Siberian Law Herald 2021. № 1

Druzhinin Gleb Viktorovich

The Influence of the Features of Legal Families on the Properties of the Corporate Regulatory System

Abstract

The paper investigates the issue of the peculiarities of the corporate regulatory system in the Romano-Germanic and Anglo-Saxon legal family. The structure of social regulation is described, which is represented by such elements as corporate-regulatory, legal, traditional, religious, moral and ethical subsystems. It is noted that at the heart of each subsystem there is a social norm, which is a system-forming element of the subsystem. The definition of the corporate regulatory system has been formulated, according to which this definition is understood as a set of internally coordinated and interrelated phenomena operating in society and having a regulatory, organizing and stabilizing effect on corporate social relations, the behavior of participants in corporate relations, as well as the activities of corporate organizations. It is indicated that the influence of the legal family on the corporate regulatory system is manifested, firstly, in the peculiarities of corporate regulation, and secondly, in the peculiarities of corporate organizations, at the stages of establishment and functioning. The concept of a legal family is analyzed, a set of national legal systems united by a common historical formation, structure, sources, leading branches and legal institutions, law enforcement, conceptual and categorical apparatus of legal science. It has been established that for countries belonging to the Romano-Germanic legal family, in the corporate-regulatory subsystem, the influence of the legal family is expressed in the primacy of legal regulation over corporate regulation, a high degree of state interference in internal corporate regulation issues, as by consolidating peremptory norms, the inclusion of which in corporate bylaws are mandatory and model bylaws. It was revealed that in the countries of the Anglo-Saxon legal family, there is a high degree of autonomy of corporate organizations, while the leading role in corporate regulation is played by contractual mechanisms, historically the corporation was considered as a pooling of capital.

Keywords

social regulatory system, corporate regulatory system, corporate norm, civil law family, common law family, socialist law family

Evloev Ilyas Muslimovich

The Legal Nature of the Judicial Compliance Assessment

The article examines the legal nature of the judicial compliance assessment, its correlation with the concepts of «judiciary»,«justice», «compliance assessment», «judicial control», «legal proceedings». In the legal literature the essence of this category is defined differently: it is considered as a function, objective, means, activities, process. Describing the concept of “function” as the main direction of the activity of different authorities, judicial compliance assessment is considered to be one of the functions (essential manifestations) of the judiciary. The leading role in the implementation of separation of powers and effective participation of courts in the system of checks and balances allows us to consider this institution as a function fulfilling the purpose of the judicial power. The judicial compliance assessment is a part of justice, which is the main function of the judiciary, and it’s implemented through constitutional, civil, arbitration, administrative and criminal proceedings. Thus, the legal proceedings are a form of realization of the compliance assessment functions of the judiciary. At the same time, the judicial compliance assessment is a kind of compliance assessment in general as the activity of the entire system of the competent authorities to assess regulations. Based on the results of the analysis of various positions of lawyers regarding the legal nature and content of judicial compliance assessment author offers his vision of the place of this institution in the system of functions of the judiciary and its main characteristics.

Keywords

judicial compliance assessment, nature of the judicial compliance assessment, judicial control, justice, legal proceedings, judiciary, functions of the judiciary

Chagin Ivan Borisovich

Detailed Description of Legal Experiment

Abstract

The phenomenon of a legal experiment and current problems that are of their nature are researched here. The notion of law is based on the instrumental approach and identified as the new tendency of law-making development which lies in necessity to identify possible effects that a regulatory act can have towards social relationships. It is alleged that all jurisprudence practice is made up of estimation procedures. The own interpretation of a “legal effect” is given here. It is identified that some rules of law are not always possible to predict their influence, therefore those who are given law-making authority have to use the mechanism of a legal experiment in their practice. The approaches to understanding of legal experiment that there are in the theory of state and law. They are set out and analyzed extensively. The definition of legal experiment from existing legislation was explored. The approach to understand the legal experiment was formulated. On the one hand, this approach accumulates all previous formulation in this area, but the other hand it proposes

new view of nature legal experiment. In the source base has been invested the regulation of existing domestic legislation and also doctrinal writings in this area including foreign-language. There is innovativeness to research the legal experiment here. Innovativeness lies in the integrated vision of nature of legal experiment. It has great mythological importance to all legal science. The conclusion of understanding of legal experiment as a method of legal prediction has been done. There was defined the place of legal experiment in the semantic row of the theory of state and law. The nature of understanding of legal experiment has been determined on the basis of author approach.
Keywords
legal experiment, legal forecasting, legal impact, legal regulation

Vasyutkin Nickolay Efremovich, Hamnuev Yuliy Grygoryevich

Institute of legislative Initiative of Citizens in the Subjects of the Russian Federation

Abstract
The article considers the issues of legal regulation of granting citizens the right to implement legislative initiatives and the consolidation of this right in the constitutions (charters) of the constituent entities of the Russian Federation. It was founded that the federal legislator, while providing the regions with the opportunity to empower citizens with the right to legislative initiative, did not regulate the issues of determining the conditions and procedure for realizing by citizens of this right. A variety of practices of legal regulation and constitutional consolidation of this institution based on the analysis of the constitutions (charters) of the regions were identified. In particular, three forms of legislative initiative of citizens were identified - a draft law, a legislative proposal, an amendment to a bill. It is proposed to consider a legislative proposal as an independent legal institution. It has been established that granting citizens the right to amend bills is aimed at developing the democratization of lawmaking process, so it was proposed to consolidate this right in the legislation of the constituent entities of the federation. But taking into account the peculiarities of the parliamentary discussion of the bill in the second reading, it was recommended to simplify the procedure of amending bills for citizens by reducing the number of signatures of citizens supporting this initiative. It has been established that regional legislators use a blanket method of securing the norms on the right to legislative initiative of citizens in the constitutions (charters) of the regions in most of the cases. The absolute number of citizens or the percentage of the total number of citizens who have the right to vote is used in the regions to determine the number of citizens required for the implementation of a legislative initiative. It is proposed to regulate the mechanism for implementing the institution of citizens' legislative initiative at the federal level in order to expand the opportunity for citizens to participate in legislative activities and eliminate contradictions in the regional legislation.
Keywords
lawmaking, legislative activity, legislative process, legislative initiative, democratization of lawmaking, popular legislative initiative, civil legislative initiative, legislative initiative of citizens, bill

Baganova Svetlana Vladimirovna, Belkova Elena Gennadievna

Exclusive Right of Co-owners

Abstract
The article gives a historical analysis of appearance and reinforcement of such a notion as "exclusive right" in special legal literature, as well as in legislation. The sufficiently detailed description of the category under consideration is given as a result of the conducted research. It is established that in modern understanding the term "exclusive right" comprises the set of property rights, the realization of which allows putting into practice the intellectual property usage; there fore this right represents a property law which takes part in civil circulation. It is indicated that the right under consideration is an exclusive right as it, by means of direct law prohibition, eliminates other entities (that are not exclusive owners) from the possibility of using the result of an intellectual activity or a means of individualization. Thus, the exclusive right is a monopoly scheme giving its holder the advantage of being the only one that has the possibility of its realization at his discretion in any way unless prohibited by law. It is established that Russian civil legislation is based on the legal scheme of exclusive right as an indivisible (integral) right. On the basis of the characteristics listed above, having highlighted the available opinions of specialists concerning the possibility of allocating an ownership interest in an exclusive right, the conclusion about the impossibility of allocating a share in an exclusive right is drawn. Issues of joint use and disposition of the exclusive right are brought to light, which initially must be discussed by the co-owners together, and if it is impossible to reach such an agreement between the right holders, it becomes necessary to resolve them by legal means. The mode of co-owning of the exclusive right over the result of intellectual activity and the means of individualization are determined.
Keywords
intellectual rights, exclusive right, ownership interest, co-owners of the exclusive right, co-owners, disposition of exclusive right

Belousov Vladimir Nikolaevich

Contract of a Commercial Concession in Russian Law: Issues of Theory and Practice

Abstract

The article is devoted to the analysis and resolution of problems arising during the conclusion and execution of a commercial concession agreement. The article substantiates the consideration of a commercial concession agreement as an independent type of civil contract. The criterion for the independence of this type of agreement is the presence of its own subject matter (the rightholder performing actions to grant the user the right to use a set of exclusive rights), as well as othertractors are differentiated. It is concluded that quality control of goods (works, services) produced (performed, rendered) by the user must be considered as a duty of the copyright holder, which cannot be excluded by agreement of the parties. The reasons for the absence of the legal obligation of the copyright holder to offer the user to conclude a contract for a new term are established. Special rules on termination of a commercial concession agreement are studied. The cases for motivated and unmotivated unilateral refusal of the contract are named. Specific proposals have been developed to improve the rules on a commercial concession agreement.
Keywords
commercial concession agreement, copyright holder, user, subject of the agreement, essential conditions, exclusive rights, termination of the agreement

Rovniy Valeriy Vladimirovich

About the Bargain Part's Invalidity

Abstract
The article is dedicated to the bargain part's invalidity. The author's point of view concerning comprehension and application the article 180 Civil Code of Russian Federation (further - CC) is formulated. The following questions - a) the sense and meaning of the rule art. 180 CC; b) the role of the objective and subjective criterions in recognition the bargain as invalid in the part; c) the phenomenon of the bargain's part and varieties of the parts for the art. 180 CC's application; d) the defects causing the recognition invalidity bargain in the part; e) the essence of the supposition about the importance or unimportance the defect bargain's part in the art. 180 CC; f) the applicability the rules of the bargain's invalidity (§ 2 ch. 9 CC) for the invalid bargains in the part - are being investigating in detail. In the connection with recognition the bargain as invalid in the part a number of disputable and problematic moments is being discussing. They are: a) the comprehension of the objective and subjective criterions, the meaning of the objective criterion in unilateral bargains, faithful manipulation by the subjective criterion; b) the separability the part from the bargain and the problem of the defectiveness of the bargains' essential conditions; c) the problem of formal and subjects' defects in the connection with the recognition the bargain as invalid in the part; d) the dualism of the supposition and the kind of the presumption in the art. 180 CC' application. Side by side with the civil law's questions some procedural questions connected with the art. 180 CC' application are touched upon. Stabilized in the literature opinions are subjected to the critical comprehension. As the result the attempt to graund more wide capacities for the recognition bargain as invalid in the part was undertaken. The conclusions are accompanied by a plenty of examples and references to the rules of the Civil Code Russian Federation.
Keywords
the bargain's invalidity in the part, the objective criterion, the subjective criterion, the part of bargain, the defect of the bargain's part

Filatova Uliana Borisovna, Gorbach Olga Vladimirovna

Associations and Unions in the System of Non-profit Corporate Organizations in Russian Law

Abstract
The article deals with the corporate nature of associations and unions. Problems of conceptual apparatus, namely such definitions as "corporation", "corporate organization", "non-profit corporate organization", "association (union)", "corporate rights" are analysed in the article. This leads to the conclusion that it is difficult to identify the necessary and sufficient corporate characteristics, whether associations and unions are full-fledged corporate organizations or can be considered as quasi-corporations. These issues are considered in the light of the non-profit nature of the corporation, in view of the purposes for which it was established, of its public or public functions.
Keywords
association, union, corporation, corporate property, not-profit corporate organization

Zhilkin Maksim Gennad'evich, Dotsenko Elena Andreevna

Criminal Manifestations in the Consumer Market: Problems of Definition and Accounting

Abstract
The problem of the lack of a uniform approach to classifying criminal manifestations as a group of crimes and offenses in the consumer market is revealed. The high relevance of this issue is noted, due to the interest in it from law enforcement and Supervisory authorities. Based on the current legislation, criminal law and economic doctrine, the discussion issues related to the concept of the consumer market are considered, and its significance in the formation of the concept of crimes in the consumer market is established. It is established that crimes on the consumer market, being potentially dangerous, from the point of view of the possibility of causing harm to the life and health of citizens, damage to property owners, harm to the health of the population as a whole, require preventive measures by law enforcement agencies aimed at preventing

the occurrence of further negative consequences. It is concluded that the presence of a victim is not a mandatory criterion for classifying an act as committed on the consumer market. An algorithm has been developed that allows accounting entities to apply a unified approach to classifying relevant acts.
Keywords
economic relations, consumer market, object of crime, victim, public danger, unified accounting of crimes, algorithm

Zabavko Roman Alekseevich

Public Danger of Ecological Crimes in the Dynamics of Society

Abstract
The transformation of public danger of environmentally hazardous acts is considered. It has been established that in the process of historical development, the approach to determining their harmfulness has changed: previously it was associated with the violation of ownership rights to natural resources, and now it is associated with the possibility of complete destruction or change of nature. It is stated that the nature of the public danger of environmental crimes has greatly changed. The main actions that have a negative impact on the natural environment have been identified. It has been established that the degree of social danger of these acts has greatly increased. It is noted that the transformation of the public danger of the analyzed acts occurred in a very short period of time, and the current criminal law does not take into account the changes in full. Special measures are proposed to improve the criminal law protection of the environment and natural resources: taking into account the selfish motive when committing them, the formation of elements of environmental crimes as compounds of real danger
Keywords
environmental crimes, social danger, naturalresources, pollution, selfish motivation

Filippova Olga Valeryevna

On the Question of the Criminal Law and Criminological Concept of Recidivism

Abstract
The concept of relapse, enshrined in the Russian criminal law, is subjected to scientific understanding and critical analysis. The characteristic of the essential signs of legal relapse is given, the opinions of various authors about their content are given. The conclusion is made about the desire of the legislator to narrow the scope of legal relapse. The definition of legal relapse has been formulated. The approaches to the study of criminological relapse, its correlation with criminal law relapse are noted, the essence and features of the study of relapse in criminology are determined. The analysis of the statistics of convicts, who at the time of conviction had removed and outstanding convictions and convicts who were found to have committed crimes in case of recidivism, were carried out. The data of official statistics of crime and convictions were compared, conclusions were drawn about the ratio of the proportion of legal and criminological recidivism in them, and conclusions were drawn about the insignificant volume of recidivism in the total aggregate of repeated crimes. Shows the reflection of information about the recidivism of crimes in criminal statistics - the number and proportion of persons who have previously committed crimes, as well as previously convicted. The analysis of the statistics of convicts who at the time of conviction had a removed and outstanding convictions and convicts recognized as having committed crimes upon recidivism was carried out. The data of the official statistics of crime and convictions were compared, conclusions were made about the ratio of the proportion of legal and criminological recidivism in them, and conclusions were drawn about the insignificant volume of recidivism in the total set of repeated crimes.
Keywords
recidivism, legal recidivism, criminological recidivism, repeated crime

Shikhanov Vladimir Nikolaevich

Criminalization of AUE*: the Pitfalls of the Enforcement of the Decision

Abstract
The article analyzes the expected positive and possible negative consequences of the implementation of the decision of the Supreme Court of the Russia to ban the activities of the international public movement “Prisoner criminal unity” in the Russian Federation. The organization is recognized as extremist. The author considers possible options for criminal-legal assessment of the activities of adults who coordinate minor adherents of this subculture, legal assessment of the collection and storage of material and financial resources (the so-called “obshchak”), which are intended to Finance the activities of the “AUE” movement or its members. Special attention is paid to the issues of legal influence on teenagers who are in one way or another committed to the“AUE”-ideology. Based on criminological theory and practice, the author draws attention to a number of issues on which it is necessary to develop a clear position in order to avoid negative side effects from the application of the norms of the Codec of the Russia on administrative offenses and the Criminal code of the Russian Federation. Among these consequences, the risks of dramatization of evil and stigmatization with subsequent polarization of young people, excessive expansion of the boundaries of criminal repression for ideological reasons, and an increase in the mood of sympathy or imitation for those who will be brought to criminal responsibility for adhering to the criminal subculture are highlighted. According to the author, the window of opportunities for countering the criminal subculture should be used

with great care, so as not to repeat the mistakes and excesses that were previously made in countering extremist activities and for the sake of eliminating which the Prosecutor General's office of the Russian Federation, together with the Plenum of the Supreme Court of the Russian Federation, in September 2018, were forced to significantly adjust law enforcement practice.

Keywords
extremist organization, extremist activity, criminal subculture, criminal policy, criminalization, stigmatization, dramatization of evil

Nikitashina Natalia Alexandrovna, Maryasov Konstantin Vasilyevich

Electronic Evidence in the Civilistic Process

Abstract
The current civil procedure legislation refers to information obtained from electronic sources of information as written evidence. At the same time, electronic evidence is not an independent means of proof. The purpose of this article is to study the possibility and necessity of allocating electronic evidence as independent means of proof. The traditional approach to understanding the electronic document is based on the participation of the person in the information interaction as the author of the document and its performer. At the same time, the electronic document is characterized by its (special) properties related to its creation, change, preservation. In addition, the authors draw attention to the existence of electronic documents that do not have a human-readable form but create, modify or terminate rights and obligations. The study also points to the possibility of self-participation of computer tools in information interaction. In the article, the authors propose to distinguish electronic evidence as an independent means of proof, and also justify the theoretical and practical necessity of this approach to the legal regulation of the procedure of proof in civil and arbitration proceedings (research, recording, evaluation of evidence from electronic sources).

Keywords
electronic document, electronic evidence, evidence, written evidence, civil procedure

Sebyakin Alexey Gennadievich

Some Aspects of Tactics of Using Special Knowledge in the Field of Computer Technology

Abstract
The article considers the tactical features of the use of special knowledge in the investigation of crimes by analyzing the structure of tactical decisions and tactical and forensic recommendations. The components of the tactical decision are high-lighted, the emphasis is placed on the connection of predictive activity with the dynamism of the development of the investigative situation, not only as a result of tactical influence, but also in the process of this influence. It is proposed to consider the tactical-criminalistic recommendation as a scientifically sound and practice-tested advice relating to the selection and application of a system of tactical actions in a typical investigative situation. The following structural elements of the tactical recommendation are highlighted: a comprehensive assessment of the information component of the investigative situation, requiring the use of special knowledge; determination of the goal of tactical influence by formulating a number of tasks; determination of the sequence of tactical actions, the sequence of their implementation, forecasting the development of the investigative situation. It is concluded that each stage of making a tactical decision when using knowledge in the field of computer technology should be accompanied by the interaction of the investigator with a competent person (both procedural and non-procedural). Based on the identification of typical investigative situations, the formation and use of tactical-criminalistic recommendations is possible, providing for the selection and application of a system of tactical actions, including the application of knowledge in the field of computer technology, as well as their complexes.

Keywords
tactics, tactical decision, tactical-criminalistic recommendation, special knowledge, investigative situation, tactical complex, tactical operation

Toshtemirova Regina Farhodovna

Investigator and Investigation Body Supervisor: Cooperation Problems

Abstract
The purpose of criminal proceedings is protection of rights and legitimate interests of physical entities and legal entities who became victims of crime. The effectiveness of criminal proceedings depends on activities of different offices and departments. Preliminary investigation body takes a special place among them. It implements the supervision of all the laborious process around criminal proceedings, starting from being instituted until passed to prosecutor who will direct it next to the court. Preliminary investigation body is mostly represented by both investigator and investigation body supervisor in the domestic criminal justice. According to the code of criminal procedure of Russian Federation, the investigator is an official authorized to conduct the preliminary investigation of criminal case, along with other authorities provided by the code. The investigation body supervisor is an official who leads relevant investigation division, as well as his deputy, both bearing a significant volume of procedural authorities. Implementing the law enforcement activities, these officials are in continuous interaction, which means help to each other and cooperation in investigating. Such an idyll between two significant characters of criminal justice is a guarantee of successful justice achievements. However, processual scientists and workers have been asking for last few years, how

effective is cooperation between investigator and investigation body supervisor, and how does it affect one of the most important principle of criminal proceeding - the processual independence of investigator. Standards of contemporary Russian legislation make investigator dependent of legislation body supervisor, which affects his processual independence during preliminary investigation performed. According to all above, this research has its purpose in revealing and analyzing problems emerging in cooperation between investigator and investigation body supervisor, as well as searching ways to solve those problems.
Keywords
investigator, head of the investigative body, preliminary investigation, independence, control, supervision, investigative authority

Kolobov Roman Yurievich, Ditsevich Yaroslava Borisovna

International Legal Potential for Solving Environmental Problems in the Baikal Natural Territory

Abstract
It is determined that the task of improving the legal protection of the ecosystem of Lake Baikal presupposes a comprehensive analysis of the existing legal regimes of both national and international origin. It is noted that various international treaties have already played a positive role in solving acute problems of lake protection, however, the potential of international law in this area is far from being exhausted, since, on the one hand, the existing international legal mechanisms are often not fully used, with the other is that there are a significantpact Assessment in a Transboundary Context", reflecting leading international and foreign practice of solving environmental issues. A separate block is allocated to the conventions on the protection of flora, fauna and its individual species:"on the protection of wild fauna and flora and natural habitats in Europe" and the Convention on the Conservation of Migratory Species of Wild Animals. It was noted that the analysis of the European Convention on Landscapes, whose provisions can contribute to the formation of landscape policy in the Central Ecological Zone of the Baikal Natural Territory, is promising.
Keywords
protection of lake Baikal, international environmental law, international treaties

Kolosov Aleksandr Viktorovich

International Protection of Rights in the Information Relations Field (on the Example of the Practice of the European Court of Human Rights)

Abstract
The features of international protection of rights in the information relations field are investigated. Modern information technologies form new types of public relations, the object of which is information. Information has an impact on all spheres of human activity and generates information relations that are in constant dynamics and development, as new information technologies appear, new types and methods of information transmission and protection are created. The article analyzes the international legal basis of information relations. Special attention is paid to the analysis of the practice of the European Court of Human Rights. The norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, devoted to freedom of expression, are considered. It was found that sometimes it is extremely difficult to determine the degree of potential threat to human rights and freedoms, and often this is the cause of judicial errors on the part of national courts and become a reason for applying to the European Court of Human Rights. Special attention is paid to the consideration of judicial practice concerning relations arising on the Internet, the activities of online mass media (online newspapers, information portals, etc.), as well as a completely new case of cyberstalking. The practice of the European Court of Human Rights shows that free media space and the right to information are the foundation of any democratic society. Maintaining a balance between public and private interests, a person's right to respect for their private life and the right to express their opinion is extremely important in a modern state governed by the rule of law
Keywords
European court of human rights, international protection of rights, information relations, cyberstalking

Pavelyeva Evelina Anatolyevna, Paytyan Roza Khachaturovna

Implementation of the Norms of International Law on the Legal Status of Refugees into the Legislation of the Russian Federation and the Mechanism for their Implementation

Abstract
The analysis of the application of the norms of international law in relation to the establishment of the legal status of refugees, their protection, granting of asylum in the Russian legal system is carried out. Conclusions are drawn about the inconsistency of some norms of national law with universal norms. Problems are identified at the term level. The necessity of supplementing the concept of «refugee» with new categories and features, such as armed conflicts in the country of habitual residence, is substantiated. In support of this thesis, an overview of Russian judicial practice is given. It is concluded that from a legal point of view, both at the universal and at the national levels, a very effective system of assistance to refugees has developed. However, in practice, when the need arises to implement such norms, numerous difficulties arise. It is recommended to solve these problems by eliminating the inconsistency of norms at different levels. The

1951 Convention has ceased to meet the needs and realities of the modern world order. The need to revise the entire system of norms in this area, and the implementation of innovations in national laws is revealed. The role of cooperation between the Office of the UN High Commissioner for Refugees and the national departments of the Russian Federation is analyzed, and the significant role of the Agency in improving the legislative framework of the Russian Federation is indicated. It is recommended to develop mandatory rules regarding the procedure for granting refugee status. It is proposed to give more legal force to the New York Declaration adopted in 2016, which fully fills the gaps in this area, but at the moment it is only advisory in nature. The tightening of the rules for granting legal status to refugees as a result of the analysis of current trends in the migration policy of Russia is revealed. It is recommended to find a balance of interests in terms of the ratio of the principles of sovereignty and respect for human rights and freedoms.
Keywords
refugee, migrant, forced migrant, implementation, human rights

*** The organization is banned in the Russian Federation**