Isaev Igor Andreevich

MASKS OF THE SOVEREEN: "REPUBLIC" - "MONARCHY"

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The article analyzes the historical process of transformation of political forms in their correlation with such a phenomenon as sovereignty. The study is based on the concepts of the half-forgotten Italian thinker and jurist as Gianbatista Vico, as well as the theories of sovereignty formulated by Joseph de Maistre and Alexis Tocqueville , famous ideologists of the counter-revolution in France.

For these ideologists, the image of Rome as a political and multidimensional system has always remained a kind of "matrix" of political forms. It was there that such principles as "republicanism" and "monarchism" were legally formed, which had a decisive influence on all further political development of Europe. The change in political forms, however, did not affect the essence of statehood, presented in the form of sovereignty .

Sovereignty presupposes the presence of freedom and equality, two principles that are in a state of mutual complementarity and contradiction. The French Revolution quickly demonstrated that equality as a political factor comes into conflict with political freedom. The processes of state centralization based on political and legal equality give rise to authoritarian tendencies that adjust the original goals of the revolution. Republican principles are not identical with democratic principles. Monarchies of the "new type" are always ready to replace the republics.

Sovereignty creates its own idea of justice, the fundamental concept of law. But for the monarchy and the republic, justice means a different concept of law and justice. Over time, the concept of "social justice" is born, which crowds out the legal- normative and political definition of justice. The turning point in this process was the revolution. At the same time, Vico's relativistic views on political

form and justice were supported by the emerging political romanticism in Europe, which opened up new perspectives for political-legal theory and practice.

Sovereignty as a special legal status can be expressed collectively or individually. Sovereignty is not the same as dictatorship, although it includes an element of domination. A dictatorship presupposes the urgency of its existence and a situation of emergency, sovereignty claims to be eternal or at least long-term. Sovereignty does not coincide with sovereignty, this latter is characterized by an orientation towards a state of freedom and self-determination, sovereignty always gravitates from Hegelunia . The "masks" of sovereignty are diverse, but its essence remains indispensable. Sovereignty creates a space of inviolability and requires the concentration of power in one center. The institution of representation is secondary to him. Political attention is focused on a single subject of power. Subjectivity is the defining feature of sovereignty. Monarchical and republican forms are amorphous and undefined enough to be directly and unambiguously associated with the concept of sovereignty. As for the legal sphere, sovereignty, itself being a product of the legal, forms norms and institutions that affect the contexts surrounding it. Characteristic is the exclusivity due to subjectivism, which is characteristic of sovereign rule-making. The constituent legislation of the sovereign characterizes the activities of both the collective and the individual sovereign. The history of monarchies and republics is largely similar precisely because of these properties of sovereign existence.

Baev Valery Grigorievich

Marchenko Alexey Nikolaevich

H ORMATIVNOST and authoritarian: INTERPRETATION PROFESSOR IA ISAEVA

No. 12, 2015

The article analyzes the scientific work of the famous Russian historian of state and law, Professor I.A. Isaeva, who is one of the most profound researchers of the metaphysical foundations of the categories of power, domination and law, considering them in historical retrospection. He penned a number of works ("Metaphysics of power and law" (M., 1998), " Politica hermetica : hidden aspects of power" (M., 2000), "Power and law in the context of the irrational" (M., 2006), " Dominance: Essays on Political Philosophy "(Moscow, 2008)," Topos and Nomos : Spaces of Law and Order "(Moscow, 2011)," Normativeness and Authoritarianism. Intersection of Ideas "(Moscow: Norma, 2014), united by a common research problem. Focusing on the last book, the reviewers note that IA Isaev's publications are equipped with versatile philosophical material and diverse sources, investigate the "will to power" as a philosophical and legal problem, critically interpret the modern liberal-democratic society, erecting its "genealogy" to the ideas and practice of the Great French Revolution at the end of the 18th century.

The authors of the review share many of the positions of I.A. Isaev, note his deep penetration into the described era, a high degree of reading, a figurative metaphorical style of presentation. The reviewers appreciate the point of view of I.A. Isaev, who accuses modern liberal society and the "rule of law" in creating a "new type of despotism", cruel, "historically centralized", cold and terrible. At the same time, they point out that I.A. Isaev avoids answering the question of what should replace this Leviathan, are there alternatives to “normative coercion”? Are there any existing and pre-existing societies known to us that are more perfect than modern liberal society? Is there even a theoretical possibility to create a fundamentally new state, devoid of inevitable contradictions?

Panchenko Vladislav Yurievich

LEGAL ADVICE AND LEGAL ASSISTANCE AS PAIRED LEGAL CATEGORIES

In contrast to the measures of legal counteraction to unlawful behavior, due to the tradition of exaggerating the struggle, contradictions and exaggeration of the role of coercion in law, due to the tradition of exaggerating the struggle, contradictions and exaggerating the role of coercion in law, the opposite type of legal interactions - legal assistance for the realization of rights and legitimate interests - remains poorly developed .

The use of the method of paired legal categories, which directs the researcher to search for insufficiently studied properties of one category with sufficient knowledge of another, paired to it, category, is able to fill in cognitive gaps in the “opposite” way.

The author substantiates the conclusions that the study of legal assistance and legal opposition develops and supplements the doctrine of the information-psychological mechanism of action of law, communicative and instrumental approaches in law; legal opposition and legal assistance are paired legal categories, since they: have common features (object, purpose, etc.), differences (object, means, etc.), are internally dialectically interrelated and interact as opposite legal reactions to behavior (activity) subjects of law, opposite and type-forming principles of legal interaction. Legal opposition can simultaneously act as legal assistance and vice versa, including in the case of mutual exclusion of the legal goals of the participants in legal interaction, when legal assistance to the achievement of the goals of one person acts as legal opposition to the achievement of the legal goals of another; legal assistance can turn into legal opposition; they can interpenetrate each other.

The positions on the admissibility of understanding legal assistance and counteraction of both direct (targeted) and indirect (actually emerging) types of legal interaction are argued; on the need to distinguish between legal assistance

and legal opposition as legal activities aimed at socially useful goals, and legal obstruction and complicity as negative, illegal phenomena.

ROMAN DMITRIEVICH SHARAPOV

ALTERNATIVE THEORIES OF THE OBJECT OF CRIME IN THE CONTEMPORARY CRIMINAL LAW OF RUSSIA

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The article provides a critical outline of the basic concepts of the object of a crime, which are substantiated in the theory of modern criminal law, as opposed to the generally accepted concept of the object of a crime as public relations. The following theories are reviewed: “the object of a crime is a legal benefit, a law-protected interest”, “people as an object of a crime”, “an object of a crime is the interests of social subjects”. It is concluded that alternative theories of the object of the crime failed to distance themselves from the category of social relations in explaining the object of the crime. Any of the structural elements of social relations (its subject (goods, values), participants, their interests or rights) is declared as such. This is evidence that, in the Russian doctrine of criminal law, the roots of the theory of the object of a crime as a public relation are quite strong, and to squeeze it out with some other concept, practically oriented criminal law research is needed, with a truly scientific rethinking of the experience that has been accumulated in the teaching of the object of the crime by representatives of the classical, sociological and Soviet schools of criminal law of the XIX-XX centuries.

Denisova Anna Vasilievna

SELF-REGULATION IN RUSSIAN CRIMINAL LAW

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The article concludes that the legal system is capable on its own, thanks to self-regulation , to maintain the stability and stability necessary for normal functioning. Self-governing processes are a manifestation of a property inherent in all systemic formations, arising from their nature, therefore, they take place in legal matter both at the intersectoral and sectoral levels. With regard to the branch of criminal law, autoregulatory processes to a certain extent determine the degree of its unity and integrity, the level of functional capabilities of the elements of its system, because thanks to the processes under study, they are harmonized, self-adjusted, and "adjusted" to each other. Self-regulation in criminal law (and in law in general) is carried out through the functioning of a system - preserving mechanism, the structural elements of which, as a rule, serve as a means of interpreting branch formal legal sources, or serve as the basis for their development, or even directly regulate social interactions related to the subject. legal regulation, supplementing the existing legal norms or acting as an alternative to them. The article analyzes the features of the functioning of the system - preserving mechanism in criminal law; a detailed description of its structure and content is given, the significance of this mechanism for ensuring sectoral self-regulation is revealed. Carefully study the structural elements sistemosohranyayuschego mechanism: Principles, objectives and tasks of the criminal law, a presumption of sectoral and fiction, prejudice , conflict and whitespace rules pravopolozhenija . They coexist in close interconnection and form a complex dynamic mechanism of self-regulation of criminal law, which preserves and maintains its systemic characteristics. Thus, the system - preserving mechanism in criminal law is an objectively existing subdivision of the criminal law system, its obligatory structural component, thanks to which autoregulation processes in the industry are carried out , its adaptive capabilities increase, which ultimately affects the effectiveness of criminal law in the " external " regulation of public relationship. Self-regulation processes embody the "reserve" of law, which ensures the resolution of one of the main contradictions of law - the need for its stability and dynamism at the same time. At the same time,

the existence of the investigated processes and the mechanism greatly facilitates the law enforcement activity of the state, ensuring the prompt resolution of issues arising in legal practice.

Egorova Natalia Alexandrovna

Subject of GUILT: problems of criminal legal science and practice

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The article clarifies the traditional approach to the interpretation of the substantive content of guilt as the actual circumstances of the commission of a crime, the awareness and foresight of which (or the absence of such awareness or foresight) are mandatory for a given corpus delicti. Under the subject content of guilt, it is proposed to understand not the legally significant circumstances of the crime themselves, but their reflection in the mind of the perpetrator. It is proposed to investigate the subject content of guilt at three levels: individual (specific crime); a separate composition; species composition. At the level of the general corpus delicti, it seems impossible to establish the universal components of the subject content of guilt. The author considers the subject content of guilt to be an integral part, a "figurative" aspect of its psychological content. The subject content of guilt is defined as a set of subjective images of the signs of an offense, considered at the levels of a specific crime, a separate corpus delicti, a specific corpus delicti.

The features of the subject content of guilt in intentional and careless crimes, crimes with material and formal structures, with qualified and privileged structures, etc. are shown. The problem of the degree of reflection (exact or approximate knowledge) in the mind of the guilty person in intentional crimes of

such signs as the properties of the victim (on example of crimes against the person and against the order of government). The ambiguity of theoretical and practical approaches to the issue of recognizing the sign of the wrongfulness of an act is stated (on the example of economic and environmental crimes). The author believes that when qualifying the theft as causing significant damage to a citizen without taking into account the guilty's awareness of this feature, there are no elements of objective imputation. When both intentional and careless crimes are committed with a special subject, the mind of the perpetrator reflects the fact that the latter has a special legal status (signs of a special subject). When a crime is committed as part of a group of persons, the consciousness of the perpetrator must reflect the signs characteristic of group crimes.

Recognizing the presence of evaluative moments in the process and the result of establishing the subject content of guilt, the author comes to the conclusion that it is inadmissible to substitute the subject content of guilt by its assessment. It is proposed to include clarifications on the substantive content of guilt in all decisions of the Plenum of the Supreme Court of the Russian Federation, dedicated to judicial practice in cases of certain types of crimes.

Filippov Pavel Alexandrovich

DECRIMINALIZATION from passing MILITARY AND ALTERNATIVE CIVIL SERVICE (Art. 328 of the Criminal Code)

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Based on the study of doctrinal provisions and established judicial practice, the article analyzes the grounds for decriminalizing evasion from military and alternative civilian service. The article analyzes the doctrinal interpretation of the crime under Art. 328 of the Criminal Code of the Russian Federation. Within the

framework of the topic under study, the author analyzed the decisions of the courts of various levels. In total, 611 decisions of courts of 15 constituent entities of Russia were analyzed.

The paper drew attention to the established historical tradition of criminal liability for evading military service, including a detailed review of regulations, starting from 1918, that established criminal liability for evading military service in various ways.

The article concludes that it is possible to decriminalize the crime under Art. 328 of the Criminal Code of the Russian Federation and the transfer of this act to the category of an administrative offense.

As a justification for this conclusion, the author points to:

- a low level of public danger of the act, which is due to: the abstract nature of the harm inflicted on the object; preferential commission of a crime by pure inaction (failure to appear on a summons); by designing the composition according to the type of formal; positive characteristics of persons who have committed a crime; in almost all crimes, the courts state the presence of mitigating circumstances; lack of base motives for committing a crime;

- the absence of clear psychological and moral grounds for the criminalization of the act in question, including more than half of the population and a third of the interrogators agree with the decriminalization of the act under study, and the courts generally impose a penalty in the form of a fine or conditional imprisonment for a short period;

- a decrease in the number of crimes committed, over the past ten years the number of crimes has decreased by 2.5 times;

- selectivity in bringing to criminal responsibility persons who have committed a crime under Art. 328 of the Criminal Code of the Russian Federation, namely, that 10% of persons who evade military service are prosecuted,

- organizational and managerial difficulties in the implementation of the criminal law prohibition.

Marina Borisovna Kostrova

Theory MODEL LANGUAGE FORMS of CRIMINAL CODE OF THE RUSSIAN (Part 1: those theoretical approaches to the understanding of the ontological status of the language of the criminal law

No. 12, 2015

Within the framework of the correspondence round table "New Criminal Code of Russia: Conceptual Foundations and Theoretical Model" the question is raised on what scientific basis should be based on the theoretical model of the linguistic form of the new Criminal Code of Russia.

There are four main theoretical approaches to understanding the ontological status of the language of law, which have developed in the general theory of law and a number of branch sciences: 1) " law-technical "; 2) "non-functional"; 3) "radical"; 4) "natural language".

In the first approach (the most common), the language of the law (option: the language of law) is considered as a component (options: element, means, area, etc.) of the legislative (options: legislative, law-making, legal) technique, or in the system of legislative technique linguistic rules are highlighted (option: an independent element - legislative linguistics).

The second approach either directly recognizes the existence of the language of law, or does not distinguish between the language of law and the language of law.

The third approach to the language of law is represented by extreme views: from the recognition of the grammatical determinism of law (that is, to giving an

exaggerated meaning to one of the levels (tiers) of natural language - grammar) to a complete denial of the productivity of the study of the language of law.

It is proved that these approaches do not take into account: 1) the status of the natural (for Russia - Russian) language, in which laws are written, in the general picture of the world; 2) the division of the Russian language into functional styles accepted in linguistics; 3) the structure of a natural language, which includes a system of interrelated and interdependent elements that form three levels (tiers) of the language - lexical, grammatical and phonetic; 4) methodological provisions of philosophy, logic and linguistics, based on which, any text has logical and linguistic components.

The conclusion is argued that the fourth approach is more productive, substantiating the need to adapt to the needs of criminal law regulation of the inherent properties of the natural language system and to search for rational ways of using the natural manifestations of the Russian language in the text of the criminal law in order to give accuracy and clarity to criminal law regulations, in connection with what exactly this approach is proposed to use to build a theoretical model of the linguistic form of the new Criminal Code of Russia.

Skachkov Nikita Gennadievich

PRESUMPTION OF MUTUAL INSURANCE IN CROSS-BORDER SEA TRANSPORTATION OF DANGEROUS GOODS

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Cross-border sea transportation of a consignment of dangerous goods predisposes to the emergence of multi-level insurance coverage, it is enough just to realize how compensation for losses is linked to the scale of the risk. Any decisions in the field of strategic management are in demand , if only to come to the pooling nature of the insurance function, which consists of the accumulation of

payments for compensation. The axiomatics of the mutual insurance club claims maximum reliability.

Clubs are hardly limited to a single array of forward deals. The distribution of the total mass of losses cannot be ruled out elementary. Hazard differentiation can be tangible. The coverage is burdened by the involvement of payments of varying degrees of financial complexity. Mutual insurance is undoubtedly a good alternative here. But P&I clubs mediate their presence only if the excess of expenses over income translates into a disastrous depreciation of premiums.

Mutual insurance clubs have a dominant insurance contract. They are free from looking for any special advantages in the uncomfortable conditions of minimum insurance, when the variable premiums are determined with a certain allowance for incomplete coverage. The relationship between the indicators of the actual cost of dangerous goods is so thin that no single method of notifying the state of the risky stock does not correspond to the line of the insurance product.

Mutual insurance clubs testify in favor of the premium accrued and subsequently returned to the policyholder, thereby ensuring an impartial cost reduction. A very contradictory procedure is emerging , within which the stage of accumulation of reserves nevertheless undergoes a far from unambiguous period of formation of coverage.

Tsaregradskaya Yulia Konstantinovna

INSTITUTE OF DEBT STATES IN THE UK: FORMATION AND DEVELOPMENT OF LEGAL REGULATION

No. 12, 2015

The evolution of the development of the institution of the public debt of Great Britain and its legal regulation, from the reign of William III to the present

day, is considered. It is indicated that many instruments of modern government debt policy, in particular, types of government debt (internal and external), forms and types of government loans (government loans, government bonds, urgent, etc.), government debt management bodies were legally formalized in different periods. development of the state. An interesting fact in the study of the evolution of the development of the institution of public debt in Great Britain is that the theories of J. Keynes and R. Barro , who created a mechanism for effective public debt management, were taken as the basis of the official public budget and debt policy . The article reveals the models of public debt management, among which three main ones are currently used in world practice: traditional, alternative and intermediate. The traditional model of building a system of public authorities assumes the leading role of the Ministry of Finance or the Treasury. An alternative model operates on the basis of the delegation of powers to borrow funds to relatively independent bodies - government debt management agencies. The integrated model is characterized by the division of public debt management functions between the Ministry of Finance and the Central Bank. The experience of the functioning and management of the public debt of Great Britain allows the author to conclude that the evolution of its development is similar to the evolution of this institution in Russia, therefore, it is necessary to borrow an alternative model of public debt management, characterized by the presence of a specially created public debt management body, which functions in Great Britain under Ministry of Finance - Debt Management Office .

Dr. Geraldine Demme

REFORM OF GERMAN LEGISLATION ON VIOLATION OF EQUAL COMPETITION

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The article reveals the problems of regulation of competition in Germany, in particular, discloses the content of the so-called German economic constitution, based on the idea that competition contributes to the creation of more favorable conditions for the consumer, shows methods of ensuring competition, including through the application of the Law on the Protection of Competition (Gesetz gegen Wettbewerbsbeschränkungen , GWB) and the Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb , UWG). In addition, a historical excursus was made on the development of competition law starting from the end of the 19th century, and a commentary on the main provisions of the above laws was given.