

IRSTI 10.79.35

UDC 343.148

<https://doi.org/10.46914/2959-4197-2024-1-3-52-57>

BAKYT S.B.,¹

PhD student.

e-mail: 23240798@turan-edu.kz

ORCID ID: 0000-0002-2252-2710

ALAYEVA G.T.,*¹

c.l.s., professor.

*e-mail: g.alayeva@turan-edu.kz

ORCID ID: 0000-0002-1644-3709

PLOTSKAYA O.A.,²

d.l.s., professor.

e-mail: olga.plockaya@mail.ru

ORCID ID: 0000-0003-4016-095X

¹Turan University,

Almaty, Kazakhstan

²Plekhanov Russian University of Economics,

Moscow, Russia

THE ISSUE OF ADMISSIBILITY AND RELIABILITY OF EXPERT OPINIONS AS EVIDENCE IN CRIMINAL PROCEEDINGS

Abstract

This article is devoted to the problem of assessing the admissibility and reliability of an expert's opinion in the context of criminal proceedings. The expert's opinion, as an important evidence in criminal cases, is an integral part of the judicial process. However, its admissibility and reliability play a crucial role in the formation of court decisions. The purpose of this study is to conduct a comprehensive assessment of the admissibility and reliability of the expert's opinion in criminal proceedings. The article discusses the main aspects of assessing the admissibility of expert opinions, including the issues of expert qualification, his independence, methodology of work, as well as compliance with professional standards. The importance of strict procedure and supervision of experts to ensure the objectivity of conclusions is noted.

Key words: criminal proceedings, evidence, admissibility of evidence, expert opinion, expert.

Introduction

One of the key elements of the criminal process is the use of evidence that helps establish the truth of the case and ensure a fair trial. Special attention is paid to the expert's opinion, as it often becomes a decisive factor in the court's sentencing. However, in practice, a number of issues arise related to the admissibility and reliability of expert opinions. Since the fate of the accused may depend on them, it is critically important to assess the reliability and objectivity of the expert data provided.

This article discusses the main problems associated with the use of expert opinions in criminal proceedings, as well as approaches to their admissibility and reliability as evidence. We will analyze how the legal system solves issues related to the qualifications of experts, the objectivity and neutrality of their assessments, as well as the methodological aspects of the preparation of conclusions.

In criminal proceedings, the expert's opinion plays an important and integral role. Expertise is the process of conducting scientific and technical research, during which an expert gives his opinion on issues that require special knowledge.

Materials and methods

The study uses normative acts and materials of judicial practice, the analysis of which made it possible to assess the admissibility and reliability of expert opinions in criminal proceedings. The methodology included comparative legal analysis, case studies and interviews with practicing experts to identify problems and ways to solve them.

Expert's conclusion - the content and conclusions of the study submitted in writing on the issues posed to the expert by the person conducting the criminal case or by the parties. The basis for the appearance of an expert's opinion in a case is the appointment and conduct of a forensic examination, which consists in conducting research and issuing an expert's opinion on issues whose resolution requires special knowledge in the field of science, technology, art or crafts, and is an independent procedural action that is put before the expert by a court, judge, body of inquiry, determination by the investigator or prosecutor in order to establish the circumstances subject to evidence in a particular case. The expert's conclusion as evidence is the totality of factual data identified as a result of the study of material objects, as well as data collected in a criminal case conducted by a person knowledgeable in a particular field of Science, Technology or other special knowledge [1].

The expert's conclusion as a type of evidence is characterized by:

- ♦ this case will come from a special investigation.»;
- ♦ comes from a person (expert) who has certain special knowledge, without which the study itself is impossible;
- ♦ issued in compliance with a specially established procedural procedure;
- ♦ it relies on the evidence collected in the case as a starting point and object of research.

In the expert's conclusion, data on specific facts revealed in the course of the expert study and the expert's conclusions arising from these facts are of reasoned value. The expert's opinion should be based on the totality of all the facts necessary for this established in the criminal case, regardless of whether it was established as a result of the study of the objects of expertise or was obtained from the criminal case in the form of established data [2].

However, the expert's opinion, like any argument, is evaluated taking into account its legal properties. Based on the purpose of general evidence by evaluating evidence in a judicial study, R.S. Belkin offers an understanding of the logical thought process of determining the role of collected evidence in determining validity [3]. The legal properties of evidence are necessary features, the absence of which does not allow them to be used in this capacity. The requirement of permission means the reliability of evidence in terms of legality, types of evidence, methods of obtaining and approving information relevant to the case. Often, the assessment of the validity of evidence is replaced by their verification and is associated with the identification of their sources. Therefore, in most cases, the method of assessing the correctness of the expert's conclusion is used, which does not require special intellectual costs from the participants in the process and is reduced only to checking the information contained in the details of the document: expert Institution, expert, place and time of the examination, object of study, etc. however, based on the definition of the concept of reliability, contrary to this misconception it is possible to highlight some permissive requirements that are subject to verification when evaluating the expert's conclusion.

1. Evidence must be obtained by the relevant subject who has the right to conduct procedural actions in this case. A forensic examination, as a result of which an expert opinion appears in the case, can be carried out by «state forensic experts and other experts from among persons with special education», about which the investigator or judge makes a decision. As A. N. Grishin rightly noted: «since the vast majority of forensic examinations are currently carried out by employees of state forensic institutions – specially trained and certified experts, the assessment of reliability is only official. But even with this method of assessing the expert's opinion, it is necessary to determine the competence of the expert, which cannot be determined due to the lack of the necessary information in the introductory part of the expert's opinion» [4]. So, for example, one can find cases of using the results of a study carried out not by the expert himself, but by other specialists of an expert institution, who were not instructed to conduct an examination, but independently presented objects for study. This approach to assessing the correctness of the conclusion is based on the confidence of the expert in some of its simplified versions. However, it must be said that it has the potential for judicial error.

2. Evidence must be contained in the types of evidence established by law, and in some cases in certain types of evidence. The peculiarity of this type of evidence, such as the expert's conclusion, allows you to use not only the expert's conclusion as a document, but also the expert's testimony. The expert's testimony is the data reported by him in the interrogation carried out after receiving his conclusion in order to clarify or clarify the conclusion.

The expert's testimony serves to provide context and depth to the conclusions drawn in their report. It can elucidate the methodology used in their analysis, clarify any uncertainties, and address

questions posed by the court or involved parties. This dual role of the expert's evidence – both as a formal document and as verbal testimony – ensures a comprehensive understanding of the findings.

Furthermore, the admissibility of such evidence often hinges on its relevance and reliability, as established by legal standards. Courts typically assess the qualifications of the expert, the scientific validity of the methods employed, and the applicability of the conclusions to the case at hand. This rigorous scrutiny helps maintain the integrity of expert evidence within the legal system, ensuring that it contributes meaningfully to the pursuit of justice.

In addition, the interplay between written conclusions and oral testimony highlights the dynamic nature of expert evidence. It underscores the importance of not only the findings themselves but also the ability of the expert to communicate those findings effectively, thereby enhancing the court's understanding and facilitating informed decision-making.

Results and discussion

Thus, the expert's testimony is not independent evidence, but is derived from the expert's conclusion. The essence of interrogating an expert is expert research and conclusions that the expert came to with answers to the questions asked to him. In other words, if the expert's testimony can be obtained only in connection with the examination carried out by him, then the forensic examination will be evidence even if the expert who conducted it was not interrogated [5].

Evidence must be obtained in compliance with the rules of the procedural action taken (issuing a decision on the examination, familiarizing with the resolution and drawing up a protocol explaining the rights of the suspect, accused, and his defense lawyer). the protocol on this, etc.). The norms of Criminal Procedural Law ensuring the right of the suspect, the accused and his defense counsel to familiarize themselves with the resolution on the appointment of a forensic examination are obliged by the bodies and officials carrying out the criminal process to submit to the accused and his defense counsel a resolution on the appointment of an examination and explain to the accused the rights And law enforcement agencies should not forget about this position in order to avoid injustice associated with assessing the reliability of the expert's opinion.

When obtaining evidence, all legal requirements relating to the registration of the course and result of the investigative action must be met.

The admissibility of evidence primarily concerns its object and does not concern the content, which is characterized by other properties. Obviously, this is not the content of the argument, but the method, the source. Permissibility is primarily determined by compliance with the official rules directly specified in the law [6]. They are not fully spelled out in the current law. Legislation should strive for the full detail of the rules that determine the admissibility of evidence, because it is actually an area available for formalization. The procedural form is designed to provide a solution to two interrelated tasks: to maximize the reliability of the information received and to protect the legitimate rights and interests of an individual.

To achieve these objectives, it is essential that legal frameworks are clearly defined and consistently applied. The procedural rules surrounding evidence collection should ensure that all investigative actions are conducted transparently and with respect for individual rights, thereby enhancing the overall legitimacy of the judicial process.

Moreover, by formalizing these rules, legislatures can reduce ambiguity, which often leads to disputes about the admissibility of evidence. A well-structured legal framework will not only clarify what constitutes admissible evidence but also outline the procedures for obtaining and documenting that evidence. This clarity is crucial for law enforcement, legal practitioners, and the courts to ensure that the process remains fair and just.

Additionally, the protection of individual rights must be balanced with the need for effective law enforcement. As such, procedural safeguards – such as the right to legal representation during interrogations and the requirement for warrants in certain situations – play a vital role in maintaining this equilibrium. These safeguards help to mitigate the risk of coercion or misuse of power, fostering public trust in the legal system.

In summary, the formalization of evidence admissibility rules not only enhances the reliability of information but also reinforces the protection of individual rights, ultimately contributing to a fairer and more effective judicial system.

Strict compliance with the procedural form of expertise is a necessary condition for accepting the expert's opinion as judicial evidence. In the difficult period of the formation of the democratic foundations of state and public life, strengthening guarantees of the rights and freedoms of citizens, the demand for improving the quality of activities of all subjects of law enforcement agencies is growing. This may explain the fact that the production of forensic examinations has increased significantly, this type of activity is constantly evolving by creating new and improving existing research methods.

Conclusion

In conclusion, the issue of the admissibility and reliability of expert opinions in criminal proceedings is a key aspect affecting the fairness and effectiveness of judicial proceedings. Expert opinions play an important role in providing specialized information necessary to understand the complex issues that arise during the investigation and judicial process. However, their admission should be based on clear legal standards that ensure not only compliance with established standards, but also the quality and reliability of the data received.

The need for clear regulation of the procedure for obtaining expert opinions and their presentation in court underlines the importance of protecting the rights of participants in the process and trust in the judicial system. Legislative measures aimed at formalizing the rules relating to expertise will help eliminate legal gaps and minimize the risks of misinterpretation or use of unreliable information.

Thus, in order to achieve fair justice, it is important to develop and improve mechanisms that ensure the reliability and admissibility of expert opinions as evidence. This will not only strengthen public confidence in the judicial system, but also improve the quality of law enforcement in general.

An important aspect is the need to ensure transparency in the process of presenting expert opinions in court. Providing the opportunity to interrogate experts and their oral explanations can significantly improve the understanding and evaluation of their conclusions by judges and participants in the process. It also creates a space for critical analysis and discussion, which can enhance the validity of court decisions.

REFERENCES

- 1 Теория доказательств в советском уголовном процессе / Под ред. Жогин Н.В., Карпец И.И. – М., 1967. – Глава VII. – С. 301.
- 2 Горский Г.Ф., Кокорев Л.Д., Элькинд П.С. Проблемы доказательств в советском уголовном процессе. – Воронеж, 1978. – С. 168.
- 3 Белкин Р.С. Собираение, исследование и оценка доказательств. URL: <http://www.lawlibrary.ru/izdanie5767.html> (дата обращения: 10.10.2024)
- 4 Гришин А.В. Как правильно оценивать заключения эксперта по уголовному делу // Уголовный процесс. – 2011. – № 11. – С. 60–67.
- 5 Никуленко О.О. Оспаривание заключения эксперта по уголовному делу // Уголовный процесс. – 2015. – № 5. – С. 42–48.
- 6 Giverts P., Griber A., Kokin A.V. On the Criteria for Evaluating an Expert's Opinion and Forensic Methods by Participants in the Legal Proceedings // Theory and Practice of Forensic Science. 2022. No. 17(1). P. 27–37.

REFERENCES

- 1 Teorija dokazatel'stv v sovet'skom ugolovnom processe / Pod red. Zhogin N.V., Karpec I.I. M., 1967. Glava VII. P. 301. (In Russian).
- 2 Gorskiy G.F., Kokorev L.D., Jel'kind P.S. (1978) Problemy dokazatel'stv v sovet'skom ugolovnom processe. Voronezh, P. 168. (In Russian).
- 3 Belkin R.S. Sobiranie, issledovanie i ocenka dokazatel'stv. URL: <http://www.lawlibrary.ru/izdanie5767.html> (data obrashheniya: 10.10.2024). (In Russian).
- 4 Grishin A.V. (2011) Kak pravil'no ocenivat' zakljuchenija jeksperta po ugolovnomu delu // Ugolovnyj process. No. 11. P. 60–67. (In Russian).
- 5 Nikulenko O.O. (2015) Osparivanie zakljuchenija jeksperta po ugolovnomu delu // Ugolovnyj process. No. 5. P. 42–48. (In Russian).
- 6 Giverts P., Griber A., Kokin A.V. (2022) On the Criteria for Evaluating an Expert's Opinion and Forensic Methods by Participants in the Legal Proceedings // Theory and Practice of Forensic Science. No. 17(1). P. 27–37. (In English).

БАКЫТ С.Б.,¹

докторант.

e-mail: 23240798@turan-edu.kz

ORCID ID: 0000-0002-2252-2710

АЛАЕВА Г.Т.,*¹

з.ғ.к., профессор.

*e-mail: g.alayeva@turan-edu.kz

ORCID ID: 0000-0002-1644-3709

ПЛОЦСКАЯ О.А.,²

д.ю.н., профессор.

e-mail: olga.plockaya@mail.ru

ORCID ID: 0000-0003-4016-095X

¹«Тұран» университеті,

Алматы қ., Қазақстан

²Г.В. Плеханов атындағы

Ресей экономикалық университеті,

Мәскеу қ., Ресей

ҚЫЛМЫСТЫҚ ПРОЦЕСТЕ ДӘЛЕЛ РЕТІНДЕ САРАПШЫЛАРДЫҢ ҚОРЫТЫНДЫЛАРЫНЫҢ РҰҚСАТ ЕТІЛУІ МЕН ДҰРЫСТЫҒЫ МӘСЕЛЕСІ

Андатпа

Бұл мақала қылмыстық сот ісін жүргізу контекстіндегі сарапшы қорытындысының жол берілетіндігі мен анықтығын бағалау мәселесіне арналған. Сарапшының қорытындысы қылмыстық істердегі маңызды дәлел ретінде сот процесінің ажырамас бөлігі болып табылады. Алайда оның жарамдылығы мен сенімділігі сот шешімдерін қалыптастыруда шешуші рөл атқарады. Бұл зерттеудің мақсаты қылмыстық сот ісін жүргізу шеңберінде сарапшы қорытындысының жол берілуі мен анықтығына жан-жақты бағалау жүргізу болып табылады. Мақалада сарапшының біліктілігі, оның тәуелсіздігі, жұмыс әдіснамасы, сондай-ақ кәсіби нормалардың сақталуы мәселелерін қоса алғанда, сараптамалық қорытындылардың рұқсат етілуін бағалаудың негізгі аспектілері қарастырылады. Қорытындылардың объективтілігін қамтамасыз ету үшін сарапшыларды қатаң рәсімдеу мен қадағалаудың маңыздылығы атап өтіледі.

Тірек сөздер: қылмыстық сот ісін жүргізу, дәлелдемелер, дәлелдемелерге жол беру, сарапшының қорытындысы, сарапшы.

БАКЫТ С.Б.,¹

докторант.

e-mail: 23240798@turan-edu.kz

ORCID ID: 0000-0002-2252-2710

АЛАЕВА Г.Т.,*¹

к.ю.н., профессор.

*e-mail: g.alayeva@turan-edu.kz

ORCID ID: 0000-0002-1644-3709

ПЛОЦСКАЯ О.А.,²

д.ю.н., профессор.

e-mail: olga.plockaya@mail.ru

ORCID ID: 0000-0003-4016-095X

¹Университет «Туран»,

г. Алматы, Казахстан

²Российский экономический

университет им. Г.В. Плеханова,

г. Москва, Россия

ВОПРОС ДОПУСТИМОСТИ И ДОСТОВЕРНОСТИ ЗАКЛЮЧЕНИЙ ЭКСПЕРТОВ КАК ДОКАЗАТЕЛЬСТВ В УГОЛОВНОМ ПРОЦЕССЕ

Аннотация

Данная статья посвящена проблеме оценки допустимости и достоверности заключения эксперта в контексте уголовного судопроизводства. Заключение эксперта как важное доказательство в уголовных делах является неотъемлемой частью судебного процесса. Однако его допустимость и достоверность играют решающую роль в формировании судебных решений. Цель данного исследования заключается в проведении всесторонней оценки допустимости и достоверности заключения эксперта в рамках уголовного судопроизводства. В статье рассматриваются основные аспекты оценки допустимости экспертных заключений, включая вопросы квалификации эксперта, его независимости, методологии работы, а также соблюдения профессиональных норм. Отмечается важность строгой процедуры и надзора за экспертами для обеспечения объективности заключений.

Ключевые слова: уголовное судопроизводство, доказательства, допустимость доказательств, заключение эксперта, эксперт.