Demchenko Tamila Ivanovna

SCIENTIFIC AND PHILOSOPHICAL THOUGHT ABOUT THE CONCEPT AND UNDERSTANDING OF LEGAL CONSCIOUSNESS

No. 12, 2017

On the basis of scientific and philosophical views, approaches are presented to the consideration of the concept and understanding of legal consciousness, its improvement, presented as expansion and elevation, which are carried out in the horizontal and vertical directions, aimed at achieving the completeness of the concept and understanding.

The completeness of the concept of legal consciousness is associated with the fullness of its historicized knowledge about the past state-legal phenomena preserved by memory, about their present being, given by the acting mental thought.

To understand the sense of justice, it is necessary to recognize the initially given unity of the spiritual and material aspects of state-legal existence, the specifics of their manifestation in his past, present and future life, anticipated by a superpsychic thought. The understanding of the meaning of state and legal life and the truth of its existence is associated with the unity of the spiritual and material aspects.

In the horizontal direction, physical legal consciousness is being improved, which is a product of mental activity, reflecting state and legal phenomena in their material existence. Individualism and egoism are associated with material existence, which is in endless division and isolation.

Physical legal consciousness is represented by simple consciousness based on instinctive, emotional-sensory perception, and intellectual consciousness based on thinking, which has a conceptual form of expression.

In the vertical aspect, improvement is carried out through the interaction of all mental and super - mental processes. The interaction of consciousness with the unconscious, sensory with the instinctive gives a synthesis of knowledge and feeling, expressed in straight-knowledge .

The interaction of the logical with the intuitive, the collection of logic and intuition, synthesizing straight-knowledge , promotes self-knowledge, leads to understanding, promotes the ascent of the intellectual to the super-intellectual consciousness, which unites the multitude in thought, constructs a model of the whole in understanding.

This approach to the examination of legal consciousness allows us to identify new creative possibilities of it and use them in theoretical research to identify the meaning of state and legal life, to determine the true principles of its just structure and righteous government.

Alieskerov Mizamir Ahmedbekovich

IMPLEMENTATION OF TARGETS FOR A COMPLETIVE CIVIL PROCESS IN A LEGAL SOCIAL STATE

No. 12, 2017

The goals of the adversarial civil procedure must comply with the principles of a legal social state.

Among the targets of the civil procedure, one can single out a universal target - the elimination of obstacles in the exercise of rights, freedoms and legitimate interests. Targets can be classified by dividing into source and derived. The original targets underlie the emergence of a civil case, derivative targets are realized as a result of the consideration of the case. Protection of objective rights refers to derivative targets. This target setting, apart from the protection of subjective rights, cannot serve as a basis for initiating a civil case in court.

The implementation of the target setting for a real resolution of the conflict requires the establishment of a special procedural regime for considering labor, housing, family cases, in which the parties are united by a local social and legal space, which persists even after the adoption of a court decision. In particular, it is possible to involve state bodies in the case, whose functions include protecting the

relevant rights of citizens, and imposing on them, in exceptional cases, the obligation to monitor the observance of the rights of a citizen within a certain period after a court decision to satisfy the claim.

The task of protecting the rights that really belong to persons does not allow excluding the establishment of the truth from the targets of the adversarial civil procedure. It is advisable to include the concept of "fair trial" in procedural legislation. At the same time, there are no grounds for using the concept of "fair judgment" in the procedural law, since it leads to the possibility of opposing the procedural law to the norms of substantive law.

Procedural equality, which is a prerequisite for the implementation of the targets of an adversarial civil procedure, inherently includes equality of opportunity in the exercise of procedural rights. In this regard, a reasonable derogation from the equality of procedural rights is not an exception to the principle of procedural equality. Inequality of the parties in procedural rights and opportunities can be expressed in the form of property benefits, procedural preferences and procedural advantages. The presence of procedural advantages for one of the parties requires the application by the court of mechanisms for equalizing the procedural possibilities of the parties.

Svetlana Sheveleva

Coercion AS A PUBLIC DANGEROUS ACT

No. 12, 2017

Coercion in criminal law is a rather capacious category that has various legal embodiment in the law. Within the framework of this study, only one aspect of coercion is highlighted, which has legislative reflection as a mandatory component of certain elements of crimes. The starting point of the presented reasoning is the statement according to which, when coerced, a person chooses a line of behavior, trying to avoid adverse consequences for himself or his close ones, or is deprived of the opportunity to choose a variant of behavior. In other words, when coercion

as a crime, the guilty person is not interested in the person in himself, not in his property, but in his behavior: the person seeks to direct the latter in the direction he needs by means of coercion.

Coercion from the point of view of some corpus delicti in the Special Part of the Criminal Code of the Russian Federation in the doctrine is considered either as a method of committing a crime or as a socially dangerous act. Following these premises, the author analyzed coercion in the form in which it is presented in the Special Part of the Criminal Code of the Russian Federation, the emphasis is made mainly on the correctness of attributing certain forms of influence to coercion and the success of the legislative text, as well as on those acts, the crime of which is excluded by separate structures. Based on the analysis of the objective side of the offenses under Art. 120, 133, 147, 149, 179, 184, 240, 302, 309 and 333 of the Criminal Code of the Russian Federation, it is concluded that “coercion” as a socially dangerous act is a method of legislative technique that is often used, but unsuccessful from the point of view of the theory of criminal law. From these positions, coercion can form only a method of committing a crime, but not a socially dangerous act.

Engelhardt Artur Avgustovich

SEX CRIME SYSTEM (IN THE CONTEXT OF NOTES TO ARTICLE 131 OF THE Criminal Code of the Russian Federation)

No. 12, 2017

The purpose of this article is to analyze the current system of crimes against sexual freedom and sexual inviolability through a note to article 131 of the Criminal Code of the Russian Federation. The requirements contained in it to qualify lecherous acts (parts two to four of Article 135 of the Criminal Code of the Russian Federation), sexual intercourse and other acts of a sexual nature (parts three to five of Article 134 of the Criminal Code of the Russian Federation), committed against persons under the age of twelve, under clause "b "Part 4 of

Article 131 of the Criminal Code of the Russian Federation or under paragraph" b "of Part 4 of Article 132 of the Criminal Code of the Russian Federation as rape or violent acts of a sexual nature, that is, as the most dangerous sexual crimes, cause different assessments. The very transformation of the qualification of these acts is determined by the introduction of the so-called “age of absolutely unacceptable consent” of a person to commit sexual intercourse or other sexual acts with his participation. Revealing the consequences of the transformation, the author shows that now Chapter 18 of the Criminal Code of the Russian Federation contains two systems of crimes against minors - complete and truncated. Truncated is a consequence of the recognition of exclusively violent sexual crimes against persons under the age of twelve. This approach seems far from obvious. Another research issue of the article is related to the assessment of the compliance of the normative grounds of liability contained in the note with the requirements of Article 8 of the Criminal Code of the Russian Federation. Establishing the grounds is complicated, since according to the text of the note it is determined by a combination (combination) of at least two articles of Chapter 18 of the Criminal Code of the Russian Federation. It is required to assess the compliance of the signs of the committed act with the signs of the objective and subjective aspects of the compositions of nonviolent sexual intercourse, certain acts of a sexual nature or lecherous actions, that is, any of the crimes provided for in Articles 134 or 135 of the Criminal Code of the Russian Federation. Further, based on the fact that the victim (victim) of a crime is in a helpless state, the possibility of his final qualification under paragraph "b" of part 4 of article 131 of the Criminal Code or paragraph "b" of part 4 of article 132 of the Criminal Code of the Russian Federation is displayed. Qualification issues were considered taking into account the recommendations given by the resolution of the Plenum of the Supreme Court of the Russian Federation dated December 4, 2014 No. 16 "On judicial practice in cases of crimes against sexual inviolability and sexual freedom of the individual", which, however, did not touch upon some difficult situations. Their absence is especially sensitive on issues of qualification under Article 132 of the Criminal

Code of the Russian Federation for lecherous acts committed against persons under the age of twelve.

Budaev Kapiton Ayurzanaevich

ON SOME DIFFERENCES OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION FOR THE PROTECTION OF THE RIGHTS AND FREEDOMS OF RUSSIAN CITIZENS: WAYS OF THEIR RESOLUTION

No. 12, 2017

In this article, the author analyzes the problems associated with the current disagreements between the European Court of Human Rights and the Constitutional Court of the Russian Federation in the interpretation of the norms relating to the protection of the rights and freedoms of Russian citizens. The article considers the positions formed in domestic and foreign science and practice on the possibility of applying the decisions of the European Court of Human Rights on the territory of Russia in the context of ensuring state sovereignty, protecting the foundations of the constitutional order (in conditions of contradiction between such decisions and the national constitution). The author provides examples of in which European countries and how issues are resolved when the decisions of the European Court of Human Rights contradict the constitutional provisions of their countries. The article assesses the legal position of the Constitutional Court of the Russian Federation on the issue of correlation between the decisions of the European Court of Human Rights and the Constitution of Russia, as well as the law that endowed the Constitutional Court of the Russian Federation with the right to make decisions regarding the possibility or impossibility of executing judgments of the European Court of Human Rights on the territory of Russia. It is noted that this Federal Law has been ambiguously perceived by scientists at home and abroad. Some scholars and lawyers positively perceived the adoption of this law in

the context of the fact that Russia remains under the jurisdiction of the European Court and its decisions remain binding on its execution. The decision of the Constitutional Court of the Russian Federation on the decision adopted by the European Court in the case " Anchugov and Gladkov v. Russia" is analyzed in detail , the opinions of a number of well-known scientists who support the decision of the Constitutional Court of the Russian Federation, as well as criticize the legal positions of the Constitutional Court in this case are presented . The author comes to the conclusion that it is necessary to maintain a balance between the common European values expressed in the positions of the European Court of Human Rights and the traditional values of the Russian society and state, expressed in the Constitution of the Russian Federation. The article proposes certain ways of overcoming the differences arising between the interstate body of judicial protection of human rights and the supreme body of constitutional control, including through the improvement of the legislative framework for the implementation of decisions of the European Court of Human Rights in Russia, as well as the use of various mechanisms for correcting the text of the Basic Law of the country.

Nepomniachtchi Tatiana Viktorovna

ACCOUNTING BY THE COURTS OF THE GENERAL THE BEGINNING OF THE APPOINTMENT OF PUNISHMENT IN THE ELECTION OF THE PUNISHMENT MEASURES

No. 12, 2017

The article is devoted to the problems of accounting by courts of the general principles of sentencing and their reflection in court sentences when justifying the punishment measure. Attention is drawn to the fact that in the theory of criminal law, the issue of the general principles of sentencing is debatable, and explanations about their consideration in the decisions of the Plenum of the Supreme Court of the Russian Federation are too short and not without contradictions. In many

respects, this is precisely why the study of sentences passed by the district courts of the city of Omsk and the Omsk region, conducted by the author , revealed errors when judges took into account the general principles of sentencing. An analysis of the practice of imposing punishment by the courts within the limits of the sanctions of the Special Part of the Criminal Code of the Russian Federation shows that in the vast majority of cases, the courts impose a punishment in the form of imprisonment and in the form of a fine, the minimum or closer to the middle of the sanction. The same trend persists in relation to crimes for which the legislator has increased the punishment. The author does not agree with the position of the Plenum of the Supreme Court of the Russian Federation dated December 22, 2015 No. 58 "On the practice of imposing criminal punishment by the courts of the Russian Federation" on the issue of criteria determining the nature and degree of social danger of a crime. The opinion is substantiated that the nature of the social danger of a crime depends on the object of the encroachment, the nature of the criminal consequences and the form of guilt, and the degree of public danger depends on the amount of harm or the severity of the consequences that have occurred, the method of the crime, the role of the defendant in the commission of the crime in complicity, the type of intent and negligence, the motive. crimes, the degree of implementation of the criminal intent. The most important for a comprehensive characterization of the perpetrator's personality are: socio-demographic data; moral and psychological characteristics; psychophysiological data; the legal status of a person. The introduction to the Criminal Code of the Russian Federation of articles 60^1 "Imposition of punishment taking into account the nature and degree of social danger of the crime" and 60^2 "Imposition of punishment taking into account the identity of the perpetrator" is justified. In order to fully take into account the mitigating and aggravating circumstances by the courts when choosing a punishment measure, the Criminal Code of the Russian Federation should establish special rules for imposing punishment in the presence of all mitigating and aggravating circumstances.

Yuri Sergeevich Bezborodov

INTEGRATION AS AN INTERNATIONAL LEGAL METHOD OF LEGAL CONVERGENCE

No. 12, 2017

The work is devoted to the analysis of the integration method as a method, technique and means aimed at solving problems and realizing the goals of legal convergence, the main of which is to achieve rapprochement, consonance of the legal systems of states with varying degrees of concretization. The processes of convergence and universalization of legal regulation in international law are implemented using various methods - unification, harmonization, model rule-making and the most advanced method to date - integration. In convergent processes, international law plays a leading role, being a necessary legal denominator for the legal systems of states. The first stage on the way to building a universalized single legal space is harmonization with the corresponding method; then follows legal unification and model rule-making, which are much closer to the designated goal; then, for those ready to forge alliances and reduce sovereignty, an era of integration begins. The term " integration" is multifaceted and in its most general form is applicable to the characteristics of convergence processes occurring along with the process of divergence. Integration is fundamentally social in nature. The study of the problem of integration within the framework of the science of international law is associated with understanding, awareness of integration processes - their causes, forms, goals, and is aimed at identifying general trends in them, also associated with the causes, determining facts, the main features of this phenomenon. As applied to international law, integration is a higher level of interaction between states and other entities, when the participants in this process alienate part of their sovereignty in favor of supranational bodies. Integration as a method until now has not been comprehensively subjected to any serious research within the framework

of the science of international law. The author offers his own understanding of the term integration and related categories.

Kozheurov Yaroslav Sergeevich

ISSUES OF THE RIGHT OF INTERNATIONAL LIABILITY IN THE DECISION OF THE COURT OF THE EAEU OF FEBRUARY 21, 2017 ON THE CASE "RUSSIAN FEDERATION VERSUS THE REPUBLIC OF BELARUS" *

No. 12, 2017

The article, through the prism of international responsibility law, analyzes the first decision of the EAEU Court, rendered in an interstate dispute on the issue of a member state's compliance with its obligations under the law of the Eurasian Economic Union. Both the positive aspects of the decision, expressed in the clarification by the Court of a number of important provisions of Union law, and critical remarks concerning, firstly, the use by the Court of the original, but unsuccessful from the legal point of view, the wording “the execution is not in full” are given; secondly, deliberate leaving out of the brackets of the judicial act of any invoice, which, on the one hand, turned the decision on the contentious case in fact into an advisory opinion, on the other hand, deprived the court of a good opportunity to contribute to the discussion on the distinction between completed and ongoing acts, which is relevant both for issues of admissibility of cases in terms of the condition ratione temporis , and in terms of the law of international responsibility (including in terms of determining the consequences of the violation - cessation or restitution). The article expresses the opinion that the Court should nevertheless consider the issue of the admissibility of the case from the point of view of temporal jurisdiction, having come to the conclusion that it exists due to the unfinished (lasting) at the time of entry into the Treaty on the EAEU by virtue of the nature of the alleged violation of the rule on mutual recognition of decisions customs authorities.

Lutkova Oksana Viktorovna

ESSENTIAL AND OTHER CONDITIONS IN CROSS-BORDER AGREEMENTS ON THE EXCLUSIVE COPYRIGHT ORDER

No. 12, 2017

The article discusses the issue of the legal consequences for the counterparties of a cross-border agreement on the disposal of exclusive copyrights of the discrepancy between the requirements of national law on the essential terms of the agreement. Analyzes the " non-conclusion " and "invalidity" of the contract. Other (in addition to the essential) terms of the agreement are being considered.

Victoria Yurievna Dokuchaeva

ADMINISTRATIVE LEGAL PROTECTION OF LAND RELATIONS IN RUSSIA AND UKRAINE: A COMPARATIVE LEGAL ANALYSIS

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the article defines the concept and structure of the administrative and legal mechanism for the protection of land relations in Russia and Ukraine. The specified mechanism is defined as a system of legal means and methods aimed at implementing and ensuring the rights of subjects of land legal relations, implemented by executive authorities on the basis of administrative and legal norms. It is concluded that the administrative and legal support for the protection of land relations includes the definition and development of the legal framework for positive regulation and principles, institutions for protecting the land system, land as an element of the environment, protecting land resources from unlawful encroachments, ensuring human security, as well as preventing land offenses. Particular attention is paid to the characteristics of the concept and types of land offenses, for the commission of which administrative liability is provided

in accordance with the Code of Administrative Offenses of the Russian Federation and the Code of Administrative Offenses of Ukraine. A land offense is defined as a guilty, unlawful act or omission that contradicts the legal norms for the rational use of land resources, hinders the exercise of the rights and legitimate interests of land owners and land users, violates the procedure for managing the land fund as a national wealth established by the state. Land offenses, for the commission of which administrative responsibility is provided for by the legislation of Ukraine, taking into account the subject composition, are divided into three groups: committed by officials, officials and citizens, only by citizens. In the Code of Administrative Offenses of the Russian Federation, the compositions of land offenses, for which administrative responsibility comes, are not combined into one chapter, but are dispersed over several chapters. It is emphasized that administrative responsibility is an independent legal phenomenon, a form of state legal coercion: it pursues as its goal the protection of law and order and the restoration of social justice. The purpose of administrative responsibility is mediated in its functions: penalty (punitive) and preventive. It has been established that there is no single body competent to consider all cases of administrative offenses in the field of land use and protection, neither in the Russian Federation nor in Ukraine. A system of such organs operates. The main feature of administrative and legal means of protecting land relations is called their lack of consistency, manifested in the absence of proper ties between various subjects of their application (government bodies, officials, local governments, judges, etc.).

Murzina Elena Alexandrovna

PROTECTION OF LABOR RIGHTS OF EMPLOYEES UNDER RUSSIAN AND CHINESE LEGISLATION

No. 12, 2017

The problems of ensuring and protecting the labor rights of employees have always been relevant and needing to be improved. This article is devoted to a

comparative analysis of the ways to protect the labor rights and interests of workers, enshrined in the legislation of the Russian Federation and the People's Republic of China . Recently, Russian scientists have paid much attention to the study of modern law of the People's Republic of China and its legislation, including labor law. However, the issues of legal regulation of the Chinese legislation on the protection of labor rights of workers have not received due attention, as well as a comparative analysis of such regulation. The Chinese legal system has a special specificity, which has been repeatedly noted by the Russian scientific legal community. China is characterized by the consolidation of a solid ideological and theoretical foundation, which includes such methodological principles as "human-base", the concept of management based on morality, the concept of management based on the law. At present, the Chinese legislator sets itself the main task of improving the entire system of legislation, which is confirmed by an analysis of the history of the development of the current legislation of China, including labor legislation. The study of the legislation of the People's Republic of China contributes to a more complete and comprehensive understanding of the modern problems of China and the processes taking place in this country, at the same time requires a purposeful comparative legal study. A study of China's labor legislation shows that while prioritizing productivity and results, it does not neglect the protection of workers' rights. Analyzing Russian labor legislation, the author notes that judicial protection is a type of state and legal protection. Taking into account this provision, the author concludes that it is advisable to create labor courts in the Russian Federation within the framework of the ongoing judicial reform. The analysis of Chinese legislation on the issue under study made it possible to identify the features of the methods of protecting the labor rights and interests of workers established by the legislation of the People's Republic of China, in particular, the presence of a mandatory pre-trial procedure for resolving arising labor disputes, regardless of the subject of the dispute. The previously valid Code of Labor Laws of the RSFSR also established a pre-trial procedure for resolving certain categories of labor disputes.

Antonian El ene Al eksandrovna

Borisov Evgeny Arkadievich

ON THE QUESTION OF POPULARIZATION OF CRIMINAL SUBCULTURE AMONG YOUNG PEOPLE

No. 12, 2017

The article examines one of the popular modern destructive youth subcultures - the criminal subculture, which in recent years has gained popularity among Russian youth in its development under the abbreviation "A.U.E." from the standpoint of the need to amend domestic legislation in order to prevent its further spread. Particular attention is paid to the issue of popularizing the criminal subculture among young people and the involvement of its individual members in criminal activities via the Internet, which requires new approaches to the development of preventive measures in relation to the phenomenon under consideration. The methods of dissemination of the subculture that promote a criminal lifestyle, involving the use of modern technologies, information resources that have a colossal audience reach and allow using minimal time and financial investments to obtain the maximum destructive effect, as well as the process of involving young people in their value system, propagandizing traditions, are investigated. customs and views of the criminal world.

Likhter Pavel Leonidovich

ANCIENT HOLISM AND MODERN THEORY OF CONSTITUTIONAL LAW

No. 12, 2017

The article examines certain aspects of the influence of ancient holism on the modern theory of constitutional law. The concepts of the ideal state of Plato and Aristotle called for a balance between the individual and society, the abilities of the

individual and public interests. Philosophers did not oppose society to the state, but sought to develop a theoretical basis for the harmonious state of all social institutions in order to develop the polis.

The teachings of ancient Greek thinkers about holism are still relevant and can be used to explain the main processes of the modern theory of constitutional law.

The study substantiates the advantages of holism as a methodological core in the regulation of individual institutions of state and law over the reduction approach. Among the advantages of holism as a methodology, the possibility of multilevel application is indicated; congruence of scientific knowledge with a variety of research objects of such a complex branch of science as constitutional law; orientation to the consistency of objects of study. The possibility of using a holistic approach (with its recognition of the integrity of the process and the priority of unity) for solving some multilevel tasks of law is considered. Particular attention is paid to the analysis of the modern catalog of human rights from the point of view of ancient holism.

Rethinking the role of the state and law is closely related to the desire to create an effective constitutional system in terms of finding an optimal balance of public and private interests. Based on the results of the study, the author raises the question of considering the category “common good” developed in Ancient Greece as one of the basic concepts of modern constitutional axiology.

Ryabinina Tatiana Kimovna

DOES THE RUSSIAN CRIMINAL PROCESS NEED AN INSTITUTE OF AN INVESTIGATING JUDGE?

No. 12, 2017

Reforming the criminal process and achieving the goals of the judicial and legal reform cannot be considered successful without transforming the pre-trial proceedings in a criminal case, which is a strong tradition in domestic legislation

and law enforcement . Meanwhile, the repeated adjustments made to the Criminal Procedure Code of the Russian Federation regarding the legal regulation of pre-trial proceedings, which are mostly fragmented and haphazard in nature, testifying to the legislator's lack of a holistic understanding of what the criminal procedure in Russia should be and in what direction it should be. should develop, as well as the protracted discussion in the scientific world about ways to improve the preliminary investigation cause serious concern, since the numerous proposals for reforming this stage of the process do not add up to a coherent system in any way due to the fact that they are sometimes too diverse and touch on several "pain points" preliminary investigation.

The developers of the Concept of Judicial Reform in the Russian Federation, arguing about the expansion of adversarial principles in criminal proceedings, quite rightly linked this most important area of the ongoing reform with the preliminary investigation, for which adversariality was least characteristic. In this regard, the idea of creating such an investigative structure was proposed, which should correspond to the principle of adversariality, and in which at the same time it is the investigator who should become a central figure independent of the administrative chiefs, and this idea is clearly dualistic, since the authors of the Concept two ways were proposed for the formation of an adversarial investigation: either through the creation of the Investigative Committee as a service of the prosecutorial power, or through the establishment of the institution of investigating judges in the judicial department. But if the Investigative Committee of the Russian Federation has been functioning for many years, then there are still heated discussions about the introduction of the figure of an investigating judge, both among practitioners and among scientists.