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LEGISLATION, COMMENTARIES, PROBLEMS

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Speech of the Chairman of the State Duma of Federal Assembly of the Russian Federation G.N. Seleznev at the meeting with members of the Expert Council on Various Aspects of Legislation under the State Duma Chairman

The meeting of the Chairman of the State Duma with members of scientific-advisory councils on various aspects of legislation happened this March. Speaker Seleznev underlined the increased role of the Law Department (created in 1994) and noted that there is a big merit of all staff members of Law Department in it. Thanks to diligence of experts, in the last decade the legislative foundation of the Russian Federation base has been updated or newly created.

Lyubimov A.P. Experts proposals

At a meeting of the Chairman of the State Duma with members of scientific-advisory councils some offers on legislative process have been brought. Among other things, to discuss complex bills in which there are problems of legislative settlement, the invitation to sessions of Council of the deputies who have introduced a bill, expansion of terms of detailed analysis, the invitation of members of scientific-advisory councils to participate in parliamentary hearings.

Lavrent'ev A.I. Standing committees and their role in the Kazakhstan parliamentary activities

Functions of parliamentary committees in various countries are not alike; they are adjusted by special acts and rules. We can differentiate some theoretical methods as well, inluding distributive, neoinstitutional, informational, party theories, etc.

Usually parliamentary committees are created with accent on lawmaking, but they have other functions too: control over activity of executive and judicial bodies, carrying out their own investigations, overcoming disagreements between chambers of parliament.

Parliamentary committees can be divided into temporary and standing. The number of standing committees is usually determined by law. Standing committees of Kazakhstan do not have the right of the legislative initiative, but their powers are significant.

Standing orders of chambers don't enlist powers of the committees defining distribution of incoming documents between the committees. That would also be logical to define functions of committees in accordance with spheres of parliamentary activities as written down in the Constitution. Membership of committees varies between 9 and 14 deputies. Before getting to a profile committee, a bill passes through a bureau of chamber. A working group is formed by the committee; it can include not only members of parliament.

Committees play the most important role in legislative activities. There is a tendency of a growth of a number of committee chairs belonging to the party of the majority. That leads to a necessity to form alliances by representatives of the minority.

Interview of a Correspondent of "Representative Power – XXI Century" B.A. Osipyan with Mr. A.A. Hachatryan (March, 21, 2003)

Armenia's admission to the Council of Europe in 2000 makes it important to single out the directions in lawmaking, promoting execution of democratic principles

corresponding to European standards. Despite bad times and tragic events in Armenia in the very beginning of its parliament's work, it managed to enter in a normal legislative channel.

Creation of *ad hoc* deputy commissions on criminal cases having big public impact has become an effective form of interaction between legislative and judicial branches of power.

It is possible to speak about positive dynamics of the Armenian-Russian relations. Parliamentary diplomacy (with participation of a permanent inter-parliamentary commission, and quadrilateral meetings of chairmen of parliaments of Azerbaijan, Armenia, Georgia and Russia) plays an important role in our relations. Globalization processes make Armenia be ready for them. She is ready for integration as a carrier of high technologies and qualified labour force.

Norkin A.V. Elected bodies of state power in subjects of the Russian Federation

At the present stage of development of statehood there is an interest to

Studies of problems of formation of bodies of power in subjects of the Russian Federation (including research on a legal status of a representative body of a RF subject, volume of its competence, specific features of its law-making) are of special interest at the current stage of development of Russia's statehood.

Scholars may compare legal statuses of bodies of regional and federal representative power in Russia.

Legislation establishes specific features of elected (representative and lawmaking) bodies in a subject of the Russian Federation. Legislative role of parliaments in RF subjects is reduced to adoption of laws as one of acts of the state will. There are several approaches to the essence of laws: as a means of legal regulation and an act of supreme legal power, an expression of interests of the certain bodies of power, etc.

Artificial character of the Russian Federation as a federal entity makes it possible to raise a question of presence of those two components in representative bodies of the Russian Federation. Results of a search let us come to a conclusion that absence of those elements in regional parliaments makes them only elected bodes of the government formed by the population for law-making in spheres determined by federal legislation.

PARLIAMENTARY CONTROL IN FOREIGN COUNTRIES

Kovryakova E.V. Specific features of parliamentary control in France (part 1)

France has been a parliamentary republic for a long period of time. The Senate, and later the National Assembly possess all power. Constitutional reform of 1958 gave President emergency powers in legislative area. The basic purpose of reform was the achievement of the compromise between concepts of strong personal authority and the parliamentary control over governmental activities. Parliamentary control plays the most important role in achievement of this compromise.

Standing Orders of the National Assembly determine several forms of parliamentary control. First, such forms include procedures of reception of the information and monitoring procedure by the National Assembly: reports of the government, oral and written questions, formation of investigation commissions, information powers of permanent or special commissions, budgetary control, submission of petitions, adoption of resolutions by the National Assembly.

Other important tool is vote of confidence to the government, including debates on the program or declarations on the

general policy of the government, resolutions of censure and interpellation.

The third form concerns criminal liability of President of the Republic and members of the government.

Author of the article analyzes such forms of parliamentary control, as reports of the government, oral and written questions of deputies, submission of petitions, and activities of investigation commissions.

FEDERATIVE RELATIONS

Tchertkov A.N. Volume and structure of sphere of shared competence of the Russian Federation and its subjects in Russia and abroad (part 1)

Shared competence between the federal authority and subjects can be reflected in the legislation in different manner. However, comparative analysis of federations of radically different geographical locations (like Austria, Brazil, Germany and India) allows to assert that the real volume and spheres of shared competence are similar in many respects. These spheres include economy, social and cultural sphere, wildlife management and preservation of the environment. A great bulk of spheres of shared competence coincide everywhere. Subjects of federation have limited powers mainly in the sphere of state-building and security.

Comparing spheres of shared competence in Russia and abroad, we also come to a conclusion, that it does not strongly differ from foreign federations.

Why is it so? It can be explained by the fact that such spheres concern pressing needs and interests of inhabitants of all federations. in various subjects can differ essentially. At the same time conditions of life and activity in different subjects of federation should not differ drastically. The federation should maintain balance of regional interests in the spheres of economy, culture, social attitudes, with national interests. Thus, shared competence is necessary in order to exercise control and coordination by the federal center and maintain independent activity of a subject of the federation.

JUDICIAL PRACTICE OF ELECTORAL DISPUTES

Galushko I.V., Minaev M.I. Electoral disputes: their nature, judicial practice, influence on development of electoral legislation

When considering electoral disputes courts resolve the disputed situations arising in connection with various interpretation of norms of the suffrage during their realization by participants of the electoral process.

For example, citizens of the Russian Federation Pominov V.F. and Chichikin V.N. appealed to the Supreme Court of the Russian Federation with a complaint on actions of Central Election Commission (CEC) of Russia in which asserted, that during State Duma elections in 1999 and presidential elections in 2000, CEC violated their rights because it failed to guarantee an access to electoral programs and similar documents of all possible candidates.

Applicants asked to recognize that CEC illegally does not carry out its duty to inform voters about the registered candidates. As a compensation for moral damage, they sue CEC for 30 million roubles that they intend to use to inform electorate of the results of comparative analysis of programs of candidates.

Representatives of the Central Election Committee of Russia objected the declared requirements arguing that they

interpret certain provisions of electoral legislation in a different manner.

In its decision the Supreme Court ruled that electoral legislation doesn't impose on CEC the duty to inform electorate with official electoral programmes of candidates and similar documents. Thus, it cannot agree with the thesis about violation of rights of certain citizens.

This conclusion in the decision of court has been carefully proved by references to norms of the selective legislation working at that time. It's clear that this conflict, as well as others, has arisen on the ground of various interpretation of norms of the suffrage by its participants.

LEGISLATIVE TECHNICS.

ChigidinB.V. Classification of juridical-legal mistakes in contemporary Russian legislation

Classification of juridical-legal mistakes should depend on classification of rules of legal technics. Three groups of such rules are proposed: linguistic, logical and gnoseological. Linguistic mistakes are discussed in the first part of the article.

The number of obvious grammar mistakes and typos in texts of acts is insignificant. The first type of mistakes of this kind is an inclusion of such statements in the text that do not express rules of behaviour. Similar errors include presence of a great amount of blanket norms and references to other acts, excessive reproduction in texts of one act of positions of other laws, superfluous declarations. So, it is necessary to be limited to an expedient minimum of references and not to do references on bills that are not adopted yet.

Unreasonable difficulty of syntactic constructions constitute the second type of errors. Presence in the text of compound sentences with multilevel constiructions complicates perception of the text. This type of errors is one the most common.

The third type includes errors caused by poor quality of terminology of legal acts, excessive amount of definitions (that is especially typical of acts with special subjects of regulation), application of not approved or ordinary terminology, reckless use of terminology.

Ashaev D.S On normative acts of the Government of the Russian Federation

In May 1998, the President of the Russian Federation issued a regulation providing termination of the preliminary coordination in Administration of the President of draft resolutions and decisions of the Government of the Russian Federation, except drafts for which coordination is stipulated in a special order. Since then the Government of the Russian Federation has received significant independence in adoption of its own legal acts.

The constitution provides for two formal restrictions of authority of the Government of the Russian Federation in adoption of its legal acts. Section 1 of Article 115 stipulates that the RF Government issues decisions and orders "in the performance of the Constitution of the Russian Federation, federal laws, normative decrees of the President of the Russian Federation". Thus, orders and the governmental orders of the Russian Federation cannot contradict the Constitution of the Russian Federation and - what is especially important - should be issued with a view of execution of statutory acts of higher level. That would be fair to say that Section 1 of Article 115 of the Constitution of the Russian Federation is that very norm that gives the RF Government a status of a body of executive authority.

Section 3 of Article 115 of the RF Constitution empowers the RF President to repeal normative acts of the Government only in case of their contradiction to the acts of higher level. That excludes a repeal of acts of the RF Government of the Russian Federation on political reasons.

The constitution demands a regulation of the order of activity of the Government by the federal constitutional law. However, Law "On the Government of the Russian Federation" does not contain sufficient procedural mechanisms of activity of the Government of the Russian Federation. Standing Orders imply a possibility to adopt statutory acts without participation of all of its members, in particular - individually Chairman of the Government and his deputies. Legal acts do not always express will of all its members that violates a principle of collective leadership.

The absence of understanding, whose will is expressed by legal acts of the Government of the Russian Federation raises doubts in their legitimacy. It is necessary to regulate rigidly the order of legislative activity of the Government of the Russian Federation by norms of laws.

Gukova V.G., Malahova E.L., Litvinova I.A., Rodionova A.P. On law-making experience and the order of publication of normative acts in subjects of the Russian Federation

Authorities of subjects of the Russian Federation are obliged to forward official publications of legislative acts to the parliamentary library. The parliamentary library carries out the account and systematization of acts and creates national legislative fund.

The parliamentary library keeps acts that can be divided into new normative acts, amendments to existing legislation, and new editions of old laws. Statistically, the most common acts are dedicated to budgetary questions, taxes, local self-government, , public service, and environment.

Besides adoption of new amendments to existing legislation, legislatures of some subjects of the Russian Federation make out changes and additions as new editions of laws; other subjects of the Russian Federation promptly publish new editions of laws in official publications. It is important to note the tendency of growing cooperation between parliaments of the RF subjects, application of practice of inter-parliamentary agreements.

Some RF subjects adopt contradictory norms, from the point of view of their correspondence to federal legislation. Some subjects have problems with transparency and availability of their legislation to general public.

WOMEN'S CONGRESS

Chertoritskaja T.V. Public organizations in life of a business woman

Now there is an active process of formation of public organizations by various female business groups (organizations of women-politicians, businesswomen, etc.) The women-leaders, who become successful in their profession, offer new role models for active women. Specific features of female business are their social orientation, bigger attention to interests of workers of the enterprise, manufacture of production and services which are really demanded by a society; a need for the fullest self-realization. Female public organizations cultivate the idea of "leader-organizer": attention to people, ability to accumulate private interests in the valid purpose, ability to organize support, legal and corporate protection of the participants.

Safari Z. " Public organizations are an indicator of society's health, they are like conscience "

In countries with advanced democracy political and business organizations are a litmus paper for the definition of the society's health. As human conscience, they do not allow to cross the unlawful moral side. In the environment of political establishment "it is fashionable" to speak about partnership with public organizations. However, it is still too far to real cooperation . Questions of interaction of nongovernmental and state structures for female public organizations are especially tough. Traditionally in Bulgaria only Social-Democratic ideology protected and developed a sterling participation of women in all spheres of a life. Patriarchal model of a society is not gone yet, and laws should take into account a necessary poised balance of forces and opportunities in realization of rights for women and men.

Organization "Forum of Female Solidarity" became a member of the "Female International" and actively works on different social questions. The purpose is - not only to name problems and to aggravate public opinion, but also to offer decisions. That won't be possible to do without association of women in public organizations

Seller B.D. Everything depends on us...

In each country of a transition economy, sooner or later comes a moment when citizens come to the decision, that it is time to be united and something to do together because it is difficult to stand alone. The first group of people who comes to such decision usually is the representatives of small and average business to whom especially gets from an arbitrariness of authorities. Each country differs the unique originality, but these processes are similar.

Charter from the senseless struggle against the state, the businessman asks himself a question: Why any initiative perishes on a root? What is wrong in my city, in my area, in my country? The sparkle lights up in souls of few true leaders, the real patriots. However, if adherents do not find each other, more often the businessman will emigrate. And still the majority eventually finds the adherents. The initiative comes from businessmen, its supported by civil servants or deputies, the international organizations When businessmen realize, that they can think up the new program and solve a problem - forces a increase at them. The fight is difficult to win , but the most important - that there has come this turning-point when the businessman comes to idea: " Everything depends on us! ".

Malitikov E.M. Woman as a leader (conclusion)

Beatrice Seller worked in the legislature of state of Colorado for more than twenty years. She played an important role in normalization of relations between state of Colorado and Japan. (Aggressive competition between Japan and USA for several decades tainted relations between those two countries). Since 1990, Beatrice has visited Russia and other the countries of CIS dozens times. Knowing six foreign languages, she is fluent in Russian too. Having finished public service, Beatrice continues own and corporate life in international business. Sphere of her interests - assistance to cooperation between private and state organizations, strengthening business in countries with developing market economy. She remains a beautiful, charming and attractive woman.

HOME LIFE

Bezborodov N.M., Dorohin S.N., Profatilov A.I.
The necessity of formation of "a family council" in each family in the Russian society

A family as "a cell of the state" is a basic element of education and formation of citizens. A family council is a unique public part imparting necessary qualities for formation in new conditions of the progressive person. The element is in addition to formation in system " school - institute " and to education in system - " mass-media - street ". A family council is charactezed by goodwill of a "fathers-children" family atmosphere

The purpose of council is creation of precedent of formation a principle of regular formation of the person of XXI century with intellectual-professional and spiritual-moral aspects since childhood. A family council is expedient in two variants - small (two times a week for discussion and the analysis of the supervision occurring in the surrounding validity in structure of members of one family, living in one apartment) and big (once a quarter or half-year in structure of the relatives living in city). Chairman of council is the informal leader in family. The supervision state on hierarchy - from younger to grown-ups. During discussion participants of dialogue refer to proverbs, sayings, historical examples. After carrying out of "advice" all members of family are offered to sing in common a song (revival of folklore overlooked by Russian people as family church chanting).

For revival and strengthening of the Russian state within the framework of democratic reforms, strengthening of safety becoming qualitatively new thinking of citizens is necessary: intellectual-professional and spiritual-moral as element of high culture of the person.

The scheme of formation of psychology of the person, giving an apprehension about the basic elements available and functioning both in a society, and in each person, it is possible to present representation in the following scheme. The gauge - an entrance element for social systems (group of people, a sociopolitical formation), an executive element of automatic control (individual), a feedback being a brake (terminator), a constraining element (fear before the law, conscience, the God, the maximum reason). The interaction of the specified three elements provides steady controllable influence on adjustable processes, and also progressive development of any system, including family advice.

FIGHT AGAINST CORRUPTION IN RUSSIAN AUTHORITIES

MaximovV.K. Corruption in Russia in a mirror of statistics (a part 1)

Author of the article analyses corruption in modern Russia and ways of struggle against it on the basis of the data of official criminal statistics.

Corruption is a dangerous social phenomenon, menacing to national safety of Russia, making complete set of the crimes accomplished by public officials with use by them of the service position, the official powers available at them following from them of opportunities, and also their accomplices. As the basis for reference of penal offences to corruption the direct attitude to the following objects of a criminal encroachment serves: to interest and authority state and municipal authority, public service and service in institutions of local government, commercial and other organizations.

The greatest share in a file of corruption criminal actions is borrowed with official plunders. Others are simultaneously distributed profitable, but more latent corruption crimes which are not demanding direct communication with a subject of an encroachment, obvious use of official powers under the order by material assets.

After the destruction of Soviet Union during the becoming of new Russian statehood (1991-1996) sharp recession (maximum - over 15 % in 1993) of registered corruption was observed. After 1996 some growth of quantity of the taken into account crimes of the given kind was outlined. The attention almost double increase in densities of bribery about 2 % (the beginning of 90th years) up to 5,6 - pays to itself of 5,9 % (1996 - 2001). Unfortunately, it is necessary to recognize, that the criminal statistics does not reflect true scales of bribery.

DEFINITION OF MONEY

Gribov A.U. Is money a "thing" or a new approach to interpretation of the term "money"

In the legislation of the Russian Federation there is no exact indication what rights are applied in relation to money: material (there is a property right to money) or obligatory (to money rights of requirements and the claims inherent in obligations are applicable, i.e. one person has the right to demand only from other granting a thing). The distinction between material and the obligatory rights can be found in the writings of Roman lawyers. Today jurisprudence has developed two categories of the rights: absolute and relative. The dualism of the property right and the obligatory right is caused by absence of coincidence between of things and persons, and basic distinctions in circulation things and obligations from here follow.

Russian legislation establishes that term "money" is limited to things in spite of the fact that the world economists believe that functions of money can carry out both things and obligations. Various definitions of money reflect their different concepts: State, nominalist, metal, reproductive.

At the present moment, the nature and essence of money have change; they are not only means of realization of economic communications, between subjects, but also influence on the structure and quality of these communications. The essence of money is shown in their functions, which modern economists define as: everything, that carries out functions of money, and is money. Many western scientists recognize three functions - means of the reference, a measure of cost and means of accumulation.

A new school in jurisprudence was formed in the beginning of XIX century. It asserts that a right is a product of life. Recognition of dependence of the right from economy has taken place owing to this, so-called, historical school. A closer work of lawyers and economists is necessary for overcoming inadequacy of legal and economic treatments and development of legislation with a view of improvement of uniform treatment of money.

ELECTRONIC LEGAL RESOURCES

Stepans O.A. Prospect of the legislation on regulation of the development of the information-electronic technologies

For ages mankind has been developed in conditions of the becoming complicated information environment (language, writing, publishing, radio, telegraph, phone, TV), but nobody suggested to adjust the reference of the information with the help of the right till 70th years of XX century . And only with the development of electronic systems of storage, processing and access to the information to sound there were more and more persistently appeals to necessity of legal regulation of new sphere of public attitudes, especially regarding, concerning storage and use of the electronic information on the person. At the same time it is obvious, that such regulation cannot be universal. It should be distributed to

those attitudes which are most significant for development of society. Otherwise the question will be process of total regulation of a life which is incompatible with development of a modern society, and hardly it can be guaranteed by him.

At the same time nowadays it is possible to speak quite definitely that the future of the legal regulation connected with the development of information-electronic technologies assumes necessity of the decision of the whole complex of problems on maintenance of desirable development of complex social-technological processes with legal means. Just desirable, as to stop the further development of high technologies hardly possible, however to provide such development in an allowable (safe) direction for society for the present quite probably.

CONSEPT OF A STATE

Ustryalov N.V. The concept of a state (a part 1)

Kelzen spoke about the necessity of known conformity between " the importance of the normative order " and available current of the facts. Hence, "facts" are not indifferent and for the right. But what for then to exclude all sociological, theological and other moments from concept of the state? Universal phenomenon of the state is damaged by one-sided legal normativism. In order to overcome such one-sidedn ess, science of constitutional law should be guided first of all by historical experience in its completeness and rich variety, by historical comparative data, historical science amicably coexisting with sociology, political morphology, jurisprudence, and ethics. Science of constitutional law should be truly dialectic.

It is impossible to deny merits of a dogmatic legal method. It teaches us "logical mastering by a positive legal material" (Laband). But when applying it, it is necessary to remember that it comprehends the state only expressed in rules of law, the state, as legal institute, as a scientific design. The dynamics of a living phenomenon escape from him. It is compelled to become isolated conditionally in a static form. If the facts do not embrace the given system of positive norms and even break off it, from the point of view of consistently spent legal method, it is necessary to proclaim only - " the worse for the facts "?

STATE GUARANTEES

Talerov K.V. Peculiarities of legal regulations of a state guarantee

Obligations arising from the state or municipal loans, taken up as the Russian Federation, the subject of the Russian Federation or municipal formation, guarantees under obligations of the third parties admit as the state or municipal debt. The norm of the budgetary Code of the Russian Federation concretises the concept of a public debt and defines it as promissory notes of the Russian Federation before physical and legal persons, the foreign states, the international organizations and other subjects of international law, including obligations on the state guarantees given by the Russian Federation. The way of maintenance of civil-law obligations by virtue of which accordingly the Russian Federation, the subject of the Russian Federation - the guarantor gives the written obligation to be responsible for execution by the person to

which the state or municipal guarantee is given admits as the state guarantee. The circumstance according to which the made contract about granting of the state guarantee by the Russian Federation admits as the promissory note of the Russian Federation is basic. Thus, money resources will be inevitably attributed to an account part of the budget. Similar position is not corresponding

to general beginnings of the Budgetary legislation. The decision of a problem lays in a plane of legislative process by entering respective alterations and additions in The budgetary Code of the Russian Federation.
The norms directly determining a legal regime of the state and municipal guarantees should be structurally detached in independent chapter of the budgetary Code of the Russian Federation which could be designated as the state credits. It is possible to make a conclusion that granting of the state guarantees is the form of crediting, having analysed the positions contained in section 7 of Article 115 of the Budgetary Code of the Russian Federation, fixed, that " execution of the state and municipal guarantees needs to be reflected in the structure of charges of budgets as granting of credits ".

CULTURE AND LAW

Sysoyev V.D. Products of an unjust trial

A.N.Ostrovsky is a great playwright who left a deep trace in history of Russian literature and jurisprudence. Research of Ostrovsky's works and his views shows close interrelations his writings and law. Under the influence his father, Ostrovsky was appointed to service in Moscow joint court, later - in the Moscow commercial court. In the competence of commercial courts there were affairs about receivership proceeding, about the various infringements connected to a deceit of creditors. In his play "Abyss" the playwright showed a real picture of the orders reigned in courts and official to the environment. Work in courts enriched the playwright with social materials, left an imprint on most of Ostrovsky's writings. 47 out of 59 of his comedies deal with problems of law, judicature, and legality. Ostrovsky always was in the center of public life of Russia. He was the initiator of creation of the Society of Russian dramatists, actively worked in the commission for revision of statutes of theatrical department, does not break off communications with judicial community, maintained close relations with outstanding lawyers A.F.Koni, F.N.Plevako, poets-lawyers J.P.Polonsky, A.A.Griror'ev. In January 1885, A.N.Ostrovsky took a post of the chief of repertoir of Imperial Moscow Theatre and director of theatrical school. The high post did not improve health of the playwright, On June 2, 1886, Ostrovsky died leaving after him kind memory and great creations.

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