

**Actual problems of criminal law,
criminal procedure and criminalistics**

Materials of scientific conference

«East West» Association for Advanced Studies and Higher Education GmbH

**Vienna
2016**

**Actual problems of criminal law,
criminal procedure and criminalistics**
Materials of scientific conference

ISBN 978-3-903115-04-0

Editor-in-chief
Consulting editors

International editorial board

Proofreading
Cover design
Additional design
Editorial office

Email:
Homepage:

Samuel Cuenca, Spain
Kamila Orzechowska, Poland
Anton Mackevitch, Russia
Oana Olteanu, Romania
Nora Szekeresne, Hungary
Rima Dzhansarayeva, Kazakhstan
Květoslava Vitkova, Czech Republic
Matthias Kuster, Austria
Valery Gurchin, Ukraine
Herve Thomas, France
Tatiana Yashkova, Russia
Lidija Jovanović, Croatia
Kristin Theissen
Andreas Vogel
Stephan Friedman
European Science Review
"East West" Association for Advanced
Studies and Higher Education GmbH,
Am Gestade 1
1010 Vienna, Austria
info@ew-a.org
www.ew-a.org

This collection contains materials of scientific conference "Actual problems of criminal law, criminal procedure and criminalistics". The works are aimed at addressing problems such as the modern criminal policy, combating transnational organized crime and corruption, the development of criminal procedure legislation, to ensure the effective investigation of crimes.

Instructions for authors

Full instructions for manuscript preparation and submission can be found through the "East West" Association GmbH homepage at: <http://www.ew-a.org>.

Material disclaimer

The opinions expressed in the conference proceedings do not necessarily reflect those of the «East West» Association for Advanced Studies and Higher Education GmbH, the editor, the editorial board, or the organization to which the authors are affiliated.

© «East West» Association for Advanced Studies and Higher Education GmbH

All rights reserved; no part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Publisher.

Typeset in Berling by Ziegler Buchdruckerei, Linz, Austria.

Printed by «East West» Association for Advanced Studies and Higher Education GmbH, Vienna, Austria on acid-free paper.

<i>Paizova A., Duzbayeva S.B.</i>	
Need of institute of mediation in criminal proceedings of Republic of Kazakhstan.....	135
✓ <i>Senkibayev B., Mukhamadiyeva G.N.</i>	
Features of the preliminary investigation of the juvenile.....	138
<i>Suleimenova A.</i>	
The role of the investigating judge in the new Code of Criminal Procedure of the Republic of Kazakhstan.....	141
<i>Suleimenova A.</i>	
Issues of admissibility of evidence in light of the new criminal procedure legislation of the Republic of Kazakhstan.....	143
<i>Sukhanova A., Duzbayeva S.B.</i>	
Prosecutor's supervision over execution of the legislation on juveniles in the Republic of Kazakhstan.....	146
<i>Tanatar A., Mukhamadiyeva G.N.</i>	
The necessity of introducing in the criminal proceedings of the Institute of the investigating judge.....	149
<i>Tasova M., Mukhamadiyeva G.N.</i>	
Equality of the parties as a principle of criminal proceedings.....	152
<i>Tasova M., Mukhamadiyeva G.N.</i>	
Legal regulation of publicity in criminal proceedings.....	156
<i>Tasova M., Mukhamadiyeva G.N.</i>	
The legal nature of the principle of openness in criminal proceedings.....	159
<i>Tolegenova A., Zhanibekov A.K.</i>	
The concept and essence of prosecutorial supervision.....	162
<i>Toleuova A., Alimkulov E.T.</i>	
The investigative judge - as the factor of the system controls and counterbalances.....	163
<i>Tynysbek A., Duzbayeva S.B.</i>	
Legal basics of mediation development in Kazakhstan.....	168
<i>Sharipova A.B.</i>	
The activity of the court and adversarial of parties in criminal proceedings.....	170
<i>Aldabergen A., Duzbayeva S.B.</i>	
Mediation - the art of resolving conflicts.....	173
Section 3. Actual problems of criminalistics	175
<i>Adanbekova Z., Daubassova S.Sh.</i>	
Some aspects of the forensic classification of environmental crimes.....	175
<i>Aizharykova A., Satybaldinov D.D.</i>	
Method of investigation of a crime related to drugs.....	177
<i>Aitghanova B., Daubassova S.Sh.</i>	
Problems of pre-investigation and interrogation in legal enquiry arrangement.....	180
<i>Amanov R., Shopabayev B.A.</i>	
Problems of the theory of judicial examination: methodological aspects.....	183
<i>Appazov E., Shopabayev B.A.</i>	
Features of survey of material evidences research of traces of breaking.....	184
<i>Daligul S., Shopabayev B.A.</i>	
Judicial ballistics and judicial and ballistic examination.....	185
<i>Daubassova S.Sh., Abdizhappar I.</i>	
Forensic recommendations of interrogation.....	188
<i>Daubassova S., Ibraimov M.A.</i>	
About categories of forensic tactics.....	192
<i>Yeleuov M., Daubassova S.Sh.</i>	
Judicial examination in the Republic of Kazakhstan.....	196

whether attorney has the right to be present at the mediation procedure? The Main Provisions of role of lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime in 1990, emphasizes that everyone has the right to seek the assistance of a lawyer at all stages of criminal proceedings. In the UN document on the basic principles of mediation have indication that the parties should have the right to legal advice before and after the recovery process. However, a lawyer in the course of mediation can only act as an observer. Returning to the subject of training of mediators, I note the following. The mediator does not have to be a lawyer, because he should not always know all legal details of what happened. Its mission is to achieve reconciliation with the least negative consequences. And this is the main point.

Consequently, there is no need to familiarize with all case materials. It is sufficient that the fact that act takes place and suspect (accused) does not deny his involvement in the crime. These information may be enough to get a competent person in charge of criminal case, to make him decide about need and feasibility of clarifying parties the right to participate in the mediation

elements of restorative justice (mediation) is due, on the one hand, with humanization of criminal policy, on the other - the need to optimize process procedures. Prospects for development of mediation are seen through prism of development of restorative justice as much of its direction.

As the issue of introduction of elements of restorative justice is complex, from quality of its decision will depend destiny of meditation. We consider that it is necessary to conduct a large-scale educational work with population. At the same time it should be noted that, despite well-established system of justice, Kazakhstan has in its historical past prototype of restorative justice - biy court system. Mentally, we are ready for application of restorative justice, because, if somewhat distorted, but retained experience of solving disputes through peaceful negotiations.

The main problem hampering development of mediation remains the problem of breaking old stereotypes and introduction into public consciousness, that new institutions give new opportunities not only for lawyers, but are primarily aimed in improving the quality of life of citizens.

References:

1. O mediatsii. Zakon Respubliki Kazakhstan ot 28.01.2011g. // Kazakhstanskaya pravda ot 5.02.2011.
2. Poslanie Prezidenta strany N.A. Nazarbaeva «Sotsialnaya modernizatsiya Kazakhstana: Dvadsat shagov k Obshchestvu Vseobshchego Truda»//Kazakhstanskaya pravda. № 299-300 (27118-27119). 6.09.2012.
3. Maksudov R. Vosstanovitelnoe pravosudie: kontseptsiya, ponyatiya, tipy programm. URL: <http://www.sprc.ru/library>
4. Sm.: Sesar K. Karatelnoe otnoshenie obshchestva: realnost i mif // Izvestiya vuzov. Pravovedenie. - 1998. - № 4.
5. Kistyakovskiy B. Pravo kak sotsialnoe yavlenie.- M.: B.I. - 1911.

*Senkibayev B.
First-year Master's Student
Department of Criminal Law,
Criminal Procedure and Criminalistics
Faculty of Law
Al-Farabi Kazakh National University*

*Mukhamadiyeva G.N.
Candidate of legal sciences.*

Features of the preliminary investigation of the juvenile

Abstract. Currently, juvenile delinquency has become one of the most acute problems. The fight against it for a number of decades, is the main task of law enforcement agencies. Despite the measures taken for the prevention of juvenile delinquency, the state and dynamics of the crimes committed by them, give grounds to conclude that the ongoing negative processes in adolescents.

Keywords: underage, criminal process, detention, preliminary inquiry.

The preliminary proceedings in the case of a minor carried out in the Republic of Kazakhstan in the form of a preliminary investigation. This also applies to the case when a part of the defendants are adults, and also when it instituted the crime of minors after they reach 18 years of age.

The special rules applicable to the period of the preliminary investigation in respect of a minor, are: the selection of the criminal case into separate proceedings; particularly the detention and a preventive measure; the procedure for calling and questioning; participation in pre-trial proceedings in a criminal case the legal representative of the suspect, the accused, and mandatory participation; the possibility of termination of the criminal prosecution of a minor with compulsory educational measures [1, p.82].

The criminal case against a minor involved in the commission of a crime together with adults, stands out in a separate proceeding in the manner prescribed by the criminal procedure legislation, if it does not affect the thoroughness and objectivity of the preliminary investigation and resolution of a criminal case in court. In each case when deciding on measures of restraint should discuss the possibility of return of the minor under the supervision of parents, guardians or other trustworthy persons, as well as officials of specialized children's institutions, in which a teenager is what these persons provide a written undertaking. Baby should ensure the proper behavior of a teenager, which consists in the obligation: 1) not to leave permanent or temporary residence without the permission of

the inquiry officer, investigator, prosecutor or the court; 2) at the appointed time when summoned by inquiry officer, investigator, prosecutor and the court; 3) another way not to interfere with the criminal proceedings [2, p.143].

To a minor suspect or accused into custody as a preventive measure may be applied in the event that he is suspected or accused of committing a grave or especially grave crime. In exceptional cases, this preventive measure may be a minor suspected or accused of committing a crime of medium gravity.

About the arrest, detention or the extension of the detention of a minor his legal representatives shall be informed immediately. They have the right to participate in the hearing when deciding on the election in respect of the ward as a measure of preventive detention.

The suspect or the accused is not in custody, called the prosecutor, investigator or the court for investigation with him through his legal representatives, and if it is contained in a specialized institution for minors - through the administration of the institution.

Investigative actions involving a juvenile suspect, accused are held in accordance with the requirements of the criminal procedure. The interrogation of the suspect, the accused juvenile can not go on without a break for more than two hours, and in total - more than four hours a day. The defender, who is involved in this investigative action has the right to ask questions, and at the end of the interrogation the protocol and make comments

on the correctness and completeness of the records made in the protocol.

The interrogation of a person under the age of sixteen years or over that age, but suffering from a mental disorder or lagging in mental development, necessarily involved a teacher or psychologist who can, with permission of the prosecutor, investigator ask the adolescent issues, and after questioning the transcript and make written comments on the correctness and completeness of the records made in it. These rights prosecutor, investigator, inquiry officer explain to the teacher or psychologist before the interrogation, what is in the record.

A feature of juvenile justice is the participation of the legal representatives of the juvenile suspect, accused who are allowed to participate in a criminal case on the basis of the decision of the prosecutor, the investigator, the investigator from the first interrogation of a teenager [3, p.98]. When admission to participation in a criminal case he aware of his rights: to know what is suspected or accused of a minor; present at the arraignment; to participate in his interrogation, and with the permission of the investigator - in other investigative actions conducted with the participation of the adolescent and his or her counsel; acquainted with the records of investigative actions in which the legal representative participated, and make written comments on the correctness and completeness of the records made by them; petitions and objections, to lodge complaints against the actions (inaction) and decisions of the inquirer, investigator, prosecutor; to submit evidence; at the end of the preliminary investigation to examine all the case materials, write out any information and in any volume.

After the preliminary investigation, a juvenile accused can not present to review the criminal case, if they could have a negative impact on it, which imposed the prosecutor, investigator. In this case, a teenager representative necessarily acquainted with these materials.

Based on the requirements of international agreements, the termination of criminal proceedings against a juvenile

offender can be used at any stage of the proceedings. Criminal procedural law stipulates as one of these options termination of prosecution at the stage of preliminary investigation, the application of coercive measures of educational influence [4, p.206].

If in the course of the preliminary investigation of the criminal case on the crime of minor or medium gravity is determined that a juvenile accused has committed a crime for the first time and the correction can be achieved without the use of punishment, the prosecutor and the investigator and the investigator with the consent of the prosecutor has the right to decide to terminate the criminal prosecution and instituting before the court an application for the use of a minor accused of compulsory educational measures.

Juvenile delinquency, is an integral part of crime in general, but also has its own specific features that allows you to treat it as an independent object of study of criminal procedure. The need for such allocation is determined by the peculiarities of physical, mental and moral development of minors, as well as their social immaturity. During adolescence, young age at the time of the moral formation of the person is an accumulation of experiences, including negative, which can not be detected externally, or appear with a considerable lag.

Its characteristics are inherent in the quantitative and qualitative characteristics of juvenile delinquency. This crime is compared with an adult has a high degree of activity and dynamism. People who have taken the path of committing crimes at a young age, it is difficult to be corrected and re-education and constitute a reserve for adult crime. Between juvenile delinquency and adult criminality are closely linked. One of the causes of adult crime is juvenile delinquency. Adult Crime has its roots in the time when the identity of the person being formed, is produced by the orientation of his life, when are actual problems of education, becoming a person in terms of the direction of conduct [5, p.112].

Thus, the proceedings in the cases of minors must be carried out with all the features of offender.

References:

- 1 Bagautdinov F Juvenile justice begins with the preliminary investigation. - M., 2003.
- 2 BJ Gavrilov On the procedural independence of the investigator: history, real state, development prospects. - Moscow, 2003
- 3 NI Winds Prevention of violations among youth. - M., 1980. - 182 p.
- 4 Merkushev AA review of criminal cases involving minors. - Moscow, 2002.
- 5 Melnikova EB Juvenile justice. Issues of criminal law, criminal procedure and criminology. - M., 2001.

*Suleimenova A.
First-year Master's Student
Department of Criminal Law,
Criminal Procedure and Criminalistics
Faculty of Law
Al-Farabi Kazakh National University*

The role of the investigating judge in the new Code of Criminal Procedure of the Republic of Kazakhstan

Abstract. In this article the author considers the changes in the Criminal Procedure Code, as well as problems of law enforcement in connection with the introduction of the institution of the investigating judge. The position of the investigating judge is one of the important innovations in the New Criminal Procedure Code of the Republic of Kazakhstan (which came into force January 1, 2015). Institute of investigating judge (in those or other features) exist in Belgium, Spain, France, Latvia, Switzerland and other countries. the introduction of a new figure in the criminal process (investigating judge) - is a huge step in the realization of basic human protection principles laid down in the Constitution of the Republic of Kazakhstan

Keywords: the investigating judge, the new Criminal Procedure Code, authorizing preventive measures, the admissibility of evidence

On July 4th, 2014 was adopted, and on January 1st, 2015 came into force the new Criminal Procedure Code of the Republic of Kazakhstan, which replaced the Code of Criminal Procedure of the Republic of Kazakhstan 1997.

Since the beginning of the new Code of Criminal Procedure of the Republic of Kazakhstan gone more than a year, but in spite of this, in this scientific article, I would like to consider the characteristics of the rules relating to the institution of the investigating judge and the problems of enforcement.

Institute of investigating judge (in those or other features) exist in Belgium, Spain, France, Latvia, Switzerland and other countries. In Germany, a similar function, specific to investigative judges, district judges operate. According to the Criminal Procedure Code of Latvia functions of investigating judge directed specifically at ensuring the

constitutional rights and freedoms of the individual in criminal proceedings [5].

According to paragraph 47 of article 7 of the Criminal Procedure Code of the Republic of Kazakhstan "The investigating judge - a judge of the court of first instance, the communication provided by the Criminal Procedure Code of the Republic of Kazakhstan authority in the course of pre-trial proceedings." The investigating judge (judges) shall be appointed from among the judges by Chairman of the Court [1].

The powers and the general conditions of implementation of the investigating judge provided for in Articles 55 and 56 of the Criminal Procedure Code of the Republic of Kazakhstan respectively.

It is worth noting that the range of issues under consideration by the investigating judge is extensive. In Part 2 of Article 56 of the Criminal Procedure of the Republic of