Lyutov Nikita Leonidovich

EMPLOYMENT RELATIONSHIP WITH A COLLECTIVE EMPLOYER: PROSPECTS FOR LEGAL REGULATION

No. 12, 2018

The article analyzes two forms of so-called new or atypical labor relations, in which several legal entities or individuals act on the part of the employer at once. In foreign practice, these forms are called employee sharing. The joint use of workers' labor can be permanent (strategic) or one-time.

Strategic employee sharing, in which employers create a single structure to coordinate their interactions when tasking employees with a job function, can benefit both employees and employers. Employers who do not need to hire a full-time employee, and cannot predict exactly how long they will need the work of this employee, can split the use of his labor, reducing the risk of paying downtime. Workers, on the other hand, reduce the volatility of their employment by being offered more stable working conditions and greater workload than if they had to deal with these employers individually. In addition, in the case when they work for a coordinated group of employers, the risk is removed,

The legalization of this form of employment implies the need to consolidate in the law a number of aspects related to such legal relations: the establishment of the minimum and maximum total working hours, the order of assignment of work, the distribution of responsibilities and duties in relation to wages, social insurance, etc.

A one-time joint assignment of work or secondment can be beneficial to employees and employers for similar reasons. When legalizing this form, it is necessary to limit the maximum time for secondment of workers in order to avoid the possibility of turning this scheme into the actual use of agency labor. In addition, it is necessary to establish legal guarantees for employees, similar to those provided to them when concluding contracts for the provision of labor of employees (personnel).

The introduction of these forms of employment into legislation, along with the already legalized contracts for the provision of labor for employees (personnel), makes it possible to raise the question of the existence of a new subject of labor law - a collective employer.

Sviridenko Oleg Mikhailovich

TOPICAL ISSUES OF SUBSIDIARY LIABILITY OF CONTROLLING PERSONS IN BANKRUPTCY OF A DEBTOR

No. 12, 2018

The article analyzes the judicial arbitration practice of applying the norms of liability of persons controlling the debtor. The conducted research shows that in recent years there has been a positive trend of bringing persons who control the debtor to subsidiary liability.

Usoltseva Svetlana Valerievna

PROBLEMS OF LEGAL QUALIFICATION OF ILLEGAL ACTS IN CREATING WORKS OF SCIENCE FOR THIRD PARTIES

No. 12, 2018

The article discusses the issues of civil law qualification of illegal actions to create works of science for third parties, doctrinal approaches and practical consequences of certain options for such qualifications, the possibility of applying the provisions of Article 169 of the Civil Code of the Russian Federation to these actions in the framework of countering plagiarism in science. Attention is drawn to the problem of identifying a private law interest violated by the above actions. For this purpose, the activity of creating works of science for third parties is analyzed using the civil construction of an invalid transaction. The problem of defining the object of intellectual rights within the framework of the concept underlying part four of the Civil Code of the Russian Federation is considered as a theoretical problem, complicating the practical fight against plagiarism. As an intermediate conclusion of the study on the problem considered in the article, it is proposed to admit that the legal tools contained in the current legislation of the Russian Federation, in terms of countering plagiarism in the field of science, is not effective and needs to be improved.

Anufrieva Lyudmila Petrovna

The Constitution of the Russian Federation and International Law: A Theoretical Look at the Concept of “Generally Recognized Principles and Norms of International Law”. "Generally recognized principles and norms of international law" and jus cogens

No. 12, 2018

In the second part, the article analyzes the specific concept of “generally recognized principles and norms of international law” in comparison with the phenomenon denoted by the term jus cogens, which is widespread in Western theory of practice. A special direction in their consideration is the comparative legal approach to the results of the past and current stages in the development of this concept by the UN International Law Commission. These two terms currently coexist in international legal science and practice with others, also included in the category of designations of principles - "basic principles", "general principles of law", "principles of general international law", etc. orientation them. This publication does not set itself the ambitious goal of offering a definitive solution to problems,

Osavelyuk Alexey Mikhailovich

CONSTITUTION OF RUSSIA IN THE CONDITIONS OF GLOBALIZATION

No. 12, 2018

Based on the analysis of the provisions of the Constitution and legislation of Russia, international documents, as well as published domestic and foreign scientific works on this issue, it is shown that, despite the objective nature of globalization processes that have embraced all states, there are many problems that cause scientific discussions and contradictions between states.

The contradictory reaction to the processes of globalization is caused by many reasons. For example, globalization itself brings not only undoubted benefits to national states, the world community as a whole, but creates real problems associated with the supremacy of the constitution and threats to national security. Moreover, globalization itself contains internal contradictions. Since it is characterized by a certain duality, expressed in the existence of internal interconnected counter processes: the internationalization of domestic regulation and the constitutionalization of international relations.

In this article, we pay special attention to the analysis of the interaction of the provisions of the Constitution of Russia and generally recognized norms and principles of international law, as well as ensuring the supremacy of the Constitution of Russia in a globalizing world. Particular attention is paid to the analysis of the Resolution of the Constitutional Court of the Russian Federation dated July 14, 2015 No. 21-P.

It is argued that a systematic approach to the processes of globalization should be based on the interaction of the basic norms of international law and the provisions of the Constitution of the Russian Federation. In conclusion, the author comes to the conclusion that the basic principles of international law and the supremacy of the Constitution of the Russian Federation prevent direct interference of both legal systems in each other's affairs. This, as it seems, serves as a guarantee of the preservation of the state sovereignty of Russia and the search for a compromise in resolving conflict issues affecting the interests of several or many states in the process of globalization.

Luneva Elena Viktorovna

STATE POLICY IN THE SPHERE OF ENSURING RATIONAL ENVIRONMENTAL USE

No. 12, 2018

The systematization of directions of state policy in the field of ensuring rational use of natural resources was carried out on the following grounds: (1) by the presence of elements of environmental protection or elements of environmental safety (2) by actions reflecting the content of "rationality"; (3) on the renewability of natural resources; (4) by natural object; (5) by components of the natural environment. The highlighted foundations of the classification made it possible to identify areas of intersection in ideas, views on rational nature management, set out

in numerous Russian political and legal documents of environmental orientation, and internal contradictions.

At the political level, environmental management is recognized as the basis for long-term economic sustainability. However, its content is poorly developed. There is no terminological unity in relation to the most efficient use of the natural environment. The terms “rational use of natural resources”, “sustainable use of natural resources”, “sustainable use of natural resources”, “ecologically safe use of natural resources” are used with equal meaning. There is an unreasonable confusion of issues of rational nature management, environmental protection and environmental safety. Rational use of natural resources is not endowed with specific legal characteristics. It is incorrectly described as environmentally friendly or sustainable use of natural resources.

Due to the incompleteness and inconsistency of the state policy in the field of rational environmental management, there is practically no law enforcement practice that reflects the implementation of the relevant political directions. The judicial interpretation concerns only some aspects of the rational use of natural resources or the rational use of certain natural resources.

Zubarev Sergey Mikhailovich

TO THE QUESTION ABOUT REGULATION OF LOCAL SELF-GOVERNMENT

No. 12, 2018

The article analyzes the new realities in the relationship between state power and local government associated with the process of nationalization of the latter. This problem was posed by the author in a report at the IX Annual All-Russian Scientific and Practical Conference "Actual Problems of Administrative and Administrative Procedure Law" (Sorokin Readings) ", which took place on March 23, 2018 at the St. Petersburg University of the Ministry of Internal Affairs of Russia. In this article, the author's conclusions about two trends in the process of stateization were further developed: the official transfer of powers from state authorities to local authorities and the redistribution of powers between local authorities and state authorities of a constituent entity of the Russian Federation. If the first, Based on the provisions of Part 2 of Article 132 of the Constitution of the Russian Federation, is well studied by lawyers and is actively applied in practice, the second tendency of stateization has not yet received due consideration in the legal literature. At the same time, the legislation already contains several legal models for the redistribution of powers between local governments and public authorities of a constituent entity of the Russian Federation. The author identifies three such models, conventionally referring to them as emergency, federal and regional. The article reveals the content of these legal models, shows their influence on the process of the actual transformation of local self-government into one of the levels of executive power. then the second tendency of nationalization

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Korma Vasily Dmitrievich
Obraztsov Viktor Alexandrovich
INHERENT KNOWLEDGE AS AN OBJECT OF INTERDISCIPLINARY RESEARCH # 12, 2018

The article is devoted to topical problems of the theory and practice of the cognitive activity of an investigator in the field of pre-trial criminal proceedings. The ideas expressed by the authors, the developed provisions and recommendations, characteristics and classifications concerning the subject, methods, means and technologies of the investigator's cognitive mission are based on the empirically established patterns of two groups (categories). The first is the patterns of criminal and related types of legally significant behavior (activity), as well as the process of its reflection in the surrounding material environment. The second group is the patterns underlying the organization and implementation of anti-criminal investigative activities at the stages of initiation of a criminal case and preliminary investigation. Considerable attention is paid to the relationship between the concepts of investigative cognition and recognition, the essence and mechanisms of the indicated forms (directions) of the professional activity of the investigator, the application in practice of the method of the so-called reverse causal sequence in order to establish the causes and other circumstances of socially dangerous incidents, as well as the problem of formation, interaction and recognition of mental images of acts with signs of crimes. Along with this, the

article reflects the definitions of the concepts of investigative cognition and investigative recognition, criminally relevant objects, mechanisms of investigative cognition and recognition, formulated by the authors. practical application of the method of the so-called reverse causation in order to establish the causes and other circumstances of socially dangerous incidents, as well as the problem of the formation, interaction and recognition of mental images of acts with signs of crimes. Along with this, the article reflects the definitions of the concepts of investigative cognition and investigative recognition, criminally relevant objects, mechanisms of investigative cognition and recognition, formulated by the authors. practical application of the method of the so-called reverse causation in order to establish the causes and other circumstances of socially dangerous incidents, as well as the problem of the formation, interaction and recognition of mental images of acts with signs of crimes. Along with this, the article reflects the definitions of the concepts of investigative cognition and investigative recognition, criminally relevant objects, mechanisms of investigative cognition and recognition, formulated by the authors.

Symonenko Andrey Alexandrovich
CRIMINAL REMEDIES
ILLEGAL PROSECUTION:
EFFICIENCY MARK
No. 12, 2018

On the basis of expert assessments and data of criminal statistics, the article concludes that the effectiveness of criminal law means of counteracting illegal criminal prosecution is low; the factors of legislative and law enforcement nature that reduce their effectiveness have been identified; it has been proved that the fundamental reasons for the low efficiency of criminal law counteraction to illegal criminal prosecution are in the law enforcement plane.

Pan Dongmei
Gao Mingxuan
COMPARATIVE ANALYSIS OF CRIMINAL LAW PRINCIPLES OF CHINA AND RUSSIA
No. 12, 2018

Legal principles, being the basis of legal norms, reflect people's understanding and perception of the basic laws in laws, contain a legislative value aspiration, the basic spirit and direction of law enforcement interests. The article focuses on the analysis of the principles of criminal law in China and Russia. The present Criminal Code of the Russian Federation enshrines five principles: legality, equality of citizens before the law; guilt; justice; humanism. In Art. 3, 4, 5 of the

1997 Criminal Code of the People's Republic of China (hereinafter - the Criminal Code of the People's Republic of China 1997) provide, respectively, the principle of legality, the principle of equality of citizens before the law, the principle of compliance of punishment with crime and criminal responsibility: these three articles are a novelty of the Criminal Code of the People's Republic of China 1997, since the basic principles of the criminal law are considered one of the main problems in the criminal law, therefore, in the process of developing the draft Criminal Code in the legislative and judicial bodies, as well as among experts, there were different opinions as to whether it is necessary to additionally provide for the basic principles in the Criminal Code of the PRC, what are the main principles should be added, how and in which chapter of the Criminal Code of the PRC should be described these basic principles, etc. All these issues and options for their solution are shown in this article. The authors come to the conclusion that in both countries the principles of criminal law are understood as the fundamental ideas provided for in the criminal legislation, which, reflecting universal human values, determine both its content as a whole and the content of its individual institutions.

Shakhnazarov Beniamin Alexandrovich

TERRITORIAL PRINCIPLE FOR THE PROTECTION OF INTELLECTUAL PROPERTY AND THE ACTION OF STATE SOVEREIGNTY IN THE DIGITAL SPACE

No. 12, 2018

The author investigates the theoretical aspects of the implementation of the territorial principle of intellectual property protection in the digital space. It is noted that the active development of the digital space by participants in cross-border relations in the field of protection and use of rights to intellectual property objects, the popularization of the Internet and the expansion of the areas of legal relations implemented on the network are accompanied by the emergence of new problems of protection of intellectual property objects due to their intangible nature and the emerging opportunity in one action violate intellectual property rights in different countries. The identified problems persist due to the operation of the territorial principle of the protection of exclusive rights, as well as the serious importance of the sovereignty of states, as in the classical territorial understanding, and its new forms, first of all, informational sovereignty. The author, examining the provisions of international treaties in the field of protection of various objects of intellectual property, considers the peculiarities of the development of the territorial principle of the protection of intellectual property, the digital space as an environment for the implementation of this principle. The issue of the boundaries of the territorial sovereignty of states in the digital space is proposed to be resolved through the development of clear criteria for determining the "territory for the implementation of relations." As universal such criteria, it is proposed to use the “territory of validity of rights” and “territory of permitted use of rights”, which, in

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In the absence of an international treaty that would regulate the actions of states on the administration of various segments of the Internet, including for the purpose of effective protection of intellectual property in cross-border relations, taking into account the action of the security (administrative and judicial) systems of other states, it seems appropriate to use the principle of non-interference in realization of rights to intellectual property objects outside the limits of national action of rights

Demidov Nikolay Voltovich

FEATURES OF THE IMPLEMENTATION OF THE STANDARDS ON THE DISMISSAL OF AN EMPLOYER ON THE EMPLOYER'S INITIATIVE IN THE 1990S

No. 12, 2018

By means of historical-legal, historical-sociological, statistical analysis, the experience of implementation of the Russian legislation on the dismissal of an employee in the period of the 1990s has been investigated. The specificity of the period is due to the preservation of the Soviet institution of termination of an employment contract with a radical change in the socio-economic, political context of public life. Given the unpredictable further development of the country, the legislator opted for the cautious model of reform of the legislation on dismissal. At the same time, the actual practice of applying the rules on dismissal has significantly transformed. The most problematic area was the dismissal in connection with the liquidation of the organization, staff reduction. In judicial practice in cases of termination of an employment contract at the initiative of the employer, the dominant approach of Soviet law enforcement remained: the employee was reinstated at work even with minor, formal deviations from the procedure for terminating the contract. The importance of measures of societies of social influence has decreased as a condition taken into account when dismissing an employee for systematic failure to fulfill his job duties. There was a self-elimination of the state from the implementation of the educational function of labor law, in particular, in the field of dismissal for appearing at work while intoxicated. A well-known negative impact on the practice of termination of an employment contract at the initiative of the employer was widespread in the 1990s. labor contract. It was understood as an agreement between an employee and an employer, approaching in its essence to a civil contract. From the point of view of issues of releasing an employee, an employment contract is important because of the practice of including in it contractual grounds for dismissal that are not provided for by law. Some of the gaps that arose were filled in by the practice of the Supreme Court of the Russian Federation, in particular, on the issue of the date of dismissal of an employee in connection with the liquidation of an organization. In general, the period is characterized by a transitional nature. The determining factor in the development of the institute was the economic dominance of the employer. Frequent violations of the employee's rights in the field of dismissal were not suppressed by state or trade union bodies; they constituted the main content of public life in the studied area. At the same time, the provisions of the Labor Code of the Russian Federation of 1992 on the termination of an employment contract on the initiative of the employer were practically tested. Their application made it possible to analyze socio-economic needs, work out a concept for further development. The work develops the author's dissertation "Dismissal on the initiative of the employer".

Valery Grigorievich Baev

Vadim Vladimirovich Kramskoy
Who Doesn't Know Lenin?
No. 12, 2018

The proposed review sets out the authors' view of the scientific work of V.M. Raw "Unknown Lenin: the theory of the socialist state (without prejudice and servility)." The structure of the book and its theoretical and practical potential were evaluated from the standpoint of a critical approach. The authors show V.M. Raws as one of the few prominent specialists in the field of the Marxist theory of law and state, who has earned this status with his numerous and large-scale publications. The book is a multifaceted study that can attract the interested attention of legal scholars, historians, political scientists, venerable and novice scientists.

According to the authors, V.M. Raw materials failed to fully impartially approach the analysis of documents and materials related to the era of building a socialist state. However, he expressed sympathy for the leaders of the October Revolution and their ideas, rather, a scientific than a political predilection. The author of the monograph has a sharply negative attitude towards critics of the Marxist-Leninist doctrine, believing their approach to be contrary to the principle of historicism. Any attempt at anti-historical analysis by D. Volkogonov and E. Rozin, V.M. Raw, takes the researcher away from the realities of that time. In order to meet the methodological requirements (note that V.M.Syrykh's candidate and doctoral dissertations are devoted to the problems of the methodology of cognition), the professor extensively documents his book with primary sources of law, which makes it highly significant for understanding the processes of the formation of a socialist state. True, such an abundant quotation also has a downside, threatening to turn the study into a textbook edition. It seems to the authors of the review that a greater (than is present in the peer-reviewed edition) emphasis on historical criticism of sources would help to avoid the slightest hint of such suspicion.