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# Jurisprudence

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UDC 347.628

## Legal regulation of cohabitation in foreign countries

[*Pravovoe regulirovanie fakticheskikh brachnykh otnoshenii v zarubezhnykh gosudarstvakh*]

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**Abstract.** In the introduction, it is stated that the subject-matter in question is relevant for the Republic of Belarus in view of the permanent increase in the number of actual marriages in the territory of the state. The purpose of the study is to form a reasoned position on the introduction of a number of consequences of quasi-marital relations in the legislation of the Republic of Belarus, taking into account the experience of foreign states. In the main part of the article, various doctrinal approaches to the issue of legalization of de-facto marital relations in foreign countries and Belarus is examined, their critical analysis is conducted, the author's position on this issue is formulated. It is pointed out that in the doctrine there is no common opinion as to the necessity and expediency of introducing into the national family legislation the legal consequences of a number of quasi-marital relations. Also in the main part, the forms of recognition of actual marital relations in foreign law and order are investigated. Two main forms in which recognition of the legal consequences of actual marriages is possible in foreign countries are distinguished. They are – recognition by the court after the fact, as well as recognition from legally significant actions committed by the sides. A comprehensive study of foreign legislation on the existence of fixed legal consequences of actual marital relations in various forms is carried out. It is concluded that there is currently no uniform approach to resolving the issue of the legal status of partners (cohabitants) in foreign countries; dissemination of a special legal regime in relation to the partners, different from that of officially registered spouses. In the conclusion, the issue of the possibility of legislative consolidation of a number of consequences of actual marital relations in the law of the Republic of Belarus, taking into account the long-term experience of foreign states, is indicated.

**Keywords:** de-facto marital relations, common-law marriage, cohabitation, quasi-marital relations, legal consequences.

**Bibliography – 29 titles.**

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UDC 347.451(476)

## On some issues of legal regulation of refundable crowdfunding in the Republic of Belarus

[*O nekotorykh voprosakh pravovogo regulirovaniia vozmezdnogo kraudfandinga v Respublike Belarus'*]

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**Abstract.** In the introduction, the problem of legal regulation of refundable crowdfunding and the degree of elaboration of the problem in the scientific liliterature is defined. It is indicated the object of study – a set of legal relations between the investor and the recipient, arising in the process of implementation of refundable crowdfunding. The purpose of the investigation is to examine the legal nature of the relationship between a recipient and an investor of refundable crowdfunding, to reveal the specifics of refundable crowdfunding and to develop proposals for the perfection of legal regulation of refundable crowdfunding in the Republic of Belarus. In the main part, it is examined the legal nature of the relationship between the recipient and the investor in the implementation of refundable crowdfunding. The distinctive features of refundable crowdfunding are revealed. The norms of the current legislation of the Republic of Belarus, that can be used to regulate the relationship between the investor and the recipient during the implementation of refundable crowdfunding, are investigated. The legal problems arising from the implementation of refundable crowdfunding in the Republic of Belarus are identified. In the conclusion, it is shown that legal relations between the recipient and the investor with refundable crowdfunding have specific features that cannot be fully taken into account when using legal institutions named in the legislation of the Republic of Belarus. It is noted that the relationship between the recipient and the investor in refundable crowdfunding is closest in its legal nature to the relations of sale and purchase. The expediency of developing a special legal regulation of refundable crowdfunding in the Republic of Belarus is substantiated. The significance of the research results is determined by the possibility of using theoretical principles and conclusions for the development and improvement of the legislation of the Republic of Belarus on refundable crowdfunding, as well as in legal registration of relations between the recipient and the investor of refundable crowdfunding in practice.

**Keywords:** refundable crowdfunding, crowdfunding platform, purchase and sale, investor, recipient.

**Bibliography – 3 titles.**

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UDC 349.6

# On legal regulation of environmental impact assessment in foreign countries

[*O pravovom regulirovanii otsenki vozdeistviia na okruzhaiushchuiu sredu v zarubezhnykh stranakh*]

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**Abstract.** Anthropogenic influence exerts the increasing impact on the environment now. An important point is prevention of negative impact on the nature of the planned economic and other activity. One of such mechanisms is environmental impact assessment (EIA) that has initially been enshrined in the international legislation, and subsequently in the Republic of Belarus. Carrying out EIA both at a design stage of the planned activity and during realization of economic and other activity allows minimizing negative impact on the environment. The purpose of the study is the analysis of development of the legislation in the sphere of environmental impact assessment in foreign countries and the Republic of Belarus. In the introduction, the relevance of a problem is proved, it is indicated the need of development and improvement of this mechanism of environmental protection. In the main part of article, aspects of formation and further development of legal regulation of environmental impact assessment in the European Union and the Commonwealth of Independent States are considered. The analysis of the main normative legal acts of the foreign countries regulating EIA is carried out. The legal systems of the European Union, the Russian Federation and their ratio with the Belarusian legislation are analyzed. It is noted a number of conclusions and it is made offers on integration of the European and Russian experience that gives to the Republic of Belarus a number of the advantages based on experience and practice of neighboring states. The received results can be applied in the course of improvement of the legislation of Republic of Belarus and also at further scientific research.

**Keywords:** law, legislation, environmental impact assessment (EIA), environmental protection, environmental policy.

**Bibliography – 12 titles.**

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UDC 343.232

**Problem of identification of differentiating signs between economic crime and offence. Part 2**

[*Problema vyiavleniia razgranichitel'nykh priznakov mezhdu ekonomicheskim prestupleniem i pravonarusheniem. Chast' 2*]

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**Abstract.** The article is continuation of earlier designated problem of search of identification of differentiating signs between economic crime and offense. The used tools are formal and dogmatic interpretation of the operating precepts of law and the doctrine of criminal law and use of tool approach. The purpose of research is to study effective criteria of differentiation of crimes and offenses in economy. In the article, features of maintenance of essential elements of crime and offense in the context of understanding of public danger are revealed. It is noted that the public danger cannot be effective and reliable criterion of differentiation of administrative offense and crime. On the example of the bans which are contained in the Criminal Code of the Republic of Belarus and the Code of Republic of Belarus on administrative offenses it is shown efficiency of degree and the nature of public danger of the acts made in the sphere of economic activity. There is no universal formula of public danger, its character and degree that would be suitable in one and all cases. The development of informational relations, the global instrumentalization of law, the commercialization of branches of the national economy and the sphere of economic activity indicate that a category of public danger will always be transformed, depend on the economic system of society, and ideas about moral and ethical behavior in society. At such formulation of the question the public danger has something in common with expediency. Fight against crimes in the sphere of economy has to be carried out not due to expansion of a coverage of the criminal law, and due to increase in its efficiency. And the efficiency of the legal instructions which are contained in the criminal law depends on compliance of a type of illegality to the nature of the act made in economy. The sphere of application of the obtained results is law, law-enforcement practice, law-making, legislative drafting.

**Keywords:** crime, offense, minor offense, criminal law, administrative delict, public danger, harm.

**Bibliography – 10 titles.**

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UDC 343.5

**Retrospective analysis of the legal regulation of responsibility for the involvement of a minor in the commission of a crime and antisocial behavior in the legislation of Belarus**

[*Retrospektivnyi analiz pravovoi reglamentatsii otvetstvennosti za vovlechenie nesovershennoletnego v sovershenie prestupleniia i antiobshchestvennoe povedenie v zakonodatel'stve Belarusi*]

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**Abstract.** Education of citizens, protection of their rights and legitimate interests are an important task and an indispensable debt of society. Care for the younger generation, for minors, who in the face of growing social problems become the material for the

realization of the criminal interests of adults is of particular importance in this plan. Criminal and legal fight against involvement of minors in commission of crimes and other antisocial actions is one of the main directions of the state activity in the sphere of protection of the rights and legitimate interests of younger generation. These criminal acts pose an increased danger to society not only because they violate the normal spiritual and moral development of minors, inculcate in them distorted value orientations, undermine their physical and moral health, but also because they determine the state and trends of crime in the future. The article is devoted to questions of origin of criminal liability for involvement of minors in crime and antisocial behavior in the Belarusian criminal law. In the article, evolution of a criminal legal treatment of involvement of the minor in commission of crime and antisocial behavior in the Belarusian legislation is considered. In the introduction, it is indicated the object of research – involvement of the minor in crime and antisocial behavior in the Belarusian criminal law, the relevance and the importance of studying of these criminal actions, degree of study of the matter in the Republic of Belarus are shown. The attention is paid to the fact that involvement of the minor in crime and antisocial behavior is one of components of complex system of criminal encroachments, establishment of responsibility for which in the Criminal Code of the Republic of Belarus is aimed at providing guarding function of criminal law concerning the child, the person in need as it is recognized at the international legal level, in special protection. The purpose of this work is to study a historical way of the specified acts from origin to the present. In the main part, it is discussed evolution of involvement of the minor in crime and antisocial behavior. In the conclusion, the main regularities of development of criminal liability for the specified criminal actions revealed in the legislation existing on the Belarusian lands during the pre-Soviet period during operation of the Soviet legislation and also during the Post-Soviet period are stated.

**Keywords:** criminal liability, minor, crime, antisocial behavior, involvement.

**Bibliography – 13 titles.**

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UDC 343.126

# Procedural aspects of applying of restraint measures in the content of detention with regard to the minors suspected and accused of the act of terrorism

[*Protsessual'nye aspekty izbraniia mery presecheniia v vide soderzhaniia pod strazhei v otnoshenii nesovershennoletnikh lits, podozrevaemykh i obviniaemykh v akte terrorizma*]

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**Abstract.** Considering the modern criminal policy of the state in combating crime and improving the preventive measures to criminal offences, significant attention is paid to the issues confronting the crimes of a terrorist nature among minors, elimination of reasons and conditions of their fulfilment. In addition, attempts to study in the form of problems of the criminal law qualification of terrorist crimes, as well as criminal procedure aspects related to the criminal proceedings of this category of offenses, are of particular interest. The purpose of this research is to examine the procedural aspects of the remand in custody for juvenile suspects and accused act of terrorism. In the main part of the article, special attention is paid to the application of preventive measures related to isolation from society to minors who have committed crimes of this category. In this direction, an important place is the analysis of the current criminal procedure legislation at the level of the provisions of the Criminal Procedure code and the Law of the Republic of Kazakhstan "On procedure and conditions of detention of persons in special institutions providing temporary isolation from society". Based on the analysis and synthesis of the existing normative sources, theoretical approaches, scientific and legal sources, in the content of the article it is reflected the position of the authors in terms of improvement of criminal-procedural mechanisms for the application of measures of restraint in form of detention in respect of minors, suspects and accused of committing act of terrorism. The proposals involve the development of specific procedural mechanisms, a separate placement in remand prisons and detention centres for minors, suspected and accused of committing an act of terrorism. The implementation of this position will enhance the effectiveness of measures of criminal-procedural control

over the behavior of persons in the target group that will create the necessary legal safeguards to meet the challenges of criminal justice in the investigation and trial of criminal cases in this category.

**Keywords:** terrorism, detention, preventive measure, safety of participants of process, suspect, accused, detention unit.

**Bibliography – 14 titles.**

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UDC 343.9:343.3

**International anti-corruption standards as a regulator of the activities of transnational corporations**

[*Mizhnarodnyia antykaruptsyinyia standarty iak reguliatar dzeinastsi transnatsyianal'nykh karparatsyi*]

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**Abstract.** In the introduction, it is justified the relevance of the study of the problem of using international anti-corruption standards as regulators of transnational corporations' activities. In the main part, it is analyzed the role of international anti-corruption standards in the activities of transnational companies, tendencies of their development tendencies and problems of their use as a means of legal regulation of the activities of transnational corporations in different countries. The relevance of the study is due to the intensification of the processes of globalization of the world economy. It is necessary to develop the processes of creating transnational corporations and the prevention of corruption risks as a priority for the Eurasian Economic Union. The purpose of the study is to analyze the specifics of the transnational corporations' activities. Transnational corporations to promote their interests can use illegal acts, including corruption schemes against officials of foreign countries. This is facilitated by the geographically limited ability of national law enforcement agencies to monitor the activities of transnational corporations. International anti-corruption standards, that apply to various individual states, create additional opportunities for ensuring the legality of cross-border companies' activities. This is possible through using of anti-corruption compliance-programs. Four categories of international anti-corruption standards can be distinguished: standards that declare principles; standards for certification; reporting standards; procedural standards. The value of international anti-corruption standards, regardless the fact that they are not legally binding, is in ability to focus the attention of transnational corporations and the society to the problem of combating corruption. This allows us solve the problem of preventing corruption risks. In the conclusion, it is noted that in the modern world, there is a tendency to implement international anti-corruption standards into the national legislation, to develop and implement national anti-corruption standards.

**Keywords:** transnational companies, corruption, international anti-corruption standards, compliance control, corruption risks, officials.

**Bibliography – 51 titles.**

"Vesnik Hrodzenskaha Dziarzhaunaha Universiteta Imia Ianki Kupaly.
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UDC 341.9

**Conflict issues of customs measures to protect intellectual property rights in the aspect of the Eurasian Economic Union**

[*Kollizionnye voprosy tamozhennykh mer po zashchite prav intellektual'noi sobstvennosti v aspekte EAES*]

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**Abstract.** In the introduction, it is substantiated the urgency of the problem of conflict aspects of the activities of customs authorities aimed at protecting intellectual property rights in the territory of the Eurasian Economic Union (EEU). In the main part, it is discussed collision issues of customs measures for the protection of intellectual property rights in the aspect of the EEU. The problem of recognition of the legal validity of documents confirming the voluntary registration of copyright issued in a foreign country is disclosed. It is noted the unlikely possibility of resolving the conflict issue in relation to intellectual property in accordance with the Civil Code of the Republic of Belarus in the context of the activities of customs authorities. It is defined that with the development of international civil circulation of intellectual property, the increase in the volume of goods transferred through state goods embodying intellectual property, the proper awareness of the territoriality of intellectual property and the specifics of its conflict of laws will be enjoyed by not only the courts, but also other state bodies, to which rights holders can apply for the protection of their rights. It is concluded the need for substantive unification of intellectual property in general, as well as customs measures for the protection of intellectual property, in particular. To ensure one of the principles of the EEU functioning – fair competition and compliance with the rules enshrined in the general principles and rules of competition, the reference method in the development of conflict of laws regulation in the sources of the EEU and the EEU member states should allow for the existence of intellectual property relations prevailing abroad. In addition, in the article it is discussed conflict issues in the aspect of customs measures for the protection of intellectual property rights on the territory of the EEU in the context of reference to the main sources of the law of the EEU, the law enforcement practice of the EEU member states, legal doctrine. The article material can be used by undergraduates and law students in preparing reports, writing articles, term papers and dissertations.

**Keywords:** intellectual property, customs protection measures, unification, conflict of laws.

**Bibliography – 17 titles.**

"Vesnik Hrodzenskaha Dziarzhaunaha Universiteta Imia Ianki Kupaly.
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UDC 347.262

# Industrial public easement as the real obligation (on the example of model legislation for the states – participants of the CIS)

[*Industrial'nyi publichnyi servitut kak veshchnoe obremenenie (na primere model'nogo zakonodatel'stva dlia gosudarstv – uchastnikov SNG)*]

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**Abstract.** The subject of the research is the notion and the features of an industrial public easement in the model legislation for the states – participants of the CIS. The purpose of the work is to identify current trends in the legal regulation of industrial public easement on the example of model legislation for the states – participants of the CIS. In the course of the study, it is concluded that the industrial public easement is a personal easement of a special kind (*sui generis*). Its features are manifested in the fact that: 1) a legal entity serves only as one in favor of which easement is established and the time of the easement's existence cannot be determined by the holder's lifetime; 2) easement's owner in the process of implementing the powers granted to him acts in favor of the beneficiary, whose interests are a prerequisite of both the establishment and existence of such easement; 3) the need to ensure the interests of the beneficiaries of an industrial public easement gives rise to the possibility of transferring the rights arising from it from the initial easement's owner to other subjects; 4) it is supposed to preserve the possibility of both using the property levied by an industrial easement for the purpose of its owner, and changing the purpose of this object by easement's owner. The legal consolidation of industrial public easements serves as a manifestation of the tendency of restriction in modern conditions of two fundamental principles of civil law – the principle of inviolability of property and the principle of freedom of contract. The restriction of the principle of the inviolability of property is manifested in the empowerment of the easement's owner with extensive powers in relation to the property of others. The restriction of the principle of freedom of contract is expressed in the absence of the owner of the property to elect a counterparty to conclude an agreement on the establishment of easement, freely form the will to conclude it, and the impossibility

of fully determining the terms of the contract.

**Keywords:** model law, Commonwealth of Independent States, ownership, property, real right, real obligation, easement, industrial public easement.

**Bibliography – 26 titles.**

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UDC 341.9.019

**Doctrinal disclosure of the content of the criterion of the closest connection**

[*Doktrinal'noe raskrytie soderzhaniia kriteriia naibolee tesnoi sviazi*]

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**Abstract.** The subject of the research is certain aspects of flexible regulation in international private law. The purpose of the study is to determine the main factors that fulfill the criteria of close connection in the science of international private law. In the introduction, it is noted the relevance of the study, a detailed analysis of the main views of leading scientists on the subject of the study. On the basis of the grammatical method, the etymological content of the word "criterion" is established. It is identified and analyzed the authors' differences in the proposed approaches to establishing the content of the studied category. It is noted the approaches of two different legal systems – the continental and the common law system based on doctrinal and empirical material. In the main part of the scientific work, the current points of view on the criterion of the closest connection and its structural elements based on judicial precedents of the general law system are indicated. The most acceptable content of the criterion of the closest connection in the science of private international law is indicated. The presence in the criterion of the closest connection of the social regulatory functions of law is established and the need for its immanent presence in this category is noted. The list of the main elements of the legal relationship filling the content of the criterion of close relationship is defined. In the conclusion, on the basis of the analysis carried out, it is identified three main approaches to the content of the criterion of the closest connection; it is proposed to single out the territorial, objective and subjective criteria. The territorial factors of the criterion of the closest connection contain elements related to the territory of the legal relationship. Objective factors determine the rights and obligations of the parties to the relationship. Subjective factors reflect the analysis of the application of one or another legal norm, taking into account imperative norms of law. The obtained results can be applied in doctrinal studies of flexible regulation.

**Keywords:** flexible regulation, criterion of closest connection, principle of closest connection, legal relationship, elements, factors of the closest relationship.

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UDC 349.3

**Problems and peculiarities of rendering palliative legal assistance on the example of activity of the legal clinic of Yanka Kupala State University of Grodno**

[*Problemy i osobennosti okazaniia palliativnoi iuridicheskoi pomoshchi na primere deiatel'nosti iuridicheskoi kliniki Grodnenskogo gosudarstvennogo universiteta imeni Ianki Kupaly*]

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**Abstract.** In the introduction, it is analyzed issues related to the modern understanding of palliative care as an integrated system of measures aimed at relieving pain and maintaining the quality of life of patients with incurable, life-threatening and serious diseases. In the main part of the article, palliative care is seen as an activity based on the principles of human rights inherent in everyone; legal acts of an international and national nature in the field under investigation are analyzed. Palliative care is not only care for a patient of a medical nature, but also care for a family that optimizes the quality of life by preventing and treating suffering. It is noted that people suffering from life-threatening diseases are deeply vulnerable, worry about the fate of their loved ones. At the same time, emerging legal issues increase the stress in patients of the hospice and their relatives, complicate the provision of palliative care. It is believed that increased awareness of the benefits of legal services in the field of palliative care will stimulate the demand for free, or affordable direct legal services to resolve legal issues, for a more holistic approach to quality palliative care. In the article it is also said about the cooperation of the legal clinic of Grodno State University with the social-charitable institution "Life Support Center". This cooperation includes the preparation of students-clinicians to conduct interviews with clients; attendance by students of trainings organized by the Center; as well as the organization of student visits to patients and their relatives in health facilities with subsequent counseling. In the article, problems associated with the lack of a normative definition and consolidation of the concept of "palliative legal assistance", non-settlement of cases and procedures for providing palliative legal assistance, etc. are discussed. In the conclusion, these problems are summarized and solutions are offered.

**Keywords:** palliative care, palliative medical care, palliative legal assistance, human rights, legal clinic, competence, cooperation, legal issues, interviewing, counseling, social assistance.

**Bibliography – 9 titles.**

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UDC 349.3

**Legal science and practice: heritage, state and development prospects (following the results of the 20th International scientific and practical conference dedicated to the 40th anniversary of the establishment of the Faculty of Law)**

[*Iuridicheskaia nauka i praktika: nasledie, sostoianie i perspektivy razvitiia (po itogam XX Mezhdunarodnoi nauchno-prakticheskoi konferentsii, priurochennoi k 40-letiiu sozdaniia iuridicheskogo fakul'teta)*]

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**Abstract.** In the article, it is highlighted the results of the 20th International scientific and practical conference held on September 27–28, 2018 at the Faculty of Law of the educational institution "Yanka Kupala State University of Grodno". International scientific and practical conferences are held annually at the Faculty of Law, but the conference held this year was a jubilee one, since it was held in the year of the 40th anniversary of the Faculty of Law of the educational institution "Yanka Kupala State University of Grodno". At the conference it was discussed the most pressing problems of legal science and practice, the prospects for its development were analyzed. As a result of participation of reputable scientists and practitioners from the Republic of Belarus and foreign countries, a number of recommendations were developed aimed at the further development of jurisprudence and improvement of law enforcement practice.

**Keywords:** legal science, law enforcement practice, legal heritage, development prospects.

**Bibliography – 0 titles.**