



Journal Website:  
<https://theusajournals.com/index.php/ajsshr>

Copyright: Original  
content from this work  
may be used under the  
terms of the creative  
commons attributes  
4.0 licence.

## SOME ISSUES OF ASSESSING ADMISSIBILITY OF THE EXPERT'S CONCLUSION IN CRIMINAL CASES

Submission Date: June 08, 2024, Accepted Date: June 13, 2024,

Published Date: June 18, 2024

Crossref doi: <https://doi.org/10.37547/ajsshr/Volume04Issue06-07>

Eshnazarov Muradkasim Khamzayevich

Independent researcher of the Law Enforcement Academy of the Republic of Uzbekistan, Uzbekistan

### ABSTRACT

The article analyzes the issues related to the assessment of the acceptability of an expert's opinion in the conduct of criminal proceedings, in particular, the requirements for the acceptability of an expert's opinion and the issues that should be paid attention to in its assessment. Also, as a result of the analysis, it is proposed to supplement Article 187 of the Criminal Procedure Code of the Republic of Uzbekistan with a new norm, which stipulates that the conclusions based on the evidence found unacceptable by the court in the expert opinion are also considered inappropriate. The use of such conclusions as evidence is prohibited.

### KEYWORDS

Expert opinion, acceptability of specialist opinion, expert, the examination, proof, to prove.

### INTRODUCTION

According to the criminal procedural legislation, an expert opinion is one of the types (sources) of evidence and is given by conducting appropriate research on the case. In turn, the expert's opinion, like other types of evidence, must meet the requirements

set for them and require proper evaluation. In this case, the expert's opinion, like other types of evidence, is evaluated from the point of view of three criteria, i.e. relevance, acceptability, and reliability. A.A.Zulfugorov also emphasized that the expert's opinion is

considered one of the most important evidence in the case and is evaluated by the investigator, investigator, prosecutor, and judge like all other evidence [1, P.115].

Accordingly, in this paragraph of the research work, we will analyze the issues of assessing the acceptability of the expert's opinion. The admissibility or inadmissibility of evidence affects the decision of the case. Based on the importance of the admissibility of evidence, the Constitution of the Republic of Uzbekistan introduced a provision prohibiting the use of evidence obtained in violation of legal requirements in the implementation of justice [2].

K.I. Sutyagin notes that the Institute of Admissibility of Evidence prevents law enforcement officers from illegal behavior, abuses in the implementation of procedural actions, and negligent treatment of legal norms when collecting evidence [3, pp.48-53], P.A. Lupinskaya and M. Niyazov said that the establishment of rules on the admissibility of evidence in criminal proceedings is of particular importance as a guarantee of human rights and freedoms and justice, to prevent the use of any forms of violence against a person, to protect the suspect, the accused and the defendant from self-incrimination. notes that it serves to ensure the inviolability of testimony to individuals [4, pp 72-76].

The conditions of admissibility of evidence evaluation serve as a guarantee of individual rights in the

implementation of investigative and procedural actions to protect them from unjustified accusations. The concept of admissibility of evidence is defined in the current criminal-procedural legislation. In particular, the evidence is considered admissible if it is collected in the prescribed manner and complies with the conditions specified in Articles 88, 90, 92 - 94 of the Criminal Procedure Code [5].

If we analyze this norm, two conditions must be met to consider evidence as acceptable evidence. First, it is the collection of evidence by the law, and second, the compliance of the evidence with the provisions of Articles 88, 90, 92-94 of the Code of Criminal Procedure.

Authors such as B.A.Rajabov, Sh.Kh.Inomjonov and I.V.Abrosimov also noted that to consider the evidence acceptable evidence, it is necessary to observe the order of their collection and to observe the rules established by law when collecting them [6, P.93].

In the criminal-procedural legislation, the collection of evidence by the procedure established by law is not a separate article but is expressed mainly in the established norms regarding the conduct of investigative actions (the third section of the Code of Criminal Procedure entitled "Evidence and Circumstances to be Proved").

At the same time, in determining the conditions of admissibility of evidence, it is required to follow the

general rules of proof, including ensuring the rights and legal interests of individuals and legal entities in the process of proof, observing the established procedure for recording evidence and confirming the correctness of their recording, as well as the conditions for checking evidence. will be done.

As noted by B.Rajabov, non-compliance with the general conditions of proof leads to a violation of these conditions and is the basis for finding the evidence collected in the case inadmissible [7, P.72].

As in the case of any evidence, when assessing the acceptability of an expert's opinion, it is necessary to know the subjects evaluating it and the evaluation criteria, as well as to analyze them. Under Article 95 of the Code of Criminal Procedure, the investigator, the investigator, the prosecutor, and the court are the persons authorized to evaluate the evidence. At the same time, although it is not provided for in Article 95 of the Code of Criminal Procedure, the official of the body investigating before the investigation has the authority to evaluate the expert's opinion [8]. In this case, the expert's opinion is evaluated according to its scientific validity and compliance with all the procedural rules established for carrying out the expertise.

In particular, A.Kh.Rakhmankulov and D.M.Mirazov noted that the expert's opinion, together with other evidence collected in the case, will be evaluated from

the point of view of its scientific basis and compliance with all the procedural rules established for the conduct of expertise [9, P.205]. G. Nabiyeu also touches on this issue and emphasizes that when assessing the acceptability of an expert's opinion, it is necessary to take into account the official rules specified in Article 187 of the Criminal Procedure Code of the Republic of Uzbekistan, in which the legislator determines illegal methods of obtaining factual information [10, P.189].

One can fully agree with the opinions of these authors regarding the consideration of the provisions outlined in Article 187 of the Code of Criminal Procedure regarding the assessment of the acceptability of an expert's opinion. This norm defines the subjects of evaluation of the expert's opinion and the circumstances to be taken into account in its evaluation (scientific basis and compliance with all the procedural rules established for the conduct of expertise). These assessment criteria are important in determining the admissibility of an expert's opinion and in deciding on a case.

Therefore, if we conclude from the above, the official of the body conducting the pre-investigation investigation, investigator, investigator, prosecutor, or court is competent to evaluate the expert's opinion, including its acceptability.

Accordingly, it is appropriate to include an official of the pre-investigation body as a subject authorized to evaluate evidence in Article 95 of the Criminal Procedure Code.

Today, different views are put forward regarding the criteria of the acceptability conditions for evaluating the expert's opinion. In particular, in the modern legal literature on the issues of the right of evidence, it is noted that the expert's opinion must be evaluated according to such criteria (elements) as whether it is obtained from a legal source, the use of legal methods in obtaining it, and whether it is obtained from the relevant authorized subjects [11, P.17], E.S. Mazur included such criteria as the general elements of evaluating the acceptability of an expert opinion, analyzing compliance with the procedural order of preparing, appointing and conducting an expert opinion, determining the completeness of the opinion, determining the scientific validity of the opinion and its place in the evidence system [12, P.364].

You can agree with the opinions of these authors. Because evaluating the acceptability of an expert's opinion through these criteria means that it will have legal force as evidence.

A.K. Zakurlyayev noted that the evaluation of the expert's opinion is based on inner feelings, and noted that the following circumstances are checked when evaluating its acceptability:

- compliance with the requirements of criminal-procedural legislation in the appointment and conduct of expertise;
- justification of the given expert opinion;
- whether the materials studied during the examination meet the requirements, the methods and methods used during the examination are correctly used;
- compliance of the facts determined by the expert with the evidence collected in the case [13, P.3].

It should be noted that these criteria of admissibility of evidence are also used in assessing the admissibility of expert opinion.

D.B.Bazarova and I.R.Astanov also touched on the issue of evaluation of the expert opinion and noted that the expert opinion, like any evidence, is analyzed based on the general principle of evidence evaluation and its acceptability is evaluated based on the internal confidence of officials [14, P.73].

Analyzing these criteria, it is necessary to take into account several cases when considering the criterion that the evidence must be obtained by the relevant subject to assess the acceptability of the expert's opinion.

First, the examination must be conducted by an expert who has the right to conduct it. Whichever expert is assigned to conduct the expertise, this expert must



conduct the expertise and give an appropriate conclusion. If the case is not assigned to the management of the expert, it is not possible to carry out the personal expertise. According to Article 67 of the Code of Criminal Procedure, it should be conducted by a person with special knowledge to give a conclusion. A.N. Petrukhina Y.S. Authors such as Mazur noted that to assess the acceptability of an expert's opinion, it is necessary to take into account the expert's qualifications, lack of interest in the proceedings, and the absence of grounds for its rejection [15, P.114].

It is possible to agree with the opinion of these authors that the expert should have the appropriate qualification when assessing the acceptability of the expert's opinion. However, the question of refusing an expert is part of the criterion of compliance with the established rules and regulations for taking procedural actions in obtaining evidence under our current legislation.

secondly, before the investigation, it is not possible to examine without the decision or ruling of the official of the inspection body, the investigator, the investigator, the prosecutor, or the court. According to Article 180 of the Criminal Procedure Code, the official of the body conducting the pre-investigation investigation, the investigator, the investigator makes a decision, and the court issues a ruling on the appointment of an expert. In these cases, the expert's opinion is considered

unacceptable based on the fact that it was obtained by a person who does not have the authority to collect evidence, and it cannot be used as a basis for prosecution.

Also, if expert investigation action was assigned by an investigator or investigator who did not accept the case by the procedure established by the law, was not included in the investigation or investigation team of the criminal case, if an expert opinion was given by the relevant expert, this expert opinion should be considered unacceptable during their evaluation.

The second condition for evaluating the admissibility of evidence is related to the sources of evidence, and any evidence must be obtained only from the sources of evidence provided for in the second part of Article 81 of the Code of Criminal Procedure.

Expert opinion is also provided as one of the sources of evidence in Article 81 of the Code of Criminal Procedure. Authors such as D. B. Bazarova, I. R. Astanov, and A. A. Zulfukharov also recognize that expert opinion is a direct source of evidence [16, pp.115-122]. In our opinion, there are no problems in assessing whether the expert's opinion is obtained from a legal source. According to the second part of Article 81 of the Code of Criminal Procedure, an expert opinion is a direct source of evidence. Y.K. Orlov also touched on this issue, he noted that there are specific features in assessing the acceptability of an expert's opinion, in

particular, there is no problem with the fact that the expert's opinion is obtained from a legal source [17, P.133].

It should be noted that, as the expert opinion is a direct source of evidence when assessing its admissibility, authorized officials must assess compliance with all procedural rules specified in the Criminal Procedure Code for conducting an expert opinion.

The next condition for assessing the acceptability of an expert's opinion is the state of compliance with the rules for conducting procedural actions related to obtaining an expert's opinion. If these requirements are met, if an expert's opinion is obtained, the evidence is considered acceptable. When assessing the acceptability of an expert's opinion on these grounds, special attention should be paid to the following two cases:

first of all, when assessing the acceptability of an expert's opinion, it is necessary to check whether or not the rights of the suspect, the accused, or the defendant are guaranteed by the law at the time of the appointment of the expert.

Article 179 of the Criminal Procedure Code defines the rights of the suspect, the accused, and the defendant in appointing and conducting an expert examination, and when evaluating the conclusion, authorized officials are required to check the issue of the provision

of these rights and evaluate the expert opinion accordingly.

secondly, when evaluating the acceptability of an expert's opinion, before the investigation, it is necessary to study whether there are grounds for rejecting the expert by the official of the inspection body, the investigator, the investigator, the prosecutor, or the court.

Article 78 of the Criminal Procedure Code defines the grounds for rejecting an expert, and it is not possible to conduct an expert examination by an expert who should be rejected in the case. In this case, the expert should be rejected by the participants of the criminal proceedings or should be rejected by himself. Also, if the expertise is conducted by several experts, it is necessary to assess whether each expert has the authority to conduct the case and whether or not to reject them.

In our opinion, if the expert's opinion is obtained in violation of the rights guaranteed by the law of the suspect, the accused, or the defendant during the appointment of the expert, or if there are grounds for rejecting the expert, then the expert's opinion is considered unacceptable based on the violation of the norms of criminal procedural legislation.

In our opinion, it is not appropriate to expand the capabilities of criminal prosecution bodies in the process of proof based on the evidence obtained by

illegal means or its results during the conduct of a criminal case.

Therefore, it is appropriate to reflect this provision in our national legislation. After all, not only the evidence obtained by illegal means, but also the expert conclusions obtained as a result of the study of such evidence are deemed unacceptable, and the "initiatives" of the criminal prosecution authorities aimed at using inappropriate evidence or collecting evidence in such ways are more strict. It will be possible to restrict based on broader criteria.

Accordingly, it is proposed to supplement Article 187 of the Criminal Procedure Code of the Republic of Uzbekistan with the fourth part in the following version: "Conclusions based on evidence found inadmissible by the court in the expert's report are considered inadmissible. It is forbidden to use such conclusions as evidence."

## REFERENCES

1. Zulfikorov A. The legal nature of the evaluation of forensic reports // Journal of Fundamental Studies. – 2023. – Т. 1. – №. 1. – С. 115-122. <https://imfaktor.com/index.php/jofs/article/view/462>.
2. Ўзбекистон Республикаси Конституцияси. [Матн] Расмий нашр. – Тошкент: "O'zbekiston" нашриёти, 2023. – 13-бет.
3. Сутягин К.И. Основания и процессуальный порядок исключения недопустимых доказательств в ходе досудебного производства по уголовному делу. – Юрлитинформ, 2008. С.48-53.
4. Лупинская П.А. Вопросы оценки допустимости доказательств в практике Верховного Суда РФ // Допустимость доказательств в российском уголовном процессе: Материалы Всероссийской научно-практической конф. – Ростов на Дону, 2000. С.72-76. Niyazov M. 2022. Problems of the permissibility of evidence obtained during the production of investigative and other procedural actions during the pre-investigation control. Society and Innovation. 2, 12/S (Jan. 2022), 1–18. DOI:<https://doi.org/10.47689/2181-1415-vol2-iss12/S-pp1-18>.
5. Ўзбекистон Республикасининг Жиноят-процессуал кодексининг 95-моддаси // Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1995 й., 12-сон, 269-модда.
6. Ражабов Б.А. Жиноят процессида далилларни тўплаш, текшириш ва баҳолаш: Монография – Т.: Ўзбекистон Республикаси ИИВ Академияси, 2019. – 93-б.
7. Ражабов Б.А. Жиноят процессида далилларни тўплаш, текшириш ва баҳолаш: Монография – Т.: Ўзбекистон Республикаси ИИВ Академияси, 2019. – 96-б.

8. Ўзбекистон Республикасининг Жиноят-процессуал кодексининг 187-моддаси // Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1995 й., 12-сон, 269-модда.
9. Рахманкулов А.Х. Миразов Д.М. Дастлабки тергов: Дарслик. – Т.: Ўзбекистон Республикаси ИИБ Академияси, 2012. – Б.305.
10. Nabiev, G. 2023. Ways of development of forensic expertise in criminal proceedings. Society and Innovation. 4, 8/S (Oct. 2023), 189–195. DOI:<https://doi.org/10.47689/2181-1415-vol4-iss8/S-prp189-195>.
11. Громов Н.А., Зайцева С.А., Гущин А.Н. Указ. соч. С. 28-29; Костенко Р.В. Указ. соч. С. 72-73; Орлов Ю.К. Судебная экспертиза как средство доказывания в уголовном судопроизводстве. М.: Институт повышения квалификации Российского Федерального Центра Судебной экспертизы. 2005. С. 67-68; Абросимов И.В. Актуальные вопросы обеспечения допустимости и достоверности доказательств в уголовном судопроизводстве: автореф. дисс. ... канд. юрид. наук. М., 2007. С. 17.
12. Мазур Е.С. Проблема оценки достоверности заключения судебно-медицинского эксперта // Вестн. Том. гос. ун-та. 2012. №364. URL: <https://cyberleninka.ru/article/n/problema-otsenki-dostovernosti-zaklyucheniya-sudebno-meditsinskogo-eksperta> (дата обращения: 16.02.2024).
13. Закурлаев А.К. Суд экспертизаларни ўтказиш жараёнида хатолар ва уларни бартараф этиш // SAI. 2022. №33. URL: <https://cyberleninka.ru/article/n/sud-ekspertizalarni-tkazish-zharayonida-hatolar-va-ularni-bartaraf-etish> (дата обращения: 16.02.2024).
14. Базарова Д., Астанов И. Криминалистика ва экспертиза. Дарслик. – Тошкент: ТДЮУ, 2019. – Б. 73.
15. Петрухина А.Н. Заключение эксперта и его оценка в уголовном процессе. Диссертация на соискание ученой степени кандидата юридических наук. Москва 2012. – 114. Мазур Е.С. Проблема оценки достоверности заключения судебно-медицинского эксперта // Вестн. Том. гос. ун-та. 2012. №364.
16. Базарова Д., Астанов И. Криминалистика ва экспертиза. Дарслик. – Тошкент: ТДЮУ, 2019. – Б. 29. Зулфуқоров А. Суд экспертиза хулосаларини баҳолашнинг ҳуқуқий табиати //Journal of Fundamental Studies. – 2023. – Т. 1. – №. 1. – С. 115-122.
17. Orlov Yu.K. Problems of the theory of evidence in criminal proceedings. Moscow: Jurist, 2009. P. 133.