope of application of the Vienna Convention on the Law of Treaties, 1969, and the provisions of this convention must apply to them. It is recommended to conclude international agreements called Statements in the manner established by the norms of international and domestic law of the states party to the agreement. On official Internet portals where international treaties are officially published, add a form such as Statement to their titles.

Keywords

Russian Federation, Republic of Azerbaijan, international treaty, statement, conclusion, ratification, publication, problem