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**SOME ASPECTS OF PROOF BY MEANS  
OF THE EXPERT STATEMENT**

This article considers the problems arising at assessment of expert statements. The actual data important for the correct solution of criminal case is determined by testimonies of the suspect, victim, witness, witness having right for protection, the expert, the specialist; statement of the expert or specialist; material evidences; protocols of procedural actions and also statement of the expert or specialist. Assessment of proofs is considered in all scientific sources as the proof process element consisting in cogitative logical activities for determination of relevancy, admissibility and sufficiency of proofs for adoption of this or that proceeding decision. Further, authors emphasize that at assessment of the expert statement all important elements of activity of the expert have to be exposed to the analysis. The analysis of scientific validity of the expert statement – the most difficult moment in assessment of the expert statement. This analysis presents the known difficulty for court because the expert statement – result of the research conducted by the expert person on the basis of special knowledge. Knowledge of practical employees of law enforcement and judicial authorities in methodical bases of production of judicial expertise – one of conditions of objective assessment concerning compliance of the expert statement, the expert to circumstances of the considered case. Further, the article reveals basic provisions of the analysis of the expert statement in detail.

**Key words:** proof, evidentiary facts, investigative actions, expertise, expert, statement, conclusions, proof, assessment.

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**Сарапшы қорытындысының көмегімен  
дәлелдеудің кейбір аспектілері**

Мақалада сарапшы қорытындысын бағалау кезінде пайда болатын мәселелер қарастырылған. Қылмыстық істі дұрыс шешу үшін маңызға ие болатын фактілік деректер күдіктінің, жәбірленушінің, куәнің, қорғалуға құқығы бар күдіктінің, сарапшының, маман жауаптарымен, заттай дәлелдемелермен, іс жүргізу әрекеттерінің хаттамаларымен, сонымен қатар сарапшы мен маманның қорытындыларымен анықталады. Дәлелдемелерді бағалау барлық ғылыми қайнар көздерде белгілі бір процессуалдық шешім қабылдау үшін дәлелдемелердің қатыстылығы, жіберілетіндігі мен жеткіліктілігін анықтау бойынша логикалық ой қызметінен тұратын дәлелдеу процесінің элементі ретінде қарастырылады. Мақалада авторлар сарапшының қорытындысын бағалауда сарапшы қызметінің барлық маңызды элементтері талдануға жатуы қажет екендігіне назар аударған. Сарапшы қорытындысының ғылыми негізділігін талдау – сарапшы қорытындысын бағалаудың ерекше күрделі кезеңі. Бұл талдау соттар үшін қиындық туғызады, себебі сарапшы қорытындысы – тұлғаның арнайы білімдер негізінде жүргізген зерттеуінің нәтижесі. Құқық қорғау

мен сот органдары қызметкерлерінің сот сараптамасын жүргізудің әдістемелік негіздерін білуі – қарастырылып отырған істің жағдайларына сарапшы, маман қорытындыларының сәйкестігін анықтау бойынша объективтік бағалаудың бір шарты болып табылады. Мақалада сараптамалық қорытындыны талдаудың негізгі ережелері жан-жақты ашылып көрсетілген.

**Түйін сөздер:** дәлелдеу, дәлелдеу құралдары, тергеу әрекеттері, әрекет, сараптама, сарапшы, қорытынды, нәтижелер, дәлелдеме, бағалау.

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### **Некоторые аспекты доказывания с помощью заключения эксперта**

В статье рассмотрены проблемы, возникающие при оценке заключений эксперта. Фактические данные, имеющие значение для правильного разрешения уголовного дела, устанавливаются показаниями подозреваемого, потерпевшего, свидетеля, имеющего право на защиту, эксперта, специалиста; вещественными доказательствами; протоколами процессуальных действий, а также заключениями эксперта, специалиста. Оценка доказательств рассматривается во всех научных источниках как элемент процесса доказывания, состоящий в мыслительной логической деятельности по определению относимости, допустимости и достаточности доказательств для принятия того или иного процессуального решения. Далее авторы подчеркивают, что при оценке экспертного заключения анализу должны подвергаться все важные элементы деятельности эксперта. Анализ научной обоснованности заключения эксперта – наиболее сложный момент в оценке экспертного заключения. Этот анализ представляет известную трудность для суда, в связи с тем, что заключение эксперта есть результат исследования, проведенного ведущим лицом на основе специальных знаний. Знание практическими работниками правоохранительных и судебных органов методических основ производства судебной экспертизы – одно из условий объективной оценки соответствия заключения эксперта, специалиста обстоятельствам рассматриваемого дела. Далее, в статье подробно раскрываются основные положения анализа экспертного заключения.

**Ключевые слова:** доказывание, средства доказывания, следственные действия, экспертиза, эксперт, заключение, выводы, доказательство, оценка.

### **Introduction**

Social and economic transformations are followed by criminalization of society, growth and modification of crime. In structure of crime more and more important place is taken by activity of the organized, technically equipped groups having considerable material resources that significantly complicates process of identification and investigation of crimes. In proof on criminal cases the role of institute of judicial examination considerably increases in these conditions. Not to a lesser extent the role of judicial examination is significant also by consideration of civil cases, cases of administrative offenses. However, many qualified lawyers, including judges and lawyers, very vaguely imagine possibilities of judicial examination, not to mention ordinary citizens, who entirely rely on lawyers in this matter. Especially problems arise at assessment of the statements. The

purpose of this article is devoted to fill this gap. It considers the rules of assessment of the expert statement; also attention is paid to conclusions of experts of diagnostic, classification and identification character.

Methodological base and methods of the research. Methodological basis of the research are provisions of a general scientific dialectic method of knowledge of surrounding reality in its communication and interaction, general scientific system approach. At the same time also private and scientific methods have been applied: historical, statistical, logical, system and structural, systemic-functional and other private methods of research activity. In order to achieve objectivity of results these methods were applied in a complex.

### **Main part**

The Criminal Procedure Code of the RK in

Art. 113 establishes a proof subject, i.e. a circle of the circumstances, which are subject to proof on criminal case, necessary for its solution (Criminal Procedure Code of the RK dated 04.07.2014 No. 206-I). The procedure of proof, as a special form of knowledge that is emphasized by the Legislator in Art. 121-122,124, 125 and all researchers, consists of collecting, check and assessment of proofs. Considering specifics of informative process, processualists, criminalists distinguish in it formal and procedural Art. 122,123 and gnoseological aspects. In the formal and procedural view collecting of proofs – according to the listed articles of the Criminal Procedure Code of RK presents objective and practical activities of subjects of proof on search, detection, receiving and fixing of proofs. Methods of collecting of proofs: investigative actions and other procedural actions: reclamation and submission of proofs; receiving objects, documents and other data by the defender, inquiry of persons from their consent. According to Art. 111 of the Criminal Procedure Code of the RK the proofs on criminal case are validly obtained actual data, on the basis of which in the order determined by the present Code an inquiry organ, the inquiry officer, the investigator, the prosecutor, the court set existence or absence of the act provided by the Criminal Code of the Republic of Kazakhstan, commission or non-commission of this act by the suspect, defendant or accused, his guilt or innocence and also other circumstances important for the correct solution of case. Further the Law in the same article states that the actual data important for the correct solution of criminal case is set by: testimonies of the suspect, defendant, victim, witness, witness having right for protection, the expert, the specialist; expert opinion, specialist statement; material evidences; protocols of procedural actions and other documents. The legislator ranks judicial expertize as evidentiary facts.

Gnoseological aspects are distinguished especially at stages of verification and assessment. Verification of proofs are not only objective and practical, but also cogitative activity of subjects of proof for determination of proofs properties (the Art. 123,124,125 of the Criminal Procedure Code). Verification includes elements of collecting and assessment of proofs. Ways of verification are: a) comparison of the verified proofs to other proofs, b) establishment of sources of proofs, c) obtaining other proofs confirming or disproving the verified proof. The task of verification of proofs is formation of the body of evidence sufficient for a conclusion about their reliability.

*Assessment of proofs* is considered in all scientific sources as the proof process element, consisting in cogitative logical activities for determination of relevancy, admissibility and sufficiency of proofs for adoption of this or that proceeding decision (The theory of proofs in the Soviet criminal trial 1967: 242).

Assessment accompanies all process of disclosure and investigation of crime and can be preliminary (current) assessment, which is carried out during collecting of proofs, and total assessment, which accompanies adjudgement. The result of assessment of proofs is fixed in motivation of the adjudgement (petition). According to all researchers, assessment of proofs is made in the following directions:

- relevancy of proofs (their relation to the proof subject);
- admissibility of proofs (legality of their receiving);
- reliability of proofs (validity, lack of reasonable doubts);
- sufficiency of proofs (ability of body of evidence to prove the adjudgement).

The considered scientific and procedural provisions have a direct relation to judicial examination and expert opinions as to proofs. The statistics shows that there is a tendency to the constant growth of number of the expertizes, which are carried out in the country. If last century there were carried-out about 10000 expertizes a year, then for today number of the carried-out expertizes exceed more than 70000 in a year, including expertizes, carried-out by experts working according to the license. Thus, the provided figures demonstrate demand of this type of a source of the proof and to use of the statements as proofs, significant for adjudgement.

The expert statement can't be the basis for the judgment, indictment without its careful assessment by court, the investigator, the prosecutor, the lawyer and other participants of process according to Art. 77 of CC of the RK; Art.125 of the Criminal Procedure Code of the RK, Art. 784 Administrative Code of the RK (Civil Procedure Code of the RK). No proofs for court and other participants of process have force that is established in advance. All collected proves of the case are subject to comprehensive and objective verification and assessment by court. These requirements certainly belong also to expert statements (The Code of the Republic of Kazakhstan about administrative offenses, the Administrative Code of the RK). It is necessary to recognize as wrong the opinion that the expert statement has special validity, as it proceeds from the person, having special knowledge, in this connection he

cannot be assessed by the body which has appointed expertize. The court (the investigator, the prosecutor, the lawyer) can't blindly follow expertize, take it on trust without careful check and critical evaluation. Expert statement assessment – not end in itself. By means of this statement the court, the investigator, the prosecutor and also the lawyer establish the circumstances important for case.

In procedural literature the opinion that assessment of the expert statement is a difficult thought process, carried out by the judge (court) is standard (Modern opportunities of judicial examinations 2000: 132). At the same time the content of a concept of the expert statement assessment demands specification. Processualists and criminalists have no unanimity of views on this matter. There is an opinion that expert statement assessment mainly comes down to assessment of the expert's conclusions stated in this statement from the point of view of their validity, other point of view exists, that the maintenance of assessment of any proof consists solution of the following questions: a) about a source of proofs; b) about relevancy and admissibility of proofs; c) about reliability of proofs, there is an opinion that the expert statement has to be estimated from the point of view of its admissibility and reliability (Rossinskaya 1996: 188).

Assessment of expert statements by court (the investigator, the prosecutor, the lawyer) has to include two main issues, besides general provisions of assessment of proofs: firstly, the analysis of the expert statement from the point of view of its legality and validity; secondly, the analysis of compliance of the expert statement to another proves collected on case, i.e. the analysis of its evidentiary value. Further, we will stop on expert statement assessment by court.

Procedural conditions of appropriate assessment of the expert statement are the following factors:

a) the expert statement is estimated by court on internal belief. The actual data which are in the expert statement have no force established in advance for court;

b) the internal belief of court is formed on the basis of comprehensive, complete and objective examination in judicial proceedings of all facts of the case in their set;

c) at expert statement assessment the court is guided by the law and sense of justice.

At assessment by court of the expert statement all important elements of expert activity have to be exposed to the analysis, i.e. the expert statement has to be estimated in the procedural relation and from the actual view.

In civil process, also as well as in criminal, the legislator allows a possibility of such cases, when it isn't possible to establish all circumstances, significant from the point of view of the law. However in civil process there isn't accusatory or guilty verdict, and there is a judgment made by court in favor of one of the parties. The law doesn't allow court to refuse judgment in view of absence of proof of the facts important for case. The court has to make the judgment and the judgment has to be passed in favor of one of the parties. Therefore there is a question, what judgment should be passed if the court didn't manage to establish all circumstances important for case? In civil process if neither the court, nor the parties managed to establish actual data, important for case, it is necessary to make judgment that is adverse for that party which according to the principle of distribution of duties of proof, had to prove the required actual data.

The expert statement doesn't matter if it is given with violation of standards of the procedural law. Therefore an obligatory element in assessment of the expert statement is verification by the investigator, prosecutor, court of observance of law requirements in connection with appointment and conducting expertize. Use of procedural rules when conducting expertize assumes clarification of the main questions: whether expertize on the basis of the resolution or definition of the judge about appointment of expertize has been carried out; whether the order of receiving materials for expertize has been observed; whether the right of the parties and other interested participants at appointment and carrying out expertize were observed; whether the expert is warned about criminal liability for making obviously false statement; whether the expert had an opportunity to get acquainted with the materials relating to an examination subject; whether the expert statement was made with observance of law requirements.

Now procedural and criminalistics literature recognizes the theses according to which the expert statement shall be evaluated neutrally in the procedural and the actual points of view. The content of the expert statement assessment includes verification of scientific validity of the expert's conclusions. In order to evaluate correctly any judicial proof, including the expert statement, to draw a conclusion on its reliability, it is necessary to penetrate into its entity, to learn the most essential sides of this proof. The analysis of scientific validity of the expert statement is the most difficult moment in expert statement assessment. This analysis presents the known difficulty for court because the expert

statement – result of the research conducted by the expert person on the basis of special knowledge. Court, without having such knowledge, nevertheless shall estimate scientific validity of the expert statement correctly. Assessment of contents of the expert statement requires presence of certain notions of judges. What the possibility of court in assessment of scientific validity of the expert statement is based on? It can be reached by different methods and ways – by a study of the literature containing necessary data from area of special knowledge; receiving consultations of expert persons; interrogation of the expert in connection with the conclusion drawn by it; comparison of results of expertize to other data on case, etc.

In judicial practice, the cases of noncritical approach to the expert statement, when the scientific party of an expert research is taken by court completely on trust without sufficient assessment, aren't eliminated yet. In due time this practice carried theoretical justification in works of some criminalists considering the expert statement as a special type of the proofs having advantages (Averina 2009: 103). But before we will note features of assessment, we will reveal what there has to be in contents of the statement according to Art. 283 of the Criminal Procedure Code RK.

Knowledge of practical employees of law enforcement and judicial authorities of methodical bases of judicial expertize procedure – an indispensable condition of objective assessment of compliance of judicial and expert activity to its tasks.

In turn the efficiency of expertize production to no small degree is caused by methodology, developed by the expert theory and practice to a research of objects and formulated by the general theory of judicial expertize as a technique of an expert research.

The technique of an expert research represents the scientific developed system of recommendations about the optimum choice and application of methods, receptions and technical means for research objectives of objects and establishment of the actual data relating to a subject of a concrete type of judicial examination (Shakirov 2012: 93).

The technique in essence means an algorithm of actions of the expert in the course of use of special scientific knowledge for the solution of the tasks set for him.

It is accepted to allocate the following stages: preparatory, analytical (a stage of a separate research of objects), synthesizing (a stage of a comparative research of objects), output (a stage of assessment of results of a research), final (a stage of registration of results of a research).

Each of the named stages has the value and it is important to know that observance of methodical requirements not only to each stage, but also their sequences is the pledge of the successful solution of an expert task and correct assessment of the expert statement by subjects of proof.

Process of production of judicial expertize comes to an end with registration of researches in the form of the Expert statement. On form and content the Statement of judicial expertize in criminal, civil trial is identical and consists of several parts. The law defines basic elements of contents of the expert statement, without establishing its structure – according to Art. 31 of the Law “About judicial and expert activity in the Republic of Kazakhstan; Art.96 of CC; Art.116, 117, 283 of the Criminal Procedure Code of the RK; Art.773 of the Administrative Code of the RK.

In expert practice the structure of the Expert statement has found reflection in Instructions of the center of Judicial Expertize of the RK, and in again adopted Rules of the organization and production of judicial examinations and researches in bodies of judicial expertize, which was earlier operating. But it should be noted that continuity remains, the existing structure of the expert statement has been developed during the Soviet period, however there are changes in execution of the expert statement.

According to the specified normative documents the expert statement consists of following parts – introduction, research, synthesizing and conclusions. The court is recommended to get acquainted with all parts of the statement, which analysis allows drawing conclusions on validity and evidentiary value of the statement taking into account other case papers consistently.

The introduction contains the following data: number and date of drawing up the statement, the information about the person or body which has appointed expertize, the legal ground of expertize production, the list of the case papers, material evidences, samples and other objects which have arrived on researches. This part of the Statement also shows the questions raised before the expert. Usually they are stated in that order in what are specified in definition about purpose of expertize. The expert has no right to change formulations of the questions offered by court (except cases of typos, obvious grammatical and spelling errors). When questions are formulated inexactly, but their sense is clear, the expert provides their literal formulations in introduction part of the Statement, and then states a task in his edition – as he understands its sense according to the competence and scientific

opportunities, but having coordinated with the judge. In practice of expert institutions in the introduction of the Statement it is accepted to formulate additional questions, and which the expert considers necessary to resolve on his own initiative. About these additions, changes and other circumstances taking place by production of expertise, the expert provides in the note of the introduction part. The introduction part end with statement of information about the expert (experts), his full name, education, academic degree, rank, position, expert specialty, experience of expert work and the instruction on prevention of the expert on criminal liability for making obviously false statement.

The research part of the Statement reflects all course and results of researches, at the same time expert assessment reflects so fully and in details that it was possible to understand an entity of a research and if necessary to repeat, for example, during production of repeated expertise. First of all, it explains the data of external survey of expertise objects: material evidences, samples, documents, etc. Process of a research and its results in the Statement are explained differently, depending on tasks, conditions and type of expertise. The methods and technical means used by the expert are described. Sometimes forensic experts use results of scientific pilot studies, which are carried out in other institutions and matter for this statement, as basic data. These data have scientific, consulting character, also as well as handbook data, and in case of their use, the expert when giving the statement reports about them in the introduction part. The documents containing the information used by the expert can be added to the statement or a there will be reference to them.

Acquaintance of court with the introduction part of the Statement will allow them to define the legal and actual grounds of an expert research and conclusions. If they have a doubt in sufficiency of materials or competence of the expert, then they can check it by studying of a research part of the statement (Obraztsov 1996: 301). The Statement states the way of carrying out and results of an experiment in detail. Analytical and comparative researches of private signs in the Statement are described usually at the same time not to encumber with duplication of characteristics of the compared objects (each display and the studied object), if the identity of an object is established. When the expert carries out comparison with several checked objects, and with one of them essential coincidence is established, and there is distinction of signs with one object and coincidence of signs with another object, in this case

the coincidence of signs of that object, concerning which the conclusion about identity will be made, and distinctions – with other objects on which the lack of identity is proved, have to be described. This situation doesn't extend to expertise, on which a lot of the checked objects are presented and expertise draws the positive conclusion about identity of one of them. The quantity of the studied and checked objects sometimes happens considerable, for example, when comparing handwriting in 100 consignment notes to examples of handwriting of 5 and more persons, etc.

In these cases in a research part of the Statement the expert can be limited only to the general instruction on carrying out comparison with all objects. The detailed description of comparison of private signs can be made only concerning the identified object which identity is established. If the distinction of signs of all checked objects presented for expertise is established, results of comparison have to be given in the conclusion on each object separately (Dulov 1998: 192).

Distinctions can be described concerning each object, if about one of them there is given the probable conclusion or a conclusion about impossibility of the solution of a matter basically (in the latter case there can be several objects about which the expert can't tell anything certain).

Thus, if the expert comes to a conclusion about identity of objects, the statement states coincidence of the general signs (with reference to data of the analysis), gives the detailed description of results of the analysis and comparison of private signs of all compared objects. At the same time in a research part it is impossible to be limited to the instruction on coincidence or distinction of the general and private signs, having provided only the name (Bakhin 1988: 202). It is necessary to detail them, to give them the concrete characteristic, having described a real form, color, the sizes and relative placement of features of the compared objects. Without specification of signs the expert statement will be submitted to court uncertainly, these comparisons can seem unconvincing.

In the conclusion it is necessary to point out one more requirements, which is imposed to the maintenance of a research part of the expert statement. When comparing with structure of the expert statement with the Soviet period, for today the expert undertakes to give the list of the standard and legal, methodical and reference books used during conducting expertise. How expedient is such requirement, because the techniques being applied or applied by the expert, reflected in

the State register have been developed on these sources. References to literature are expedient, apparently, if the expert uses methodically new methods, makes some changes to the existing technique and for justification of his researches, reliability of the received results confirms to the references to the relevant sources (Matusovsky 1999: 301).

Assessment of the Expert statement proceeds differently, it depends on the resolved issues: identification, classification, diagnostic or situational.

At identification researches – it is assessment of all set of the coincidence and distinctions revealed at all stages of expertize.

Therefore, the expert has to explain authentically differences in signs of the studied objects, their insignificance – at positive, and importance – at a negative conclusion about identity (Filippov 2001a: 92). Concerning set of coincidence of signs – to prove legality of emergence of such set, its originality, stability. The set of signs has to represent a combination of the general and private, along with classification signs the expert is obliged to reveal the features individualizing or private signs. The lack of private signs testifies to groundlessness of a conclusion.

During conducting a classification expertize, so far as concerns object belonging to any class, sort, type, the research consists in identification of the general classification signs. At the same time the thing is not in the frequency of occurrence of these signs as it takes place in identification, but in signs of class, sort or type of the object, which have to be present always, their absence testifies to eccentricity or most likely to obscurity of this object (Ishchenko 2010: 412). During classification the necessary set of signs is in own way reference, characterizing not a separate object, but class, sort and type, to which it can belong.

In diagnostic expertizes along with the general classification signs the expert reveals specific signs, caused by specific circumstances. For example, when “aging” of the car paint coating there is chalking of a pigment and other phenomena; at breakdown of car parts there are micro cracks because of destruction of metal, etc.; at death of the person in May on its corpse found on the open area, there can be silk thread which caterpillars weaves only in May, etc (Volynsky 1999: 362).

The similar pattern in a research technique in case of the solution of situation-dependent questions, the expert operates with the specific signs caused by a specific situation, specific circumstances.

But these specific signs, used in case of the solution of diagnostic, situation-dependent questions, for identification can be private, individualizing. The expert statement assessment in all cases comes down in correctness of detection of signs and determination of their sufficiency (Luzgin 1973: 103).

Process of expert statement assessment consists of several serial stages.

1. Check of observance of law requirements on appointment of expertize, which consists in clarification of the answer to the following questions:

1) Whether the expert is competent in the solution of the tasks set to him and whether he has gone beyond the competence, for example, resolving issues of legal character.

2) Whether expertize has been carried out by the person who is subject to disqualification on the bases listed in the procedural law, which were considered by us in the sections devoted to appointment of expertize?

3) Whether the rights of process participants at appointment and production of expertize have been observed?

4) Whether the procedural order when receiving samples for an expert research has been broken?

5) Whether the procedural form of the expert statement has been observed and whether all requisites demanded for it are available?

2. Authentication and sufficiency of the studied material evidences and samples, at which the authenticity of material evidences and samples, their suitability for carrying out researches and sufficiency to draw the statement, are subject to assessment (Belkin 1887. 161).

Suitability and sufficiency of samples for a research is defined from the point of view of the used techniques of an expert research. Attentive studying of a research part of the expertize act, where in the beginning the expert gives the description of appearance, quantities of material evidences and samples, will show in the description of techniques and their results: whether all the materials directed to expertize have been investigated.

Usually for permission of doubts repeated commission expertize can be appointed. However at its assessment there can be difficulties. A part of doubts can be resolved during interrogation of the expert. The help of other experts can be very valuable here, who can be interrogated as experts, and explain to the investigator and court the feature and scientific validity of this or that technique. The expert can help court in the form of consultation according to Art. 207 of CC of the RK.

Also agents of the parties after acquaintance with the expert statement can receive the same consultations of the expert about scientific validity of the used expert technique, but out of a procedural form, having at the same time an opportunity in case of groundlessness of a technique to petition for purpose of repeated expertize.

At assessment of complex researches the results of application of one expert technique serve as an initial parcel for a further research. The direction of the subsequent work on performance of an expert task and finally – final conclusions of the expert depends on their correct interpretation.

3. Verification and assessment of completeness of the conclusion allows to judge:

- about completeness of a research of all objects presented for expertize;

- about completeness of answers of the expert to all questions put before him, i.e. about completeness of performance of an expert task, and at refusal of the expert to give the answer to one of questions – about validity of such refusal;

- about the completeness of the description of the course and results of a research provided by the corresponding techniques of all classification, diagnostic, situational and identification signs.

4. The logical validity of the course and results of an expert research is estimated by the analysis of the stages sequence of an expert research, logical conditionality of this sequence, logical validity of expert conclusions by intermediate results. During assessment the logical mistakes can be revealed.

5. Relevancy of results of an expert research to civil or criminal case (i.e. their evidentiary value), which is understood as communication with a subject of proof and with other facts of the case, which determination is necessary for achievement of the goals of legal proceedings.

Verification of relevancy of the expert research results at its assessment consists in clarification of whether the fact determined by the expert enters a subject of proof or number of other circumstances, essential to business, and whether the conclusions drawn by the expert allow determining, proving this fact.

6. Compliance of conclusions of the expert to the proofs which are available on business, i.e. assessment of the expert statement in total with other proofs.

All above belongs to typical process of assessment of the statement, however in some cases separate amendments can be introduced in this scheme.

If the expert has refused to answer all questions raised before him or their part, the validity of refusal will be estimated. If the refusal is recognized as reasonable, the court refuses expertize use, or reformulates an expert task, or charge production of expertize to other expert (expert appointment) or if primary expertize was carried out, appoints repeated expertize (Grigoriev 2005: 521).

In case the expert reformulated a task, it is necessary to estimate whether change of formulations of questions is lawful and to define whether the sense of questions has changed at the same time, whether it is justified from the scientific and editorial point of view. If the expert has gone beyond an expert task, the legitimacy of expansion of an expert task from the point of view of qualification of the expert, admissibility and relevancy of the received results is estimated.

If the experts, that make repeated expertize, subjected to the critical analysis the statement of the first expertize, both of these statements shall be evaluated in total. Including it is necessary to analyze validity of criticism of the first expertize which is in statement of repeated expertize, and especially if there is a discrepancy in outputs. We will note that the criticism can concern only an entity of the conducted expert research, techniques used at the same time. The expert has no right to substitute the investigator or court and to give an assessment to evidentiary value of outputs, subjective or legislative bases of giving the erratic primary inference (Filippov 1999b: 421).

We will stop on consequences of the expert statement assessment in case of the categorical form now. In case of the positive results of assessment the expert statement as a source of proofs can be used in proof for receiving new and verifications of the available proofs, for recognition of validity of this or that fact, for direction finding of further proceeding.

At assessment of the statement the same principles have to be observed that takes place also concerning other proofs: the proof gets the weight and value in connection with other proofs; proofs have to make links of a uniform chain, the system of proofs; proofs have to harmonize among themselves; they have to be so proved that any of them couldn't be eliminated, set of all proofs have to exclude any other version or other decision.

Consequences of negative assessment of the expert statement can be various, depending on what has formed the basis of such assessment. If it was a consequence of the procedural violations allowed at appointment or conducting expertize, incompetence of the expert or doubts in reliability of the received



results and the drawn conclusions, then repeated expertize can be appointed. It must be kept in mind at the same time that purpose of repeated expertize is the right, but not an obligation of court. Repeated expertize can be appointed also in that case when the expert statement contradicts with other proofs collected on case, as we stated above, the expert statement isn't any special proof and it is impossible to prefer as a priori expert conclusions. The typical mistake, which is found in jurisprudence, is appointment of repeated expertize only on the ground that conclusions of the expert don't suit court in the form (probable); or because they don't suit that version which is given preference. The

probable form of conclusions in itself isn't the basis for appointment of repeated expertize if only at statement assessment there are no doubts of rather scientific validity of the last or competence of the expert. As for contradictions between conclusions of the expert and the judicial version, in the absence of other bases for appointment of repeated expertize, resolution of conflicts lies in the plane of adjustment or replacement of the version.

Results of the research. Process of assessment of the expert statement consists of several consecutive stages – formal and procedural, scientifically based and legal and significant compliances of this conclusion to the subject of proof.

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