

# **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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## Contents

<b>Section 1. Actual problems of criminal law</b> .....	3
<i>Abbasov A., Shopabayev B.A.</i> Psychological portrait of the terrorist.....	3
<i>Abdulkaum Z., Aratuly K.</i> Murder for hire: the theory and practice.....	7
<i>Abzhabpar A., Daubassova S.Sh.</i> Classification of ecological offenses.....	9
<i>Aizharykova A., Satybaldinov D.D.</i> Scientific validity criminal legal norm as condition of their efficiency (theoretical and practical questions of classification of forms of participation).....	12
<i>Ainakulova D., Malikova Sh.B.</i> Murder committed in aggravating circumstances.....	14
<i>Amangeldy A., Shopabayev B.A.</i> Criminal and legal characteristic of the separate types of corruption crimes.....	18
<i>Baymurat M., Umirbaeva Z.A.</i> Determination of the objective and subjective elements of bribetaking.....	19
<i>Bekbolatuly M., Dzhanarayeva R.Ye.</i> Model Law "On the treatment of animals" in the Republic of Kazakhstan – a step towards solving a number of social problems.....	24
<i>Bekbolatuly M., Dzhanarayeva R.Ye.</i> Research the experience of foreign countries in the fight against prostitution and the possibility of its implementation in the Republic of Kazakhstan.....	26
<i>Bissenova M.K.</i> Features and innovations of the new Criminal Code of the Republic of Kazakhstan.....	28
<i>Boribai M., Bissenova M.K.</i> Manifestation of crimes against property in the new Criminal code accepted on July 3, 2014.....	32
<i>Daubassov S., Razakov A.</i> The problem of illegal migration, and possible ways to solve it.....	34
<i>Dauletbai D., Dzhanarayeva R.Ye., Mukhamadiyeva G.N.</i> Measures to combat juvenile offense.....	36
<i>Yergali A.M., Nurbekova K.</i> The legal framework to combat corruption in the Republic of Kazakhstan.....	38
<i>Yergali A.M., Alimkulov G.</i> Criminological and Victimological characteristics of fraud.....	41
<i>Zhamankenova A., Duzbayeva S.B.</i> Foreign experience of fight against crime of minors.....	44
<i>Kaketayeva Zh., Malikova Sh.B.</i> Juvenile delinquency in the Republic of Kazakhstan.....	46
<i>Karataeva A.M., Daubassova S.Sh., Serikbayev A.M.</i> The subject of legal relations, and their features.....	48
<i>Karataeva A.M., Serikbayev A.M.</i> The concept of legal relations, content and their basic concepts.....	50
<i>Makhmutova A., Mukhamadiyeva G.N.</i> Actual problems of the application of compulsory educational measures to minors.....	52
<i>Muratova A., Taubayev B.R.</i> Positive experience of functioning of penal institutions of Norway and possibility of its use in the Republic of Kazakhstan.....	54
<i>Musagali A., Shopabayev B.A.</i> Psychological and personal features subjects of computer crime.....	57

<i>Nurgaziyeva M., Duzbayeva S.B.</i>	
Features of juvenile crime.....	59
<i>Ordabek K., Aratuly K.</i>	
Problems of corruption and possible solutions.....	61
<i>Omerbayev E.S., Bissenova M.K.</i>	
Criminal law characteristics of economic crimes.....	63
<i>Rakhmetova A., Mukhamadiyeva G.N.</i>	
Psychological portrait of the criminal.....	67
<i>Sartayev S.A., Daubassova S.Sh., Abdykadyrova Zh.</i>	
Theoretical and legal issues to ensure lawful behavior in the Republic of Kazakhstan.....	69
<i>Satybaldinov D.D.</i>	
Cruelty to animals in the foreign and domestic criminal law and criminalistics field.....	72
<i>Satybaldinov D.D.</i>	
Preventive aspects of animal cruelty in the world today.....	74
<i>Sukhanova A., Shopabayev B.A.</i>	
Problems of fight against crime against public safety in the light of legal education.....	77
<i>Taukenbai A., Tlepbergenov O.N.</i>	
The role of criminal politics in the national system of the Republic of Kazakhstan.....	79
<i>Tlepbergenov O.N.</i>	
Techniques for teaching law in the Republic of Kazakhstan.....	82
<i>Tomayeva N., Shopabayev A.B.</i>	
Experience of foreign countries in fight against corruption.....	85
<i>Tokhtakhunova D., Shopabayev A.B.</i>	
Internet as means of influence on consumption drugs and their analogs.....	90
<i>Shopabayev B.A.</i>	
Criminological characteristics of criminality of migrants.....	92
<b>Section 2. Actual problems of criminal procedure.....</b>	<b>102</b>
<i>Abilkhair B., Sharipova A.B.</i>	
The subject of the Truth in a Criminal Proceeding.....	102
<i>Askarbek M., Sharipova A.B.</i>	
The role of the court to protect the rights of man and citizen.....	106
<i>Bekentaeva A., Duzbayeva S.B.</i>	
Professional ethics of the lawyer.....	109
<i>Daubassov S., Abdrazak A.</i>	
Urgent problems of appeals procedure of juveniles.....	112
<i>Zhaksybekov B., Bersugurova L.Sh.</i>	
The role of the Prosecutor's supervision on stages of the criminal process.....	114
<i>Kadyrbayeva G., Zhanibekov A.K.</i>	
The role and legal status of the court in modern Kazakh criminal proceedings.....	117
<i>Kurmankulov A., Alimkulov E.T.</i>	
Some problems of mediation in criminal proceedings the Republic of Kazakhstan.....	121
<i>Kurmankulov A., Bayandina M.O.</i>	
The moral essence of service to society and the state of law enforcement officers.....	125
<i>Kurmankulov A., Bayandina M.O.</i>	
Some problems of acquittal in criminal proceedings.....	127
<i>Mustafa Zh., Duzbayeva S.B.</i>	
Supervision of the legality of executive production.....	128
<i>Myrzakhan Zh., Mukhamadiyeva G.N.</i>	
The legal basis of criminal procedure protection of individual rights.....	131
<i>Okhmetov E., Duzbayeva S.B.</i>	
Lawyer mystery.....	134

<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
<b>Section 3. Actual problems of criminalistics.....</b>	<b>175</b>
<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

<i>Esen U., Shopabayev B.A.</i>	
Object and subject of judicial examination in the theory and practice of a judicial expertology.....	198
<i>Zhalkpbekov N., Daubassova S.Sh.</i>	
Detection and research of microobjects.....	200
<i>Zhumabayev A., Shopabayev B.A.</i>	
Forensic medical examination of living persons.....	202
<i>Ibraimi M., Shopabayev B.A.</i>	
Role of natural, exact and legal sciences in judicial handwriting examination.....	204
<i>Imashev A., Shopabayev B.A.</i>	
Features of judicial and accounting examination within a judicial expertology .....	208
<i>Marat A., Shopabayev B.A.</i>	
Some problems of judicial examination at the present stage.....	210
<i>Mashkenov M., Shopabayev B.A.</i>	
Stages of carrying out expert research.....	212
<i>Rakhmetova A., Aryn A.A.</i>	
Legal, organizational and methodological problems of criminal techniques.....	213
<i>Stybayeva A., Duzbayeva S.B.</i>	
Tactics of minors interrogation.....	215
<i>Sultan D., Shopabayev B.A.</i>	
Some questions of trasological examination.....	218
<i>Tabyldiyev K., Tapalova R.B.</i>	
The value of specialized knowledge in the consideration of environmental offenses in civil proceedings.....	220
<i>Umbetalin N., Shopabayev B.A.</i>	
Basic concepts of the theory criminalistic identifications, diagnostics and situalogiya.....	222
<i>Hamzina Z., Shopabayev B.A.</i>	
Production of examination in court.....	224
<i>Hasenova A., Shopabayev B.A.</i>	
Separate problems of use of the polygraph.....	225
<i>Shopabayev B.A.</i>	
Trends in the development of judicial expertise in the Republic of Kazakhstan.....	227

and methods of protection applied to him for legal assistance. [1]

Institute of attorney-client privilege arose in the Roman Empire. Roman jurists prescribed presiding in the courts, so that they did not allow lawyers to take role of witnesses in cases where they are defenders.

About attorney secrets voiced many lawyers. Those who spoke about preservation of institute of attorney-client privilege, differently justified its necessity. Some have argued that "without mysteries of meeting - there is no protection, no justice." Others talked about violation of defendant's interests. From the moment when customer crossed threshold of legal advice, law firm, office - everything is a further object of attorney-client privilege. Even the fact of access to a lawyer have professional secrecy. The essence of client's request, the content of initial consultation is also the subject of attorney-client privilege. Moreover, even if initially lawyer asked not future customer but any of his family, with which subsequently concluded no agreement about business management, general rule remains unchanged - the information obtained from this relative, the fact of his conversion It is the attorney-client privilege. [2]

Attorneys secret - a constitutional unit of lawyer activity, without which the lawyer's

assistance as phenomenon disappears. Secrecy of Information - a necessary guarantee to principal.

There are the following guarantees preservation of lawyer secret:

- the right of Advocate to visit his client in private and in confidence [3]

- A ban on disclosure of information by counsel, which became known to him from connection with an application for legal aid and its implementation [3]

- Prohibition of questioning as a witness defense of the suspect, accused, as well as representative of victim, civil plaintiff and civil defendant, advocate of witness - about circumstances that have become known to him in connection with the performance of his duties in a criminal case. [3]

The disclosure of attorney-client privilege is a gross violation of the law " about advocacy". It undermines the credibility of citizens, as the only protection of violated or disputed constitutional rights, freedoms and lawful interests in court is a lawyer. Undermining the prestige of the professional activities of lawyers considered such behavior, which reduces public confidence in the institution of the legal profession and denigrates title of lawyer. The lawyer should be an example of moral purity and impeccable behavior.

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**Need of institute of mediation in criminal proceedings of Republic of Kazakhstan**

**Abstract.** The article describes the need in our society also in our human right's sector of the institute of mediation in criminal proceedings of Republic of Kazakhstan. Detailed description of the meaning of the mediation procedure and it's institute helps to know about the need of its being in criminal proceedings.

**Keywords:** mediation, agreement, institute, rights, criminal, parties.

The duration of way to world standards and high standard of living can be reduced just by changing consciousness. Civilized man, man of the future is a man of creation, not a destroyer. We must reduce financial costs of citizens and, most importantly, their time, health, which is wasted because of offence.

A mediation resolution of criminal case can achieve these goals. A citizen, who has chosen an alternative way to settle the dispute, does not only act in their own interests, but in the public interests.

The advantage of mediation is the least financial cost; in comparison with judicial, as well as it can help to reduce the spent time of participating parties and to provide confidentiality. Since 2011 the country has a law "On Mediation" [1], however, practice of mediation leaves much to be desired, especially in terms of its application in criminal proceedings. It is known that mediation is a procedure of reconciliation of conflicting parties by their entry into voluntary negotiations with assistance of a neutral person - the mediator - in order to achieve mutual understanding and drawing up the contract, which resolve conflict situations. When it comes to disputes within framework of family relationships, in business proceedings such option is most acceptable and understandable procedurally. It lies in the fact that the two conflicting parties, if desired, instead of going to court, decide to turn to a professional mediator, who helps them to come to a mutually-beneficial agreement.

The essential difference of mediator from the judge that he resolve dispute not with his will. The meaning of mediator activity consists in summing up each of the parties to reconciliation, by agreement, conflicting parties should work out solution by themselves. Experience shows that even in these types of cases process of introducing mediation is hard. Not even if we mention criminal cases.

In the framework set by the President N.A. Nazarbayev in his address "Social modernization of Kazakhstan: Twenty Steps to the Universal Society of Labor" [2] The tasks of mediation institute should develop at an accelerated pace. This should help authorities and law enforcement agencies. Since skepticism of these individuals often defines development of alternative dispute resolution at all levels of public awareness and slows down the process of their application. Justifying the need to resolve dilemma in implementation of procedural matter of mediation beginning, it should be noted some problematic points. Hard criminal proceedings require a mandatory step: comparison of offense and its qualifications. A different approach is impossible by definition. In turn, in the case of using mediation a crime is considered on absolutely other parameters. In this case, the offense appears from perspective of a long process which has not only present (directly - time of crime), but also past and future. At the same time concept of "guilt" also loses criminal procedural interpretation ceasing to be a "point phenomenon." If defendant pleads guilty, the mediation can solve issues that are important from the point of view of society. In other words, it defines the future value framework to this mechanism responding to a crime [3].

Following. Unlike criminal process, formalized in essence, mediation takes place in an environment of open and unlimited communication, suggesting scoring emotions, etc. During the mediation procedure guided by inherent only to her base and internal regulations. Only after all speak out and an agreement is reached, case is returned to the judicial logic. This separation also allows the parties to maximize possibility of mediation, without considering it as part of criminal proceedings with characteristic of a compulsory nature. Finally, undisputed advantage over traditional litigation, and the