# Actual problems of criminal law, criminal procedure and criminalistics

Materials of scientific conference

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## Actual problems of criminal law, Criminal procedure and criminalistics

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### CONTENT

Alimkulov Erbol Temirkhanovich Reforms of Criminal Justice in the Republic of Kazakhstan Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings Alimkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon 16 Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnosthost. Bayandina Mainura Okanovna. Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration Bisengali L., Bazilova A.A. On the jessue of the prevention of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of criminal-legal measures of counteraction of criminamental crimes investigation  Daubassova S.Sh. Tactics of production of criminal investigative actions during the environmental erimes investigation  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh. Significant significant element  Daubassov	Alimkulov Erbol Temirkhanovich Reforms of Criminal Justice in the Republic of 7 Kazakhstan  Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings  Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings  Alimkulov Erbol Temirkhanovich On some issues of improving the ethics and morality in lawyer activity  Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity  Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnosthost.  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality".  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental crimes investigation  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh. Tapalova R.B. The highest supervisi		
Alimkulov Erbol Temirkhanovich         Reforms of Criminal Justice in the Republic of 7           Kazakhstan         Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings         12           Alimkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon 16         16           Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity         21           Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel         24           Bayandina Mainura Okanovna Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.         29           Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".         32           Bisengali L., Dahansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"         42           Bisengali L., Bazilova A.A. On the extent of cross-border migration         42           Bisengali L., Bazilova A.A. On the justion of criminal-legal measures of counteraction of criminality of migrants         43           Baibassova S.Sh. Tatcites of production of certain investigative actions during the paubassova S.Sh. Tatcites of production of certain investigative actions during the environmental eximination expert in the Republic of Kazakhstan         50           Daubassova S.Sh. Tapalova R.B. Methods of cri	Alimkulov Erbol Temirkhanovich Reforms of Criminal Justice in the Republic of 7 Kazakhstan Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings Alimkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon 16 Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor's addefense counsel Bayandina Mainura Okanovna, Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnosthost. Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender". Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality" Bisengali L., Bazilova A.A. On the extent of cross-border migration Bisengali L., Bazilova A.A. On the suse of the prevention of criminality of migrants Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova	llimkulov Erbol Temirkhanovich About the question of mediation development	3
Alinkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings Alinkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon 16 Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna, Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnosthost. Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender". Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the sisengali L., Bazilova A.A. On the extent of cross-border migration Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants Of criminality of migrants Alisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants Daubassova S.Sh. Tractics of production of certain investigative actions during the environmental crimes investigation Daubassova S.Sh. Legal questions of judicial appointments and production of senvironmental examination expert in the Republic of Kazakhstan Daubassova S.Sh. Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh. Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh. Topolova R.B. Methods of crime as a forensic significant element Daubassova S.Sh. Problems of protection of preservation of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on prelimin	Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights and freedoms of person in criminal proceedings Alimkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon 16 Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna, Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnosthost. Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration 4.  Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants 4.  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants 4.  Daubassova S.Sh. Turashbekova D.A. Forgery as crossing technique 5.  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation 5.  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental crimes investigation 5.  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan 6.  Daubassova S.Sh. Tapalova R.B. Methods of crime as a forensic significant element 7.  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the direction 7.  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation 7.  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan 7.  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as sourc	Alimkulov Erbol Temirkhanovich Reforms of Criminal Justice in the Republic of	7
Alimkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon 16 Bayandina Mainura Okanovna Some issues of improving the ethics and morality 21 in lawyer activity Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost. Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender". Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality" Bisengali L., Bazilova A.A. On the extent of cross-border migration Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. of the lights supervision of preservation of the rights and direction Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the direction Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main	Alimkulov Erbol Temirkhanovich Concept and content of legality, as social phenomenon   16 Bayandina Mainura Okanovna   Some issues of improving the ethics and morality   21 in lawyer activity   Bayandina Mainura Okanovna   Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel   Bayandina Mainura Okanovna   Tabyldiev Kadirbek   Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.   Bayandina Mainura Okanovna, Tabyldiev Kadirbek   Problems relations concept of "attorney" and the concept of "Defender".   Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"   Bisengali L., Bazilova A.A. On the extent of cross-border migration   4	Alimkulov Erbol Temirkhanovich On some issues of realization of fundamental rights	12
Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna . Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnost. Inost. Bayandina Mainura Okanovna . Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality" Bisengali L., Bazilova A.A. On the extent of cross-border migration Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  50 Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation Daubassova S.Sh. Legal questions of judicial appointments and production of senvironmental examination expert in the Republic of Kazakhstan Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element Daubassova S.Sh., Tapalova R.B. of the prevention of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight linestigation Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight lamibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal proc	Bayandina Mainura Okanovna Some issues of improving the ethics and morality in lawyer activity  Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel  Bayandina Mainura Okanovna , Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the justion of criminal-legal measures of counteraction of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's	Alimbridge Exhal Temirkhanovich Concept and content of legality, as social phenomenon	16
Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna , Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Security of prosecutor's office the direction  Tapalova R.B., Aryn A. A. Subjects of assessment of proofs  Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight linestigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight lamibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge	Bayandina Mainura Okanovna Features of the impact strength of conviction during the speech of the public prosecutor and defense counsel Bayandina Mainura Okanovna, Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhanasrayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the jesue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K., Problems of protection of the rights and interests of the suspects accused of criminal trial  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office Thanibekov A. K., Aryn A. A. Concept of judicial examination as	Bayandina Mainura Okanovna Some issues of improving the ethics and morality	21
Bayandina Mainura Okanovna, Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh. Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Tagalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Tapalova R.B., Procedural form of application of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of b	Bayandina Mainura Okanovna Tabyldiev Kadirbek Actual problems of public prosecutor's supervision of authorities conducting operational search deyatelnostlnost.  Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of "attorney" and the concept of "Defender".  Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and if freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tilepbergenov O.N. The legal link between the rehabilitation of the national	Bayandina Mainura Okanovna Features of the impact strength of conviction during the	24
**Bayandina Mainura Okanovna, Tabyldiev Kadirbek** Problems relations concept of "attorney" and the concept of "Defender".  *Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  *Bisengali L., Bazilova A.A. On the extent of cross-border migration  *Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  *Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of prouduction of criminal production of production of production of criminal trie paulus sova S.Sh. Tavashbekov A.B. Methods of crime as a forensic significant element paulus sova S.Sh. Tapalova R.B. Methods of crime as a forensic significant element paulus sova S.Sh. Tapalova R.B. Methods of crime as a forensic significant element paulus sova S.Sh. Tapalova R.B. A. A. Subjects of assessment of proofs on preliminary the direction of the presentation of the rights and interests of fice the direction paulus sova A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the paulus sova A. K. Problems of protection of the rights and interests of the suspects of the Republic of Kazakhstan paulus sova A.B. Procedural form of application of a protection	**Bayandina Mainura Okanovna, Tabyldiev Kadirbek** Problems relations concept of "attorney" and the concept of "Defender".  *Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  *Bisengali L., Bazilova A.A.** On the extent of cross-border migration  *Bisengali L., Bazilova A.A.** On the issue of the prevention of criminality of migrants  *Bisengali L., Bazilova A.A.** On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A.** On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A.** On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A.** On the question of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A.** On the extent of cross-border migration of criminality of migrants  *Bisengali L., Bazilova A.A.** On the extent of criminal-legal measures of counteraction of criminality of migrants  *Bisengali L., Bazilova A.A.** On the extent of criminal production of criminal trial paubassova S.Sh. Tarabalova P.A.** Despety as crossing technique  *Bisengali L., Bazilova A.A.** On the extent of criminal procedures of the person and the citizen of judicial appointments and production of the rights and freedoms of the person and the citizen of assessment of proofs  *Bisengali L., Bazilova A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** A.A.** Subjects of assessment of proofs  *Bisengali L., Bazilova A.A.** A.A.** A.A.** Subjects	Rewarding Mainura Okanovna Tabyldiev Kadirbek Actual problems of public	29
Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of senvironmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Tahanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Tahanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Tahanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K., Problems of protection of the rights and interests of the suspects of the Republic of Kazakhstan  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight accused of criminal trial  Thanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in 27 accused of criminal trial  Thanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in 27 accused of criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "spe	Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the concept of "economic criminality"  Bisengali L., Bazilova A.A. On the extent of cross-border migration  4. Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Problems of protection of the rights and interests of the suspects of the Republic of Kazakhstan  Zhanibekov A. K., Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.D. Juridical policy, juridical society and lawful situation,	Bayandina Mainura Okanovna, Tabyldiev Kadirbek Problems relations concept of	32
Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Griminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B., Tryn A. A. Subjects of assessment of proofs  Tapalova R.B., Procedural form of application of specific knowledge in court procedures  Tapalova R.B., Tryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office ag	Bisengali L., Bazilova A.A. On the extent of cross-border migration  Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Griminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K., Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The legal link between the rehabilitation of the national	Bisengali L., Dzhansarayeva R.Ye., Bazilova A.A. problems of determination of the	35
Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Thanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Thanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K. Problems of protection of the rights and interests of the suspects  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight accused of criminal trial  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office  Thanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapa	Bisengali L., Bazilova A.A. On the issue of the prevention of criminality of migrants  Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K., Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The legal link between the rehabilitation of the national	concept of "economic criminality"	42
Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counterests of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  50  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Tapalova R.B., Aryn A. A. Subjects of assessment of prosecutor's office the direction  Tapalova R.B. Procedural form of assessment of proofs  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as	Bisengali L., Bazilova A.A. On the question of criminal-legal measures of countered of criminality of migrants  Daubassova S.Sh., Turashbekova D.A. Forgery as crossing technique  Daubassova S.Sh. Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K., Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office riminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The legal link between the rehabilitation of the national	Bisengali L., Bazilova A.A. On the extent of cross-border inigration	44
Daubassova S.Sh., Turashbekova D.A. Forgery as crossing techniqueDaubassova S.Sh. Tactics of production of certain investigative actions during the53environmental crimes investigation56Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan59Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element59Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction67Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs67Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation71Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan75Zhanibekov A. K., Problems of protection of the rights and interests of the suspects77accused of criminal trial2Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office82Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure91Tlepbergenov O.N. Juridical policy, juridical society and lawful situation.94Tlepbergenov O.N. The legal link between the rehabilitation of the national consciousness and crime prevention.96	Daubassova S.Sh., Tactics of production of certain investigative actions during the environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K., Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office Thanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge	Bisengali L., Bazilova A.A. On the question of criminal-legal measures of counteraction	47
Paubassova S.Sh. Tactics of production of certain investigative actions during survivonmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in the criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge Tapalova R.B., Turashbekova D.A. The concept "special knowledge Tapalova R.B., Turashbekova D.A. The concept "special knowledge Tapalova R.B., Turashbekova D.A. The concept "special knowledge Tapalova R.B., Turashbekova	Daubassova S.Sh. Tactics of production of certain investigative actions during an environmental crimes investigation  Daubassova S.Sh. Legal questions of judicial appointments and production of environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The legal link between the rehabilitation of the national	of criminality of migrants	50
Daubassova S.Sh. Legal questions of judicial appointments and evamination expert in the Republic of Kazakhstan  Daubassova S.Sh., Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tapalova R.B., Turashbekova D.A. The concept "special knowledge  Tlepbergenov O.N. Juridical policy, juridical society and lawful situation.  Tlepbergenov O.N. The legal link between the rehabilitation of the national one consciousness and crime prevention.	Daubassova S.Sh. Legal questions of Judicial appointments and provided environmental examination expert in the Republic of Kazakhstan  Daubassova S.Sh Tapalova R.B. Methods of crime as a forensic significant element  Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of the rights and freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office again	Daubassova S.Sh. Tactics of production of certain investigative actions daring and	53
<ul> <li>Daubassova S.Sh., Tapalova R.B. Methods of crime as a formed at a</li></ul>	<ul> <li>Daubassova S.Sh., Tapalova R.B. Methods of ethic day a visited and a strength of the rights and the citizen – recognized in activity of prosecutor's office the direction</li> <li>Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs</li> <li>Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation</li> <li>Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan</li> <li>Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial</li> <li>Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office</li> <li>Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in criminal procedure</li> <li>Tapalova R.B., Turashbekova D.A. The concept "special knowledge</li> <li>Tapalova R.B., Turashbekova D.A. The legal link between the rehabilitation of the national</li> </ul>	Daubassova S.Sh. Legal questions of judicial appointments and production of Kazakhstan	56
<ul> <li>Zhanibekov A. K., Aryn A. A. The highest supervision of procedure's office the freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction</li> <li>Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs</li> <li>Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation</li> <li>Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan</li> <li>Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial</li> <li>Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of p</li></ul>	Zhanibekov A. K., Aryn A. A. The highest supervision of prosecutor's office the freedoms of the person and the citizen – recognized in activity of prosecutor's office the direction  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs  Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office accused to the proof of the accuse of the proof of th	environmental examination expert in the reputitive as a forensic significant element	
<ul> <li>Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation</li> <li>Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan</li> <li>Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial</li> <li>Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the suspects.</li> </ul>	Zhanibekov A. K., Aryn A. A. Subjects of assessment of proofs on preliminary the investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main	Zhanibekov A. K., Aryn A. A. The highest supervision of preservation of preser	64
Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Thanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the suspects.	Thanibekov A. K., Aryn A. A. Subjects of assessment of investigation  Tapalova R.B. Procedural form of application of specific knowledge in court procedures of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the suspect of activity of bodies of prosecutor's office against crime as one of the suspect accused of the su		
77  Thanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Thanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime and procedure against crime as source of proofs in 87  Thanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in 87  Trapalova R.B., Turashbekova D.A. The concept "special knowledge 91  Tlepbergenov O.N. Juridical policy, juridical society and lawful situation. 94  Tlepbergenov O.N. The legal link between the rehabilitation of the national 98  Trapalova R.B., Prevention of a crime and the quality of legal consciousness. 10	of the Republic of Kazakhstan  Zhanibekov A. K. Problems of protection of the rights and interests of the suspects accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main obj	Zhanibekov A. K., Aryn A. A. Subjects of assessment	71
Zhanibekov A. K. Problems of protection of the accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as source of proofs in 87  Zhanibekov A. K., Aryn A. A. Concept of judicial examination as source of proofs in 87  criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge 91  Tlepbergenov O.N. Juridical policy, juridical society and lawful situation. 94  Tlepbergenov O.N. The legal link between the rehabilitation of the national 98  consciousness and crime prevention.	Zhanibekov A. K. Problems of protection of the accused of criminal trial  Zhanibekov A. K., Aryn A. A. Ensuring coordination of legality, law and order and fight against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime a	Tapalova R.B. Procedural form of application of specific knowledge in court procedures	75
Zhanibekov A. K., Aryn A. A. Ensuring coordinated against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as source of proofs in 87 criminal procedure  Tapalova R.B., Turashbekova D.A. The concept "special knowledge 91 Tlepbergenov O.N. Juridical policy, juridical society and lawful situation. 94 Tlepbergenov O.N. The legal link between the rehabilitation of the national 98 consciousness and crime prevention.	Zhanibekov A. K., Aryn A. A. Ensuring coordination of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime as one of the main objectives of activity of bodies of prosecutor's office against crime against crime as one of the main objectives of activity of bodies of prosecutor's office against crime against cr	Zhanibekov A. K. Problems of protection of the	77
The procedure 91  The procedure 92  The procedure 94  The procedure 95  The procedur	The brown of N. The legal link between the rehabilitation of the national	Zhanibekov A. K., Aryn A. A. Ensuring coordination of regarding prosecutor's office	t 82
Tapalova R.B., Turashbekova D.A. The concept special intervences of the national policy, juridical society and lawful situation.  Tlepbergenov O.N. The legal link between the rehabilitation of the national 98 consciousness and crime prevention.	Tapalova R.B., Turashbekova D.A. The concept special rate transfer and lawful situation.  Tlepbergenov O.N. Juridical policy, juridical society and lawful situation.  The began in O.N. The legal link between the rehabilitation of the national	Zhanibekov A. K., Aryn A. A. Concept of Judicial Chamber	n 87
Tlepbergenov O.N. Juridical policy, juridical society and lawren steadon.  Tlepbergenov O.N. The legal link between the rehabilitation of the national 98 consciousness and crime prevention.	The beggen O.N. The legal link between the rehabilitation of the national		91
The legal link between the renabilitation of the flational 98 consciousness and crime prevention.	The legal link between the rendomination of the national		94
O A Drevention of a cliffic did the quality of legal consciousness.		Tlepbergenov O.N. The legal link between the renaormation of the national	al 98
Tlepbergenov O.N. Prevention of legal policy on the situation of crime.	Drevention of a criffic and the quarty of regal consciousness.	O A Drevention of a cliffic and the quality of legal consciousness.	10
	Tlepbergenov O.N. Influence of legal policy on the situation of crime.	Tlepbergenov O.N. Flevendon of a struction of crime.	10

К. Аратулы Crimes in the Sphere of Computer Information in the Republic of Kazakhstan and Foreign Countries	
Kazakhstan and Foreign Countries	109
G.M. Atachanova the subject of fraud and its subjective	
G.M. Atachanova, Sovetkhan SH Some moments in a criminal low in 4:4:	112
	116
G.M. Atachanova, SH Sovetkhan Notion of the fraud in a modern criminal law	
G.M. Atachanova, U.Nurgazieva Committing theft of property by fraud for several times	121
G.M. Atachanova, S. Darkhan The object of the fraud and its aspects of objective signs  Bazilova A. A. Bisangali I theoretical	126
Bazilova A.A., Bisengali L theoretical aspects of the development of self-defense institute	129
Bazilova A.A., Bisengali L the criminal policy of the state in the theory of criminal law	133
Bazilova A.A., Bisengali L Exceeding the limits of necessary defense by the legislation of the Republic of Kazakhstan	140
	147
Satybaldinov D.D. Forensic technique of crime related to murder	151
Salybalathov D.D. Forensic Photography	151
Satybaldinov D.D. Modern opportunities in identifying a person	154
Satybaldinov D.D. Forensic technique in ballistics	157
Shopabayev B. A.criminal and legal and criminological measures to combat crime of migrants	160
and the same of th	163
Shopabayev B. A. Expert mistakes, arising at the research of proofs	168
Sharipova Assel Bostanova Controversy in the examination of the evidence in the	173
proceedings	1,5
Sharipova Assel Bostanova The role of the court in adversarial criminal proceedings	175
Mukhamadyeva G. N., Zhaksylyk Myrzakhan Guidelines for Investigation criminal	178
offenses for the legalization (laundering) money and (or) other property, obtained by	
criminal means in the Republic of Kazakhstan	
Mukhamadyeva G. N., Umbetalin H Principles of criminal procedure and their	181
importance	
	185
appeals process	
Bysenova M.K High Treason in Republic of Kazakhstan	188
Bysenova M.K Unlimited moratorium on the execution of the verdict on the death penalty in Kazakhstan	190
D 11/4/C1-1:-4:	102
Bysenova M.K. The international system of copyright protection in the Republic of	193
Kazakhstan.	197
The manager of F. The managers applied to safety of persons in ariminal massed	201
Van A.C. The investigative judge in criminal procedure of kazakhatan	204
V 10 minimum adoutation as type a of counterpation to animum:	207
Paragrama Lyaring Shaltanna Tahuldin Kadirbak Questions the	
investigating judge to ensure the rights and freedoms of persons in the pre-trial stage.	211
Raysygurova I vaziza Shaltaevna Tahyldiev Kadirhek The legal status of the	214
prosecutor at the stage of pre-trial proceedings.	214
Bersugurova Liyazyza Shaltayevna, Dyussembayeva A.S. The constitutional right to	217
judicial protection as a principle of criminal process of the Republic of Kazakhstan	-11
Bersugurova Liyazyza Shaltayevna, Dyussembayeva A.S. The boundaries of the research	221
evidence in criminal cases	
R.U.Akhmetov, A.M. Yergali Organizational support the criminal policy of information	225
technologies in Kazakhstan	
Baysalov A.D. Importance of international partnership in prevention of international	228
crime	

К. Аратулы Crimes in the Sphere of Computer Information in the Republic of Kazakhstan and Foreign Countries	
Kazakhstan and Foreign Countries	109
G.M. Atachanova the subject of fraud and its subjective	
G.M. Atachanova, Sovetkhan SH Some moments in a criminal low in 4:4:	112
	116
G.M. Atachanova, SH Sovetkhan Notion of the fraud in a modern criminal law	
G.M. Atachanova, U.Nurgazieva Committing theft of property by fraud for several times	121
G.M. Atachanova, S. Darkhan The object of the fraud and its aspects of objective signs  Bazilova A. A. Bisangali I theoretical	126
Bazilova A.A., Bisengali L theoretical aspects of the development of self-defense institute	129
Bazilova A.A., Bisengali L the criminal policy of the state in the theory of criminal law	133
Bazilova A.A., Bisengali L Exceeding the limits of necessary defense by the legislation of the Republic of Kazakhstan	140
	147
Satybaldinov D.D. Forensic technique of crime related to murder	151
Salybulullov D.D. Forensic Photography	151
Satybaldinov D.D. Modern opportunities in identifying a person	154
Satybaldinov D.D. Forensic technique in ballistics	157
Shopabayev B. A.criminal and legal and criminological measures to combat crime of migrants	160
and the same of th	163
Shopabayev B. A. Expert mistakes, arising at the research of proofs	168
Sharipova Assel Bostanova Controversy in the examination of the evidence in the	173
proceedings	1,5
Sharipova Assel Bostanova The role of the court in adversarial criminal proceedings	175
Mukhamadyeva G. N., Zhaksylyk Myrzakhan Guidelines for Investigation criminal	178
offenses for the legalization (laundering) money and (or) other property, obtained by	
criminal means in the Republic of Kazakhstan	
Mukhamadyeva G. N., Umbetalin H Principles of criminal procedure and their	181
importance	
	185
appeals process	
Bysenova M.K High Treason in Republic of Kazakhstan	188
Bysenova M.K Unlimited moratorium on the execution of the verdict on the death penalty in Kazakhstan	190
D 11/4/C1-1:-4:	102
Bysenova M.K. The international system of copyright protection in the Republic of	193
Kazakhstan.	197
The manager of F. The managers applied to safety of persons in ariminal massed	201
Van A.C. The investigative judge in criminal procedure of kazakhatan	204
V 10 minimum adoutation as type a of counterpation to animum:	207
Paragrama Lyaring Shaltanna Tahuldin Kadirbak Questions the	
investigating judge to ensure the rights and freedoms of persons in the pre-trial stage.	211
Raysygurova I vaziza Shaltaevna Tahyldiev Kadirhek The legal status of the	214
prosecutor at the stage of pre-trial proceedings.	214
Bersugurova Liyazyza Shaltayevna, Dyussembayeva A.S. The constitutional right to	217
judicial protection as a principle of criminal process of the Republic of Kazakhstan	-11
Bersugurova Liyazyza Shaltayevna, Dyussembayeva A.S. The boundaries of the research	221
evidence in criminal cases	
R.U.Akhmetov, A.M. Yergali Organizational support the criminal policy of information	225
technologies in Kazakhstan	
Baysalov A.D. Importance of international partnership in prevention of international	228
crime	

К. Аратұлы Crimes in the Sphere of Computer Information in the Republic of Kazakhstan and Foreign Countries	109
G.M. Atachanova the subject of fraud and its subjective	112
G.M. Atachanova, Sovetkhan SH Some moments in a criminal law in distinguishing the fraud from similar crimes	116
G.M. Atachanova, SH Sovetkhan Notion of the fraud in a modern criminal law	121
G.M. Atachanova, U.Nurgazieva Committing theft of property by fraud for several times	126
G.M. Atachanova, S.Darkhan The object of the fraud and its aspects of objective signs	129
Bazilova A.A., Bisengali L theoretical aspects of the development of self-defense institute	133
Bazilova A.A., Bisengali L the criminal policy of the state in the theory of criminal law	140
Bazilova A.A., Bisengali L Exceeding the limits of necessary defense by the legislation of the Republic of Kazakhstan	147
Satybaldinov D.D. Forensic technique of crime related to murder	151
Satybaldinov D.D. Forensic Photography	154
Satybaldinov D.D. Modern opportunities in identifying a person	157
Satybaldinov D.D. Forensic technique in ballistics	160
Shopabayev B. A.criminal and legal and criminological measures to combat crime of migrants	163
Shopabayev B. A. Expert mistakes, arising at the research of proofs	168
Sharipova Assel Bostanova Controversy in the examination of the evidence in the proceedings	173
Sharipova Assel Bostanova The role of the court in adversarial criminal proceedings	175
criminal means in the Republic of Kazakhstan  Mukhamadyeva G. N., Umbetalin H Principles of criminal procedure and their importance  Mukhamadyeva G. N., Zakirova M. Essence and significance of jurisdiction in crimina	181
	1
appeals process  Bysenova M.K High Treason in Republic of Kazakhstan	188
Bysenova M.K. Unlimited moratorium on the execution of the verdict on the death penalty	190
in Kazakhstan	193
Bysenova M.K. Corpus delicti.  Bysenova M.K. The international system of copyright protection in the Republic of	197
Tlegenov A. E. The measures applied to safety of persons in criminal procedure	201
Van A.G. The investigative judge in criminal procedure of kazakristan	204
to the increase adaptation as type a of counteraction to crimes investigation	207
Bersugurova Lyaziza Shaltaevna, Tabyldiev Kadırbek Questions the powers of the	211
Bersugurova Lyaziza Shaltaevna, Tabylalev Kaairbek The legal saltas of the proceedings	214
Bersugurova Liyazyza Shaltayevna, Dyussembayeva A.S. The constitutional right to	217
Bersugurova Liyazyza Shaltayevna, Dyussembayeva A.S. The boundaries of the research	221
R.U.Akhmetov, A.M. Yergali Organizational support the criminal policy of information	225
technologica in Augustian at the strength in provention of international	228
Baysalov A.D. Importance of international partnership in prevention of international crime	

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# Principles of criminal procedure and their importance

Abstract. The article examines the legal nature of the principle of judicial proceedings on the basis of equality of the parties as a basic guideline and start the criminal process the Republic of Kazakhstan. Actualized need for further improvement of legislation defining the legal regime of judicial proceedings on the basis of equality of the parties in criminal proceedings. Consider the need to expand the provision of arms began to advocate the right to express their objections to the indictment, in the form of defensive conclusion.

**Keywords:** the principle of judicial proceedings on the basis of equality of the parties, the criminal proceedings for prosecution, protection function, the administration of justice.

Intellectually caved in to the depth and grandeur of the Roman legal thought, Europe of the Middle Ages, and later the rest of the world have recognized the genius of the Roman jurists Guy, Ulpian, Paul, Modest, Papaniana and others apprehended all major legal formulas, categories and principles of law, developing and adapting them to the needs of his being. One of these centuries verified formulas and legal categories Latins is the concept of «principium». It is the foundation, the beginning of something [1, c.17].

Modern encyclopedic dictionaries emphasize the semantic diversity of the concept of "principle." Firstly, it refers to a basic, initial position of any theory of science, as well as the teachings and philosophy. Secondly, a person inner conviction, determining its relation to reality, norms of behavior and activity. Third, the main features of the device of any mechanism, device [2, c.621].

Indeed, in the hierarchy of legal, criminal and procedural categories, the category of "principle", along with the category of "problem" is the main reference position. This category, reflecting the legal ideology of a particular society and criminal procedure policy of the state, the algorithm

sets the lawmaking and law enforcement process, known and largely determines the hierarchy of different legal categories, mediates their interaction, interdependence, interdependence, consistency. Reflected in the principles of criminal procedure, legal ideology and criminal procedure policy, as this recognition and assimilation of the subjects of the criminal procedure law and criminal procedure (inquirers, investigators, prosecutors, judges, lawyers, etc.), it becomes a part of their inner beliefs. It determines mainly their attitude to the criminal reality, directs their behavior and determines the moral foundations of criminal procedure.

In the science of criminal procedure there are numerous definitions, revealing the authors' opinion, the essence of the principles of the criminal process.

The term "principle" means generalized expression of a phenomenon.

Principles of criminal proceedings - it is basic, reflecting its essence the beginning (patterns) of the criminal procedure law and the activities on the application of its provisions [3, c.32].

The principles of the criminal process are called the basic legal provision or rule of law of general and guiding values, which express the nature and essence of the process is determined to build all its stages, forms and activities to achieve the objectives and targets set by the state before the criminal proceedings [4, c.26].

Those or other provisions can be attributed to the category of the criminal process principles, provided that they meet the following requirements:

1) they (rules) define in law enforcement chief,

starting points from which, in turn, followed by private law;

- in all aspects of what is permitted or mandatory behavior and all the elements of a legal norm (hypothesis, disposition, sanction the principles themselves should not be formed);
- 3) The essence of the fundamental provisions is the stability, constancy (canceled the rule of law, there is a change in the law, and the principles are preserved);
- 4) should have a powerful, imperative nature, their implementation is provided by the state;
- 5) in the criminal procedure system should occupy a dominant position;
- 6) common to the principles is that our regular destination they have the appropriate state bodies. State authorities are responsible for the strict observance of the principles and shall bear all the consequences associated with their disorder.

The principles are the primary rules of law covering other standards that specify the content of the principles and who are subject to them. As a more general rules, principles determine all matters arising in the course of practice. If detected gaps or contradictions between the specific rules of law, the key to resolving the difficulties encountered are the principles. The principles include generally binding regulations, the implementation of which is ensured by the state. The principles should be enshrined in law. While the idea is not fixed in the law, they are principles of justice, scientific findings, but not the principles of criminal proceedings [4, c.27].

Normative principles - is an important sign of binding.

The principles provide a single remedial order in all criminal cases and serve as a conductor of legality in criminal proceedings.

Certain provisions, the principles of criminal justice enshrined in the Constitution of the Republic of Kazakhstan. These are the principles that are of particular importance in the overall policy which pronounced the very essence and reflects the views of the legislator in the criminal proceedings as part of the state. The remaining principles which are primarily functional in nature and disclose the contents of the criminal proceedings as a special kind of activity to prevent and solve crimes, get their consolidation in the CPC. These principles do not compete with the first, and follow from the general provisions of the Constitution, are with them in the organic connection and complement them. Together with them, they form an integrated system, where the nature and significance of this or that principle does not only own the content, but also the functioning of the entire system. where the violation of any other principle is not necessary in isolation from other as reflected in their principles, implementation as a whole, where each principle defines a side of the criminal process, without which it is impossible to correctly carry out the tasks.

All the principles of criminal proceedings are the normative expression, ie, enshrined in law. That is what provides their direct regulatory effect on the criminal-procedural relations. Whatever may be the valuable scientific idea, this or that legal thought, it will not be the principle of the criminal proceedings, until it receives a normative form.

Each of the principles of criminal justice is the traditional structure of criminal procedure, including the hypothesis, dispositions and sanctions. Having such a common feature as laid down by law, the principles of criminal justice vary forms such consolidation.

All the principles of criminal proceedings due to these or other provisions of the Constitution. Most of the principles enshrined directly in the individual articles of the Constitution in the form of specific legal rules, and the mechanism of their implementation in relation to the criminal proceedings is given in the Code of Criminal Procedure. However, some of the principles

have no direct constitutional and legal consolidation in the form of separate standards, and are derived from the contents of the other provisions of the Constitution.

Principles of criminal proceedings are the rules governing values, ie, are directly applicable and are binding on all the parties to the criminal proceedings, together with specific rules. Binding principles of criminal process guarantees enshrined in their Constitution of the Republic of Kazakhstan, which has the highest legal force in the territory of the Republic of Kazakhstan. In case of ambiguity with regard to the content of a rule of criminal procedure law, it must be interpreted in the context of enforcer of meaning attached to it complies with the principle of criminal proceedings. All the principles of criminal proceedings form an integrated system, where the content and meaning of each principle is due to the operation of their entire system. Violation of the principle of criminal procedure usually entails a violation of a number of other principles.

All the principles form a system. Although each principle has its own content, they operate in conjunction with each other. Each of the principles is a guarantee of the other. For example, the principle of presumption of innocence, guarantees compliance with the principle of the accused, the suspect's right to protection. The question of the principles of the system is still disskusionnym. Thus, some authors share the principles at the place of fixing them on the constitutional and other. Others shared their sphere of influence (sudoproizvodstvennye) sudoustroystvennye. Still others divide them into obscheprotsessualnye that are the basis for the whole system of criminal procedure, and the specific characteristic of its the pre-trial and

The value of the principles of criminal procedure consists in the fact that their violation, depending on its nature and materiality, entails recognition held the proceedings null and void, cancellation made during such production decisions or

recognition assembled with materials not having a proof strength [5, c. thirty].

A broad interpretation of the principle is as follows:

- in the system of criminal procedure are central, leading role;
- 2) are primary source, the governing regulations closely and harmoniously connected with each other:
- are of a regulatory, unconditional, binding;
- define the basic, main directions and prospects of development of criminal procedure;

5) contribute to the proper interpretation of the rules of procedure [6, c.62].

By virtue of a general, guiding nature of the principles of criminal proceedings, their influence on all stages of the criminal process, the presence in all the procedural acts or decisions of their neglect, forgetfulness authorities in criminal proceedings, of course, - the ground for unfair criminal proceedings in the case and the evidence failure to reach the goals and objectives of the criminal process. In this regard, strict adherence to the principles of criminal proceedings - the main condition for the legality of the entire proceedings, its decisions and collected dokazatelstv.UPK establishes a system of rules governing the general conditions of the preliminary investigation and the main trial, which prescribe the authorities conducting the criminal proceedings, to follow certain rules in order to avoid violations of the principles of the criminal process. This guidance, which is carried out in the framework of criminal procedural activities of bodies responsible for criminal proceedings, during the entire proceedings. How big is the importance of the principles of criminal procedure in a particular criminal case and the consequences of noncompliance with authorities in criminal proceedings, shows a wide range of decisions made by the court of appeal and supervising instances when detecting grounds for quashing or changing judgments, rulings of the lower courts. In addition, the evidence obtained in violation of the principles of due process recognized null and void and can not be the basis for the charges, and also used in proving any of the circumstances [4, c.31].

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