ABSTRACTS

CRIMINAL LAW

Arkhipov Andrey V. Tomsk Regional Court (Tomsk, Russia). LEGAL TREATMENT OF EMBEZZLEMENT OF FEDERAL SUBSIDIES FOR MULTIPLE-CHILD FAMILIES.

Keywords: fraud, maternity capital, preparation, attempt, accompliceship.

Federal subsidies for multiple-child families (maternity capital) is a social benefit introduced by the Federal Law No. 256-FZ «About additional measures of the state support of the families having children» of December 29, 2006. Their specific purpose and application complicate the criminal treatment of affiliates in cases of fraud and public money embezzlement. The paper describes three most common cases of illegal actions connected with these federal subsidies: illegal receipt of the Government maternity capital certificate; illegal receipt of maternity capital by the holder of the certificate; illegal receipt of maternity capital with the assistance of a banking or any other institution employees. The conclusions are made that since January 1, 2013 illegal receipt of the Government maternity capital certificate as such is not a punishable offence by the general rule; the legal holders of the Government certificates, who use the services of «agencies» that cash maternity capital, must bear criminal responsibility along with the employees of the «agencies» as accomplices.

Veltmander Aleksey T. Tomsk State University (Tomsk, Russia). LEGAL MODELS OF ENTRENCHMENT OF CIRCUMSTANCES EXCLUDING CRIMINALITY OF CONDUCT IN THE CRIMINAL LAW: THE COMPARATIVE-LEGAL ASPECT.

Keywords: circumstances excluding criminality of conduct, foreign criminal legislation, models of legal regulation.

The current Criminal Code of the Russian Federation entrenches six circumstances excluding criminality of conduct. That particular list of circumstances in the national criminal law is predetermined by a number of objective factors, among which are the peculiarities of the legal system, national legal traditions, social factors and historical processes in the state.

In general, the procedure for entrenchment of the circumstances excluding criminality of conduct in the national criminal law represents just one of the possible ways of such entrenchment in legal systems of different countries.

Moreover, different countries and legal systems practice various approaches to the essence of this category, its content, structure and legal nature. The aforesaid distinctions are even more significant than those in such legal categories as crime, punishment and responsibility. That is why, anyhow, the legal model proper for the national criminal law is regard as of paramount importance for a comparative legal research.

It is the types of entrenchment of the circumstances excluding criminality of conduct in each of the states that reflect differences in research methodology.

There are legal systems which do not represent the circumstances excluding criminality of conduct as an independent legal category. Hence, they do not always entrench these circumstances in a separate chapter or as independent legal statuses.

In this respect it is possible to distinguish at least three approaches to entrenchment of the circumstances excluding criminality of conduct.

1. The circumstances excluding criminality of conduct are entrenched in an independent chapter, separately from any other grounds excluding criminal responsibility as well as from other legal categories. This type of legal regulation is to be found primarily in the CIS and Baltic countries as well as in Georgia, San-Marino, Israel and some other states. The titles of the aforesaid chapter or paragraph may vary: «Circumstances excluding illegality of conduct» in the Criminal Code of Georgia (Chapter 8), «Circumstances excluding criminal responsibility» in the Criminal Code of Lithuania (Chapter 5), «Exculpatory circumstances» in the Criminal code of San-Marino (Chapter 4), etc.

2. The circumstances excluding criminality of conduct are entrenched in one chapter together with other circumstances excluding criminal responsibility or any other legal categories. Such type of entrenchment of circumstances excluding criminality of conduct is to be found in the Criminal Codes of France, Spain and China. The legislation of Australia also belongs to this group to some extent. In this case, the circumstances excluding criminality of conduct can be entrenched either together with other grounds for excluding criminal responsibility (as in the Criminal Codes of France and Spain) or without them (as in the Criminal Code of China).

3. The circumstances excluding criminality of conduct are entrenched separately in several paragraphs, clauses or chapter. This type of entrenchment implies that the circumstances excluding criminality of conduct are not placed together with other legal categories. This type of entrenchment is to be found in the Criminal Code of Thailand, in particular.

CRIMINAL PROCEDURE

Barabash Anatoly S. Siberian Federal University (Krasnoyarsk, Russia). PURPOSES OF DIRECT AND INDIRECT PROOF IN CRIMINAL CASES.

Keywords: purpose, circumstances subject to be proven, purposes of direct and indirect proof.

The paper describes circumstances subject to be proven, the content of which is fixed by Art. 73 of the Criminal Procedure Code of the Russian Federation as the purpose of the criminal procedure proof. The author analyses the given article and finds

drawbacks in its structure and in description of circumstances subject to be proven. The author offers amendments and addenda to the articles that fix the purposes of the direct and indirect proof.

It is suggested to give a regulatory definition of the purpose of proof. Its result, an outcome of efforts of subjects of proof to accomplish a common purpose, is a success if each participant has a similar concept of the purpose of proof. The regulatory fixation of the purpose is possible, though the result of its achieving will be different, determined by the type of the offence whose circumstances are to be proven.

Facts to be proven are the event of offence and the lack of it, guilt and innocence. Proving such circumstances is the grounds for termination of criminal cases, prosecution, for entering an acquittal due to the lack of evidence or offence. As these circumstances are important for making essential decisions on a case, they must be fixed in Art. 6 of the Criminal Procedure Code of the Russian Federation, which describes the purposes of the law enforcer, not in Art. 74, which describes proofs.

Circumstances that contributed to the offence are also subject to clarification. Addressing from these positions to the text of Art. 73 of the of Criminal Procedure Code of the Russian Federation does not allow to immediately identify the connection. The reason to it is the lack of circumstances that correlate with the elements of offence, or circumstances that are regular only for some offences or irrelevant for criminal legal treatment. There are circumstances that can be used both in and after establishment of facts, which are equivalent to an offence, and there are circumstances that should be taken into account when deciding on non-punishment, the so-called circumstances of exemption from criminal liability, and circumstances that may lead to exemption from punishment. They are described in detail in the Criminal Code.

Baranova Yevgenia V. Tomsk State University (Tomsk, Russia). MODERN LEGAL POSITIONS OF THE RF CONSTITUTIONAL COURT ON THE CORRELATION OF THE ADVERSARIAL PRINCIPLE AND ACTIVITY OF THE COURT IN A CRIMINAL PROCEDURE.

Keywords: adversarial principle, activity of court, return of criminal case to prosecutor.

The decision of the RF Constitutional Court No.16-P of July 2, 2013 has sharpened the debate about the necessity of an institute of return of the criminal case to the prosecutor at the court's initiative for retreatment of the act, which worsens the position of the accused, in domestic criminal procedure.

This problem must be discussed with considering the possible and permissible degree of activity of the court in the criminal process, taking into account the adversarial principle. The modern content of the adversarial principle includes the following elements: separation of the functions of the prosecution, defense and resolution of the criminal case; inadmissibility of giving more than one function to one and the same agency or official; creation of conditions for the performance by the parties of their procedural rights and responsibilities; equality of the parties before the court, which means the parties have equal rights and opportunities to defend their interests.

A conclusion is made that to ensure the full, comprehensive and objective resolution of the criminal case, the court must be able to compensate for the lack of activity of both parties. The opinion is given that the adversarial principle does not preclude the collection of additional evidence by the court, which is possible under certain conditions.

The analysis of the decision of the RF Constitutional Court No.16-P of July 2, 2013 shows that the highest judicial body actually directs lawmakers to return the institute of further investigation, since if the criminal case is returned for the modification of criminal charges, which worsens the position of the accused, the investigator must hold a series of investigatory actions. The analysis of the content of the adversarial system and its relation to the activity of the court in the criminal process, suggestions on the available extent of such an activity are made. Thus, when returning the criminal case to change the charges, which worsen the situation of the accused, a number of conditions must be fulfilled: the court is not entitled to give instructions to correct the violations found; return of the criminal case to the pre-trial proceedings is possible only at the request of a party; the court in the same composition may not consider the criminal case again. These conditions together form the available extent of the activity of the court when returning the criminal case to the prosecutor. Thus, this decision of the Constitutional Court is not completely flawless, as court activity limits are not defined, which may lead to a breach of the adversarial principle.

Boyarskaya Aleksandra V. Omsk F.M. Dostoevsky State University (Omsk, Russia). SUBSTANTIVE BASES OF THE SYSTEM OF SUMMARY PROCEDURES IN THE CRIMINAL PROCEDURE OF THE RUSSIAN FEDERATION.

Keywords: criminal-procedural form, summary procedures, trial procedures, differentiation of criminal proceedings, special order of trial.

The paper studies the leading trend in the development of the domestic criminal procedure – the tendency of its differentiation in the form of simplification.

The author considers the system of summary procedures characteristic for the Russian criminal procedure, indicating that it is formed by: the «normal» version of the special order of the trial provided by Ch. 40 of the Criminal Procedure Code of the Russian Federation; a special order at the conclusion of the pre-trial agreement on cooperation enshrined in Ch. 40.1 of the Criminal Procedure Code of the Russian Federation; the simplified procedure introduced by Ch. 32.1 of the Criminal Procedure Code; proceedings in criminal cases of private prosecution.

The direct object of investigation are substantive bases of the system of summary procedure, which are substantive rules designed to be use in the simplified procedures analysed. In this paper, the author consistently considers substantive bases of each of the procedures, and gives their generalized description, coming to a conclusion that they can not be considered sufficiently defined and developed.

At the same time, the greatest number of questions refers to the domestic system of procedures based on the special order of the trial prescribed by Ch. 40 of the Criminal Procedure Code of the Russian Federation, because it lacks a clearly defined criminal legal basis that objectively requires the specificity of the criminal procedure form. In addition, the existing criminal legal ba-

sis is essentially limited by the requirements of the criminal procedure.

Basing on the above, the author makes general conclusions about the basic phenomena that determine the specificity of the criminal procedural form of summary procedure inherent in the criminal practice in Russia.

The phenomena are not the objective properties of criminal cases, where the modified procedural forms are applied, but the tasks lawmakers put before the criminal procedure: - faster and cheaper criminal proceedings; - easier access to justice for the suspect, the accused, and the victim; - peaceful resolution of the social conflict (for the special order of the trial in the forms provided by Ch. 40 and Art. 226.9 of the Criminal Procedure Code of the Russian Federation); - for the special order of the trial at the conclusion of the pre-trial cooperation agreement it is also the fight against organized crime. The author also made the final conclusion about the ever-increasing reverse influence of differentiation of the criminal procedure on the differentiation of criminal law.

Brester Aleksandr A. Siberian Federal University (Krasnoyarsk, Russia). ORIGIN OF THE CRIMINAL PROCEDURE AND ITS INFLUENCE ON THE CRIMINAL PROCEDURE FORM.

Keywords: controversy, publicity, origin, form.

At present, the law is often subject to changes. The changes are extremely heterogeneous, which has a negative impact on the criminal procedure.

One of the main reasons for this situation is the ambiguity of the basic concepts essential for understanding and building the criminal procedure. Origin of the criminal procedure is one of these concepts.

After analysing the existing approaches and the historical tradition of the use of this notion the author defines origin of a criminal case as a ratio of private and public interests that determines the structure of the criminal procedure; a ratio where one's interests prevail the others, which has developed in a society (a particular society) under the influence of objective factors throughout its development. There are two types of origin – controversial (predominance of private interests) and public (predominance of public interests). Each system must have its principles.

The conclusions are consistent with the criminal procedure tradition of the 19th century and are exemplified in the history of Russia.

Origin of the criminal procedure is not implemented in the model, as some authors state it, but in the form of the criminal procedure. The model in this case is only a research tool, the notion of a different level.

The author finds elements of the form through which origin renders its influence. Origin of the criminal procedure has the following requirements to its organization: in terms of purposes – to correspond to the task of the criminal procedure, to the «social demand» for it; in terms of the subject - to be able to realise the prevailing interest; in terms of the cognitive scheme – to allow the subject to fully implement their prevailing (and non-contradictory other) interests and achieve their goals. The changes in these respects will substantially affect the form and the efficiency of activity, as for the form to react requires a significant change in the content of the system as a whole, or at least in one of its subsystems.

It is absolutely obvious that different forms may have common elements, which do not belong to their main characteristics and influence their bases. Another thing is that the purpose of these elements can be different in different forms.

Noskova Yelena V. Tomsk State University (Tomsk, Russia). THE LIMITS OF LITIGATION IN SPECIAL PROCEEDINGS FOR COMPLAINS REVIEWED BY COURT UNDER ARTICLE 125 OF THE CRIMINAL PROCEDURE CODE OF THE RUSSIAN FEDERATION.

Keywords: proceeding for complaint administration and resolution, evidence and proof, proceeding and its limits.

One of the most recent and urgent amendments to the criminal procedure legislation concerns the subject of appeal under Article 125 of the Criminal Procedure Code of the Russian Federation of July 23, 2013. Together with the frequent correction in the legislative language of the law under study it goes to prove that legislators pay constant attention to the procedure for consideration and resolution of complaints lodged by the participants of the criminal procedure in the pre-trial stages.

On the basis of the formulation of Part I, Article 125 of the Criminal Procedure Code of the Russian Federation, amended on July 23, 2013, the circumstances to be proven in the course of complaint consideration include: 1) ability (lack of ability) of disputed decisions, actions (lack of action) to inflict a damage upon the constitutional rights and freedoms of the participants in the criminal court proceedings; 2) ability (lack of ability) of disputed decisions, actions (lack of action) to interfere with the citizens' access to the administration of justice; 3) relevant jurisdiction (or lack of it) of the authorities and officials conducting the pre-trial procedure, as well as the prosecutor's power (or lack of it) to make a disputed decision or take a disputed action (lack of action). However, the comprehensive analysis shows that the aforesaid are not all the circumstances to be proven. Under Parts 3 and 5 of Article 125 of the Criminal Procedure Code of the Russian Federation these circumstances also include: 4) legality (lack of legality) of decisions, actions (lack of action) of the authorities and officials conducting the pre-trial proceedings in a criminal case, as well as that of the public prosecutor; 5) substantiation (or lack of it) of decisions, actions (lack of action) of the authorities and officials conducting the pre-trial proceedings in a criminal case as well as that of the public prosecutor.

At present, the analysis of the current Russian legislation leads to the following conclusion: the powers of court in consideration and resolution of complaints under Article 125 of the Criminal Procedure Code of the Russian Federation are ambiguous, as the court has the power to audit, while its initiative in this field is restricted. The legislative inconstancy is partly corrected by the settled judicial practice. As a rule, the judge is not confined to the arguments of the complaint, though this practice must be enacted.

Thus, all of the aforesaid leads us to the following conclusion:

1) the applicant shall prove the circumstances of the complaint lodged under Article 125 of the Criminal Procedure Code of the Russian Federation. The authority or official, whose decisions, actions (lack of action) are appealed against, shall prove le-

gality and substantiation of their decisions, actions (lack of action).

2) When applied to proceedings for consideration and resolution of complaints under Article 125 of the Criminal Procedure Code of the Russian Federation, the term «evidence» shall be used in its broad sense as the means to substantiate the facts relevant for consideration and resolution of the complaint.

3) During the proceedings for consideration and resolution of complaints the court shall not discuss and evaluate the materials on-file in terms of proven guilt or innocence of any given people of the crime under investigation, or foreclose questions that might subsequently become the case at law and conclude about the facts of the case.

4) The judge shall check all the grounds for the complaint, though the check of disputed decisions, actions (lack of action) in terms of their legality and substantiation shall not be confined to the arguments of the complaint.

Ozhiganova Maria V. Udmurt State University, Branch in Nizhnyaya Tura, Russian State Professional Pedagogical University (Yekaterinburg, Russia). RESTORATIVE JUSTICE AS AN ALTERNATIVE FORM OF JUVENILE CRIMINAL PROCEDURES.

Keywords: restorative justice, juvenile justice, juvenile criminal procedures, mediation, alternatives to criminal prosecution.

The paper describes the problems of restorative justice in juvenile delinquency cases in the national criminal procedure. The idea of restorative justice is based on the fact that in criminal proceedings for certain categories of cases when the offence is committed by a juvenile offender, the harm caused to a certain person can be refunded or otherwise redressed. The principle of inevitability of punishment can be replaced by the principle of obligatory reparation and redress. The main objective of restorative justice is to promote and protect the rights of juvenile delinquents, primarily their right to a well-being and decent life. Renunciation of criminal measures and (or) their minimization within the restorative justice is aimed at implementing the interests of both the child and society as a whole.

However, the current criminal justice system is not focused on solving the problems of the victim resulting from the criminal assault. It is very important for the victim to feel secure and confident and to have their rights restored, which is the main goal of restorative justice. Restorative justice has pedagogical effect on the offender, too. Unlike conventional forms of legal proceedings where the court imposes a sentence, restorative justice implies that the juvenile delinquent determines his/her degree of responsibility and pledges to implement it, which fosters responsibility, respect for the dignity and rights of the individual, and active social position. Unfortunately, the present law enforcement practice does not identify the the rights and interests of the child with those of the public authorities.

Restorative justice is mistaken by some as a procedure that reconciles the offender and the victim and therefore exempts the former from the punishment. In reality, such goal is not assigned at any cost. A lot depends on the status of the procedure: whether it is conducted simultaneously, instead of or before the criminal procedure. Determining the role of restorative justice when we deal with juveniles, it seems to be possible to establish the priority of restorative justice procedures at the stage of initiation of a criminal case. As far as the current legislation does not allow abandoning a criminal case due to feasibility of non-criminal measures to a juvenile delinquent, it seems to be possible to apply them at any stage of criminal proceedings, up to the stage of punishment execution, during the initial stage of implementation of such procedures. The Russian Criminal Code contains provisions that allow dismissal of prosecution against a juvenile delinquent, if it is recognized that his/her correctional rehabilitation can be conducted through coercive educational measures. Accordingly, if the child himself/herself assumes responsibility for the act committed and undertakes to correct the situation, it is also possible to abandon criminal prosecution. Restorative justice is characterized by a high degree of responsibility which involves active actions of the offender. The international experience suggests that a failure to satisfy voluntary commitments within the prescribed time limits shall cause, criminal prosecution recovery.

Petrushin Artyom I. Tomsk State University (Tomsk, Russia). COMPLEXITY OF THE FINDING OF FACTS AS A CRITERION OF DETERMINING THE LIMITS OF PRIVATE PROSECUTION.

Keywords: private prosecution, access to justice, victim, differentiation of procedural form.

The paper focuses on some bases for granting the victim the right to substantiate him-/herself the accusatory thesis in the court. The legal significance of the conditions that complicate the findings of facts in resolving the issue of initiating a criminal case of private prosecution is discussed.

Any change, simplification of the form of action, in particular, may only be recognized as valid while there are guaranties the purposes of the criminal procedure are fulfilled. Basing on this idea the author argues that the private prosecution procedure, involving the absence of the pre-trial stage, is only possible in the absence of conditions that complicate the finding of facts of the case in the court.

Having studied the criminal cases of private prosecution, the author concludes that the typical investigatory situation for private prosecution is characterised by the absence of conditions that complicate the finding of facts. The typical circumstances for cases of private prosecution are the availability of the data about the committer and witnesses of the crime; lack of necessity to appoint audit, search and investigatory actions, for it is impossible to conduct them within the court investigation.

By the result of studying the criminal records, the author concludes that the need to clarify the list of grounds for the preliminary investigation of private prosecution cases. Furthermore, the author states the need to differentiate the effects of the presence of conditions that complicate the finding of facts. After examining these issues, the author proposes to amend the list of grounds for the preliminary investigation of private prosecution cases by the presence of conditions that complicate the finding of facts, which manifests itself in the need of investigatory actions, which are impossible to be conducted within the court investigation. The existence of conditions that complicate the finding of facts can not justify the initiation of a criminal case without obtaining the victim's declaration of a corresponding will.

Piyuk Aleksey V. Megion City Court (Megion, Russia). SYSTEMATICITY AND BALANCE AS ESSENTIAL FEATURES OF THE RUSSIAN CRIMINAL PROCEDURE.

Keywords: type of Russian criminal procedure, principles of criminal procedure, system of criminal procedure, purpose of criminal procedure, basic and optional elements of criminal procedure.

Stability of the criminal justice system is ensured by the presence of integrative relations between its elements, interdetermination, interconnection and interpenetration of all elements. The set of rights and responsibilities of each participant in the criminal procedure should be balanced. The procedural statuses of all participants should be balanced, too, so that professional tasks, procedural functions, defending / representing one's interests are done most effectively. The criminal procedure is an ongoing process moving from initiation to its logical conclusion, consisting of a system of stages with their own tasks and purposes; and the competence of subjects and their different interests must be balanced as a whole, as well as at specific stages. When the balance and organization of the criminal procedure (like of other social life spheres) are satisfactory, the general purpose of criminal procedure achieved – to ensure social stability and public order.

There appears to be no objective need to introduce other provisions into the criminal procedure law, such as, for example, a widely advertised «mediation». The current Criminal Procedure Code of the Russian Federation provides an opportunity of reconciliation between the victim and the accused (defendant) for certain types of cases, and the best «mediator» here is not the entrepreneur, who inevitably promotes his / her financial interest, not only the interests of the «equal parties», but a state authority body, acting on its behalf – the court.

The conclusion is that criminal procedure has its own system, structure, rules and axioms. They may not be as obvious as the rules governing the physical or chemical phenomena and objects, but it is unacceptable to ignore and break them. Otherwise it is hardly possible to expect to achieve success in the protracted criminal procedure reform in Russia.

Trubnikova Tatiana V. Tomsk State University (Tomsk, Russia). DEFENDANT'S RIGHT TO A FAIR TRIAL: A NEED IN NEW APPROACHES TO THE «OLD» PROBLEMS OF THE RUSSIAN SCIENCE ON CRIMINAL PROCEDURE.

Keywords: right to a fair trial, proof and decision-making in trial, admissibility of evidence, truth, adversarial principle.

The author assumes that by ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation committed to creating a systematic mechanism for implementation in Russia of the rights enshrined in the Convention, including the right of the defendant to a fair trial. It is difficult to develop such a mechanism because the legal positions articulated by the European Court of Human Rights on specific issues often diverge significantly from the established domestic legal doctrine, the Russian law, or its application. Therefore, the legal science faces the task of both an adequate perception of the legal positions of the ECHR and rethinking on their basis of the domestic legal doctrine. The author gives examples of the legal positions of the ECHR on the content of the right to a fair trial, most dramatically different from the views familiar to the Russian science of criminal procedure, as well as from the ordinary law enforcement practices: on the need to establish the truth in the trial; on the content of the adversarial principle and equality of the parties in the criminal procedure, on the admissibility / inadmissibility criteria of certain evidence; on the requirements for the court's impartiality and motivation of its decisions.

As a result, the author suggests the following: - to adjust the domestic interpretation of the adversarial principle in the criminal procedure; - to introduce changes to Russian legislation and law enforcement practices that take into account the autonomous definitions by the ECHR of such notions as «witness», «prosecution», and «expert»; - to revise the theoretical principles of the criminal procedure science on the issues of proof, so that the criteria for the admissibility of evidence in Russia take into account the ECHR legal positions, and the requirement to use only admissible evidence does not preclude the defence to argue their case; - to address the issue of ensuring the judge's impartiality, which is in unjustified oblivion in the Russian criminal procedure science, as well as the issue of providing motivation to the decisions by the court.

Shestakova Lyubov A. Samara State University (Samara, Russia). COMPROMISE MEANS OF RESOLVING CRIMINAL LAW CONFLICTS: PROBLEMS OF INTERSYSTEM AND INTERBRANCH RELATIONS.

Keywords: criminal procedure, branches of criminal cycle, intersystem relations of law, interbranch relations of law, compromise proceedings.

Every year the criminal procedure law has more proceedings, which can be referred to as compromise. By compromise proceedings we understand a special kind of criminal procedural form in which the criminal law conflict is resolved by a mutually beneficial exchange of concessions by the parties as permitted by law. In this regard, the author analyses the recent changes in legislation aimed at introducing the new and modifying the existing criminal procedure legislation on compromise procedures with accounting for intersystem and interbranch relations of the legal system.

The scientific literature of the Soviet period reasonably highlighted the genetic and functional relations in the legal system. The regulatory changes of branches of law that ignore these relations always have a disastrous impact on the application of specific provisions of the law up to the complete impossibility of their application.

Basing on the analysis of law provisions discussed in the paper, the author concludes that the recent changes in the criminal procedure law, aimed at the acceleration of justice in criminal cases, are increasingly carried out in violation of interconnections and genetic relations of the legal system in Russia, they are more related to individual or corporate lobbying.

Moreover, finding the rules intended for certain categories of persons in the general part of the criminal procedure law, numerous articles and chapters of the RF Criminal Procedure Code with indices 1, 2, 3 – all this is not consistent with the structure of a codified act and complicates the application of such regulations.

On the other hand there is an objective trend of convergence of private and public law. Noticing this trend, some authors propose to supplement the compromise procedures already existing in the criminal procedure law with civil legal mechanisms of

compensation for harm caused by the offense. This idea is based on the fact that the totality of the criminal procedure rules regulating compensation for harm caused by the crime is an integral part of the interbranch institute of compensation for damage from crimes in general. However, the author finds the opportunity to compensate for harm caused to the victim by the crime in the future and all additional procedures necessary to ensure the rights of the victim in such cases excessive.

Yakimovich Yuriy K. Tomsk State University (Tomsk, Russia). ON THE PROCEDURAL STATUS OF THE PROSECUTOR, THE HEAD OF AN INVESTIGATION BODY AND THE INVESTIGATOR IN THE CONTEMPORARY RUSSIAN PRE-TRIAL PROCEEDINGS.

Keywords: functions of prosecutor, pre-trial procedure, procedural supervision of investigation, procedural independence

The article analyses the amendments to the Criminal Procedure Law (since 2007) concerning the functions of the prosecutor and the investigator in the pre-trial proceedings. The author finds these changes inconsistent and requiring significant modification. Special attention is paid to the fact that the prosecutor no longer performs the procedural supervision of the preliminary investigation. However, the prosecutor still retains some functions of procedural supervision, the list of which is constantly growing. There are two possible solutions to the problem.

There can be a single investigation body, the head of which (either directly or through subordinate managers) will implement procedural supervision of the preliminary investigation and prosecution, and the representative of which will then support the public prosecution in court. In this case the prosecutor performs the supervisory function only both during the preliminary investigation and in court. Another way is when the prosecutor regains the function of procedural supervision during the preliminary investigation together with the relevant powers of authority. In this case the prosecutor again becomes the focal point of the preliminary investigation, bearing responsibility for its quality and efficiency. In any case the prosecutor shall regain his/her right to open a criminal case.

Besides, the article concerns the problem of procedural independence of the investigator. Here the author means the influence that is exercised by the head of the investigation body, the prosecutor and the court on preliminary investigation.

The head of the investigation body accumulates not only powers of authority as the supervisor of the investigator, but also those as the procedural supervisor.

Moreover, the procedural powers of the head of the investigation body have been expanded in comparison with those which used to belong to the supervising prosecutor due to the fact the head of the investigation body is not just the procedural supervisor, but also the investigator's immediate superior.

Another factor that seriously undermines the procedural independence of the investigator is total judicial supervision of the preliminary investigation. The list of cases that require judicial decision to perform investigative or other procedures is gradually expanding (Part 2 of Article 29 of the Criminal Procedure Code of the Russian Federation). Moreover, this list (contrary to the Constitution of the Russian Federation) can be expanded not only by the legislator, but also by the Constitutional Court of the Russian Federation. Furthermore, Article 125 of the Criminal Procedure Code of the Russian Federation is worded so that almost any action (inaction) of the investigator as well as its decisions can be appealed against in court.

A serious blow to the procedural independence of the investigator, bringing it almost to nought, was delivered by amending Article 5, Paragraph 40 of the Criminal Procedure Code of the Russian Federation. This law states another participant of the criminal proceedings for the prosecution - a forensic investigator.

Finally, a significant blow to the investigation authorities in general was caused by the Federal Law of December 6, 2011 (No. 407-FZ). According to this law, the material from the tax authorities only can encourage initiation of a criminal case on tax crimes. This innovation seems to have no sense at all.

CRIMINAL AND PENAL LAW

Voronin Oleg V. Tomsk State University (Tomsk, Russia). ON SOME TYPES OF COMPULSORY ISOLATION FROM SOCIETY IN RUSSIAN LEGISLATION.

Keywords: compulsory isolation from society, penal measures, detention, arrest, deprivation of freedom, house arrest, forced treatment, specialised psychiatric hospital, special closed educational institution.

The national legislation establishes the list of measures of compulsory isolation from society with regard to the criteria developed by the legal science and international legal standards. These include measures that have such features as special bodies and institutions they are implemented in; protection and supervision over persons held in these bodies and institutions; strict regulation of lifestyle of such persons; limitation of their satisfaction of a range of social and biological needs including those of living conditions. The European Court of Human Rights considers compulsory isolation from society as a form of deprivation of physical liberty, which consists in a forced stay in a confined space, isolation of a person from society, family, termination of his / her duties, inability to move freely and communicate with the general public. The features of measures of compulsory isolation from society, in our opinion, also include their appointment by the court or application by specifically authorized agencies or officials in the procedural order. They involve limitation of fundamental rights and freedoms of persons, and their execution, although temporary, lasts for an extended period and usually implies placement to other persons serving similar types of compulsory isolation.

By international standards, compulsory isolation is all types of forced seclusion from society appointed in order to ensure the interests of pre-trial proceedings and justice in criminal and other cases, as well as security in the execution of criminal sanctions and other coercive measures that are executed in special closed institutions by court decisions and do not exclude educational, medical and correctional impact.

Among the measures of compulsory isolation from society in the domestic legislation are the following. Coercive measures of isolation of administrative nature are administrative detention, administrative arrest, placement in detention and isolation cen-

ters. Penal measures in the narrow sense include pre-trial detention and custody, criminal penalties involving isolation from society, as well as detention when executing the sentence. Penal measures in the broad sense include criminal procedure detention, forced detention in a specialised psychiatric hospital and a specialised psychiatric hospital with intensive supervision, criminal punishment not related to isolation from society. Coercive measures similar to penal, but other than the latter, are compulsory education of a minor in a special closed educational institution and house arrest. These measures differ in their legal nature, implementation order, as well as the gravity of service.

Uvarov Oleg N. Federal Government Agency of Penal Inspectorate of the Federal Penitentiary Service of Russia in Tomsk Region (Tomsk, Russia). GROUNDS AND CONDITIONS OF GRANTING THE CONVICT THE RIGHT TO MOVE WITHOUT CONVOY OR ESCORT.

Keywords: convicts, deprivation of liberty, general regime penal colonies, convicts' movement without convoy or escort, encouragement of convicts.

The paper is devoted to clarifying the grounds and conditions of granting the convict the right to move without convoy according to the Russian legislation. Permission to move without convoy is formally connected with the positive character evidence of the convicted, but does not determine it directly. Moving without convoy or escort primarily implies the lack of armed guards, independent stay outside prison, which is a fairly high level of benefits impossible in any other conditions of serving a sentence, even the mildest. In this regard, it actually is one of the forms of imprisonment, which provides an opportunity of quite effective training of the convicted for life their release from a correctional institution on the basis of an objective assessment of the real extent of their correction and ability to re-socialization. General regime penal colonies for male convicts have more potential of granting the right to move without convoy.

These are men convicted for crimes committed by negligence, men who committed intentional crimes of little and average gravity with no previous imprisonment, and men sentenced to imprisonment for serious crimes with no previous imprisonment.

Unlike male penal colonies of general regime the situation with the possibility of granting the right to move without convoy in female penal colonies of general regime is similar to the male strict regime colony, because they contain persons who committed especially grave crimes, and dangerous recidivists.

Prisoners left in detention facilities or jails to perform household duties were carefully examined (during the selection process and in the course of their activities), and almost all of them can later be granted the right to move without convoy.

Thus, therapeutic prisons and colonies of strict and general regime, as well as educational colonies and groups of household service at detention centers, prisons and colonies of special regime have a rather large number of convicts (from 30 to 70 %, and for the household service group – almost 100 %) potentially able to move without convoy.

The grounds for granting this right, in our opinion, are a job outside the correction facility which is connected with movement without convoy or escort, and a positive character evidence of the convict; the condition is that the convicted lacks the features of the category of persons who are not allowed to move without convoy or escort outside the correction facility. This approach stems from the fact that certain legal bases should encourage the change of the legal status of the convict (which the right to move without convoy actually is), however, there must be conditions to follow in order to have such changes. The conditions may be assigned for convicts and for correctional facilities, and their execution may be compulsory for both. So, when moving without convoy, the grounds of having a job outside the correction facility require correctional institutions to give such convicts a job However, Part 1 of Art. 96 of the Correctional Code of the Russian Federation this condition is virtually non-existent, as moving without convoy is applicable in case «if t is necessary by the nature of work. Still, giving jobs to convicts seems to be an important task correctional institutions face.

Chubrakov Sergey V. Tomsk State University (Tomsk, Russia). THE PROBLEMS OF PENAL ENFORCEMENT PRINCIPLES RELATED TO THE STATUTORY REGULATION OF LEGAL PRINCIPLES BY THE LEGISLATOR AND THEIR UNDERSTANDING IN THE DECISIONS OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION.

Keywords: principles of penitentiary law, law principles, legislation principles, principles of statutory regulation, common law principles.

The problem of legal principles in general and of penitentiary law in particular is one of the most controversial in jurisprudence. While principles are generally recognized as basic and universal categories that serve as a frame for the entire legal matter, the theory still shows no single approach either to the definition of «principle» or to the kinds of principles or their content. Another unsolved question is what principles are implied - the principles of law, of a branch of law, of legislation, of law enforcement activities, of statutory regulation or any other.

The article is devoted to a question debated in penitentiary legislation: what legal principles should be subject of law entrenchment. In terms of this problem, the author analyses the current codifying and other federal laws and decisions of the Constitutional Court of the Russian Federation. Besides, an attempt is made to determine how certain is the Constitutional Court of the Russian Federation about the list of common law principles, as far as the latter should be equally implemented in all legal fields, including penitentiary law.

The analysis of the provisions of the federal laws shows that legislative practice (sometimes even within a single act) detects lack of a unified approach to the essence of principles to be determined in law. Among them are the principles of legislation, the principles of responsibility, the principles of justice, etc. The analysis of decisions of the RF Constitutional Court also leads to the conclusion that there is no single approach to principles of which categories should be used. The definitions and regulations of the Russian Constitutional Court usually use the term of «principles of law», while the synonymous term of «principles of statutory regulation» is used less often. The article also provides examples of various types of common law principles reflected in the relevant acts of the Constitutional Court of the Russian Federation and in the dissenting opinions of some judges of the body for

constitutional supervision. The analysis of specific materials leads to the conclusion that the Russian Constitutional Court has no single approach to the list of common law principles. Thus, the idea to treat many of the principles as having the common law status is highly disputable.

To sum it all up, researchers, legislators as well as the highest judicial body for constitutional supervision leave these basic issues unresolved.

MEDICAL JURISPRUDENCE

Borovskikh Roman N. Novosibirsk Law Institute, Branch of Tomsk State University (Novosibirsk, Russia). PRAGMATISM AS A VECTOR OF CRIMINALISTIC KNOWLEDGE DEVELOPMENT.

Keywords: medical jurisprudence, object of medical jurisprudence, applied recommendations, scientific provisions of medical jurisprudence.

The paper explains the necessity of making teaching medical jurisprudence more pragmatic. The useful practical results for medical jurisprudence as a science consist in the development of scientific concepts, as well as practical recommendations, which can be widely and effectively adapted and used by professionals involved in criminal procedures and other persons defending one's rights and legitimate interests. Practically useful results for medical jurisprudence as an academic discipline are improvement of the quality of future practitioners' training, increase of students' interest in the subject.

First, forensic recommendations should be presented in a language, which is brief and clear to the many readers of law, with a reasonable number of correctly compiled and presented examples of real law enforcement, with the support of schemes, algorithms, software, multimedia means.

The second point is closely related to the previous direction. A very interesting and useful proposal of a number of scientists is to include recommendations on the proper preparation of procedural and other documents into various types of forensic products (technical, tactical, methodological), especially, of most complex and important ones, such as indictment.

Implementation of these means to strengthen the pragmatism of medical jurisprudence as a science and discipline is urgent due to the requirements of modern practices in the fight against crime. Their implementation will be an important step towards modernization, specification of development paradigms of not only medical jurisprudence, but also other sciences, as well as academic disciplines of the anti-crime cycle.

CRIMINOLOGY

Prozumentov Lev M. Tomsk State University (Tomsk, Russia). ON THE NECESSITY OF ACCOUNTING FOR CRIMINOLOGICAL CONDITIONS IN CRIMINALIZATION OF ACTS.

Keywords: criminalization, decriminalization, socially dangerous act, condition, social danger.

The article states that changes in criminal law are related to the corresponding changes in the economic, political, social and other spheres of social life. However, important for criminalization (decriminalization) of acts are criminological conditions, which include: the relative incidence of the offence; criminal-political adequacy of penal prohibition, etc. By examples of some changes to the Criminal Code in recent years the author tries to show that ignoring of criminological conditions in criminalization of acts casts doubt on the appropriateness of introduction of specific criminal law norms.

One can still watch the attempts to change the criminal law only on the basis of the subjective attitude to the act without considering scientific developments. Still, the author notes that the level of legal culture of our society suggests that such attempts remain unfulfilled in a particular penal prohibition. Criminal law not based on social reality is usually ineffective and does not correspond to the condition that underlies the adoption of any rule of law, the essence of which is that the benefit from the accepted norm should be greater than the potential harm from it. Criminalization and decriminalization of acts should also be considered from the perspective of benefits and social adequacy.

An important condition of criminalization is nonredundancy of penal prohibition.

The problem of nonredundancy of penal legal prohibition can be attributed to one of the most important theoretical foundations of criminalization. This condition implies, first, avoidance of the possible duplication of criminal law norms providing penalties for committing a specific socially dangerous act, and, second, correspondence of the volumes of penal prohibition to the nature and degree of social danger of the act.

It should be noted that modern lawmaking suffers from criminalization redundancy.

High dynamism of legislative changes, which can generally be attributed to the merits of legislative activity, in cases of making decisions that are not thoughtful enough, contradictory, ignoring social change and scientific basis, turns into its opposite, becomes a disadvantage, destroying the stability of law, which is an even more important condition of its effectiveness than variability.