

## DISCUSSION FORUM

**Aleksandr G. Volevodz**

Doctor of Law, Professor in the Department of Criminal Law, Criminal Procedure and Criminalistics at the Moscow State Institute of International Relations (University), Editor-In-Chief of the Journal

### Introducing a New Rubric

**Vladimir N. Terehovich**

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**Elita V. Nimande**

Doctor of Law, Associate Professor in the Department of Criminal Law Sciences of the Law Faculty at the University of Latvia

### The Essence of Subject of Knowledge in Criminalistics

The article critically analyzes the different approaches to the determination of subject of knowledge in Criminalistics. In compliance with the basis of modern criminal law enforcement, a detailed definition of the subject of knowledge in Criminalistics is formulated.

**Keywords:** criminal law enforcement; investigation of criminal acts; theory of Criminalistics; subject of knowledge in Criminalistics.

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### History of Development and Modern Ideas of Object and Subject of Criminalistics

The article explores the process of formation of the definition of the concept of object in the science of Criminalistics in historical context, and the discussions that accompanied it, and the current trends for scientific researches in this field.

**Keywords:** Criminalistics; object and subject of science.

**Valery Y. Shepitko**

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### Criminalistics within the System of Scientific Knowledge: Tasks and Particular Tendencies under the Modern Conditions

The article considers the role of Criminalistics in the system of scientific knowledge and determination of its place within the structure of sciences related to criminal law series. Attention is paid to the tendencies of Criminalistics and the change in the content of its subject-matter. The tasks of Criminalistics in the contemporary conditions of combating crime are typified. Particular problems that concern the teaching of Criminalistics (problems of Criminalistics didactics) are singled out.

**Keywords:** tasks of Criminalistics; information technologies; truth in criminal procedure; Criminalistics; Criminalistics didactics; Criminalistics strategy; Criminalistics knowledge; subject-matter of Criminalistics; tendencies of Criminalistics.

**Aleksey A. Exarkhopulo**

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### The Doctrine about the Subject of Criminalistics as Theoretical Basis for Setting Its Actual Tasks

The article is devoted to problem questions of the development of the doctrine about the subject of Criminalistics. The author gives an analysis of the current state and prospects of development of this doctrine in the light of its practical expediency.

**Keywords:** Criminalistics; subject of knowledge in Criminalistics.

**Valery N. Karagodin**

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**Formation and Development of Modern Ideas of Object and Subject of Criminalistics**

The article reviews the modern concepts of object and subject of domestic Criminalistics, origination and development of ideas of these significant scientific categories. The analysis was carried out for the most widespread concepts of object and subject of Criminalistics with taking into account the positions of different scientists. The author expresses his own opinion on debatable questions of the topic under consideration.

**Keywords:** science of Criminalistics; subject and object of Criminalistics; criminal activity; method of crime; investigation of crimes.

<b>CRIMINAL LAW</b>
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**Aleksei G. Kibalnik**

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**Justified Risk in Medical Activity**

The article deals with the problems of criminal liability for the acts committed when taking justified risk in medical activity. The conclusion is drawn that there are specific characteristics for justified risk in medicine. The understanding of socially useful purpose of justified risk taking in medical activity is formulated.

**Keywords:** criminal liability; justified risk; medical activity; socially useful purpose.

**Nadezhda V. Miroshnichenko**

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**The Criminal Law Characteristics of Infliction of Harm at Violation of Special Rules: Problems and Solutions**

The article deals with the criminal law characteristics of crimes connected with violation of special rules. The issues of their classification by features of object, objective and subjective part are analyzed. The rules of classification are specified, and the possible avenues for improvement of criminal law are identified.

**Keywords:** violation of special rules; classification of crimes; blanket disposition; socially dangerous consequences; complex form of fault.

**Yuriy E. Puduvochkin**

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**On the Ethical Basis of Criminal Law Prohibition**

The article is devoted to exploring the question of the relationship between morals and criminal law. Problems of a moral justification of criminal law prohibition in the conditions of accruing relativity of moral values are analyzed. Attention is focused on the selection of objects for criminal law protection and ethical justification of criminal punishment. Solution options to the problem of the balance between criminal law and morals are specified.

**Keywords:** criminal law prohibition; moral values of demassified society; moral justification of criminal punishment; values protected by criminal law.

**Tatiana A. Rodionova**

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**The Influence of International Agreements of the Russian Federation on the Improvement of the Criminal Code of the Russian Federation**

This paper deals with the issues of improving the Russian Criminal Code in the context of the influence of international treaties of the Russian Federation on domestic criminal legislation.

**Keywords:** Criminal Code of the Russian Federation; international treaty; impact of international law; domestic criminal legislation; improvement of the Criminal Code of the Russian Federation.

**Elina L. Sidorenko**

Ph.D. in Law, Associate Professor in the Department of Criminal Law and Criminology at the Russian Law Academy of the Russian Federation Ministry of Justice

**Principles of Dispositiveness in Criminal Law: Search for a Methodological Basis of Criminal Policy**

In this work, a methodologically justified approach to the definition of a model for the Russian criminal policy is offered. The expansion of individual principalities of legal regulation is estimated by the author as a natural and expected stage in the evolution of criminal law, but is considered in an unusual way – in the context of determination of ideological imperatives of dispositiveness. Special attention is given to a synergetic method of research. This method has allowed to consider criminal law as a self-organizing system, not accepting effectively external influence, and outline promising directions for its development. The principles of dispositiveness in today's crisis play the role of an ideological attractor, and provided their social "convenience" (maximum adaptation to political, economical and other circumstances), can change the vector of criminal policy.

**Keywords:** criminal law; dispositiveness; individual principalities of criminal law regulation; principles of criminal law; synergetics; methodology; criminal policy.

**Vadim V. Khiluta**

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**Reforming of the Concept of Plunder and Its Signs in the Criminal Law Doctrine**

The article considers the problems of definition of the concept of "plunder" in criminal law science. The very concept of plunder and its signs are analyzed. The available points of view stated in legal literature concerning the modernization of stealing are considered, and a conceptual model of the development of criminal legislation in regard to establishment of absolute prohibitions in the field of protection of property relations is offered.

**Keywords:** plunder; crimes against property; appropriation of property of another; signs of plunder.

<b>CRIMINAL PROCEDURE</b>
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**Georgy V. Abshilava**

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**Transaction in Criminal Procedure as the Result of Convergence of Private and Public Law**

During the few last years the criminal policy, which also includes policy of criminal procedure, had experienced essential changes. These changes became a component of the modernization of judicial system and the criminal and procedural legislation of the Russian Federation. The expressions of historical logic of the development of civilization are globalization and convergence. The article argues that the essence of the objective process of convergence of private and public law consists of interpenetration of private and public law methods of legal regulation that inevitably generates conciliation procedures in criminal procedural law. The author concludes that convergences of private and public law in the sphere of criminal procedure, is not simply an interaction, but development of a mutually acceptable agreement that meets the rights and legitimate interests of the parties, and is easily realized in practice.

**Keywords:** criminal procedural law; convergence; transaction in criminal procedure; conciliation procedures; Code of Criminal Procedure of the Russian Federation.

**Oleg Ya. Baev**

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**Ensuring the Rights and Lawful Interests of the Victim in a Pretrial Agreement on Cooperation**

The article explores a rather urgent problem of legislative exclusion of the victim from the process of the conclusion of pretrial cooperation agreements with suspected (accused), while taking into account a ratio of public and personal interests in criminal trial. The author justifies the opinion that this concept

represents legal, legislative and social nonsense in terms of the implementation of the very purpose of criminal proceedings.

**Keywords:** pretrial cooperation agreement; public and personal interests in criminal proceedings; victim.

**Leonid V. Brusnitsyn**

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**International Legal Standards of Ensuring Safety for Participants in Criminal Trial: Reserves for Development of Russian Legislation**

The article reviews the international legal acts defining reserves for the improvement of Russian legislation in the sphere of ensuring safety for participants in criminal proceedings. The author draws attention to the fact that the main guidelines for the development of domestic legislation in this sphere are the regulatory documents of the United Nations and its special bodies, the Council of Europe, and the precedents of the European Court of Human Rights.

**Keywords:** criminal proceedings; ensuring safety for participants in criminal proceedings; state protection of victims and witnesses.

**Lyudmila M. Volodina**

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**The Object of Knowledge and the Object of Proving in Criminal Case**

The article deals with the relation between the concepts of object of proving and object of knowledge in criminal proceedings, and their significance for the establishment of the elements of a crime.

**Keywords:** proving; knowledge; criminal proceedings; object of proving in criminal proceeding.

**Vadim V. Gorsky**

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**On the Issue of the Purpose of Participation of a Legal Entity, as Victim of Crime, in Criminal Proceedings**

The article explores the problem of participation of a legal entity as victim in criminal proceedings. The author highlights the distinctions of functions and aims of participation of a legal entity as victim from those when it participates as civil claimant.

**Keywords:** legal entity; victim; civil claimant.

**Vladimir V. Dubrovin**

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**Prejudice in Criminal Procedure in Russia: Development and Current State**

This article is devoted to the evolution of legal institution of prejudice in criminal procedure in Russia. Attention is drawn to the current state of prejudice and to the position of the Constitutional Court of the Russian Federation on this issue.

**Keywords:** criminal procedure; prejudice; Criminal Procedural Code of the Russian Federation.

**Roman V. Kostenko**

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**Assessment of Admissibility of Victim Testimony from the Viewpoint of Appropriate Persons Authorized to Obtain It**

The article considers one of the urgent issues in the science of Russian criminal procedure, regarding the rules of assessment of admissibility of victim testimony from the viewpoint of appropriate persons who obtain it in criminal cases. Based on the analysis of various points of view of scientists in criminal procedure, the current Code of Criminal Procedure of the Russian Federation and practice of its implementation, the author has made original conclusions about this rule (criterion) of assessment of

admissibility of victim testimony. In particular, according to the author, the essence of the considered rule of assessment of admissibility of victim testimony is that this kind of proofs should be received by the appropriate person that is the person competent in the criminal case to carry out procedural actions on gathering of evidence. Violation of this criterion of appropriate person always involves recognition victim testimony obtained as inadmissible evidence.

**Keywords:** admissibility of evidence; rules of assessment of admissibility of evidence; victim testimony; assessment of admissibility of victim testimony; persons authorized to obtain testimony.

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**Julia V. Kuvaldina**

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#### **Problems of Legal Regulation and Application of the Institution of Pretrial Cooperation Agreement**

This paper analyzes the problems concerning the essence, procedure and consequences of the conclusion of a pre-trial cooperation agreement, and the functions of the participants of criminal proceedings in this procedure. Based on examples of real practice, suggestions are given for the improvement of the institution provided for in Ch. 40.1 of the RF CPC.

**Keywords:** pretrial cooperation agreement; proposal of the prosecutor; special procedure of judicial proceedings; plea bargain; criminal procedure; modification of a criminal charge; consent of victim.

**Olga V. Levchenko**

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**Denis M. Huziahmetov**

Assistant Chairman of Lenin District Court of the City of Orenburg

#### **Limits of Judicial Discretion in Criminal Proceedings**

In the science of criminal procedure law, the issue of the concept and limits of judicial discretion is debatable. Solving the problem of the limits of judicial discretion would allow answering the question of how such part of the law-enforcement activity, as judicial discretion, is exercised in practice, and how the choice of a decision is made, and by what it is limited.

**Keywords:** judicial discretion; limits of judicial discretion; relevance of judicial decision; legal facts; inward conviction.

**Vladimir M. Meshkov**

Doctor of Law, Professor in the Department of Criminal Procedure, Criminalistics and Legal Informatics at the Baltic Federal University

#### **Interference between the Aim and Time Factor in Criminal Proceedings, or How the 'Aimless' Code of Criminal Procedure of the Russian Federation Has Split Us into Poor and Rich**

The article examines a number of factors, which allow making a conclusion about that the establishment of truth in criminal cases should become the primary aim of the Code of Criminal Procedure of the Russian Federation, and provisions of this Code should protect equally effectively the rights and legitimate interests of all citizens of Russia, irrespective of their financial position.

**Keywords:** aim of criminal proceedings; truth; time factor; expiry of limitation period; protection of rights and interests of citizens, irrespective of their financial situation.

### **CRIMINALISTICS**

**Anatoly M. Bagmet**

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#### **Forensic Characterization of Mass Disorders**

The article considers the structure of forensic characterization of mass disorders, reveals elements of forensic characterization of mass disorders as such, forensic characterization of signs of mass disorders and forensic characterization of crimes committed during mass disorders.

**Keywords:** mass disorders; signs; forensic characterization.

**Yaroslava V. Komissarova**

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#### **Objectives, Object and Subject of Psychophysiological Examination with the Use of Polygraph**

According to the author, empirically proved efficiency of psychophysiological method of lie detection by using a polygraph (provided that all "technological" parameters of its application are maintained), as well as the knowledge and understanding of the nature of some of the most important processes, leading to the manifestation of psychophysiological reactions registered with a polygraph, present sufficient grounds to move the issue of the possibility of conducting forensic psychophysiological examination with the use of polygraph from discussion to practice. Based on the results of the previous analysis of the professional components of the expert activity in criminal proceedings, the author suggests a system of concepts, which adequately reflects capabilities, features and perspectives of the participation of polygraph examiners in the process of proving on criminal matters.

**Keywords:** polygraph; psychophysiological reactions; diagnostics; expert task; object and subject of expert examination; forensic psychophysiological examination with the use of polygraph.

**Anna A. Lebedeva**

Ph.D. in Law, Senior Research Fellow at the All-Russian Scientific Research Institute of the Ministry of Internal Affairs of the Russian Federation

#### **Some Aspects of the Investigation of Non-Return of Funds in Foreign Currency From Abroad**

In this article, some aspects of the investigation of non-return of funds in foreign currency from abroad are revealed. The list of the circumstances, which are subject to proving at the initiation of a criminal case and establishing the issue, is specified. In addition, the list and sequence of necessary investigatory actions is given.

**Keywords:** investigation; non-return of funds in foreign currency from abroad; circumstances subject to proving; initial investigatory actions.

**Pavel V. Malyshkin**

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#### **The Method of Concealment of a Crime and its Place in the Structure of the Method of Committing a Crime**

The article is devoted to the problem, which is significant not only for theory, but also for practical investigation of crimes. The problem of detecting of the method of concealment of a crime has methodological significance, because it depends on its understanding what methods and means an investigator will choose for detecting the committed concealment, which guarantees success in detection and investigation of particular crime.

**Keywords:** method of concealment of a crime; method of committing a crime; investigation of a crime; crime activity.

**Sergey A. Pichugin**

Ph.D. in Law, Lecturer in the Department of Forensic Expert Activity at the Moscow University of the Ministry of Internal Affairs of Russia

#### **Current State and Prospects of Development of Forensic Research of Appearance Signs of a Person**

In this article, the author explores the contemporary problem issues of the forensic research of appearance signs of a person, related to such areas of law-enforcement activities as operational search, investigations and expert examinations. Suggestions are given for the improvement of this kind of activity in the context of problems of establishing a person's identity by means of subjective images.

**Keywords:** forensic gabitoscopy; identity of a criminal; subjective image; outward appearance.

## CRIMINOLOGY

**Andrey A. Aryamov**

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**Evgeniy A. Sharafutdinov**

Deputy Kemerovo Interdistrict Prosecutor on Supervision over the Implementation of Legislation in Coal Industry

### **The Relations in the Sphere of Licensing of Subsurface Use as an Object of Legal Protection**

The article considers the intersectoral problem of gaps in legal regulation in the sphere of subsurface use, which generate expansion of a circle of unfair users of subsurface resources and facilitate commission of ecological and economic offenses.

**Keywords:** subsurface use; legal regulation; licensing; license contract; agreement on output division; plunder; fiscal offense; legal responsibility.

**Dmitry V. Zhmurov**

Ph.D. in Law, Associate Professor, Lecturer in the Department of Criminal Law and Criminology at the Baikal State University of Economics and Law

### **Determination in Criminology – Critical Analysis**

The article reviews the main approaches to the determination of individual criminal behavior, and analyses some aspects of the contents of conditional and traditional dialectic approaches to causality in Criminology. The author suggests that the causes of criminal behavior at individual level should be considered in the context of interaction of external and internal criminogenic fields.

**Keywords:** causes of individual criminal behavior; external and internal criminogenic field.

**Oksana A. Kotelnikova**

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### **Current Trends of Street Crime in the Far Eastern Federal District**

The article is devoted to one of the most urgent problems of modern criminology - street crime in the Far East Federal District. Herewith, it reveals the socio-economic, geopolitical and demographic characteristic features of the region, which determine people's way of life, contribute to the formation of social relations and moral-psychological climate, as well as have an effect on street crime. The article presents an analysis of criminal statistics of street crimes committed in the territory of the Far East, which indicates appearance of negative trends in the dynamics of their progress, if compared with the nation-wide indicators. The author justifies the need for an improved regional system for the prevention of crimes and misdemeanors in the streets, in line with modern realities.

**Keywords:** street crime; Far Eastern Federal District; socio-economic factors; demographics; migrant workers; complex approach.

**Anna L. Repetskaya**

Doctor of Law, Professor, Head of the Department of Criminal Law and Criminology at the Baikal State University of Economics and Law

### **The Specifics of Russian Organized Crime Infiltration into the Sphere of Legal Entrepreneurship during the Post-Soviet Period**

This article reviews the characteristics of organized crime associations (OCA) penetration of legitimate business during the post-Soviet period. Various types of economic activity in a combination with commission of crimes of generally criminal nature are specified as main types of activity of OCA during this period. A definition is given of "kryshevaniye". Its versions and prevalence depending on the period of activity, influence of "kryshevaniye" on business community during the post-Soviet period, methods of organized crime penetration of legal business are described. The author has come to the conclusion that during the modern period the organized criminals, for integration into legal business, prefer the method of «indirect threat» that has been proven to be real by the high rate of realization of such threats in OCA activities in the past and at present.

**Keywords:** organized crime; organized criminal groups; associations; "kryshevaniye"; legalization of organized criminal activity; entrepreneurship; organized criminal group infiltration.

**Aleksandr M. Smirnov**

Ph.D. in Law, Senior Research Officer in the Department for Problems on Regime and Security in Criminal Penal System of the Scientific Research Institute of the Federal Penal Service of Russia

**Victimological Prevention of Crime and Criminal Discriminatory Practices against Persons with Sexual Inversions in Russia**

This article considers one of the subject matters of researching in a new area of victimology knowledge – victimology of sexual inversions, and that is the measures of victimological counteraction to crime and criminal discriminatory practices against persons practicing same-sex sexual contacts. The author outlines the principles of application of these measures, reveals their system, and gives suggestions about methods for their implementation under the conditions of contemporary Russia.

**Keywords:** victimology; victim of a crime; victimological prevention of crimes; sexual inversions; homophobia.

**LAW ENFORCEMENT AUTHORITIES**

**Anatoly K. Kiselev**

Ph.D. in History, Associate Professor, Head of the Department of History and State Law at the North-Caucasian Social Institute (Stavropol)

**Social Security of the European Police**

This article, based on the analysis of the European legal and regulatory framework and practices of its implementation, examines the policies of EU member countries in the field of social security of the national police forces staff.

**Keywords:** European Union; police; wages; pension; budget; benefit; insurance; social status; criminality.

**INTERNATIONAL CRIMINAL LAW AND JUSTICE**

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**Vadim S. Vyskoub**

Ph.D. in Law, Researcher at the Research Institute of the Academy of the Prosecutor General's Office of the Russian Federation

**Human Rights and Problems of Refusing Extradition for Criminal Prosecution or Sentence Enforcement**

The authors have attempted to analyze the legal institution of refusal of extradition for criminal prosecution or sentence enforcement, its direct connection and value for ensuring the rights and freedoms of the persons involved in extradition process. All the grounds for refusal of extradition, listed in the fundamental international Acts and the national legislation of Russia, are considered. The conclusion is drawn on the tendency to extension of the list of grounds for refusal of extradition, which meets present requirements of effective protection of the rights and freedoms of citizens.

**Keywords:** international law; contract (convention); refusal of extradition; human rights; nationality; political asylum.

**Lyudvik D. Davtyan**

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**Free Movement of Cross-Border Expert Evidence and Its Mutual Admissibility in the European Union**

From the 90s of the 20th century the developments of criminal legal and political processes in the European Union show its obvious intention to replace the traditional instruments of international mutual legal assistance in criminal matters by the modern mechanisms of judicial co-operation based on the mutual recognition principle.

The subject matter of this article is the regime of gathering and admissibility of cross-border (foreign) expert evidence in criminal matters in the European Union. The purpose of this work is the study of the international co-operation based on the regime of mutual recognition and execution of sentences and decisions on criminal cases in EU, focusing on obtaining and admissibility of expert evidence.

**Keywords:** European Union; mutual recognition; international co-operation in criminal matters; cross-border expert evidence; free movement; admissibility of expert evidence.

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#### **The Concept and Practical Application of Cumulative Charging by International Criminal Justice Bodies**

The institution of aggregate of crimes is not codified in international criminal law at present. Neither the statutory documents of the international criminal justice bodies, nor the Rules of Procedure and Evidence based on them, make any provision for it. However, in the practice of international criminal jurisprudence, they often apply a so-called cumulative charging that represents an actual corollary of aggregate of crimes.

Within the scope of the present article, the author has attempted to give the general idea of the institution of cumulative charging, characteristics of its types, consider its legal basis set out in fundamental Acts of the international criminal justice bodies and analyze the practice of its application and development perspectives.

**Keywords:** international criminal law; international criminal justice; International Criminal Court; cumulative charging.

<b>LEGAL SCIENCE METHODOLOGY</b>
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**Denis S. Khizhniak**

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#### **Modern Methodology of Jurisprudence**

The article is devoted to the state and prospects of development of the modern methodology of jurisprudence. The author analyses new methods used in understanding of law. A tendency of alteration of methodology of jurisprudence under the conditions of globalization is also discussed.

**Keywords:** methodology; jurisprudence; the world pattern; semiotics.

#### **Authors Information**

#### **Manuscripts Submission Guidelines**