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Principles of Criminal Law and Basis for Its Lasting Development

The criminal law evolution always followed the evolution of society and state, consistently reflected to some extent changes of the leading politico-legal concepts and created mechanisms and means most adequate to the essential practical issues related to the struggle against criminality. Considering the modern legal processes in this respect, the authors have proved the necessity of consideration of a new criminal law theory, the development of which will demand the contribution of a wide range of experts. Herewith crucial will be discussions on the revision and adjustment of the principles of criminal law, that is a necessary condition of preparation of the new criminal-legal and criminal-political concept, which will be valid to become a basis for further stable development of criminal law.

Keywords: criminal law; criminal code of the Russian Federation; criminal law principles; stable development.

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Subject Matter and Method of Criminal Law Regulation: Psycho-Logical Aspects

The current state of the operating criminal legislation is characterized by the lack of systematic nature, reasonableness, and, as consequence, efficiency. It is a natural consequence of the absence of actual orientation of the theory of criminal law and corresponding legislation towards the dialectic approach to the study of crime and its subject. As a result, the subject matter of the criminal law regulation does not cover with due attention the reasons and conditions of committed crime, and the method of criminal law prohibitions contradicts the psychological patterns of behavior, due to what in the course of law enforcement activity grounds are created for achieving the opposite of the officially declared objectives.

Keywords: criminal law; idea; management; informationally conditioned behavior; systemic interaction; criminal law regulation; subject matter; method.

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Current Issues Related to the Interpretation of Public Danger as a Sign of Crime

Public danger as a crime sign is inherent to the material concept of crime developed by the Russian legal doctrine of criminal law. Throughout the long period, the necessity of its existence within the concept of crime has been proved. At present the question about the scope of the notion of public danger is being discussed. In this connection particular attention is given to the nature and degree of public danger as typical components of this sign of the concept of crime. In the practice of criminal law implementation, there is no uniqueness of understanding of properties of nature and degree of public danger of an action, the fact that underlines the urgency of the issues under study. In spite of the fact that public danger of an action represents one of the major signs of the concept of crime, the social essence of public danger and its structure have not been explored with sufficient completeness, the fact that leads to the ambiguity of understanding of the studied sign by law enforcement entities and as consequence occurrence of difficulties in practice.

Keywords: concept of crime; signs of crime; public danger; insignificance; judiciary practice; nature of public danger; degree of public danger.

Vasilii D. Larichev

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Problems of Determination of Objects of Economically Oriented Crimes

General, specific, direct and additional objects of economically oriented crimes are analyzed, their inconsistency in some cases is revealed, and propositions for improvement in this area are given. .

Keywords: general object of a crime, specific object of a crime, direct object of a crime, additional object of a crime, economically oriented crimes.

Tatyana V. Nepomnyashchaya

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Measure of Criminal Punishment: Concept, Features, Characteristics

Based on the philosophical concept of measure, the author identifies features of a measure of criminal punishment, formulates its definition and gives a detailed description of its characteristics.

Keywords: punishment; type and size of punishment; measure of punishment; features of criminal punishment measure; characteristics of criminal punishment measure.

Boris A. Spasennikov

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On the Imposition of a Form of Compulsory Medical Treatment in Judicial Practice

The article is devoted to compulsory medical treatment, which reasoned imposition, prolongation, change or termination are determined by a variety of etiologic factors and pathogenetic mechanisms of socially dangerous behavior. The author considers a number of debatable questions that have arisen in theory and practice, concerning the grounds for the application of compulsory medical treatment and its forms.

Keywords: criminal law; compulsory medical treatment.

Elena V. Popadenko

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Searching for Alternative Means for the Resolution of Criminal Law Related Conflicts as the Direction for the Russian Criminal Policy

This work examines the tendencies of the development of the Russian criminal legislation in the field of exemption from criminal responsibility. These tendencies are considered in the light of the humanization of the criminal policy.

Keywords: criminal policy; humanization; criminal law conflict; mediation; transaction; exemption from criminal responsibility.

Sergey V. Smolin

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Issues of Differentiation between Knowingly False Denunciation, Connected with the Invention of Artificial Proofs for Accusation, and Provocation of a Bribe or Commercial Bribery (Theoretical Applied Analysis)

The article is devoted to the problem of concurrence and correct application of the criminal law norms contained in Article 304 and Part 3 of Article 306 of the Russian Criminal Code. This problem first of all has been caused by the similarity in formulating of formal components of the relevant crimes and essential drawbacks in formulating of the given norms. The author suggests that the available collision in application of Article 304 and Part 3 of Article 306 should be eliminated through the modification of the content of article providing responsibility for knowingly false denunciation, so that the concept of denunciation includes not only false report about the fact of committing the crime, but also actions carried out to fake a crime. In author's opinion, it would also allow to set criminal responsibility for actions carried out for faking crimes which do not actually represent a denunciation when this term is understood as report.

Keywords: knowingly false denunciation; provocation of a bribe; faking a crime; concurrence of criminal law norms; invention of artificial proofs for accusation.

CRIMINAL PROCEDURE

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Problems of Understanding and Application of a New Law on Appeal

The article analyzes the provisions of the Federal Law №433-FZ from 29 December 2010, offering to parties in criminal proceedings the right to a full rehearing of all cases by an appeal. The author concluded that before this Law fully comes into force, it is necessary to define more precisely all of its unclear, vague or erroneous formulations, and widely discuss in professional community the conceptual basis of the appeal procedure in Russia.

Keywords: criminal proceedings; revision of judgements; appeal; Criminal Procedural Code of the Russian Federation.

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The Humanization of Criminal Procedure Legislation: Social Reasons and Legal Consequences

The article is devoted to the research of the relation between social reasons and legal consequences of the humanization of criminal procedure legislation. Problems of the maintenance of the rights of minors, as well as persons in relation to whom a special criminal proceeding is applied are examined. The ability of an accused person to demand that the case be tried in a special proceeding should not encroach on other procedural rights of that person, in particular, his right to request that the criminal case be dismissed. In addition, the problems, which would arise at the conclusion of pretrial cooperation agreement, are explored.

Keywords: criminal procedure law; minor; criminal case termination; sentence; special proceeding; pretrial cooperation agreement.

Aleksandr A. Tarasov

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On the Transparency of Russian Justice

The article is devoted to the problem of use in modern special literature of a term «transparency» with reference to justice, interpretations of this term and a place of the concept of «transparency» within the categorical apparatus related to the science of Criminal Procedural Law. In a context of justice transparency, the problem relating to investigation and official secrecy in the Russian pretrial proceedings on criminal cases is considered. The author offers his definition of justice transparency and comments on some elements of its content.

Keywords: transparency of justice; international standards of human rights; criminal justice; criminal procedure.

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Problem of Selecting a Measure of Restraint To Be Introduced in the Course of the Pretrial Proceedings on a Criminal Case

The article considers the provisions of the criminal procedural law that are intended to limit application of confinement as a measure of restraint. The authors analyse the problems arising when measures of

restraint alternative to confinement are applied that are house arrest and bail.

Keywords: measures of restraint; confinement; house arrest; bail.

Natalia A. Kurmaeva

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Forms of the Use of Specialized Psychological Knowledge in Criminal Proceedings on Cases with Participation of Minors

The article considers the forms of use of specialized psychological knowledge for criminal legal proceedings in cases with participation of minors. Objectives of forensic psychological examination ordered in the specified category of cases are defined. The considerable attention is given to studying of the question on the procedural status of psychologist and his role in the investigation and conducting in court of criminal cases with participation of minors. The author investigates in detail enough some other forms of the use of specialized psychological knowledge. The conclusion is proved that the continuity of various forms of the use of specialized psychological knowledge in criminal trial is possible. The person possessing specialized psychological knowledge can act as an expert, specialist or consultant. The psychologist is needed during the preliminary investigation and at the trial of each criminal case with participation of minors and juveniles. With a view to the most effective realization of justice in criminal cases with participation of minors it is offered to create a Service of forensic psychologists for minors at the Ministry of Justice of the Russian Federation.

Keywords: criminal legal proceedings; minor; psychologist; expert; specialized psychological knowledge; forensic psychological examination; forms of use of specialized knowledge; expert psychologist.

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The Petition of the Defence Counsel for Preliminary Hearing: Problems of Practice and Legislative Regulation

The subject of the article are the actual problems related to the filing of petitions for preliminary hearing by the defence counsel in the stage of preparation of a criminal case for judicial session.

Keywords: preparation of a criminal case for judicial session; preliminary hearing; petition; terms; defence counsel.

Pyotr A. Litvishko

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Conducting Examinations on Reports of Offences and Investigative Actions on the Compounds of Foreign States Missions

The article deals with the issues of carrying out procedural actions on the territory of foreign states missions and in residences of their staff in the course of criminal examinations and investigations of offences committed there. The subjects analyzed include the extent of exercising criminal procedural jurisdiction by the represented state on that compound at all stages of pre-trial proceedings, in the context of international law and domestic legislation of foreign states. Herewith, the author formulates the principle of maximal restriction and sufficiency of the respective procedural actions and decisions. Based on the research there have been proposed some amendments to the current law on criminal procedure.

Keywords: foreign state mission, criminal procedural jurisdiction, heads of diplomatic missions and consular posts, examinations on reports of offences, investigative actions.

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On the Formation of a Theory of Protection of Legitimate Interests of an Individual in Criminal Legal Proceedings

The development of science is impossible without a theoretical basis allowing to obtain knowledge purposefully, systematically and complexly. Working out of a theory gives the chance to generalize already available knowledge and define perspective directions of further scientific research. The necessity has arisen to determine theoretical basis for one of the most significant and priority directions of modern science of criminal procedure – protection of legitimate interests of an individual. The article represents the author's view of the regularities of formation of a theory of protection of legitimate interests of an individual in criminal legal proceedings.

Keywords: theory; object; subject; criminal legal proceedings; protection; guarantees; legitimate interests, rights, freedom; individual.

CRIMINALISTICS

Oleg Ya. Baev

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Specialists in Criminalistics and Criminal Procedure: Neighbours in a Communal Apartment or Players on the Same Team?

The article deals with a problem of the relationship between the science of criminalistics and the science of criminal procedure. The author substantiates the proposition that these two sciences represent an open dynamic system, which services theoretically the same complex object, which is criminal court proceedings. Herewith, the “boundary” between the two sciences is based not on the distinction of the laws and regularities studied, that govern in this area of state and public activities, but on the difference of the objectives each science studies them for.

Keywords: criminalistics; criminal procedure; proof theory; relation between subject matters of criminalistics and criminal procedure, and related academic disciplines.

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Logics of Structure and Content of the Theory of Criminalistics

The article is devoted to the problematic aspects of forming a theory about the process of investigating criminal offences. These aspects are described taking into account basis of organization of criminal law enforcement during nowadays, as well as basis of formal-logical systematization of scientific knowledge.

Keywords: criminal law enforcement; investigation of criminal offence; system of the theory of Criminalistics.

Nikolai A. Podolnyy

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Some Problems of Investigation of Corruption Crimes

In the article practices of investigation of corruption crimes are analyzed, and reasons for committed mistakes are revealed. The attention is drawn to that the main reason of these is a weak cooperation between investigators and bodies carrying out operational investigative activity. The attention is focused on the importance of the operational investigative activity for investigation of the specified crimes. On this basis, recommendations are given on how to improve existing techniques of investigation of these crimes.

Keywords: corruption crimes; investigation; operational investigative activity; information.

Anna A. Lebedeva

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Investigation of the Facts of Illegal Seizure of Property of Legal Entities

The article covers the issues of the investigation of facts of illegal seizure of property of legal entities at an initial stage of investigation. The author points out that the key point of the investigation of the above actions of public danger is a criminal case initiation. Classification of initial investigation situations is offered.

Keywords: corporate raid; investigation methodology; investigation stages.

COMPARATIVE JURISPRUDENCE

Simone Nadelhofer

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Switzerland: Statutory controls, judicial practice and varying standards of exchange of information in tax matters

The present contribution aims at providing an overview of recent changes and resulting different sets of rules in Switzerland's exchange of information policy, with a special focus on the new DTA between Switzerland and Russia against the background of the IRS vs. UBS case.

Keywords: tax investigations; exchange of information; administrative assistance in tax matters; double taxation agreement; bank UBS; banking secrecy.

INTERNATIONAL CRIMINAL LAW AND JUSTICE

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The First Acts of the United Nations on the Prevention of the Crime of Genocide and Punishment for It

The article considers the first acts adopted in the framework of the United Nations, concerning the prosecution and punishment for the crime of genocide (the UNGA Resolution 96 (I) and the 1948 Convention on the Punishment and Prevention of the Crime of Genocide). Both the common points and differences in the description of key approaches to the prosecution for this international crime are revealed. It is shown that the definition of the crime of genocide developed by the international community completely corresponds to the priorities of the United Nations, and the modern human rights movement as well.

Keywords: convention; resolution; crime of genocide; prosecution; punishment.

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International Legal Regulation of Activities of Private Military and Security Companies: Modern Period of International Lawmaking

The current situation which can be characterized by the processes of liberalization, globalization and reduction of defense budgets, resulted in a rapid growth of the number of private military and security companies (PMSC). In this connection, a question arose of legitimacy of their activities from the point of view of international law. The article considers the current status and the prospects of international legal regulation of the PMSC sector, and the role and place of Russia and CIS countries in its formation.

Keywords: mercenaries; International Convention against the Recruitment, Use, Financing and Training of Mercenaries; private military and security companies; PMSC; export and import of military services; legal regulation; international law; the Montreux document; Draft of a possible Convention on Private Military and Security Companies (PMSCs); UN; Russia; CIS.

Yaroslav N. Ermolovich

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Influence of the International Law Rules on the Russian Federation Military Criminal Legislation

The article considers the issues of influence of the international law and international criminal law on the Russian military criminal legislation. The author has concluded that the norms of international law have served the basis of a number of elements of military crimes against laws and customs of war, and later - some elements of crimes against peace and safety of mankind. Besides, there are some legal norms in the contemporary Russian criminal law that have originated from international law, and these include: institution of criminal laws applicability to servicemen, institution of criminal responsibility of prisoners of war, institution of responsibility of commanders and chiefs, as well as institution of circumstances precluding criminality of act (statutory requirement, military necessity).

Keywords: servicemen; criminal responsibility; military criminal legislation; international law; international criminal law.

Ilia S. Lysov

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Application of Joint Criminal Enterprise (JCE) in the Practice of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea

A Joint Criminal Enterprise (JCE) concept has a “weapon of mass destruction” reputation in the modern international criminal law. It is used to accuse and convict those persons, against whom international criminal courts do not have direct evidences. However, lately a tendency has appeared to change the practice of JCE usage. And this new tendency is what is examined in current article, with legal basis on Decisions of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

Keywords: international criminal law; international criminal procedure; international criminal courts and tribunals; international law; Joint Criminal Enterprise; Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea; fair trial.

CRIMINOLOGY

Oleg V. Starkov

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Aleksei V. Tyumenev

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Science of Violence and Science of Criminal Violence

The article proves the specificity of the science of criminal violence – a theory of violent criminality and criminal behavior, their laws and regularities, reasons and conditions, types, preventive measures and other forms of influence on them, and parameters relating to this science. The subject, object, system, and methodology of the science of criminal violence are considered and justified.

Keywords: criminology; science of violence; science of criminal violence; theory of criminal violence; subject, object, system, methodology of the science of criminal violence.

Alexander A. Smirnov

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The Role and Place of Mass Media in the Mechanism of Determination of Illegal Behaviour

The article presents the findings of the research of basic scientific approaches to revealing a role and place of mass media in the mechanism of determination of illegal behavior in a context of information society development. The author proves a conclusion that one of the elements in the structure of complex mechanism of determination of illegal behavior is a negative influence of mass media, which has difficult and inconsistent interactions with its other elements. Underestimation of its importance in the conditions of information society development is a big mistake, while working out the given problem

in a complex, interdisciplinary and scientific way is what represents a necessary condition for the development of effective strategy for the prevention of offences in the 21st century.

Keywords: mass media; deviant behavior; offences; determination; aggression; violence.

LEGAL SCIENCE METHODOLOGY

Andrei A. Aryamov

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Regarding the Extent of Application of the Achievements of Natural Sciences in Jurisprudence

The article analyzes the possibility of application of the achievements of natural sciences in human sciences in general and in risk-management in particular. The search for answers to the problems being the object of the analysis has required the author to make an excursus into modern scientific researches in the field of biology and mathematics.

This research has enabled the author to submit for reader's evaluation a number of recommendations related to the application of natural sciences in humanitarian space.

Keywords: homeostasis; the relativity theory; thermodynamics; derivative; biocenosis; reflexion; jurisometrics; fluctuation; attractor; bifurcation; evolution; risk management; optimization paradigm.

Yuri P. Garmaev

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The Principle of Competitiveness and the Necessity of Didactics Reform in Legal Institutions of Higher Education in Russia

The article analyzes one of the important reasons for a low level of applied component of legal education in Russia – insufficient attention of practitioners to scientific and educational literature.

According to the author's opinion, not only future, but also many currently operating lawyers in Russia cannot quite comprehend the ideology of a real competitive process. As a rule, in this process there is not only a one single position, a so-called objective legal position that dominates, but there are three more which are quite legal, and often different to the former: prosecution position, defence position and court position. In this connection, the author suggests reconsidering traditional approaches in scientific activity and introducing amendments to common methods of training in higher schools of law and institutions for professional development.

Keywords: problems of legal education and science; quality of legal education; applied character; qualification of crimes; competitiveness; objective qualification; prosecution position; defence position; court position; hierarchy of interests of parties in criminal proceedings.

LEGAL SCIENCE IN PRACTICE

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Expert Opinion Regarding the Criminal Case Considered by Taganskiy District Court of Moscow in relation to Mr. V.V. Makarov, accused of committing the crime under Article 132, Paragraph B of the Russian Criminal Code

Press Release of 03/11/2011

CONFERENCES

Larisa I. Romanova

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Criminality and Criminal Law in the Epoch of Globalization: Results of the International Forum in Beijing

The article represents a chronicle of the activities of International Forums: «Criminality and Criminal Law in the Epoch of Globalization», and the basic results of the third International Forum with the agenda: «Global Position of Terrorism and counter-measures in the Epoch of Globalization», that took place in Beijing from 31st October to 2nd November, 2011. The author gives a short review of the activity of plenary sessions and round tables, and Forum's resolution.

Keywords: criminality; criminal law; International Forum; terrorism; international terrorism.

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