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CRIMINAL LAW

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On the Issue of a Public Danger of Insurance Swindle and a Criminal Liability for It

On the basis of the analysis of both domestic and foreign legal experiences, the author of the article has attempted to determine the main features of such phenomenon as an insurance swindle: who deceives whom, who causes harm and to whom, and also who, in the result, is subject to criminal liability.

Keywords: insurance; insurance risks; insurance premiums; insurance swindle; risks; hedging; subrogation; recourse; predatory transaction; criminal liability; complicity.

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Urgent Issues of the Criminal Law Assessment of Crimes Committed with the Use of Official Position

The article is devoted to the study of complicated issues on the classification of crimes connected with breach of official and position's duties. Analysis of existing judicial practice is carried out; issues of the classification of official crimes in the competition of criminal law rules are resolved; aspects of criminal law policy and criminalization of crimes committed with the use of official position are investigated; reasons are given to justify author's offers on criminal law development.

Keywords: classification of crimes; official and position's crimes; competition of criminal law rules; differentiation of crimes and other offenses.

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The Mechanism of Criminal Law Regulation: Psycho-Logical Aspects

In the field related to criminal law, for a long time there has been a basic contradiction in that the main idea of criminal law, since the classical school, was reduced to a virtual free will and behavior of the subject, but the existing mechanism of criminal law regulation is inherently based on the laws of the outer and inner world of the individual. Mechanism for regulating the behavior of the subject, based on the idea of free will and behavior, has not been proposed in theory, that just can not occur, because the concept of mechanism and freedom are incompatible in their natures. Therefore, there is only one way out which is to bring the existing mechanism of criminal law regulation in accordance with the constitutional norms reflecting higher values for the individual, society and state.

Keywords: criminal law; mechanism of criminal law regulation; feedback; basic idea; cause and effect; adequate imputation; constitutional direction.

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Some Problems of the Application of Article 75 of the Criminal Code of the Russian Federation

The article deals with some issues on the relief from criminal responsibility due to active repentance. The author analyses the concepts of acknowledgement of guilt, active repentance, contribution to disclosure or investigation of a crime and other conditions of the relief from criminal responsibility, provided in Article 75 of the Criminal Code of the Russian Federation.

Keywords: criminal law; active repentance; acknowledgement of guilt; relief from criminal responsibility; compensation of damage.

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Subject of Crimes in the Field of Crediting

One of indispensable features concerning the object in the general conception of crime components in the field of crediting is a material subject of crime. Alternatively, it is a credit (Article 176 of the RF Criminal Code) or accounts payable (Article 177 of the RF Criminal Code). Considering arguable questions on the specification of subject of crimes in the field of crediting, the author reasonably relies on that a subject of crime is a material substratum (a material world subject), animated or inanimate, in connection with which or in regard to which the crime is committed, and on which the person influences directly when committing a crime, and by influence on which socially dangerous harm is caused in certain (protected with the specified criminal law rule) field of public relations. Referring to the discussions in legal press, arising in regard to the content of concepts "credit" and "accounts payable" in criminal and civil law, the author proves the necessity of the unification of all legal concepts in various fields of law and urgent rendering of them to identical definitions with a view of uniform and correct application of the law.

Keywords: criminal law; crimes in the field of crediting; subject of crimes; credit; accounts payable; Criminal Code of the Russian Federation.

CRIMINAL PROCEDURE

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Essence of Evidence Presentation in Russian Criminal Procedure

The present article considers one of the urgent issues in the science of Russian Criminal Procedure devoted to the definition of essence of evidence presentation in criminal cases. Based on the analysis of various points of view of the scientists in Criminal Procedure, and the current RF CPC and practice of its application, the author comes to original conclusions about the essence of evidence presentation in criminal cases. In particular, according to the author, the presentation of evidence is one of the methods for collecting evidence, involving voluntary actions of persons who possess significant information for a criminal case to give bodies conducting criminal proceedings items and documents contributing to establishing of criminal case circumstances; and this method includes the consideration of a corresponding petition (application) filed in order to accept or reject it afterwards.

Keywords: proof; collection of evidence; methods of collection of evidence; presentation of evidence; physical evidence; other documents as evidence; proof procedure.

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Participation of Officers of Operational Divisions within Investigative Operational Groups: Theoretical and Practical Aspects

The article systematizes the opinions existing in legal literature concerning forms of participation of officers of operational divisions in the activities of investigative operational groups. The detailed analysis of each form is given, and their features are revealed. Legal and organizational problems of the mentioned forms of participation are determined and the ways for their solution are offered.

Keywords: investigative operational group; officer of operational division; forms of participation; individual errand of an investigator; assistance.

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The Relation between the Principles of Criminal Proceedings and the General Conditions of Legal Trial Realized in Proceeding on the Investigation and Resolution of Issues Connected with the Execution of a Sentence

In the science of criminal procedural law, the question of the relation between the principles of criminal proceedings (Ch. 2 of the RF CPC) and the general conditions of a legal trial (Ch. 35 of the RF CPC) is debatable. In the stage of the execution of a sentence, conducting the proceeding on the investigation and resolution of issues connected with the execution of a sentence, principles of criminal proceedings and the general conditions of legal trial are both realized. Based on the specificity of the stage of the execution of a sentence, the realization of the principles and the general conditions of legal trial in proceeding on the investigation and resolution of issues connected with the execution of a sentence, would have some special features resulted from goals and objectives of this stage. The article considers the relation of the principles and the general conditions of legal trial at the stage of the execution of a sentence.

Keywords: criminal proceedings; principles of criminal proceedings; general conditions of legal trial; stage of the execution of a sentence; realization; action.

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Essential Aspects of the Subject of Defence in Criminal Proceedings in Russia

The article reveals the significance of an important element of complex integral system of defence, such as its subject. Besides, a number of problems concerning the essence of the subject of defence in criminal proceedings in Russia are considered. The author examines the issues of a circle of subjects of defence, their legal personality and procedural position through comparison of the notions of «subjects of criminal procedural defence», «participants in criminal proceedings», «party of defence» and «participants of legal relationship arising in connection with defence». In the aspect of the given question the article explores the role and place of the state agencies and officials who carry out criminal prosecution (investigators, disclosure officers, and others), as well as the bodies who carry out justice (courts).

Keywords: criminal proceedings; the defence; subject of defence; participants in criminal proceedings; defence party; public defence; procedural status; legal capacity; ability to act; legal relationship of the defence.

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The Essence of the Change of the Principles of Criminal Procedure

In this article, the attempt is made to examine the main categories of the criminal procedure related policy through system analysis of the forms of criminal procedure, and also the concept of criminal procedure related truth, as basis of the criminal procedure related activity of the prosecution party and justice, is considered.

Keywords: criminal procedure related policy; truth in criminal procedure; presumption of innocence; publicity principle; special proceeding.

CRIMINALISTICS

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On Some Problems of Detecting Criminal Frame-Ups at the Stage of the Initiation of Criminal Proceedings

The article deals with the problems of theoretical and applied nature, caused by imperfection of the current Russian criminal procedure legislation, arising on the stage of initiation of criminal proceedings when carrying out different investigatory actions and application of special knowledge to reveal the signs of criminal frame-up, and also the ways of their solution are offered.

Keywords: criminal frame-up; negative circumstances; initiation of criminal proceedings; investigatory actions; crime scene examination; special knowledge.

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Peculiarities of the Object of Forensic Authorship Identification Research of Texts

The object of authorship identification examination in Forensic Science is traditionally a written text studied according to attributes of written speech. The forensic authorship identification research of texts should not be limited only by studying the text according to attributes of written speech, but its object can also be written texts that need to be explored according to attributes not of written, but oral speech. Therefore the object of the authorship identification examination of texts is a set of written language signs (phonetic, alphabetic, numeral and others), fixed in specific language on paper, wood, stone, magnetic tape or other material carriers, which altogether make a set of sentences connected by a common idea that are researched according to attributes of oral or written speech.

Keywords: object of forensic authorship identification examination; attributes (skills) of written and oral speech; language; written text; idiolect; dialect: individuality of speech; forensic author identification; language norm; transliteration; transcription; dictated text; author and performer of the text.

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Procedural and Criminalistic Aspects of Ensuring the Safety of Witnesses Whose Personal Data Contained in Criminal Case Files Are Considered Secret

In the beginning of the 21st century Russia has started to solve a problem that had been complicating domestic criminal proceedings for several decades by that time, and which represents in vulnerability of citizens participating in legal proceedings to after crime influence. The adoption of the RF CPC 2001, containing a number of measures on the safety of participants in a criminal trial, became the first step in the solution of the problem. In 2004 the Federal Law "On the State Protection of the Rights of Victims, Witnesses and Other Participants in Criminal Proceedings» was adopted; and the Government of the Russian Federation approved a number of statutory acts designed to develop the above mentioned Law. Meanwhile, in the conditions of the development of legal regulation of the protection of participants in criminal proceedings, the problem of its practical implementation is not yet sufficiently worked out. Based on the findings of the conducted research, the article offers author's recommendations on safety protection for participants in criminal proceedings.

Keywords: criminal proceedings; witness; ensuring safety; tactical methods.

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Characteristic Features of "Traditional" and New Sorts of Forensic Economic Expert Examination

Using a whole system approach, this article reviews main sorts of forensic economic expert examination as a procedural institution, designed to ensure obtaining evidence on economic crimes through special knowledge, rendered in a procedural form. Concepts of subject issue, object, goals and methods of examinations of the given class are defined. Features of the application of "traditional" and new sorts and kinds of forensic economic examinations are shown. Data on departmental classifications of forensic economic examinations are presented.

Keywords: forensic economic examination; forensic accounting examination; forensic financial economic examination; forensic financial credit examination; forensic financial analytical examination; forensic tax examination; forensic economic engineer examination; forensic economical examination;

forensic assessment examination; departmental systems for the classification of forensic economic examinations.

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The Essence of Truth-Conditional and Axiological Properties in Criminalistic Knowledge

The article examines the peculiarities of obtaining knowledge of the process of investigation of criminal offences, as viewed from the positions of basic epistemology, axiology and modern criminal law enforcement.

Keywords: criminalistics; criminal law enforcement; investigation of criminal acts; evaluation of quality and value of knowledge.

LAW ENFORCEMENT AUTHORITIES

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The Legal Foundations of the Organisation of Eurojust and Areas of Its Activity

On 28 February 2012, it has been ten years to the day since the establishment of one of the specialized organizations in the European Union – Eurojust. During these years, Eurojust had traveled a hard road of transformation from one of the many coordination structures in the European Union to an international law-enforcement organisation, vested nowadays with a number of criminal procedure powers. The article examines the legal foundations of the organisation, main areas of the activity, and characteristic features of Eurojust’s interaction within the various directions of judicial co-operation.

Keywords: international co-operation in the fight against crime; judicial co-operation; Lisbon Agreement; European Union; Eurojust; Russia.

COMPARATIVE JURISPRUDENCE

Anna L. Batalina

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The Fight against Corruption: Success and Failure (on the Example of Singapore and Nigeria)

There is much talk at summit level in Russia at present about the necessity of strengthening the fight against corruption. Moreover, the necessity of this is so highly rated that it seems to become almost a priority in the sphere of the state development. And how are things with this in other countries? The article describes the significant experience of counteraction to corruption in some countries. The tools used to fight against corruption in different countries are considered. The author not only considers positive experience, but also provides some helpful information about failures in the activities in question, and errors in the sphere of counteraction to corruption.

Keywords: corruption; legislation reform; policy; counteraction to corruption; Singapore; Federal Republic of Nigeria.

INTERNATIONAL CRIMINAL LAW AND JUSTICE

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International Criminal Justice: Gender Aspects

The author analyses the definition of the concept of ‘gender’ in light of international law and classification of sexual violence by the bodies of international criminal justice.

The article examines the formal components of gender crimes, materials of judicial practices and standards of the international legal proceedings on these cases, considering, in particular, the rights and guarantees of women as victims and witnesses of crimes.

Keywords: gender crimes; gender-based crimes; gender-inclusive international justice; gender-sensitive investigation; international criminal law; gendercide; international courts and tribunals, Rome Statute of the ICC.

Aleksey V. Ustinov

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On Certain Aspects of Cooperation Between Pre-Trial Investigation Agencies of Russia and Foreign Countries

The problems of cooperation of the Russian pre-trial investigation agencies with their foreign colleagues are determined to a great extent by differences in law systems related to procuring, verifying and evaluating of evidences received by the requested party on its foreign partner's request. Data and other information gathered on that sort of request will take a form of evidence as long as they are received and examined by the Russian part. It is determined, on the one hand, by the differences of the counteracting states' law of evidence, and the specific procedure of the Russian criminal justice to acknowledge the materials received from abroad in the course of mutual legal assistance as evidence – on the other hand. The article deals with certain aspects arising from that cooperation, as well as factors to be taken into consideration and offers recommendations to overcome them on legal and practical levels.

Keywords: international cooperation in the field of criminal justice; evidences; law of evidence; USA; Great Britain; Germany; Russia; admissibility of evidence; international treaties; Criminal Procedure Code of the Russian Federation; polysystemic system of legal regulation.

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Exercise of the Criminal Procedural Jurisdiction by the Receiving State with regard to Persons Enjoying International Law Immunity

The issues analyzed in the article are the permissibility and conditions of investigations by the receiving state into offences committed by persons enjoying international law immunity, as well as possibility to apply the procedure of transferring the criminal prosecution on such cases to the receiving state. Carrying out procedural actions with participation of such persons in the capacity of a witness and a victim is also considered. On the basis of the comparative analysis of laws of foreign states, the author draws the conclusion to the effect, that the Russian criminal and criminal procedural laws cover to the full extent the needs of the state to exercise its criminal procedural jurisdiction with regard to the said persons, as well as to transfer respective criminal proceedings to sending states.

Keywords: territory of a foreign mission; offences of persons enjoying international law immunity; criminal procedural jurisdiction of the receiving state; transfer of criminal prosecution to the sending state.

CRIMINOLOGY

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The Ecological Manifesto of Criminalist

For modern civilization, seized with excessive material consumption, and the official power structures, regular ecological outrages only appear to be an annoying obstacle to technical and social progress. This steady perception of growing problems of the coexistence of the human being and nature seems to be justified by those lawyers and other humanists, who usually come forward only at the occurrence of a

particular ecological disaster. The article represents an attempt to take a wider view of the problem that calls in question ideological stereotypes and administrative values.

Keywords: ecology; humanism; interests; law-governed state; private ownership of land; ecological risk.

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Contemporary Issues of Post-Penitentiary Adaptation of Persons Released From Prison

The article deals with the problems of post-penitentiary adaptation of persons released from prison. Emphasizing the high rate of post-penitentiary relapse and the period of its occurrence from the moment of release, the authors came to the conclusion that the most effective way of its prevention is the realization of measures for social adaptation of ex-convicts. The concept of adaptation is given, and the contents of stages of post-penitentiary adaptation, which include not only specific influence on a convict after his release from prison, but also activity of specialized subjects during his serving a punishment, are described. The authors offer to make a special experiment on preparation of convicts, serving punishment under typical or facilitated conditions, to life in freedom in the conditions of specific area, and underline the necessity of legal regulation of the described processes.

Keywords: adaptation; prevention of relapse; social readjustment; criminal executive inspectorate; administration of penitentiary institution; patronage; convict; criminal policy; correctional facilities.

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The Russian Anti-Drug Policy: Realities, Problems, and Development Tendencies

The article justifies the complexity and many-sided nature of the problems of drug addiction and criminal narcotism. These problems demand a system of measures for prevention, counteraction and fight to be carried out within the state anti-drug policy founded on the basis of the Concept of State Policy for Prevention of Drug Addiction and Offenses Connected with Illicit Turnover of Drugs and Psychotropic Substances, and the State Anti-Drug Policy Strategy of Russia. Priority directions, tendencies of development of the modern policy of the Russian state, and difficulties of its realization are shown, and analysis of the new expert proposals for its change and perfection is given.

Keywords: drug addiction; criminal narcotism; state anti-drug policy; drug-related criminality.

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EU System of Fight against Cybercrime

In this article, the questions of fight against cybercrime in the context of the information society's progress are reviewed. On the basis of studying of the EU and EC legal acts, the formal components of cybercrimes are defined and classified. The system of fight against cybercrime in the European Union is analyzed and recommendations about use of the EU experience in Russia are formulated.

Keywords: cyberspace; cybercrime; Internet; European Union; information society.

LEGAL SCIENCE METHODOLOGY

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The Culturological Approach to the Research of Criminal Law and Criminology Problems

The article analyzes the urgency of application of culturological knowledge in criminal law and criminology. In the foreign science, considerable attention is given to this question, and in this

connection a short review of corresponding research directions is presented. The author suggests that this specified area of scientific search be called criminal law culturology. In the article the examples confirming the urgency of the given approach are given, the criminal law culturology is differentiated with other adjacent spheres of scientific research, and its primary goals are formulated.

Keywords: criminal law culturology; foreign criminology; symbolism of criminal law; reception in criminal law.

LEGAL SCIENCE IN PRACTICE

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[Legal expert opinion on the Moscow City Court Criminal Division's cassational ruling of 29/11/2011 in relation to the criminal case of V.V. Makarov, convicted on 05/09/2011 by Tagansky District Court of Moscow of the crime under Article 132 \(4\), Paragraph \(b\) of the Russian Criminal Code, reclassifying the offence to Article 135 \(3\) of the Russian Criminal Code.](#)

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