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ABSTRACTS AND KEY-WORDS

CONSTITUTION: THE DIALECTIC OF THE UNIVERSAL AND THE CONTEXTUAL

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The author attempts to demonstrate the dialectics of the universal and the contextual approaches in constitutional analysis. The universal approach is set out in connection with the Jurgen Habermas deliberative theory and its communicative concept. The author suggests that communicative theory rests on a false foundation due to the fact that there can never be communications that are completely free from the oppression. Furthermore, he notes that the theory fails to offer rational answers to key questions about the issues that are brought to public debate such as who will make their determinations and how these determinations will be produced in order to identify the best reasonable decision.

Constitutional order implies and is built by the mechanisms of dominance. In author's view Constitution is intended to be a statement of some political and legal principles of social order which should be abstract. Their content depends on the society's historical and cultural context. While the content of the constitution can't be universal, some of its underlying principles should be.

The social purpose inherent in every constitution is considered to be the single reason for constitutional universality. People have been creating constituent norms to the establishment of social order continuously throughout human history. Constituent norms are essential for the functioning of market economy, particularly those designed to protect property, free will of contracting parties and to prohibit monopoly. No democratic system should exist without the norms which provide free elections hold at reasonable intervals, free mass media, multiparty system. The function of the constitution is to regulate the most vital interactions in the society among individuals according to their legal status.

Universality of constitution is an abstract and high ranked concept which implies the presence of a priori terms of personal existence within a society. The constitution is filled with content and becomes meaningful within its larger historical and socio-cultural context.

🗝 Constitution, universality, contextuality, communication, deliberative theory of Jurgen Habermas, social constructivism, discourse analysis.

RECOGNITION AND ENFORCEMENT OF FOREIGN COURTS' DECISIONS IN RUSSIAN JUDICIAL PRACTICE

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The consequence of the adjudicating of civil cases in a foreign court with the participation of Russian individuals and legal entities is the need to resort to a Russian court for recognition and enforcement of decisions rendered abroad. In matters of recognition and enforcement of foreign judicial acts the Russian legislation has always based on the principle of exequatur. It means that the foreign decision is subordinated to sanctions and control of the state. Russian procedure law provides that a basis for recognition and enforcement of a foreign judgment is the existence of an international treaty and/or federal law. The procedure for recognition and enforcement of foreign judgments, settled by rules of the Arbitration Procedure Code (APC RF) and the Civil Procedure Code (CPC RF) is the same, however, the practice of courts of general jurisdiction and arbitration courts in dealing with applications for recognition and enforcement of foreign judgments differs significantly. There are no cases of execution of foreign judgments in absence of an international treaty in the practice of courts of general jurisdiction. At the same time in the practice of arbitration courts there have been decisions on recognition and enforcement of foreign judgments in absence of relevant international treaties. In such cases the recognition and enforcement of foreign judicial acts is based on the principles of reciprocity and international comity, as well as on international economic cooperation agreements and the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The article analyzes the legal position of the courts of general jurisdiction and arbitration courts in this category of cases. The author gives a critical assessment of arbitration court approaches to satisfy claims for recognition and enforcement of foreign judgments on the basis of the principles of reciprocity and international comity. The author also criticizes the arbitration court interpretation of the principles of reciprocity and international comity as the universally recognized norms of international rights. The attention is paid to the fact that the decisions of foreign courts in matters of recognition and enforcement of foreign judgments are based on the clear guidance of their national law. None of them is based on the interpretation of the principle of reciprocity and the principle of comity as a generally accepted rule of international law in order to compensate the absence of an international treaty. Only international treaties, concluded on the relevant issues can be recognized as the basis for the recognition and enforcement of a foreign court decision. The

author believes that the current practice requires a serious legal analysis and correction, taking into account the unilateral position of the Constitutional Court of the Russian Federation, requiring an international treaty for the recognition and enforcement of a foreign court decision.

🗝 International economic cooperation, international treaty, federal law, universally recognized international law principles, reciprocity, international comity, foreign judgment, recognition and enforcement of foreign judgment, the exequatur, judicial practice.

THE SOURCES OF THE REGULATION OF THE CONDUCT OF THE PROCEEDINGS OF INTERNATIONAL COMMERCIAL ARBIRATION

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The article is devoted to legal sources regulating the procedure of international commercial arbitration, which is widely recognized as the main method of resolution of disputes, arising in the international commercial contracts. The author notes that the contractual nature of international commercial arbitration determines the flexibility of arbitral proceeding, which allows to take into consideration the special features of a particular case. This advantage of the dispute resolution by international commercial arbitration is due to broad rights given to the parities and the arbitrators in the arbitration procedure, provided that the mandatory rules of the applicable law and the basic principles of the regulation of the arbitration, to which the dispute is submitted are observed.

It is stated in the article, that the reform of the arbitration, which is being carried out in RF preserves the dualism in regulation of the arbitration. If the seat of arbitration is on the territory of RF the legislative basis of the regulation of the conduct of the proceeding, is the RF Law “On International commercial arbitration” of 1993 (version in force since 1 of September 2016). Analysis of this law shows that its imperative rules determine the basic principles of the dispute resolution, but most of its specific procedural rules are of dispositive nature and are applied unless the parties provided otherwise. The author notes that parties, who submit by the arbitration clause the dispute to a particular arbitration, agree to apply its rules that actually form the main source governing procedural aspects of arbitration establishing more full and detailed regulation than the law. The rules are to be applied taking into account the agreements of the parties. In the absence of the rules and the agreements of the parties the conduct of the procedure are determined by the arbitral tribunal subject to imperative rules of the applicable law.

Due to the dominance of the discretionary nature of the regulation of the conduct of the proceeding the recommendatory documents of international organizations on the procedural issues of international commercial arbitration (such as UNCITRAL Notes on Organizing Arbitral Proceedings 1996, IBA Rules on taking the evidence by International Arbitration 2010, Recommendations on Ascertaining the Contents of the Applicable Law in International Commercial Arbitration 2008, IBA Guidelines on Party Representation in International Arbitration 2013) gain more and more importance, promoting the acceptance of uniform rules on the conduct of the procedure by the participants of the dispute resolution of different nationalities, belonging to different legal systems.

Resulting from permanent increase in the number of advisory sources and the extension of their application the ideas of soft procedural law as the complex of rules, governing the procedure of resolving disputes by international commercial arbitration, get widespread.

🗝 International commercial arbitration, international commercial arbitration procedure, rules of the international commercial arbitration, dispositive regulation, documents of advisory character on the procedural aspects of international commercial arbitration, soft law.

THE PURPOSE OF PROOF IN TAX DISPUTES IN ARBITRATION PROCEDURE

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The author clarifies different aspects of the problem of truth as the purpose of proof in the arbitration procedure. Acknowledging the objective truth as the purpose of proof is significant for creation a system of principles of the arbitration procedure in Russia; for clarification of content of the principles of controversy and equality of the parties in the arbitration procedure. These principles have an effect on accumulation of evidentiary materials for every particular case. Nowadays not all scholars accept the idea of the objective truth as the main principle and purpose of a court trial. Varying standpoints of scholars are due to different approaches to the problem of establishing the objective truth by the court and implementation of the adversarial principle in the arbitration procedure. The arbitration is supposed to establish the objective truth in resolving tax disputes. The article clarifies the impact of arbitration procedure rules on establishment of the objective truth by the court when adjudicating tax disputes. One of the ideas within the focus of the present study is to determine the bases for pretrial adjudication in tax disputes as well as establish weather they are similar to the adversarial principle and the principle of equality of parties in the arbitration procedure.

The author concludes that the conditions for the establishment of the objective truth in tax disputes by arbitration court are the following: determination of facts on the basis of the adversarial principle in pretrial adjudication and arbitration procedure; in pretrial adjudication facts should be determined, adhering to the principles of immediacy, controversy and equal procedural opportunities for the parties; evidence should be accumulated in course of pretrial adjudication and arbitration procedure.

🗝 Arbitration procedure, proof, objective truth, purpose of proof, adversarial principle, principle of equality of parties, pretrial adjudication, tax dispute.

EXTERNAL LABOR MIGRATION WITHIN THE FRAMEWORK OF THE EURASIAN INTEGRATION: LEGAL ASPECTS

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The article reviews development of integration processes and legal regulation of external labor migration in FSU beginning from the Agreement on Forming up of the Single Economic Territory in September 2003, to the creation of the Eurasian economic association (EAEA), Eurasian Customs Union (EACU) and the Eurasian Economic Union (EAEU). Special attention has been paid to the analyses of the Treaty regulation of external labor migration by the EAEU.

EAEU is a result of years long meticulous work carried in cooperation by governments, business and experts' circles of Russia, Belarus and Kazakhstan. The Eurasian Economic Union is an international organization of regional economic integration, created for purposes of thorough modernization, cooperation and improving competitiveness of national economies and creating conditions for stable development in the interests of increasing of living conditions of the population of the member-states.

Eurasian Economic Union has been functioning since 1 January 2015. New member-states and partners — Armenia and Kyrgyzstan joined the Treaty.

As far as labor market constitutes an integral element of single economic territory, issues of legal regulation of external labor migration constitute an important field of activity of EAEU. Legal migration regulation is being realized mainly through the dispositive method, based on equality of sides, coordination of activities, etc. In addition, the peculiarity of the method of migration regulation within the EAEU lies in two-level legal regulation of migration: regional and national.

The EAEU has considerably enlarged rights of citizens of the member-states for labor activity on the EAEU territory. A visa-free regime of entry for citizens of member-states has been introduced. Labor migrants from EAEU countries have been granted the right to work not only as employees (labor contract) but also as independent contractors (civil contract). It has considerably widened spheres where they can seek jobs.

Common approaches to regulation of employment, social security, social insurance, calculation of pension rights, etc. are being developed.

However, a lot remains to be done for the solution of problems connected with the fulfillment of norms of the EAEU Treaty in practice. The fact that partners of integration processes constitute states with different economic capacities, resources and models of economic development creates certain difficulty.

Successful integration processes on the post-soviet territory will enable effective management of migration flaws and protection of labor migrants rights.

🗝 Eurasian Economic Union, integration processes, labor force market, migration policy, labor migration, protection of labor migrants' rights, harmonization of legislation.

MIGRANT' SOCIAL SECURITY LEGAL ISSUES IN THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION RULINGS

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Social risks faced by migrants in the Russian Federation are researched with attention to social security legal regulation. Multifaceted approach to migrants' social security system is suggested covering social risks prevention and consequences compensation. It is necessary to take into account different kinds of migration (voluntary and forced; permanent and temporary; labor, educative, ecological, etc.) Migrants' social security can have both specific forms, addressed to them (e.g. accommodation assignment from the Temporary Accommodation Fund for Refugees), and within the existing general framework of social security, (e.g. compulsory social insurance system, if a migrant is employed).

From this perspective international standards in social rights, first of all those issued by the International Labor Organization are analyzed in the article. ILO system implies particular international contracts. As an up-to-date of interstate pension coverage agreement a draft treaty between Eurasian Economic Union members is analyzed. The importance of the international contracts concerning pension coverage for people, who left Russia in Soviet times, was stressed by the Constitutional Court of the Russian Federation in it's rulings. The content of such rulings concerning disrupt of calculation and payment of pensions and additional monthly financial securities for citizens, who left the Russian Federation for another permanent place of residence, is analyzed in the article. It has been noted that these Constitutional Court legal findings were taken into account in course of recent modernization of Russian pension legislation.

🗝 Migration, social risk, social security, retirement security, international standards, Constitutional Court of the Russian Federation.

THE REFORM OF EU LEGISLATION ON BORDER CHECKS IN THE LIGHT OF THE EUROPEAN MIGRATION CRISIS

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This article analyzes the changes in the EU legislation on border checks, caused by the migration crisis of 2015. This crisis revealed a number of system errors in the field of external borders management of the Union, which forced the EU member states to review its policy. The author analyzes the main directions of the reform of EU legislation on borders, identified major trends and examines the key laws in this area. Analysis of legislative initiatives shows that the current reform covers all areas of border control, both in the field of border surveillance, as well as in the field of border checks.

Particular attention is paid to the initiative on the creation of the European Border and Coast Guard, the legal nature, as well as key features of the new service. One of the most debated powers of the Service is the right to intervene, which implies the right of the European Border and Coast Guard in exceptional cases, to carry out operational activities for the protection of the external borders on the territory of one EU Member State even without *request* from a Member State concerned.

Analysis of the regulation of the European Border and Coast Guard shows that the «right to intervene» does not fully comply with the fundamental EU law, mainly with the principle of conferral.

The author concludes that the ongoing reform of the EU legislation on the borders is a major step toward building a unified European system of border control at external borders. Taking into account the current challenges and emerging migration situation, the proposed measures comply with the principles of subsidiarity and proportionality in EU law, however, the new powers of the European Border and Coast Guard can be fully realized only in case of modification of the EU primary law.

🗝 Migration crisis, EU, principles of EU law, EU legislation on border checks, European Border and Coast Guard, system of border checks, Schengen zone.

THE OBLIGATION TO RESPECT NORMS OF INTERNATIONAL HUMANITARIAL LAW ON PROTECTION OF WAR VICTIMS

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The article analyses 1949 Geneva Conventions with additional Protocols, that establish main principles and norms of international humanitarian law. These acts represent combination of two main sources of international law — contracts and customs. Customs are of particular importance in cases of serious violations of international law. The author analyses art.1 common to all conventions studied that establishes the main obligation of the states to respect the norms of humanitarian law and ensure such respect by other countries. This undertaking is the main principle of international humanitarian law and belongs to *jus cogens* part of international law i.e. constitutes an imperative norm, an obligation *erga omnes*, binding for all parties to a military conflict — international or national, creating a universal obligation. This means that control after the enforcement of the norms of the humanitarian law is not limited to national level. International courts practice also acknowledges the norms of humanitarian law as *jus cogens*.

Particular attention in the article is paid to characteristic of legal methods of protection of the population in military conflicts. Legal status of different categories of people protected by international humanitarian law is analyzed. The article discusses the question of the role of international humanitarian law in combating terrorism. International Red Cross plays crucial role in creating international humanitarian law and drafting customary law code. The author shows that current development of international humanitarian law rules shall be a counterforce against the tendency of adjustment to its violations in course of military conflicts.

🗝 International humanitarian law, Geneva Conventions, indiscriminate attacks, civilian object attacks, civilian population protection, terrorism, protected persons, *jus cogens*, *erga omnes.*

THE CONCEPT AND TYPES OF ECONOMIC SANCTIONS IN INTERNATIONAL LAW

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The main ideas of this article justify the necessity for legislative differentiation of the terms «economic sanctions» and «countermeasures». Current trends in legal literature demonstrate frequent equating of these completely different terms, which in turn leads to substantial ambiguities and a lack of uniform approach in theoretical and practical application of these notions. Russian and Western lawyers commonly point out the substantial problems of countermeasures as an instrument of economic coercion due to a lack of legislative consolidation of the main conditions of their legality and a standardized order of their implementation. A

progressive growth of the use of economic sanctions and countermeasures during the period from 1990 till today demonstrates their relevance in international practice and subsequently significance of this study. However, despite the obvious advantages of economic sanctions and countermeasures in comparison with the measures related to the use of armed forces, the former lead to heavy and often unintended humanitarian consequences that jeopardize their overall effectiveness and consequently contradict their peacekeeping objectives and the basic principles of international law.

This study contains comprehensive research of legal nature of economic sanctions and countermeasures and analysis of their interaction and key differences. It also lists the main types and forms of economic coercion, as well as their function in the current political environment. This paper offers estimation of the effectiveness of countermeasures based on the analysis of actual examples in international law, and includes recommendations to improve the effectiveness of the instruments of economic coercion. The author conducted a comprehensive comparative historical analysis of economic sanctions and countermeasures to eliminate the conceptual gaps in today's international legal doctrine, studied modern practice of the Security Council of the United Nations and its sanctions committees in the implementation of economic sanctions and countermeasures, the interrelation of different factors in the process of implementation of coercive regimes.

🗝 Economic sanctions, countermeasures, UN sanctions, embargo, financial sanctions, goal-oriented sanctions, trade sanctions, collective countermeasures.

ACADEMIC WORKSHOP ON INFORMATION LAW AND INFORMATION SECURITY PROBLEMS

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Over 60 scholars from Moscow, Chelyabinsk, Saratov, Izhevsk, Irkutsk and other regions of Russia participated in the workshop that took place October 28, 2016 in the Institute of State and Law of Russian Academy of Sciences. According to T.A. Polyakova (Moscow, ISL RAS) the purpose of the workshop was furthering of collaboration between famous scholars and junior researchers of information law. In the course of the workshop attention was paid to the connection between information law theory and practice, priorities of academic research has been signified with stress on practical aspects (I.L. Bachilo, Moscow, ISL RAS). Particularities of methods of information law has been mentioned (A.K. Zharova, Moscow, ISL RAS, V.M. Elin, Moscow, HSE) as well as need for comparative studies in the field (E.V. Talapina, Moscow, ISL RAS). The participants touched in their presentations the issues of protection of sovereignty in cyberspace in the conditions of globalization of IT infrastructure and information space (G.G. Shinkaretskaya, Moscow, ISL RAS, A.A. Streltsov, Moscow, Lomonosov MSU), protection of information security of an individual (A.A. Chebotareva, Moscow, MGUPS-MIIT). Special attention has been drawn to some term and institutes of information law, such as informational legal system (V.N. Shelmenkov, Moscow, HSE), Governmental information system (R.V. Amelin, Saratov Chernishevsky State University), limited accessibility information (G.G. Kamalova, Izhevsk, Udmurtia State University). The participants discussed problems of virtual interrelation in information society (I.S.Boychenko, Moscow, ISL RAS) and functioning of the open government as a mechanism providing informational transparency of state governance and engagement of citizens, associations, business-structures in passing and realization of administrative decisions (O.A. Okolasnova, Moscow, HSE).

Presentations on training specialists in the field of information law attracted special interest of the participants (S.G. Chubukova, Kutafin Moscow State Law University, A.V. Morozov, Russian University of Justice).

🗝 Information law, information and telecommunication technologies, information security, information systems, open government, information of limited accessibility, comparative legal studies, training of academic staff.

REVIEW

Pravovoe regulirovanie ekonomicheskoi deyatel'nosti: edinstvo i differentsiatsiya [Legal Regulation of Economic Activity: Unity and Differentiation] (I.V. Ershova, A.A. Mohov eds.). Moscow: NORMA-INFRA-M, 2017, 464 p. (in Russ.).

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The monograph prepared at the Business and Corporate Law Department of Kutafin Moscow State Law University is the most up-to-date research of problems of legal regulation of business and some other economic activity. Current Russian law is developing in the direction of specialization and differentiation of the methods of regulation of different types of economic activity. Along with business there have been defined other types of for-profit activity. Laws regulating particular spheres or fields of economy have been adopted (commerce, industry, building, energy). This monograph makes an attempt to show unity of legal regulation of the economy and at the same time to show the need for plurality of methods of regulation of some of its sectors and fields. The first part of the book is dedicated to the common question of legal regulation of economic activity. The notion "economic activity" is analyzed and compared with conterminous categories: business, economic, commercial, for-profit activity; state regulation versus self-regulation is being analyzed; subjects and taxation of economic (versus other abovementioned types) activity are being analyzed. Of particular interest is the notion of legal regime introduced by the authors. Classification of regimes is

suggested. Different regimes with their particular features are being characterized.

The second part of the book studies legal regulation of different fields of economy such as industry, energy, transport, insurance, securities, health and social care, education, sport, tourism, legal services, information and telecommunication, advertisement, banking, private security and investigation, audit, investment.

🗝 Business law, economic activity, business, legal regulation of economic activity, subjects of economic activity, state regulation of economic activity, self-regulation of economic activity.