COMMITTEE FOR PUBLIC ASSOCIATIONS AND RELIGIOUS ORGANIZATIONS, STATE DUMA, RUSSIAN FEDERAL ASSEMBLY

ПРЕДСТАВИТЕЛЬНАЯ ВЛАСТЬ XXI ВЕК

ЗАКОНОДАТЕЛЬСТВО, КОММЕНТАРИИ, ПРОБЛЕМЫ

REPRESENTATIVE POWER XXI CENTURY

LEGISLATION, COMMENTARIES, PROBLEMS

SUMMARIES IN ENGLISH 2002 - № 5, 6 (46, 48)

MOSCOW 2003

Summaries of Articles in English
No. 5-6 – 2002 (47-48)

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On issues of getting and dissemination of the periodical "Representative Government-XXI century", as well as placing advertisement, information and publications apply to tel/fax:292-14-81; 292-53-12 /with reference to periodical "Representative Government-XXI century"/ E-Mail:

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Founded in November 1994

The Summaries of Articles are issued in Russian, English, Chinese, and French
Views of the Editorial Board do not necessarily coincide with the author's opinions
C.The texts are given in authors' versions
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C. "Representative Government- XXI century" Legislation, Commentaries, Problems
/Editor-in-Chief – A.Lyubimov/

M. No. 5-6, 2002 (47-48). – 12 p.

Committe for Public Association and Religious Organization, State Duma, Russian Federal Assembly

ПРЕДСТАВИТЕЛЬНАЯ ВЛАСТЬ XXI ВЕК

Legislation, Commentaries, Problems

Representative Government

CONTENTS

Editor-in-Chief's Column

On Fight Against Corruption and Criminal Profit Laundering

In order to deliver the Russia from the shameful title of dirty money laundry there has been taken many attempts: creation of the Committee on financial monitoring, adoption of the Federal law On Counteraction to Criminal Income Legalization /Laundry/ , etc. As a result, in its session in Paris the International Group on Fight Against Financial Abuse withdrew the Russia from its black list. In turn there are legislative solution of the three blocks of problems: currency regulation, off-shores and transition into transparent system of book-accounts. The control over activity of national business involves essential changes in currency, bank, custom, tax laws and sub-laws.

Articles of Federal law shall be in compliance with ones of international law, and legislation shall be filled with norms, which envisage use of legal mechanisms for terrorist financing counteraction. Under strict control trade of precious stones, gambling business, management of investment and non-governmental pension funds shall be included. Elaboration of the rules of internal control by organizations and imposition of responsibility for non-submittance of corresponding information on doubtful transactions to the authorized bodies shall be regular. Draft Law On Currency Regulation and Control has been withdrew from the consideration by the Prime-Minister of the Russian Federation Government Michael Kassyanov and sent to further perfection because of its internal contradictions.

Currency liberalization requires not only certain recommendations of FATF, but also rules of entering into the ETO. Besides, this shall be necessary condition of external trade and investments extension both in and out of the Russia. It is supposed also extension of the degree of liberty of market participants. In critical situations the Central Bank shall be entitled to forbid temporarily citizens and companies to transfer money to their accounts in foreign banks.

From December 1 of the current year all the system of currency trade in Russia shall be changed. Considerable decrees of stock-exchange commission shall be planned for compensation by Central Bank, which will take a part of risks on settling accounts.

Some measures have been undertaken, but in essence any currency operation in our country may be realized in circumvention of restriction of currency legislation in formally legal way. More than that, the biggest Russian holdings regulates independently the volume of sale of currency profit, ignoring instructions of the Central Bank. Unnecessary financial regulation and formalities in national business are the reason of extension and perfection of forms and methods of dirty money washing off.

Parliamentary Ethics

StrelchenkoG.I.ParliamentaryEthics-aWaytoaPolitician'sSuccess

Комиссия Государственной Думы по этике –

The Commission on Ethics is a new phenomenon, which cause a real interest. Durind two and half a years it recieved more than 500 applications of different characters. Consideration of assesments and proposals assists to realize successfully its prerogatives in different directions of its activity.

Ethical problems are problems of not merely the culture of contact. Ethical norms have great significance also in the sphere of interaction of deputies, in valuation of their activity, for example, concerning their presence in parliamentary session.

The Code of Parliamentary Ethics are to be elaborated for the purpose of promotion of effective legislative activity of the deputies of the State Duma. Withot the "Code of Parliamentary Ethics of a Deputy" deputies are deprived of " the manual for action", and the electors are deprived of the criteria of estimation of behaviour of those, who represent their interests in the Parliament.

Parliamentary Law

Grankin I.V. Secondary acts of theFederalAsembly Chambers of theRussianFederation

Secondary acts are relatively independent kind of normative acts, which are to be adopted on the basis of acting legislation for development of defferent norms of regulations of Federal Assembly's Chambers. Peculiarity of secondary

acts is that the term of their action is to be expediently restricted by the term of convocation of the Chamber or is to be asserted either in a new edition or adopted at the beginning of activity of the Chamber of a new convocation.

There are more than one hundred and twenty secondary acts in hte State Duma. They may be distinguished in three main groups: on the issues of organization of legislative activity of the Chamber; on the issues of activity of the Commissions of the State Duma and State Duma's Apparatus; on organizational and technical issues.

Secondary acts of the first group are adopted by the Committee of the State Duma on Regulation and on organization of work of State Duma. Важ

Explanation of the named Committee played an important role in ordering of legislative activity of the State Duma's second and third convocations.

Obligatory rules on naming and definition of registration number of draft laws have been also established.

The second group of secondary acts involeves articles on commissions of State Duma and on separate divisions of State Duma's apparatus, and on the very apparatus of State Duma. They define prerogatives of corresponding commissions, departments, offices of the apparatus and its divisions, as well as the modes of realization of their tasks.

The third group involves acts on different organizational issues, concerning the activity of deputies and offices of State duma's apparatus. Under the conditions of opennes/publicity/ of parliamentary work the acts, adopted by the chambers of the Parliament have to be accessable for society, and , therefore, it would be expedient, that they be confirmed by State Duma's resolutions.

Secondary acts of State Duma and the Council of Federation are to be included in general list of acts of normative regulation of legislative activity of the Russian Parliament and its Chambers.

Judicial System

Polenina S.V. **Judicial Precedent in the Russian Federation : the Reality and Perspectives**

The problem of judicial precedent became urgent in the Russian Federation. In this connection there arises a question on its merits and demerits and on the measure of its optimal implementation.

Конституционный Суд РФ при решении

Constitutional Court of the Russian Federation shall consider its previous decisions on analogous cases as judicial precedents regecting in such cases the same applications and terminating consideration of the case.

The most urgent is the problem of a judicial precedent of the courts of general juristiction.Official publication of the practice of other higher courts in the Russian Federation is not considered as a judicial precedent, but it is practically used by the courts of lower instances as means of proper interpretation and implementation of law, filling legislative gaps and application of analogy of law.

Judicial solutions of the higher courts of the Russian Federation have the character of precedent, which disclose concrate contents of value notion, used in norm construction. There are proposals to acknowledge legislatively judicial practice of higher courts of the RF on concrate cases as a source of law by giving them the force of precedent, but it is a dangerous and unlawful simbious of the legislator and judge in one face. The question of possibility andexpedience of of using of judicial precedents is closely connected with the techniques applied by the legislator. There is a demand of judicial interpretation of legislative norms, which are more favourable for citizens,

than those, which are established by the international standards.

During last years in Russian legislative activity there appeared chapters of law, which explaned terminology used in concrate law. This is superfluous and hinders the process of law application.

In the theory and practice the lack of declarativeness of Russian legislation is permanently mentioned. It creates an exeedingly wide field for judicial discretionary powers, which are oftenly abused against legality.

There is a necerssity for adoption of the law on the order of preparation of legislative acts and on their interpretation.

It is expedient both legislative imposition of use of judicial precedent, and reasonable restriction of their implementation in practice. The thing is that exceeding use of judicial precedent may bring to substitution of the legislator by judges.

Djachenko S.A. **Reforming Kazakhstan's Judicial System: the Reality and Perspectives**

The fist stage in the way to independence of courts and beginning of judicial reform has been the adoption of November 23, 1990 the law “On judicial System of Kazakh SSR” by the Supreme Soviet of the Kazakh SSR. The law imposed the principles and new purposes of activity of judicial bodies, such as “paramount strengthening of the democratic Rule of law”, “protection of democratization and further development of self-government of the people”. Nevertheless, this normative legislative act failed to go behond the frameworks of the union’s legislations.

The beginning of reformation in the sphere of justice is connected with the adoption of December 16, 1991 constitutional law “On State Independence”, where it has been declared, that state power in Kazakhstan is formed and realized on priciples of division of powers on legislative, executive and judicial branches. This principle has been imposed in the 1993 Constitution of Kazakhstan, which fixed the main principles of organization and activity of judicial power. Judicial system consisted of Constitutional Court, Supreme Court, Supreme Court of Arbitration, and other inferior courts.

The decree of the President of Kazakhstan “On State Programme of Legal Reform in the Republic of Kazakhstan”, adopted in February 1994 defined the priorities of development of judicial system. There began approximation of the legal system of Kazakhstan with international legal standards. A number of new laws emerged.

In August 30, 1995 a new Constitution of Kazakhstan has been adopted, and it envisaged creation of necessary guarantees for indepence of judges. Judges of the Supreme Court should be elected by the Senate of the Parliament, and judges of all local courts should be elected by the President of the country. There has been created the Supreme Judicial Council and Qualification Board of Justice, eliminated the system of arbitration courts by convayance of their functions to courts of general jurisdiction, defined their status and role in the system of human rights and freedoms protection.

The decree of the President of Kazakhstan, which had the force of constitutional law “On Courts and Status of Judges of the Respublic of Kazakhstan”, developed constitutional provision on principles of independence of judges by the norms of their irrevomability and inviolibility, appointment on permanent term, responsibility for nonrespect to court.

Adoption of December 25, 2000 Constitutional law “On Judicial System and Status of Judges of the Republic of Kazakhstan” may be considered as the beginning of the third period of development of independent judicial system in the country. The given law fixed a number of progressive norms, which envisaged realization of the principle of autonomy of judicial system, democratization of the process of choice of candidates for judiciary.

The last point in this process has been put by the head of the State in his January 22,2001 decree, by which the Committee of implementation of judicial decisions has been abolished and substituted by the Committee on Judicial Administration under the Supreme Court.

On the third Congress of judges the President of the Republic of Kazakhstan N.Nazarbayev put a number of tasks of the first priority, which are being realized according certain plan. A Programming Document – a draft Conception of development of judicial system – has been prepared by judicial personnel, and it has been published in press involving responces of citizens

and discussions of jurists.

Gender Policy: Women's Congress

Chertoritskaya T.V. Women's Dimention of Russia's Security: the UN Decisions and Meetings in Washington.

Recently at the session of the UN Security Council there has been discussed a report of the UN General Secretary "Women, Peace and Security". On its result the UN Security Council in its address to world community acknowledged the vitally important role of women in promotion of peace and called to protection of more active participation of women in conflict settlement in all stages of of peace-making and peace-building.

At the same time in washington there has been discussed practically the same "women's" issues within the framework of the Russian programme of leadership "Open World", organized by the Library of the Congress of the USA.The issues, discussed in Washington meetings, has been faced to the sphere of human rights: social protection of women, juridical maintenence and social protection of women, concrate legal assistance for army recruits, soldiers and their parents protection, realization of the most important human right – the right to worthy life, creation all favorable conditions for realization of each person's rights and freedoms. It is the main point of "women's" understanding of the security of a person, society and the state.

Readiness of the society and women's organizations to take subsidiary and very high responsibility, readiness of ruling structures to notice and maintain civil initiatives, properly express "social requirement" are main conditions for long- awaited solutions.

In this connection All-Russian organization "Women's Social-Democratic Congress" proposes the following:

1. To think it over all conditions and opportunities for consolidiion of many women's organizations in Russia, creation of the structure of their interaction;

2. To explain in mass-media the necerssity of preservation of the principle of balance of men and women at all levels of political activity in order to change gradually the stereotype of patriarchal way of thinking in the society;

3. To start forming in mass-media positive image of Russian woman: a professional in her specialty, public figure and politician. To search and find new names and fates;

4. To change approaches to solution of "women's issue" by political parties.

5. To propose discussion of the Report of the UN General Secretary and the Recommendation of the UN Security Council on the state level.

Appeal to the Government

Mikhalkov M.V. A Veteran's Appeal to the Authorities

It is offensive for the Russia, great original country, which today is standing on the edge of abyss. Criminality, hard drinking and dissolution are raising, people die of desperation and inconsolable grief. But the day will come!

Who is to blame in Russian s troubles? Who shall carry responsibility for distraction of millions of people in the country, which overcame German fascism?

On the verge of global catastrophe. Rasputin had predicted the end of mankind to 2013. Taking into consideration the latest statistics, there are reasons to suppose, that he had been not far from the truth.. During last five years oxygen stratum over the Globe has been reduced from thirteen to eight kilometers; yearly there used 150 tons of minerals by each man; factories pollute air and water; the space is filling with splinters of wrecked space-ships, cars poison air with gas; woods are cut; atomic power stations radiate; ices are melting in the North Pole.

One may conclude, that the nature take revenge trough natural calamities for its non-protection by mankind: floods, hurricanes, whirlwinds, volcano eruptions become much frequent.

It is necessary to undertake all measures to protect environment: to prohibit atomic power stations, to save atmosphere, to set filters on all factories and cars, to reduce consumption of natural resources, to protect woods, etc. The State Duma of the Russian Federation shall prohibit import of industrial waste.

On the state of the country. The disorder is going on. We are driven in deadlock, pressed by hypocrisy, bureaucracy, indifference and petty-bourgeois ideology. Invalids of war do not receive foreign medicines free of charge. The Russia may be called as a country of moral degradation.

But where does look elite? It is perverted not less, as if it is recruited by the West.

Children are disappearing, the level of drug abuse and criminality is raising up, the preliminary investigation jails are filled up, there are a lot of organized criminals in special services and even in elite subdivisions..

Under Yeltsin. I have to go , - said Yeltsin and went, but become a historical person, living behind a sea of blood, mistakes and treason.. In order to create a new system, it is needed to break the old one, but breaker Yeltsin has been a traitor yet. He was acting not for an idea, but for his lucrative purposes, having desire to achieve absolute power. The Soviet state was abolished: with one blow Yeltsin put an end friendship of nations.

A famous scholar and writer V.Toporov pointed out, that in Russian history there breakers and creators periodically change each other. Yeltsin and Gorbachev were breakers . And what if the next head of the state will become breaker either? The break of the sequence may bring us to catastrophe.

Under Stalin. Now Stalin is blacken for his dictatorial regime. And this not without reason: cruel destruction of his competitors, repression, violent migration of different nations, red terror, etc.

Nevertheless, one shall not forget, that Stalin defeated fascism, in short period of time transforming industry of the country in military way. We were a strong atomic Superpower, we had weapon without analogous in the world. History remembers heroism of our intelligence officers and signallers, which acted in the rear of the enemy.

Under Stalin there was not only terror and genocide. There was free of charge education and medical treatment, there was not revelry of drug-abuse and criminality. Material well-being of Soviet citizens was sufficiently high.

It remains to hope on the competence of the President V.Putin, Federal Assembly of the Russian Federation and other organs of state power. The problem of Chechnya, material state of citizens must be solved promptly, one must give them faith in the future, decrease moral degradation of youth, fight against criminality, bureaucracy and corruption, not allow the West to use us as material appendage, to help people, which suffered in natural calamities, to strengthen friendship with CIS countries, India, China, to continue war with terror.

Legislative(Law-drafting) Technique

Tsarev A.Yu. On the Rules of Legislative Technique in Law-Drafting (Part 1)

Use of legislative technology not only make easier and faster activity of the legislator, but also enables to approximate maximally the result of legislative activity to appropriate requirements. Under legislative technology the author means the totality of rules /principles/ and devices /means, methods/, used in legislative activity /law-making/, in the process of elaboration of the concepts of law, writing of a text of law, adoption of law. The law-maker have to strive to creation of law, which will be distinguished by its compactness, logical form, easy internalization, as well as maximally full regulation of relations, which shall be the subject of the Law.

There are a great number of sources, which pay attention to the rules of legislative technology, and there may be viewed different approaches to formulate these rules. Nevertheless, the essence thereof may be summarized to several fundamental rules:

The compliance of the text of the law to the language of the law: the text of the law shall not reflect the manner of writing and emotions of the author, he shall expose the law by universal official style, which is characteristic for all laws in the same extent;

|h The compliance of the structure of law to generally acknowledged in acting legislation, which supposed use of groups on structural units depending on the volume, as well as concrete use of properties;

|h The compliance of normative materials of law to the subject of law: it is necessary to avoid both cases of concentration in one law of norms of different branches of law, ant dispersion of these norms in multitude of law;

|h Logical consistence of exposition of the text of law allows to take one s bearings easily in law and internalize better its contents;

|h Absence in law non-normative materials: each preposition of law shall contain at least one rule V the right, obligation, prohibition or imposition, otherwise it shall not be as norm;

|h Fullness of legal regulation; a norm of full value shall contain disposition, hypothesis, sanction, otherwise one shall resort to send off to other legal acts, which makes difficult use of the law;

|h Unification of used terms in law: it should be used generally terms in law, as well as to avoid duplications of terms;

|h Inadmissibility of ambiguity of terms in norms of law: legal norm shall be formulate in a way to be understandably by all in the same sense; it shall not give a chance to those, who is intending to interpret it wrongfully.

Chigidin B.V. **On the Definition of Legislative Technique**

The author of the article has a task to consider the notion of "Legislative Technique".

Diversity of opinions of native researchers on the given issue is extreemly wide. However, with a portion of some schematization, all available approaches may be united in three big groups: 1. Purely practical; 2. Purely scholarly; 3. Scholarly-practical (methodological).

Legislative technique appears as a transformative and modeling force. It is on its bases llies the responsibility of a legislator to express adequatly his judgements in the texts of legislative acts. The author in his work considers the elements, purposes and tasks of legislative technique, charachterises its essence, which consists in cognitive and transformative ativity of the subject of law-making, which has a textual form of legal act.

Legislative technique is a method of optimisation of the form of legal act, which consists of scholarly justified and practically approved methods, rules, devices and means, and has in its main task insurance of possibility of grammatical interpretation of the act with the purpose of precise explanation of the contents of expressed will of the law-giver.

Tax Reform

Schitova N.G. **Perspectives of Development of Tax Reform Legislation in Russia (Part 1)**

The author of this article shows the present difficalties in reforming of tax system in Russia. 2003 will be hard for budget realization mainly because of expenditures to be payed for foreign debts. The legislators are extreemly cautious towards any preposition on tax rate decrease.

On the one hand, the bold experiment of decrease of general rate of tax on income up to 24% caused at the beginning certain stock-jobbing among wide circles of taxpayers. Nevertheless, afterwards, it became obvious, that deprivation of native producers the stimulus for development of their own means of production led to decrease of rate of economic growth. One of the sharpest problems of tax reform is regulation of the order of compensation of AVT, which has direct influence on the opportunity of the tax rate decrease.

In this article there are considered several draft laws, particularly relating to change and suplement in the Tax Code on AVT tax, as well as creation of funds of precious metals and stones of the subjects of the Russian Federation.

Control Over Financial Currents

Lyubimov A.P. **Control Over finances of State and Municipal Unitary Enterprises and Joint-Stock Companies**

The author considers several laws and legal drafts, relating to different aspects of control over financial currents of state and municipal unitary enterprises and joint-stock companies. One of a new laws is called to change the existing situation. It defines the rights and regulates the order of creation and reorganization of SFD.

The transformation of unitary enterprises is

called to resolve the issue of creation of considerable amount effectively working middle and small enterprises. Merging, strengthening and liquidation of non-effective unitary enterprises will have its impact to expansion of the middle class.

The author pays attention also to the issue of existence of a legal problem: in whos possesion the monuments of history and culture of federal significance are – of the Russian Federation or subjects of Russian Federation.

Before adoption of the corresponding law under the conditions of indefinitness of the owner of the monuments of history and culture of federal significance the only right solution is the prohibition of privatization of the objects of cultural heritage (the monuments of history and culture) of federal significance.

Thete is a mention of affairs, relating to joint-stock companies. One of the draft laws protects minoritary share holders. Lack of protection of the rights of minoritary share holders decreases market value of shares of a joint-stock company. It is infringement of the rights of small share holders explains their low capitalization in comparison with analogous foreign companies.

The discussed draft laws are called to produse awaiting changes in legislation and allow to make transition to international standards of book-keeping and financial accountability, as well as to improve essentially investment activity of joint-stock companies.

The author analyses the condition of legislative work on legal protection of the rights of owners, as well as shows many difficulties of the subjects of legislative initiatives. It is also underlined necessity of wide discussion of draft laws by concerned parties, their elucidation by the mass-media.

American Views on Democracy in Russia

Domrin A.N. A New American Law "Russian Democracy Act of 2002"(Russian Democracy Act of 2002, H.R. 2121)

In October 23, 2002 the USA President G.Bush has signed and put in force the Law (Russian Democracy Act of 2002, H.R.2121).

The Law summarises the results of ten years old "democratic regime" in Russia and puts new goals and tasks for foreign policy of the USA in Russian direction.

The Law particularly states, that since 1992 American Government organized visits and trips across the country for some 40 thousands of RF citizens; it promoted forming and financianal maintenance of 65 thouthands of social "non-governmental" groups and associations in Russia and "thosands of independent local mass-media, despite counteraction of RF government"./para.3 a. A.Art. 2/.

Analogous strategy is applied by the USA not only towards the Russia, but to a number of other countries of the world, including Belorus. During the last two years the USA provide financial assistance for different oppositional organizations in Russia in total amount of not less than 50 millions dollars.

While talking on success of Russian democracy, the authors of the Law particularly stress in considerable extent free and honest 1995 and 1999 parliamentary elections in Russia /para.a.3.B. Art.2/. According to the previous draft of the Law, 1996 and 2000 presidential elections were declared also as "free and just" ones. In the process of re-elaboration of the Bill in the Committee of international affairs of the House of Representatives and during voting in the lower chamber of the Congress the given assertion has been removed.

Havind declared the success of democracy in Russia as a subject of "national security of the USA"/para.a.6; a.1. Art.2/, the Law declares about necessity for "the USA government to elaborate long-term and flexible strategy,

directed to strengthening and maintenance of democracy and market economy by Russian society. In 2003 financial year the Congress provides 50 millions of dollars for the realization of the purposes.//Art.6/.

The question is how the USA is going to achieve that goal.

Reforms in Britain

Alebastrova I.A. Constitutional Reforms in Britain: Establishment of Regional Bodies of Power

An important direction of constitutional reforms in the latest 20-ies century has been establishment of legislative and executive bodies of three out of four regions of the country: in Scotland, Wales and Nothern Ireland.

After unsuccessful 1977 attempt the Government of the United Kingdom, formed in 1997 by labourists, metting requirements of aborigents of the three regions, has been activated its activity on devolution issues, which in the long run brought to establishment in Scotlanhd, Wales and Nothern Ireland legislative and executive bodies of power.
Having recieved maintenance in these regions, the Government initiated in the Parliament some corresponding Bills /draft laws/. In 1998 there had been adopted and entered into legal force the Act on Scotland, which establish the Parliament of Scotland, as well as the Act on Wales s Government, in accordance of which the national Assembly of Wales has been established. Elections in these bodies are to be held in the same mixed majoritarian-propotional ballot system, named as of additional member system. Upon the results of the referendum in Nothern Ireland, the British Parliament adopted the Act on Nothern Ireland, which envisaged preservation of the nothern Ireland whithin the United Kingdom until the majority of Irish population will suppot that status, as well as establishment of National Assembly and executive Committee of the Nothern Ireland. Finally, after a certain break in three of the four historical regions of the United Kingdom again there had been established their own bodies of legislative and executive power, the procedure of establishment of which included the streems, moved both from above and from below ; they have been established by the acts of all-nation Parliament with taking into consideration of the opinion of local population, manifested by the results of regional referenda. Now only in England there isn t any body of government, which is not surprising due to objective reasons.
The status of the three establihed regional legislative bodies, as it is obvious from above-mentioned, is not the same. The most volume of prerogatives is vested in the Parliament of Scotland: unlike national assemblies of Wales and Nothern Ireland it is entitled to change the rates of income tax within certain limits, as well as regulate the issues of legal order, civile and criminal law. Alongside with that if in Scotland and Nothern Ireland legislative bodies have the right of primary legal norms making within its competence, the National Assembly of Wales is able to realize just so called secondary legislation.

Legal Practical Work

Attorneys of "Braginsky& Partners" Law Firm of Moscow City Bar Association Answer to Our Questions

The given material is the answers of the lawyers on the questions of citizens. There have been considered the following problems:

1. In al journals I see advertisement of vodka and whisky. Recently I have read that such advertisement is legally forbidden. I want to know, whether alchoholic beverages may or may not be advertised.

2. I applied to court on the issue of divorce. I will also intend to make division of jointly obtained ownership. However i have known, that my husband have sold to his father his share in the company of limited responsibility, as well as our garage and car without my consent. Can I do anything in this situation?

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УДК 32.5
ББК 67.400.6
П 711

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Представительная власть - XXI век: законодательство, комментарии, проблемы

/Под общ. ред. А.П. Любимова. – М., 2002. – Реф. вып. 5-6 (47-48). - 12 с.

Оригинал-макет изготовлен 28.11.2002 Подписано в печать 02.12.2002

Бумага офсетная. Объем. печ. л. 1,2. Тираж 990 экз.. Заказ № 431

Отпечатано в ДПК Роспатента 142040, г. Домодедово, Каширское шоссе, д. 4, кор. 1, стр. 2