

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.

Contents

Section 1. Actual problems of criminal law	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., Dzhanasarayeva 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., Dzhanasarayeva 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., Dzhanasarayeva 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
Section 2. Actual problems of criminal procedure.....	102
<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
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>Aitzhanova 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

2. Forensics. Proc. / Ed. N.P. Yablokov .-- M .: Publishing House BEK, 1996, 708s.
3. Criminal Procedure Code of the Republic of Kazakhstan - Almaty LLP Baspa- 2014
4. Andreev I.S., Gramovich G.I., N.I. Porubov Forensics. Textbook Collec. / Ed N.I. Porubova Mn .: .Vyssh.shk., 1997.-344s.
5. Forensics. Proc. / Ed. B.M. Nurgalieva - Karaganda, 2010.
6. Forensics. Proc. for high schools / T.V. Averyanov, R.S.Belkin, Yu.G. Koruhov, E.R. Rossinskaya; Under red.R.S. Belkina.- M .: NORMA-INFRA 2011.
7. Forensics. Proc. for high schools / [N.A. Burnashev, V.M. Bykov, A.F. Volynsky et al.]; Under red.A.G. Filippova and A.F. Volynskogo.- M .: Publishing House of the "Spark", 1998.
8. Forensics. Proc. for high schools / R.S.Belkin, Yu.G. Koruhov, E.R. Rossinskaya etc .; Under red.Volynskogo A.F.- M .: laws and regulations, UNITY-DANA, 1999 - 615 p.

*Yeleuov M.
Student
Faculty of Law
Al-Farabi Kazakh National University*

*Daubassova S.Sh.
Head teacher
Department of criminal law,
Criminal procedure and criminalistics
Faculty of law
Al-Farabi Kazakh National University*

Judicial examination in the Republic of Kazakhstan

Abstract. In article concepts of examination are studied. examination as independent investigative action, understanding on a basis and according to the decision of the investigator sought to find any crime and special signs on a body of the suspect, victim or witness. Authors have drawn conclusions on searches of traces for their detection.

Keywords: The code of criminal procedure of the Republic of Kazakhstan, search, detection, a crime, special signs on the suspect's body, the victim, the witness

The examination has a lot in common with personal search. But according to the Criminal Procedure Code of the Republic of Kazakhstan they are considered as two separate investigations. The task of the personal search includes finding objects, perhaps hidden by criminal in clothes, shoes, and other places. Other places mean- bags, briefcases and other similar items, where evidence can be hidden and they are searched, as they were found from a detainee. The concept of a personal search according to the article of Criminal Procedure Code of the Republic of Kazakhstan also includes the search for hidden evidence in the mouth, hair and other parts of the body. However, our understanding of the search in the parts of the body belongs to the tasks of the examination. If during the search is assumed that the

installation was being searched hide objects in his body or clothing, shoes, then the examination of a person can sometimes be unaware of the presence of his body traces of the crime, but, nevertheless, the penetration into the human body should be under examination, as the procedural aspect, there are differences. Personal search can be carried out without an order and without a warrant in the following cases: during the arrest or detention, during the search. In such situations, does not exclude the possibility of human rights violations being searched. When examination legislator provided guarantees the validity of penetration into the human body, in this connection, consider during the arrest or detention, during the search personal search, if necessary, can be combined with examination

According to the Criminal Procedural Code of the Republic of Kazakhstan Examination is a kind of investigative survey [1]. This investigative action is essential in the investigation of homicide, assault, rape, kidnapping, smuggling of narcotic drugs or other prohibited objects, arson, traffic accidents, poaching, and many others crimes.

The following definition is given in forensic literature: examination - an independent investigative action, realizing on the basis and in accordance with the decision of the investigator aimed to discover any crime and special signs on a body of a suspect, victim or witness [2-6].

The legislator considers advisable to differentiate from the inspection of the scene, the corpse, the subject of a survey. The regulation of these types of inspection was insufficient for examination. Additional requirements need to be introduced. According to 223 article of Criminal Procedural Code of the Republic of Kazakhstan: the mandatory imposition of the investigator production inspection, prohibition investigator present at the examination of a person of the opposite sex, if a survey is accompanied by exposure of the examined, an indication of the inadmissibility of the action, degrading the examined or dangerous to life, health, the need to obtain the consent of a victim or witness for examination, forced their examination is conducted under the authority of the prosecutor re established.

All witness's testimony about the features inherent in the investigation and its difference from all other kinds of investigative examination.

Let us consider what is included in the task of inspection.

The first task is to establish special signs on examined body. Special features can be

congenital and caused by profession, intentional or negligent external influences. Congenital signs are considered like the presence of a sixth finger, "harelip" birthmark, warts, double teeth abnormalities of bone structure and others. Caused by profession it means the exterior changes on the human body related to his work. For example, we can see blotches of coal on the skin of miners; calloused thickening in the palms of glassblowers; we can find calluses on the fingers of hairdressers and cutters, workers in the chemical industry can suffer from nail disease, etc. In addition to professional signs should include surgery due to illness of a person being examined, i.e. the presence of scars, piercings, stitches on his body. Intentional or negligent external actions may be different. For example, the presence of tattoos, traces of plastic surgery, etc. It should be noted that the distinctive features can be catchy. They drew attention in the preparation of orientations to search the criminal or missing...

The second objective of examination is to detect, control, seizure on the body of an examined person traces of the crime. Their list is quite extensive. They include injuries sustained in the commission of a crime. These traces can be either on the body of a victim or on the body of an offender - teeth, nails, knives, scissors, forks marks, etc. Traces of crimes include-layering: traces of the material situation of the criminal event (soil, paint, glass, plants, drugs, flour, cement, etc.). Traces - liquids of another person (saliva, semen, blood, sweat, and others.) Traces of weapons and means used to commit a crime (gunpowder particles, soot, explosives, fuels and materials of glass), and others. The objectives of the survey include the detection of traces of the so-called "chemical traps."

References:

1. Criminal Procedural Code of the Republic of Kazakhstan: № 231-V dated July 4, 2014, entered into force January 1, 2015.
2. A.J. Ginsburg and others. Inspection of the scene. - Almaty, 2013.
3. Baev O.Ya. Tactics of investigation. Methodical aid. / Voronezh.NGO "MODEK -1995.
4. Popov V.I. Inspection of the scene. Study methodical aid. Tactical basics of investigation. Issue 1 - Alma-Ata, 1974.
5. Porubov N.I. Forensic tactics and its role in the disclosure of Crime: Lecture.- Minsk, 1983.
6. Shalamov M.P. Inspection of the scene: Proc. allowance on a special course / M. 1966.

*Esen U.
Second-year Student
Faculty of Law
Al-Farabi Kazakh National University*

*Shopabayev B.A.
Head teacher
Department of criminal law,
Criminal procedure and criminalistics
Faculty of law
Al-Farabi Kazakh National University*

Object and subject of judicial examination in the theory and practice of a judicial expertology

Abstract. In the present article the author considered object and a subject of judicial examination in the theory and practice of a judicial ekspertology.

Keywords. Object, subject of judicial examination, judicial expertology.

Judicial examination – the procedural action consisting in research by the expert (the owner of special knowledge) at the request of the investigator (court) of material evidences, other material objects and materials for the purpose of establishment of the actual data and circumstances important for the correct permission of a criminal or civil case.

Establishment of relationship of cause and effect between the made act and the come negative consequences requires carrying out judicial examinations. Concepts of a subject and object of judicial examination are among key in the theory and practice of a judicial ekspertology . More than forty years there are discussions among scientists-criminalists concerning concrete definition of concept of a subject of judicial examination. It is possible to allocate about seven points of view of different authors on this matter. The first point of view is based that such scientists as G. M. Nadgorny, N. P. Yablokov equate a subject of judicial examination to a subject of the relevant judicial and expert branch of knowledge. Other scientists, such as M. Ya. Segay, consider that the subject and object of judicial examination have identical concepts. R. S. Belkin, V. M. Galkin D.Ya.Mirsky identify an examination subject with her result and the purpose. V. V. Aksenova, L.E.Arotsker, I.L. Petrukhin understand set as a subject of judicial examination resolved by examination of tasks or issues: the authors

adhering to the fifth point of view V. D. Arsenyev, V. G. Zablotsky consider a subject of judicial examination from a position of the theory of knowledge; they understand as a subject of judicial examination as "the parties, properties and the relations of object (the main and auxiliary) which are investigated and learned by means (methods and techniques) of this branch of examination for the solution of the questions important for business and falling within the scope of the relevant branches of knowledge".

In modern literature most of authors allocate that it is different concepts. Having analyzed the offered options, it appears, that the subject of judicial examination can be defined as the actual data important for the investigated case, established on the basis of special scientific knowledge. Other scientists identifying a subject and the direct purpose of examination (R. S. Belkin, V. M. Galkin, Yu.K. Orlov, A.R. Shlyakhov) claim that her subject are the facts (actual data, facts of the case) which are subject to establishment by means of examination. In the last publications on a case in point of the similar point of view Ya.V. Komissarova who understands as a subject of judicial examination "existing as part of objective reality the steady, typical phenomena, the facts, circumstances established by science and practice which can