

DISCUSSION PLATFORM

• **Dialectics of traditions and innovations in the criminal law.**

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Yuriy E. Pudovochkin – Doctor of Laws, Professor in the Department of Criminal Law at the Russian State University of Justice.

The article is devoted to the research of the contents and prospects of dialectic interaction of traditions and innovations in the criminal law. First of all, the authors define fundamental concepts of the subject: criminal and legal traditions and innovations; prove the necessity of their qualitative differentiation by types; as a special kind of traditions, they specify foundations of the branch that ensure sustaining of its identity in time and space; consider the issue of struggle of the old and the new in the criminal law; specify the functions of each party of dialectic interaction; give reasons for the thesis that even foundations of the branch cannot be absolutely protected from the influence of innovations and are subject to adjustment or replacement at critical stages of development of the society; formulate the thought on necessity of development of a modern innovative idea, capable of becoming a core of radical renovation of the criminal law; and emphasise the role of the state in changing foundations of the criminal law branch.

Keywords: criminal law; dialectics; criminal law philosophy; criminal law principles; criminal law foundations; innovations in the criminal law; criminal law reform.

• **About convergence of the criminal procedure law of Russia and the foreign states.**

Sergey I. Zakhartsev – Doctor of Laws, Assistant Director General Joint-stock company «Russian machines».

Viktor P. Salnikov – Doctor of Laws, Professor, Editor-In-Chief of the «Legal Science History and the Present» journal, Honored Scientist of Russia.

The article considers debatable issues of convergence of the law. The authors distinguish two forms of development of the convergence processes, analyse conditions at which they occur. They also consider changes in the criminal procedure law of Russia under the influence of foreign countries during the last twenty five years in the context of convergence.

Keywords: convergence; the theory of state and law; criminal procedure law.

CRIMINAL LAW

• **Time factor in the legislative formula of justifiable defence.**

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Correct determination of time limits of justifiable defence is of great importance in the criminal law. Being conditions proceeding from which the legitimacy of the harm caused at justifiable defence is determined, they serve as a guarantee of assurance of statutory rights and interests of citizens – both aggressors and defenders. The author analyses in details approaches to the understanding of time borders of defensive actions existing in the criminal law doctrine, provides spectacular examples from law enforcement practice, suggests her own vision of ways of solving issues brought up by her. In particular, to establish time limits of justifiable defence, she identifies objective and subjective criteria directing law enforcement officers towards compulsory taking into consideration of not only external circumstances of socially dangerous encroachment or its direct threat, their origination and disappearance, but also perception of these circumstances by the defender.

Keywords: justifiable defence; conditions of legitimacy; time borders; the moment of origin of the right of defence; the moment of termination of the right of defence.

• **Perpetrator of the crime provided for by article 134 of the Criminal Code of the Russian Federation.**

Arseniy A. Bimbinov – PhD Student in the Department of Criminal Law at Kutafin Moscow State Law University.

The article deals with characteristic of a subject of a sexual intercourse and other sexual actions with a person under sixteen. On the basis of a comparative analysis the author makes a conclusion that the perpetrator of the said crime is special. Based on theoretical provisions and judicial practice, the author analyses mandatory characteristics of the subject of the crime (age, mental capacity, etc.). Attention is given to characteristics of a subject suffering from disorder of sexual preference not excluding mental capacity. On the basis of studies of international acts in the field of medicine as well as recommendations of the Ministry of Public Health and Social Development and the V.P. Serbsky Center of Social and Forensic Psychiatry, the author defines the notion of the perpetrator as a person feeling a sexual desire towards children of early pubertal age throughout more than six months. The author also considers additional characteristics determining possibility of a person to enter into a sexual contact (availability of genitals, potency, libido, erection, sexual orientation, etc.). It is established that additional anatomic and physiological characteristics of the person characterise perpetrator of the crime provided for by article 134 of the Criminal Code of the Russian Federation only with reference to a specific form of sexual actions.

Keywords: perpetrator of the crime; sexual intercourse; sexual actions; minors; age; mental capacity; sexual preference disorder.

• **Methods for entrenching consequences of a crime in dispositions of the Special part of the Criminal Code of the Russian Federation.**

Viktor N. Vinokurov – PhD in Law, Associate Professor in the Department of Criminal Law and Criminology at Siberian Law Institute of FSKN of Russia.

According to the author of the article, it is necessary to differentiate such concepts as «criminal harm», being the whole spectrum of negative changes in the social life, and «consequences of the crime» being the part of negative consequences in the social life for the prevention of which specific criminal law provision is created. Basic methods of identification of consequences of a crime that prejudice considerable amount of relations are: prohibition through the establishment of formal constituent elements; constituent elements of «creation of a danger»; supplementing the Criminal Code of the Russian Federation with special provisions establishing punishment for crimes against property and crimes against public interests, and the use of such wording as «the same acts which entailed other grave consequences».

Keywords: harm from a crime; consequences of a crime; real danger of damnification.

• **Right of the state to criminal sanction in the light of the principle of separation of powers and its implementation in the Russian Federation.**

Dmitry V. Gurin – Lecturer-PhD Student in the Department of Criminal Law at the Russian State University of Justice; Senior Specialist in the Division for the Review of Complaints on Criminal Matters at the Office of the Representative of the Russian Federation at the European Court of Human Rights – Deputy Minister of Justice of the Russian Federation.

Interpretation of criminal sanction as a subjective right of the state makes it possible to identify therein a number of competences, the functions of implementation of which, in a state governed by the rule of law, are distributed between power branches non-uniformly. The article emphasises the role of the principle of separation of powers as one of restrictions of retaliatory activity of the state, as well as considers a number of exceptions of this general principle at exercising by the state of the right to punishment and makes an attempt to reveal certain criteria of admissibility of such exceptions.

Keywords: the right of the state to criminal sanction; separation of powers; checks and balances; amnesty; free pardon; criminal law sources.

• **Fulfillment of professional functions under circumstances excluding criminality of an act.**

Nadezhda V. Miroshnichenko – PhD in Law, Associate Professor, Head of the Department of Law of the Economic Faculty at Stavropol State Agrarian University.

The article analyses circumstances excluding criminality of damnification at fulfillment of professional functions. The author proves possibility of application of two of them: obedience of laws and reasonable professional risk, as well as formulates suggestions on improvement of the law and practice in this direction.

Keywords: fulfillment of professional functions; circumstances excluding criminality of an act; reasonable professional risk; obedience of laws.

• **Criminal means intended to ensure transport safety and to protect against terrorist threats.**

Denis V. Tokmantsev – PhD in Law, Associate Professor in the Department of Criminal Law and Criminology at the Siberian Law Institute of the Federal Drug Control Service of the Russian Federation.

The article reviews the set of criminal prohibitions and state coercion measures (punishments and other penal measures), as well as criminal authorisations and encouragements, that together constitute criminal means for ensuring transport safety and protecting against terrorist encroachments.

Keywords: terrorism; safety; transport; responsibility; criminal law.

● **Voluntary refusal to commit crime and its types (article 31 of the Criminal Code of the Russian Federation).**

Andrey P. Filchenko – PhD in Law, Associate Professor, Professor in the Department of Administrative and Finance Law at the Academy of the Federal Penitentiary Service of Russia.

The article deals with the criticism of the effective standards established by article 31 of the Criminal Code of the Russian Federation. Using system-structural, formal logic, as well as historical and comparative analysis methods, the author actualises the criminal law consistency issue to the extent it relates to voluntary refusal to commit crime. After comparing provisions of articles 30 and 31 of the Criminal Code of the Russian Federation, the author draws a conclusion about absence of a uniform legal nature of refusal of a person to commit crime. On the basis of consequences of criminal responsibility, the author identifies and characterises two kinds of voluntary renunciation of criminal purpose: the one excluding it and the one releasing from it. The author also suggests an estimation of the legal effect of preparation for a small and medium gravity crime, as well as of an «aborted» attempt – termination of actions aimed directly at commission of a crime while the person realises possibility to carry through the crime.

Keywords: voluntary refusal to commit crime; relief from criminal responsibility; punishability of an act; circumstances excluding criminality of an act; absence of actus reus; constituent elements of an inchoate crime.

● **«Value» characteristic of the subject of plunder of another's property: interpretation and law enforcement issues.**

Vadim V. Khiluta – PhD in Law, Associate Professor, Head of the Department of Criminal Law and Criminology at Yanka Kupala State University of Grodno (Belarus).

The article discloses the essence of the «value» as key economic characteristic of the subject of plunder of another's property. On the basis of the legislation of Russia and Belarus the author analyses doctrinal approaches to the understanding of this economic characteristic of the subject of plunder in the criminal law science and law-enforcement practice. The author of the article draws a conclusion that nowadays the economic characteristic of the subject of plunder should be determined taking into account not only consumer and exchange value, but also its capability to be a subject of civil turnover.

Keywords: offenses against property; plunder; economic characteristic of a plunder; value; plunder of cultural values.

CRIMINAL PROCEDURE

● **Resolutions of the European Human rights court and their effect on decision making by the russian courts regarding imprisonment.**

Anatoliy S. Barabash – Doctor of Laws, Associate Professor, Professor in the Department of Criminal Procedure at the Law Institute of Siberian Federal University.

Studying Resolutions of the European Human Rights Court relating to the complaints against Russia for illegal and unjustified imprisonment leads to an unfavourable conclusion: the quality of work of the Russian courts does not stand up to criticism. To a certain extent this is also explained by the European Court practice when in its decisions it suggests considering the gravity of the committed crime as grounds for imprisonment. But the main thing is that judges frequently do not realise what circumstances shall be taken into account when choosing pre-trial restrictions and how they shall be proved. Without mentioning the lack of independence of judges from the previous decision on imprisonment when delivering final judgement. A body taking decision on pre-trial restrictions should be independent. The author substantiates the conclusion that under the effective legislation such body is the Office of Public Prosecutor.

Keywords: The European Convention for the Protection of Human Rights and Fundamental Freedoms; European Human Rights Court; proof of availability of grounds for imprisonment; errors committed by courts; return of case to the public prosecutor.

• **Some global problems of current legal practice.**

Sergey I. Zakhartsev – Doctor of Laws, Assistant Director General Joint-stock company «Russian machines».

The article touches upon several global problems of existing legal proceedings and legal practice. In particular, the author studies ongoing formalisation of legal proceedings, establishment of (failure to establish) objective truth, corruption in the law-enforcement sphere, low authority of courts in Russia. Complexity and globality of the said problems require their studying at philosophical and legal level.

Keywords: legal philosophy; legal practice; legal proceedings.

• **«New» principles of criminal procedure under conditions of changing procedural proving concept.**

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Valentin A. Paniushkin – PhD in Law, Professor, Head of the Department of the Organization of Judicial Authority and Law Enforcement Activity; Dean of the Law Faculty at Voronezh State University.

The authors consider «new» principles of criminal procedure: reasonable formalism, procedural economy and reasonable timeframes of criminal trial and substantiate their necessity in the conditions of actual criminal procedure activity.

Keywords: proofs; principles; proving limits; proof; formalism; rationality; timeframes.

• **This unpredictable court practice.**

Nikita A. Kolokolov – Doctor of Laws, Professor in the Department of Judiciary and Organization of Justice at the Higher School of Economics – National Research University.

The author, based on actually indisputable thesis that «ius» only objectivizes in the form of «lex», but is not reduced to it, makes a conclusion that the justice system shaping mechanism and its functioning are predetermined by a number of factors, the main of which are legal ideology and legal psychology of law enforcement officers. This means that total unification of the court practice is unattainable.

Keywords: legal ideology; legal psychology; the Criminal Code of the Russian Federation; the Criminal Procedure Code of the Russian Federation; court practice.

• **Legislative regulation of the procedure for cancellation of the criminal investigator's determination to institute criminal proceedings.**

Svetlana V. Kornakova – PhD in Law, Associate Professor in the Department of Criminal Procedure and Public Prosecutions at the Baikal State University of Economics and Law.

The article addresses an issue of practical importance: differentiation of powers of the public prosecutor and the head of the investigating authority regarding cancellation of the criminal investigator's determination to institute criminal proceedings. The author points out at imperfection of the legislative regulation of this issue and makes a conclusion not only about the necessity of the legislative recognition of the restriction of the period established for reviewing legality of the investigating authority senior officer's determination to institute criminal proceedings, but also re-entrusting the public prosecutor with the right to cancel the criminal investigator's determination.

Keywords: powers of the public prosecutor; powers of the senior officer of the investigating authority; cancellation of the determination to institute criminal proceedings.

• **Internal control and public prosecutor's supervision of the estimation of sufficiency of proofs at the final stage of pre-trial investigation.**

Maria A. Kochkina – Lecturer at Lipetsk branch of the Russian Presidential Academy of National Economy and Public Administration.

At the final stage of the pre-trial investigation the criminal investigator checks and judges all collected proofs, takes measures to eliminate errors and ambiguities contained in the criminal case. Depending on available evidence and established circumstances the criminal investigator determines either to terminate the criminal case or to refer it to the public prosecutor and subsequently, to the court. Therefore the internal control and public prosecutor's supervision at this stage are crucial. The senior officer of the investigating authority and the public prosecutor, using their powers, shall find out lacks of the pre-trial investigation and take effectual measures to eliminate them.

Keywords: criminal case; criminal investigator; senior officer of the investigating authority; public prosecutor; proofs.

● **Plea of guilty – «regina probationum» of the current Russian criminal procedure?**

Sergey A. Novikov – PhD in Law, Associate Professor in the Department of Criminal Procedure and Criminalistics at Saint-Petersburg State University.

The article reviews the tendency of increasing absolutization of the plea of guilty by the accused existing in the Russian criminal procedure manifested in continuous expansion of possibility of application of a special procedure for delivering judgement and in appearance of a reduced form of inquiry. Demonstrating by specific examples from court practice the danger of awarding to such plea the status of «Queen of evidence», the author supports significant reduction of categories of cases in which, if the accused acknowledges charges brought by the prosecution, the punishment may be awarded without comprehensive court investigation. Besides, according to the author, special procedure of a court trial should not be applied to a person who concluded a plea agreement if general terms of its application are not observed. The author also suggests investing the judge with such powers which even in case of the said special procedure will allow him to make sure personally of the reasonableness of the charge.

Keywords: plea of guilty; proofs; statement of the accused; special trial procedure; plea agreement.

● **Formal review of proofs in the current criminal procedure in Russia: «has the trap slammed?» (Reflections about the book of academician A.Ya. Vyshinsky).**

Aleksandr V. Pobedkin – Doctor of Laws, Professor, Deputy Head of the Department of Professional Training at the Directorate of Public Service and Personnel of the MIA of Russia.

The article considers issues of reviewing proofs in the today's criminal procedure in Russia. The author substantiates a conclusion that the principle of liberty of reviewing proofs provided for in article 17 of the Code of Penal Procedure of the Russian Federation, actually does not operate in legal proceedings and criticizes the attitude to the plea of guilty as to the «Queen of evidence» which was regarded as inadmissible by academician A.Ya.Vyshinsky, whose position has been qualified wrong by the science for many years.

Keywords: reviewing proofs, principle of liberty of reviewing proofs, plea of guilty, special trial procedure.

● **Revisiting the procedural status of a person in charge of pre-trial support of a minor who committed a crime.**

Nina YU. Skripchenko – Doctor of Laws, Associate Professor in the Department of Criminal Law and Procedure at the Northern (Arctic) Federal University named after M.V. Lomonosov.

Natalia V. Mashinskaya – PhD in law, Associate Professor, Head of the Department of Criminal Law and Procedure at the Northern (Arctic) Federal University named after M.V. Lomonosov.

Enshrining among priority lines of activity of the National Strategy of Actions in the Interests of Children for 2012–2017 of measures aimed at forming and development of justice friendly to children, requires deeper studying of a person of a minor offender with a view of his/her re-socialization and social adaptation. This activity is possible in the form of pre-trial support of minor offenders. The Criminal Procedure Code of the Russian Federations does not contain any provisions determining legal status of a person in charge of pre-trial support of a minor that makes relevant the issue of determination of his/her procedural status and volume of powers.

Keywords: criminal trial; minor offender; specialist; social worker; pre-trial support.

● **Evidence of the defence in current criminal procedure.**

Aslyam N. Khalikov – Doctor of Laws, Associate Professor, Professor in the Department of Criminalistics at the Bashkir State University Institute of Law.

The article deals with issues of formation of evidence of the defence according to the principle of competitiveness in criminal trial. The author considers problems of the current criminal procedure legislation relating to the giving to the lawyer of a possibility to collect evidence for the defence, to produce them to the preliminary investigation bodies and to the court, as well as to the granting to the lawyer of a right to appeal against actions of investigation authorities and the court in case the evidence of the defence is rejected.

Keywords: lawyer; proving; evidence of the defence; preliminary investigation bodies; competitiveness; petitions.

CRIMINAL EXECUTIVE LAW. PENITENTIARY

• **Personality disorder of persons with a previous conviction.**

Boris A. Spasennikov – Doctor of Laws, Professor, Senior Researcher at the Research Institute of the Russian Federal Penitentiary Service.

The article presents results of a study of persons with a previous conviction (basic group), and persons who have never been convicted of a criminal offence (reference group). The study reveals that persons with a previous conviction feature various psychopathies (personality disorders) which may greatly influence implementation of criminal behaviour 5.5 times more often than in the reference group. Custodial sanction leads to failure of compensation of psychopathy (personality disorder). The author shows that convicted persons suffering from psychopathy (personality disorder) of antisocial, paranoid, epileptoid, and schizoid type need compulsory out-patient treatment and supervision by a psychiatrist along with the execution of the punishment aimed at improvement of mental health and life quality as well as re-socialization. However administration of correctional facilities of the Federal Penitentiary Service of Russia does not unfortunately use properly possibilities afforded by part two of article 18 of the Penal Code of Russia providing for such treatment.

Keywords: criminology; penal law; personality disorder; psychiatry; compulsory medical measures.

• **Theoretical legal justification of European penal systems and their short characteristic on the example of German penal system.**

Pavel V. Teplyashin – PhD in Law, Associate Professor, Head of Organizational-Scientific and Editorial-Publishing Department at the Siberian Law Institute of the Federal Drug Control Service of the Russian Federation.

The article considers scientific bases of classification of European penal systems. The author states the concept and constituent elements of the penal system, substantiates availability of its ten types on the European penitentiary map, and presents a short characteristic of the German type featuring a high degree of customisation of the federal (central) penitentiary legislation by regional regulatory legal acts, a microgroup principle of confinement of prisoners, «preventive detention» institute, low coefficient of prisoners and considerable proportion of foreign citizens within total number of convicted.

Keywords: isolation from society; prisoner; imprisonment; penitentiary policy; re-socialization; criminal sanction; Federal land; private prison.

• **Some aspects of determination of special conditions and reasons contributing to the commission of penitentiary crimes.**

Sergey A. Khokhrin – PhD in Law, Associate Professor, Head of the Department of Regime and Surveillance Organization in Penal System at the Academy of the Russian Federal Penitentiary Service.

The article addresses the studying and forming of a set of special conditions and special determinants of wrongdoing by convicted serving custodial sentence on the basis of analysis of court practice of criminal offences in correctional facilities.

Keywords: penitentiary criminality; special determinants; crime; penal system personnel; convicted; correctional facilities; mode; video surveillance; statistics.

CRIMINOLOGY

• **Judicial crime prevention issues.**

Svetlana I. Danilova – PhD in Law, Associate Professor, Higher Doctorate Candidate in the Department for Research Personnel Training at the All-Russian Research Institute of the MIA of Russia.

The article considers basic issues of judicial crime prevention due to the lack of its proper legal regulation, as well as statistics of its efficiency. On the basis of the analysis of Soviet criminal procedure legislation, and current legal acts regulating prevention of crimes and offences, as well as court practice, the author comes to a conclusion on necessity of a deep modification of both legal fundamentals of preventive activity of courts, and statistical reporting indicators in this field. According to the author, this would allow to take off the table a number of problems braking efficiency of judicial crime prevention as a whole.

Keywords: criminal trial, crime prevention, judicial crime prevention.

• **Transnational character of latency of rapes and «victim recrimination» as one of reasons of this phenomenon.**

Yaroslava O. Kuchina – PhD in Law, Associate Professor in the Department of Criminal Law and Criminology at the Far Eastern Federal University Law School.

Rape is the most widespread crime against women. Some researchers asserts that only in the Russian Federation every third woman has a relevant experience. However official statistics does not reflect this tendency and, moreover, criminologists maintain that rape is the most latent crime against a person within the criminality structure. Turning to the experience of foreign countries, the author has made an attempt to analyse, whether these tendencies are exclusively national (and such an opinion exists) or they have a transnational character and they should be regarded as a constant negative factor accompanying a rape irrespective of the country where it is committed. Scientific results have been received within the framework of fulfillment of a state assignment of the Ministry of Education and Science of the Russian Federation, assignment No. 29.763.2014/K.

Keywords: rape; victim recrimination; latency; reasons of latency; women rights; sexual freedom; sexual immunity.

• **Criminological characteristic of person of criminals who committed offences stipulated by Articles 176 and 177 of the Criminal Code of the Russian Federation (with reference to the Irkutsk region and the Republic of Buryatia).**

Irina M. Sereda – Doctor of Laws, Professor, Head of the Department of Criminal Law and Criminology at Irkutsk Law Institute (branch) of the Russian Law Academy of the Ministry of Justice of the Russian Federation.

Maria A. Kostyuchenko – Lecturer in the Department of Criminal Procedure and Criminalistics at Irkutsk Law Institute (branch) of the Russian Law Academy of the Ministry of Justice of the Russian Federation.

The article deals with criminological characteristic of persons who committed crimes stipulated by articles 176 and 177 of the Criminal Code of the Russian Federation in specific constituent entities of the Russian Federation - the Irkutsk region and the Republic of Buryatia. Authors come to the conclusion that the person of criminals who committed credit-related offences has a number of distinctive signs: demographic, criminal, legal, moral, and psychological. The analysis of personal characteristics of such persons makes it possible to reveal their specific characteristics on the basis of which classification of these persons has been developed.

Keywords: criminological characteristic; person of a criminal; economic crimes; illegal obtaining of credit; malicious evasion from repayment of accounts payable.

• **Revisiting classification and typology of the person of a minor offender.**

Vera A. Shunyaeva – PhD in Law, Associate Professor in the Department of Criminal Law and Criminology of the Institute of Law at Tambov State University named after G.R. Derzhavin.

The article considers classification and typology of the person of a minor offender. The author suggests a classification of the person of a minor offender depending on the degree of public danger of the act made by him/her, as well as its typology depending on volitional characteristics of psychological indicators.

Keywords: volitional qualities; dyscoordination; classification; person; minor; public danger; typology.

CRIMINALISTICS

• **Criminalistical characteristic is the informational basis of specific criminalistical techniques.**

Aleksey A. Bessonov – PhD in Law, First Deputy Head of the Investigative Department of the Investigative Committee of the Russian Federation in the Republic of Kalmykia, Honorary Worker of the Investigative Committee of the Russian Federation.

Specific criminalistical techniques are always based on information about criminalistically significant attributes of particular kind of crimes. The set of criminalistically significant essential elements of a crime of a certain kind is consolidated in standard criminalistical characteristics of crimes. The article envisages importance of standard criminalistical characteristics for forming each element of specific criminalistical techniques. Based on results of the research, the author has come to the conclusion that it is criminalistical characteristic of crimes that is the information basis of development of specific criminalistical techniques.

Keywords: criminalistical characteristic of crimes; investigation authority; investigation of crimes; specific criminalistical techniques.

● **Particularities of an investigatory examination in criminal cases involving illegal crossing of the state border of the Russian Federation.**

Rustam Z. Emaletdinov – Senior Lecturer in the Department of Criminal Law and Procedure at Kurgan State University.

The article considers the essence and tactical particularities of an investigatory examination when detecting and investigating illegal crossing of the state border of the Russian Federation. The author substantiates the necessity of formalisation of the procedural status of persons who take part in investigatory actions before institution of criminal proceeding: person suspected of crime, and eyewitness; specifies the content of activity of the criminal investigator (interrogating officer) at various stages of the examination of the scene including in particular the stage of preliminary preparation, the stage of direct preparation, the stage of general examination and the stage of detailed examination. Taking into account particularities of illegal crossing of the Frontier at specific sites of units (frontier posts), the author suggests carrying out scene examination with the use of a tactical approach “Dumbbell” representing a special combination of eccentric, concentric and frontal methods developed by the author. The author gives reasons for tactical expediency to engage infringers of the Frontier, eyewitnesses of the crime, officers of border authorities in examination of the scene, and personnel of border control authorities, in examination of items (documents).

Keywords: illegal crossing of the state border of the Russian Federation; investigatory examination; examination of items (documents).

● **Current model of the criminal trial and debatable issues of the «criminalistics of defence».**

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Vladimir I. Komissarov – Doctor of Laws, Professor, Senior Researcher at the NIRIO, Honored Lawyer of the Russian Federation.

The article deals with issues of condition of the criminalistics science from the point of view of today’s criminal trial. The authors review expediency of transformation of the criminalistical knowledge system under conditions of development of the current criminal trial; analyse theoretical issues of the «criminalistics of defence» within the framework of modern criminalistical knowledge, and envisage possible ways of development of this area within the framework of «traditional criminalistics». Authors share their views on a number of debatable issues of the said doctrine and its place in the criminalistics theory.

Keywords: scientific knowledge; criminalistical theory; criminalistics system; laws; competitiveness; criminal trial; protection; exposure of the criminal.

● **Prospects for the development of the criminalistical personality research theory.**

Yaroslava V. Komissarova – PhD in Law, Associate Professor in the Department of Criminalistics at Kutafin Moscow State Law University.

Elena N. Kholopova – Doctor of Laws, PhD in Psychology, Professor in the Department of Criminal Procedure, Criminalistics and Legal Informatics at Immanuel Kant Baltic Federal University.

Concepts «person», «individual», «personality» are frequently used as synonyms that is not absolutely justifiable. Personality is the result of socialisation of a person under the influence of a set of various factors, both external, and internal. However biological origins of formation of the personality shall not be ignored as we always deal simultaneously with both a living organism, and a member of the society. For this reason psychology is not a «monopolist» in studying the «personality». The essence of this category, its relation to other concepts characterising a modern person as «homo sapiens» have always been and remain a subject of independent studying of many sciences including criminalistics. Researches devoted to the person of the criminal (accused) and the victim (aggrieved person) may be regarded as the basis of the criminalistical personality research theory. A number of scientific papers published at the turn of the century raised issues of analysis of personal characteristic of minor participants to a trial, and addressed criminalistical aspects of penitentiary criminality. The issues of criminalistical investigation of personality of a witness have been rather extensively discussed recently. In contrast, problems of criminalistical studying of personality of other subjects of legal proceedings have been studied poorly. Little attention is given to the studying of personality during trial. Authors of the article support scientists who believe that the criminalistical personality research theory is still at the forming stage, and suggest new approaches to the systematization of the underlying knowledge.

Keywords: investigation of crimes; criminalistics; criminalistical theory; personality; participants to the trial; interpersonal communication; homology; homeoscopy; habitoscopy; homobioscopy.

• **Gnoseological problems of integration of scientific knowledge into criminalistical technics system.**

Gennady N. Mukhin – Doctor of Laws, Professor in the Department of State and Legal Disciplines at the Belarus State Economic University.

Dmitry V. Isyutin-Fedotkov – Doctor of Philosophy, PhD in Law, Associate Professor, Head of the Department (JSC «Aviation Equipment»).

The article addresses problematic issue of determination of the structure and cognitive value of criminalistical technics as criminalistics branch, as well as the ways of elimination of negative consequences of some inefficient changes of its conceptual provisions. The authors point out that scientific and technical progress, naturally influencing the structure of criminalistical technics, leads to the emergence of its new branches, but not to the change of the cognitive essence of this branch. The authors motivate the conclusion that some issues regarded as debatable are immaterial both from with theoretical and didactic points of view, do not influence understanding of the cognitive essence of this branch which consists in studying objective laws of use of achievements of natural and engineering sciences in solving crimes.

Keywords: criminalistical technics; criminalistical technics system; new branches and transformation of the criminalistical technics system; using achievements of natural and engineering sciences in solving crimes.

• **Some issues of practical application of provisions of the special criminalistical theory of counteraction to crime investigation and methods of its overcoming.**

Ramil R. Rakhmatullin – PhD in Law, Associate Professor in the Department of Criminal Procedure and Criminalistics of the Law Faculty at Kazan (Volga region) Federal University.

The article considers the issues of practical application by law enforcement bodies of provisions of the special criminalistical theory of counteraction to crime investigation and methods for its overcoming. Unfortunately practitioners are reluctant to use some provisions and even terminology of the phenomenon under consideration. However, a criminal investigator who has not mastered the methods of revealing and overcoming counteraction to the investigation, will be more often doomed to failure. Many drawbacks in the work of criminal investigators are due to outdated instructions which do not allow them any more to solve successfully tasks in hand. First of all, under conditions of action of the new Criminal Procedure Code of the Russian Federation real competitive process promptly gain momentum. In recent years the defence party has been more and more actively positioned by the legislator as having the right to be treated equal to the prosecution. Today the criminal investigator should think strategically, that is to figure out and foresee the actions of the opponent proactively, in other words, the criminal investigator should also possess criminalistical thinking.

Keywords: investigation; tactics; counteraction; legal institution; objective truth; influence; protection.

• **Regarding criminalistical prevention concept.**

Maksim V. Stoyanovsky – PhD in Law, Associate Professor in the Department of Criminalistics at Voronezh State University.

The article reviews statements about the essence, particularities, and levels of functioning of criminalistical prevention. The author notes that criminalistical prevention structure logically stems from with the block of objective laws studied by criminalistics, and the system of this science. The development of representations about criminalistical prevention on this basis, systematisation of criminalistical preventive means and methods, cause comprehension of the importance of the essence of these provisions, as well as their structurizations in the form of integral, pragmatically material criminalistics branch.

Keywords: crime; criminalistics; criminalistical prevention; levels of criminalistical prevention; preventive methods.

• **Use of professional knowledge of a psychologist by the criminal investigator.**

Alla V. Khmeleva – PhD in Law, Acting Head of the Department of Criminalistics at the Academy of the Investigative Committee of the Russian Federation.

Based on generalisation of investigatory practice, the author presents positive experience of use of special knowledge of a psychologist during investigation of crimes against minors, and crimes involving minor victims and witnesses.

Keywords: expert psychologist; minor victim; witness; interrogation; forensic examination; hypnosis-induced recollection; reliability and unreliability of evidence.

● **Biological objects in the context of judicial proving: investigation tactics and criminalistical errors.**

Anna E. Khorosheva – PhD in Law, Associate Professor in the Department of Criminal Law Disciplines at Altai branch of the Russian Presidential Academy of National Economy and Public Administration.

The author undertakes an attempt to analyse reasons of burning problems arising during investigation of objects of biological origin. Using practical examples from murder and rape cases, she scrutinizes criminalistical errors committed at the use of such objects in judicial proving.

Keywords: proofs; examination; DNA analysis method; murder; judicial tactics.

FORENSIC EXAMINATIONS

● **Poppy seeds as an object of legal and expert examination.**

Igor M. Komarov – Doctor of Laws, Professor in the Department of Criminalistics of the Law Faculty at Lomonosov Moscow State University.

The article envisages issues of legal and expert examination of poppy seeds as an object of narcotics trafficking, their relation to narcotic substances and their meeting criteria for an object of a criminal encroachment.

Keywords: poppy seeds; poppy; narcotic; expert examination.

LAW ENFORCEMENT BODIES

● **Presidium of the Supreme Court of the Russian Federation is the higher court of cassation.**

Iliya S. Dikarev – PhD in Law, Associate Professor, Director of the Institute of Law at Volgograd State University.

On the basis of the analysis of provisions of the criminal procedure legislation the author comes to the conclusion that cassation and supervision courts use a unified – cassational – form of review of judgements which have become final. The functioning of these instances within the framework of the uniform system guarantee the solution of tasks of ensuring consistency of court practice and the right of a person to judicial protection. The article gives reasons for the conclusion that Presidium of the Supreme Court of the Russian Federation, by exercising the judicial supervision function, represents the higher court of cassation for criminal cases.

Keywords: cassation; supervision; legality; consistency of court practice; appeal; principle of legal certainty; higher court of cassation.

INTERNATIONAL CRIMINAL LAW AND JUSTICE

● **Forming of expert and criminalistic units of police elements of UN peace-making missions: experience of the UN Mission in Kosovo.**

Sergey A. Tishkov – PhD in Law, Deputy Head of the Department of Criminalistics and Preliminary Investigation at Orel Law Institute of the MIA of Russia named after V.V. Lukyanov.

Using personal experience of participation in peace-making activity of the United Nations, the author considers organizational aspects of creation of expert and criminalistic units of police elements of the UN Mission in Kosovo. Analysis of problems emerging at the stage of deployment of the peace-making mission made it possible to formulate a number of recommendations on expert and criminalistic support of fulfillment of law-enforcement tasks by UN policemen in the territories under protectorate of the United Nations.

Keywords: investigation of crimes; expert and criminalistic support; organisation of expert and criminalistic activity; non-international armed conflict; UN peace-keeping activity; United Nations Interim Administration Mission in Kosovo; UNMIK.

● **Forensic support of activity of the International criminal court.**

Shamil N. Khaziev – PhD in Law, Associate Professor, Senior Researcher in the Sector of Criminal Law, Criminology and Justice Problems at the Institute of State and Law of the Russian Academy of Sciences.

The article considers procedural and criminalistic aspects of the use of special knowledge in the International Criminal Court's activity. The author provides details of participation of forensic experts from various countries in forensic, criminalistic and other examinations, organization of examinations both at the stage of preparation, and during legal proceedings, as well as addresses organizational matters of engaging forensic experts in the Court work.

Keywords: International Criminal Court; forensic examination; interrogation by an expert; expert's opinion; special knowledge.

COMPARATIVE LAW

• **The issue of applicability of penal sanctions for abusing tax bearer rights in the Italian Republic and the Russian Federation.**

Aleksandr M. Gusev – PhD Student in the Department of Criminal Law, Criminal Procedure and Criminalistics at Moscow State Institute of International Relations (University) of the MFA of Russia.

The article reviews some aspects of Italian legislation, court practice and legal doctrine relating to the applicability of criminal sanctions for abusing tax bearer rights. Taking into account experience of Italy, the author analyses the issue of applicability of criminal sanctions for abusing tax bearer rights in Russia.

Keywords: taxes; abusing the right; criminal responsibility; Italy; Russia.

LEGAL SCIENCE METHODOLOGY

• **Legal experience of a subject of legal knowledge.**

Yury P. Borulenkov – PhD in Law, Associate Professor, Prorector at the Academy of the Investigative Committee of the Russian Federation.

The author focuses on personal legal experience of the subject of legal knowledge as a system of «scenarios» stored in the long-term memory of a particular subject of legal knowledge reflecting social and legal situations of reality, as well as retained knowledge, skills, abilities and habits acquired by him/her in the course of education, formation and practical activities, forming together the most reasonable, efficient, progressive and creative means, techniques, methods, and rules facilitating his/her further activity in the legal sphere. The author states that in legal cognition individual experience of the subject is extremely rich in terms of content as at perception and analysis stages the information is mastered and, accordingly, used differently depending on capabilities and motivation. The author emphasises that personal legal experience is characterised by certain volume, selectivity, organisation, operationality, efficiency, and variety.

Keywords: legal knowledge; subject of legal knowledge; legal experience of the subject of legal knowledge.

LEGAL SCIENCE IN PRACTICE

• **Is it necessary to record the process of explanation of the rights to persons participating in an investigatory action using video recording equipment?**

Maksim R. Glushkov – Head of the Department of Criminalistics of the Sixth faculty for Professional Development of the Institute for Professional Development of the Academy of the Investigative Committee of the Russian Federation (Saint-Petersburg branch).

The matter specified in the heading is considered in the article on the basis of analysis of the legislation, opinions of researchers and practitioners. The author substantiates the point of view that there is no need to record the process of explanation of the rights using videorecording equipment.

Keywords: videorecording; investigatory action; explanation of rights; procedural regulation; participants of investigatory actions.

• **Proper preparation of the judge for consideration of the criminal case is a guarantee of justness of court judgements.**

Natalia V. Kostovskaya – PhD in Law, Associate Professor in the Department of Forensic Activity at Ural State Law University.

The article analyses non-procedural activity of the judge at the stage of preparation for examining the merits of the criminal case. The author substantiates dependence of legality of judgements delivered by the court upon the quality of the preparatory work relating to the studying by the judge of the criminal

case files, the theory and the practice of application of the relevant legislation, as well as to the forecasting of the court investigation options.

Keywords: preparation of the criminal case for consideration; legality of a sentence; studying criminal case files; technique; court investigation forecasting.

● **Regarding practice of differentiation of physical evidences and enclosures to reports of «nonverbal» investigatory actions.**

Sergey B. Rossinskiy – PhD in Law, Associate Professor in the Department of Criminal Procedure at Kutafin Moscow State Law University.

The article deals with practical issues relating to the accepting as physical evidences of audio and video records and other materials of additional recording of the results of investigatory examination, search, seizure, crime re-enactment and other «nonverbal» investigatory actions. Methodologically proceeding from the gnoseological essence of the evidences within the meaning of article 83 the Criminal Procedure Code of the Russian Federation, the author proves wrongfulness of such investigatory practice, and strongly criticizes it. Given that such practical errors have been already partially enshrined in statutory provisions regulating control and recording of negotiations, as well as obtaining information on connections between subscribers and/or subscribers' devices, the author suggests making respective amendments to the Criminal Procedure Code of the Russian Federation.

Keywords: physical evidences; video recording of an investigatory action; kinds of evidences; reviewing evidences; report of an investigatory action; collecting evidences.