

Internal Conviction and Forms of Expert Conclusions

Mykola Dementiev *

* NSC «Hon. Prof. M. S. Bokarius FSI», Kharkiv, Ukraine,
ORCID: <https://orcid.org/0000-0002-6662-5455>, e-mail: dementiev1986@ukr.net

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The Article Purpose is to determine grounds, essence, conditions and reflection of the forensic expert's internal conviction in conclusions of performed research, the concept and significance of possible conclusions for criminal proceedings. Fulfilling the set goal was made possible due to the use of: the system-structural method (to determine peculiarities of formation and external manifestation of the forensic expert's internal conviction); the comparative-legal analysis (to compare approaches of researchers with probative value of probable conclusions); the formal-legal (to reveal procedural independence of the forensic expert and formulate the concept of "probable expert conclusion"). Objective basis of the forensic expert's internal conviction is objects of forensic examination, expert methods, scientific positions of forensic examination, research results; subjective: the forensic expert's specific expertise and personal experience. The essence of internal conviction is psychological state of a forensic expert, his/her confidence in obtained findings and readiness to word conclusions. The procedural condition of objectivity, impartiality of internal conviction are guaranteed by the forensic expert's independence. External manifestation of the forensic expert's inner conviction is answers to addressed questions (in the form of categorical judgments). The lack of internal conviction may be embodied by the forensic expert while formulating a conclusion as to possibility of existence (availability)

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of circumstances and facts. A possible conclusion should be distinguished from a probable one. A possible conclusion is a form of the forensic expert's version, which probability or credibility is determined stemming from results of evaluation of all pieces of evidence as a whole.

Keywords: criminal proceedings; forensic examination; forensic expert's internal conviction; expert conclusion; forensic expert's probable conclusion.

Research Problem Formulation

The majority of daunting issues associated with forensic expert activity have not been resolved by science, legislation and practice to this day. One of the most complex is the issue of the forensic expert's inner conviction. In the procedural literature, inner conviction, its content and grounds are oftentimes viewed in relation to subjects of evidence: the inner conviction of a judge, prosecutor, investigator. As to the forensic expert's inner conviction, it can be argued that aspects of this issue have been understudied. The peculiarity of the forensic expert's internal conviction is that the cognitive component of personality while its development prevails, as the forensic expert possesses specific expertise. The forensic expert's internal conviction is the result of a comprehensive evaluation of the course and results of research carried out by her/him, and not of pieces of evidence, which is characteristic of subjects of proof. The lack of a proper analysis of the issue of the forensic expert's internal conviction is to some extent due to the fact that this issue is not separately regulated in the current procedural legislation. In addition, legal experts do not specifically consider link between the forensic expert's internal conviction and form of conclusions on

the basis of expert research results, in particular, formulation of categorical and probable conclusions.

Analysis of Essential Researches and Publications

Individual aspects of the forensic expert's internal conviction were studied at different times by: T. V. Averianova, L. Yu. Arotsker, V. D. Arseniev, A. O. Aubakirova, R. S. Bielkin, L. M. Holovchenko, N. L. Hranat, N. I. Klymenko, V. P. Kolmakov, V. O. Konovalova, Yu. H. Korukhov, A. V. Kudriavtseva, V. K. Lysychenko, A. R. Ratinov, H. M. Reznyk, O. R. Rossynska, M. V. Saltevskiy, M. Ya. Sehai, E. B. Simakova-Yefremian, Z. M. Sokolovskyi, O. R. Shliakhov, V. D. Yurchyshyn, Ya. M. Yakovliev and others. Analysis of research papers of indicated authors demonstrates that there is no consensus among scientists concerning such important issues as the essence of inner conviction, elements of its structure and grounds. Insufficient attention is also drawn to connection of internal conviction with forms of the forensic expert's final conclusions based on findings of carried out research.

The inner conviction of a forensic expert has a complex nature, therefore it

requires a complex approach to research from the standpoint of psychology, logic, epistemology and given the specifics of forensic expert activity. This indicates that the issue of internal conviction necessitates further research. There is a need to differentiate the approach to the process of formation of the forensic expert's internal conviction, taking into account his/her function in court proceedings and peculiarities of obtaining evidentiary information based on specific expertise.

Research methods

Considering specifics of the set goal, the following methods were selected for research: *the system-structural method* (for the systematic review and identification of the grounds for the formation of the forensic expert's internal conviction, arising at all stages of forensic examination, its essence and external manifestation); *the comparative-legal* (to compare approaches of scientists to the probative value of probable conclusions); *the formal-legal* (as grounds for revealing the procedural independence of the forensic expert and wording the definition for the concept of *probable expert conclusion*). The indicated methods were applied as interconnected and complementary, which contributed to the completeness of research and credibility of formulated research conclusions and proposals.

Article Purpose

To determine grounds, essence, conditions and manifestation of the

forensic expert's internal conviction in conclusions of performed research, the concept and significance of probable conclusions for criminal proceedings. To analyze the content and determine the objective and subjective grounds for formation of the forensic expert's internal conviction, external forms of its manifestation; find out reasons for wording a forensic expert's probable conclusions and their probative value in criminal proceedings; clarify the essence of the *probable conclusion* term.

Main Content Presentation

In the criminal justice literature, internal conviction relates to evidence evaluation ¹. The internal conviction concept is viewed as a means (method) of evaluating evidence and as a result of its evaluation. Internal conviction as a method outlines the principle of free evaluation and means that "*no evidence shall have any predetermined probative value*" (Part 2 of Article 94 of the Criminal Procedure Code of Ukraine ²). With regard to a forensic expert, free expert evaluation means that the forensic expert, given her/his specific expertise, independently determines the significance of individual features and characteristics of objects under study. Internal conviction as a result means that the forensic expert draws a conclusion on significance of established features (combination of features) of objects only after being convinced of this. This aspect of inner conviction is the outcome of the forensic expert's creative thinking. It is absolutely clear that both aspects

- 1 Вапнярчук В. В. Теорія і практика кримінального процесуального доказування : монографія. Харків, 2017. С. 118. URL: <https://dspace.nlu.edu.ua/handle/123456789/13425> (date accessed: 04.12.2022).
- 2 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 04.12.2022).

of the inner conviction concept are inextricably linked.

For the first time about the forensic expert's inner conviction spoke V. P. Kolmakov, a distinguished Ukrainian criminalist, who believes that the forensic expert's inner conviction is *"an instinct, not a subconscious intuition; it is a consciously and freely formed conviction (belief) that has objective grounds enabling to draw only one veracious conclusion"*³. In forensic expertology, the forensic expert's inner conviction is described as a complex, multifaceted concept. Internal conviction is considered as a mental, emotional and intellectual state of a forensic expert, which characterizes his/her confidence in accuracy of judgments and conclusions, in their representation of real facts⁴.

The structure of the forensic expert's inner conviction constitutes a set of closely interrelated components: epistemological, logical, psychological⁵. The epistemological component means the forensic expert's sense of confidence in validity of her/his specific expertise and the entire research process, application of science-based research methods, established properties and features of objects of forensic examination. The logical component consists in the fact that internal conviction is reasonable, categorical and (according to the forensic expert's opinion) veracious and the only possible conclusion concerning addressed question, which is made on the basis of observing laws and rules of logic. The psychological conviction

component is the result of interaction of a person's mind, feelings and will, a state of consciousness characterized by confidence in the objectivity of obtained data and determines readiness to take further actions⁶.

The forensic expert's internal conviction is formed while research in accordance with evaluation results of established data. At all stages of forensic examination (starting from external inspection of provided objects, subsequent identification of their features and properties, and up to the formulation of final conclusion), the expert evaluates meaning of identified data, using specific expertise and logic methods applied to evaluate any evidence. Therefore, the expert conclusion is based not only on objective data identified as a result of performed research but also on their individual evaluation. The forensic expert must understand factual data obtained as a result of conducted forensic examination (for example, common and individual handwriting features, quantitative and qualitative glass composition, etching traces on a document, etc.), evaluate their reliability and significance for resolving addressed question. He must be sure that applied research methodology (on the basis of specific expertise) has established objectively available facts, conclusions are a rationale of these facts, and a conclusion drawn on their basis is the only possible one.

The forensic expert's inner conviction is conditioned and associated with

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- 3 Колмаков В. П. О внутреннем убеждении советского судебного эксперта / Вопросы советской криминалистики. Москва, 1951. С. 28.
 - 4 Белкин Р. С. Курс криминалистики : учеб. пособ. Москва, 2001. С. 468.
 - 5 Головченко Л. М. Оцінка висновків криміналістичної експертизи : автореф. ... дис. канд. юрид. наук. Київ, 1999. С. 10.
 - 6 Серкевич І. Р., Лісіцина Ю. О. Психологічні особливості внутрішнього переконання судді. Вісник Львівського торговельно-економічного університету. Юридичні науки. 2022. Вип. 11. С. 53. DOI: [10.36477/2616-7611-2022-11-08](https://doi.org/10.36477/2616-7611-2022-11-08) (date accessed: 04.12.2022).

the principle of his/her procedural independence and self-sufficiency. Despite the lack of the rule that the forensic expert provides a conclusion founded on her/his inner conviction in procedural codes, this provision is a logical result of his/her position in criminal, civil, and administrative proceedings. Thus, in compliance with Art. 3 and 4 of the Law of Ukraine *On Judicial Examination* ⁷, one of the principles of forensic expert activity is independence of the forensic expert (procedural independence during conduct of research and conclusion provision) and prohibition of any person to interfere in forensic examination conduct, as well as to persuade a forensic expert to refuse to provide conclusions and testimony (under the threat of criminal liability stipulated by law: Articles 364, 365, 373, 386 of the Criminal Code of Ukraine ⁸).

The forensic expert makes a conclusion on the basis of an objective and comprehensive evaluation of carried out research and in accordance with her/his specific expertise. In addition, he/she shall have the right to make a motion for additional materials necessary for providing a conclusion (opinion), and in the event of their insufficiency, he/she is obliged to inform about the impossibility of compiling a conclusion (Article 69 of the Criminal Procedural Code of Ukraine ⁹). Consequently, the question of whether it is possible to draw a conclusion based on submitted objects and materials, and what exactly this conclusion will consist of, is resolved by the forensic expert relying on her/his inner conviction. The

forensic expert's conviction has nothing to do with the body (person) who ordered forensic examination. At the same time, the customer of forensic examination has no right to force the forensic expert to provide a conclusion of a certain content. Neither the forensic science institution head nor anyone else has such a right.

The indicated above means that expert conclusions are grounded on her/his conviction stemming not only from objective results of his/her research performed with the use of specific expertise but also on subjective evaluation of obtained findings. The forensic expert's internal conviction reflects the expert's confidence in the accuracy of conclusions drawn by him/her. However, the significance of the expert's inner conviction is not limited by this principle. Forensic examination as a means of proof establishes new evidentiary facts and circumstances of a case, but at the same time it is linked to the forensic expert's personality. Forensic examination cannot be considered a source of evidence unless the forensic expert has reached a conclusion (conviction) as a result of evaluating his/her research concerning the fact that circumstances established by him/her correspond to reality.

The psychological category of internal conviction implies a certain form of external manifestation, which depends on procedural situation of the subject in whom conviction arises. The forensic expert's inner conviction manifests itself externally through the answers provided by him/her in

7 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 04.12.2022).

8 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 04.12.2022).

9 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 04.12.2022).

response to questions posed. Therefore, as a mandatory summary of evaluation by the forensic expert of results of research carried out by her/him, the internal conviction should in all cases acquire the character of judgments, which are traditionally divided into the following types: conclusions are categorical (ambiguous, unconditional) and conclusions about the impossibility of resolving addressed question. Each of the two mentioned judgment types about the investigated fact is the result of the forensic expert's inner conviction ¹⁰.

If the forensic expert has not reached the state of internal conviction, he/she is not absolutely sure in research results, therefore he/she makes a conclusion that is called probable (acceptable, problematic) in forensic expertology. Probable conclusions have been the subject of a long-standing debate in forensic and procedural literature: scholars have different opinions regarding their admissibility and probative value.

The majority of scientists, on the basis of the lack of prohibitory rule as to

this matter in the criminal procedural legislation, allow for the possibility of presenting probable conclusions. At the same time, individual legal scholars ¹¹ believe that probable conclusions cannot be viewed as source of evidence, since they are assumptions about facts (in this way equating probable conclusions with assumptions that are not accepted as prosecution evidence as stated in Article 62 of the Constitution of Ukraine ¹². Some believe that intermediate facts, signs and circumstances set forth in research part of forensic examination, and which are the basis for probable conclusions, possess the meaning of indirect evidence ¹³. It is important to note that the issue of the truth and significance of the forensic expert's probable conclusions should be addressed only after their verification and evaluation in conjunction with all other pieces of evidence collected in a case ¹⁴. By admitting the existence of probable conclusions, attention is focused on their positive role in the investigation process for gaining approximate, searching information ¹⁵ (in particular, concerning

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- 10 Юрчишин В. Д. Аналіз та класифікація висновків експерта у кримінальному провадженні: теоретичний та практичний аспекти. *Прикарпатський юридичний вісник*. 2013. Вип. 1 (3). С. 442. URL: http://www.pjv.nuoua.od.ua/v1_2013/42.pdf (date accessed: 04.12.2022).
- 11 Панько Н. А. Доказове значення висновку експерта. *Форум права*. 2009. № 1. С. 411.
- 12 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.) URL: <https://zakon.rada.gov.ua/laws/show/254k/96-vr#Text> (date accessed: 04.12.2022).
- 13 Скачкова Т. Ю. Про можливість використання висновків криміналістичних експертиз із вірогідною формою висновку під час розслідування кримінальних проваджень. *Науковий вісник Херсонського державного університету. Серія Юридичні науки*. 2014. Вип. 4. Т. 2. С. 248.
- 14 Воробчак А. Р. Висновок експерта як джерело доказів у кримінальному провадженні : дис. ... канд. юрид. наук. Одеса, 2019. С. 58. URL: <http://dspace.onua.edu.ua/bitstream/handle/11300/12104/%D0%94%D0%B8%D1%81%D0%B5%D1%80%D1%82%D0%B0%D1%86%D1%96%D1%8F%20%D0%92%D0%BE%D1%80%D0%BE%D0%B1%D1%87%D0%B0%D0%BA%203.pdf?sequence=6&isAllowed=y> (date accessed: 04.12.2022).
- 15 Клименко Н. І. Судова експертологія. Курс лекцій : посібник. Київ, 2007. С. 158—159 ; Клименко Н. І., Колонюк В. П. Структура і доказове значення висновку експерта як документа, що відображає його дослідження. *Теорія та практика судової експертизи і криміналістики*. 2009. Вип. 9. С. 217 ; Експертизи у судовій практиці : наук.-практ. посіб. / за заг. ред. В. Г. Гончаренка. Київ, 2005. С. 263.

versions to be verified ¹⁶). Lastly, it is proposed to view the forensic expert's probable conclusions as evidence since the probable form does not automatically deprive the expert conclusion of probative value ¹⁷. Indeed, any expert conclusion as a document must fully meet requirements of Art. 102 of the Criminal Procedure Code of Ukraine ¹⁸; however, conclusions worded in a probable form require a more reasoned argumentation, stating grounds for drawing up and explaining reasons for impossibility of obtaining a conclusion in a categorical form. From our perspective, the expert conclusion as a procedural document (regardless of the form of final conclusions) is subject to evaluation as source of evidence. Individual researchers believe that, based on evaluation results and verification, the forensic expert's probable conclusion acquires probative value if it is later consistent with other pieces of evidence collected in proceedings ¹⁹. We view the last position as the most appropriate.

As we see, terminology regarding probable conclusions and their essence should be clarified. First, it is necessary to clearly distinguish between the concepts of *categorical* and *probable* as they have different etymological origins. *Categorical* is based on certainty, which implies an unconditional, non-alternative judgment. The concept of *possibility* is the opposite of categorical. The possibility concept is the opposite of categorical. A conclusion

in the form of possibility assumes the presence or absence of any fact, event. The forensic expert's lack of confidence in resolving posed question should be expressed precisely by the *possibility* term. Another paired category is *probability* and *veracity*. They characterize knowledge from the point of view of its provenance, reasonableness, persuasiveness, correspondence to reality. Veracious is knowledge which truth is confirmed by certain data, probable is problematic knowledge which truth has not been proven: so the probable is opposed to the veracious. According to Art. 94 of the Criminal Procedure Code of Ukraine ²⁰, veracity of the expert conclusion is determined during evaluation by the investigator, prosecutor, investigating judge, court: along with other evidence identified in the course of proceedings. Therefore, the concepts of *probable* and *veracious* characterize the degree of proof of facts, knowledge form. In this case, we are talking about the expert's subjective attitude to the degree of proof. Thus, categorical conclusions should be distinguished from veracious ones, and possible ones from probable ones.

The expert research procedure includes certain stages. Based on the review of submitted objects, her/his own specific expertise and acquired experience, the forensic expert proposes expert versions depending on a question addressed to him/her. The expert version is an expert's

16 Лисиченко В. К., Циркаль В. В. Использование специальных знаний в следственной и судебной практике : учеб. пособ. Киев, 1987. С. 90.

17 Юрчишин В. Д. Висновок експерта як джерело доказів у кримінальному процесі України : дис. ... канд. юрид. наук. Івано-Франківськ, 2007. С. 153.

18 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 04.12.2022).

19 Афонін Д. С. Деякі особливості використання некатегоричних висновків експерта в якості доказів. *Порівняльно-аналітичне право*. 2014. № 3. С. 193.

20 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 04.12.2022).

reasonable assumption about properties and condition of submitted objects, final and intermediate circumstances to be determined during research. Expert versions are put forward regarding various characteristics of objects submitted for forensic examination: nature and origin of their features, the mechanism by which features of one object appear in others, the role of objects in the mechanism of investigated events, information structure of objects, etc.²¹. Versions are the basis for choosing the methodology for subsequent expert research, in the course of which they are verified and clarified, and obtained results are the basis for moving from a hypothesis to certain knowledge. The set of data obtained as a result of forensic expert analysis forms the expert's internal conviction of confidence in the veracity, falsity, and probability of a suggested version. If source data provided to the forensic expert are insufficiently informative in terms of its quantity or quality, the methodology is flawed or there are no certain research and development results associated with a question posed, then the forensic expert may develop an incomplete inner conviction about veracity of obtained research results²². The impossibility of attaining veracious knowledge allows for the probability of the existence of

a fact, but does not exclude another, opposite conclusion about the one. According to our terminology, such a psychological state is embodied in formulation of a conclusion in the form of possibility²³.

Thus, a possible conclusion of the forensic expert is a version that is not sufficiently substantiated by results of conducted expert research, therefore it is a form of resolution of addressed question by a forensic expert. If the forensic expert, within the limits of her/his specific expertise and based on materials submitted to him/her, is unable to resolve the question (for example, about fingerprinting), in individual cases it can be resolved by the investigator and the court, based on the entire body of evidence, considering the forensic expert's intermediate conclusions. For this reason, it is increasingly important to present mentioned intermediate conclusions in a clear, understandable way, so that they can be used to prove actual circumstances of a case in the future. Expert versions (in the form of possible conclusions) can confirm other evidence of criminal proceedings. Analysis of judicial practice for 2020 demonstrates that 86% of expert conclusions in criminal proceedings and 78% in civil cases are accepted as a source of evidence in such a form²⁴.

21 Щербаковський М. Г. Судова експертологія : посібник. Харків, 2008. С. 117.

22 Georgiou N., Morgan R. M., French J. C. The Shifting Narrative of Uncertainty: a Case for the Coherent and Consistent Consideration of Uncertainty in Forensic Science. *Australian Journal of Forensic Sciences*. 2022-07-31. Рр. 6—9. DOI: [10.1080/00450618.2022.2104370](https://doi.org/10.1080/00450618.2022.2104370) (date accessed: 04.12.2022) ; Іванович А., Науменко С., Брюхань С. Оцінювання ідентифікаційних ознак почерку за різних форм висновку експерта. *Теорія та практика судової експертизи і криміналістики*. 2021. Вип. 3 (25). С. 106. DOI: [10.32353/khrife.3.2021.07](https://doi.org/10.32353/khrife.3.2021.07) (date accessed: 04.12.2022).

23 Сімакова-Єфремян Е. Б. Теоретико-правові та методологічні засади комплексних судово-експертних досліджень : дис. ... д-ра юрид. наук. Харків, 2017. С. 225.

24 Щербаковський М. Г. Судебная практика оценки вероятных выводов эксперта. *Актуальні питання судової експертології, криміналістики та кримінального процесу* : мат-ли II Міжнар. наук.-практ. конф. (Київ, 19.11.2020). Київ, 2020. С. 649. URL: <https://m3rkxutm8pk3eqapl5yn-jvb3gips8uao.cdn-freehost.com.ua/wp-content/uploads/2021/06/5fd09ad02772c.pdf> (date accessed: 04.12.2022).

Reasoned possible conclusions of the forensic expert are quite admissible in forensic expert practice, and probability or veracity of facts and circumstances of offense are established by the subjects of proof themselves, evaluating totality of all pieces of evidence collected in criminal proceedings.

Conclusions

In compliance with performed analysis, it is possible to single out certain components of the forensic expert's internal conviction. The *objective* cognitive basis of the forensic expert's internal conviction is objects submitted for forensic examination, availability of developed expert methods, scientific provisions of a certain type of forensic examination, clarified actual circumstances of the offense, obtained research results in the form of signs and characteristics of objects. The *subjective* basis of internal conviction is the forensic expert's specific expertise and personal experience. The essence of internal conviction is the forensic expert's psychological state, his/her confidence in objectivity and reliability of obtained results, validity of their interpretation and evaluation, and his/her readiness to formulate conclusions. The forensic expert's inner conviction is a feeling of confidence in accuracy of his/her conclusion (opinion) and the decision made on its basis. Internal conviction is such a psychological state when a forensic expert (relying on specific expertise, scientific and methodological principles of forensic examination) is confident in the accuracy of a chosen scheme and methodology of research of submitted materials, results obtained, their interpretation and evaluation, and is ready to formulate answers to questions

addressed to him. The procedural condition of objectivity, impartiality of internal conviction is guaranteed by the forensic expert's independence.

The external manifestation of the forensic expert's inner conviction is logical, reasoned answers provided by him/her to posed questions in the form of categorical judgments. As a result of the insufficiency or poor quality of the materials submitted for forensic examination and/or the lack of scientific and methodological principles corresponding to addressed questions, the forensic expert may still be uncertain in research results; and the lack of internal conviction can be embodied by the forensic expert while formulating a conclusion on the possibility of availability of facts and circumstances. A possible conclusion should be distinguished from a probable one: it is a form of expert version, which probability or veracity is determined by the investigator, prosecutor, investigating judge and the court according to evaluation of results of all pieces of evidence as a whole.

Внутрішнє переконання та форми висновків експерта Микола Дементьєв

Метою статті є визначити підстави, сутність, умови й відображення внутрішнього переконання експерта у висновках проведеного дослідження, поняття та значення ймовірних висновків для кримінального провадження. Досягнення поставленої мети стало можливим завдяки використанню: системно-структурного методу — для визначення особливостей формування й зовнішнього відображення внутрішнього переконання експерта; порівняльно-правового аналізу — для зіставлення підходів науковців до доказового значення ймовірних висновків; формально-юридичного — для розкриття процесуальної незалежності судового

експерта та формулювання поняття «можливий висновок експерта». Об'єктивним підґрунтям внутрішнього переконання експерта є об'єкти експертизи, експертні методики, наукові положення експертизи, результати дослідження; суб'єктивним — спеціальні знання й особистий досвід експерта. Сутністю внутрішнього переконання є психологічний стан експерта, його впевненість у здобутих результатах й готовність формулювати умовиводи. Процесуальну умову об'єктивності, неупередженість внутрішнього переконання гарантовано незалежністю судового експерта. Зовнішнім виявленням внутрішнього переконання експерта є відповіді на поставлені питання (у формі категоричних суджень). Відсутність внутрішнього переконання експерт може втілити у формулюванні висновку про можливість існування обставин і фактів. Можливий висновок слід відрізняти від імовірного. Можливий висновок є формою експертної версії, імовірність чи достовірність якої визначають за результатами оцінювання сукупно всіх доказів.

Ключові слова: кримінальне провадження; судова експертиза; внутрішнє переконання експерта; висновок експерта; імовірний висновок експерта.

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The author declares no conflict of interest.

References

- Afonin, D. S. (2014). Deiaki osoblyvosti vykorystannia nekatheorychnykh vysnovkiv eksperta v yakosti dokaziv [Certain features of the use of non-categorical expert conclusions as evidence]. *Porivnialno-analitychne pravo*. № 3 [in Ukrainian].
- Belkin, R. S. (2001). *Kurs kriminalistiki* [Criminalistics Course]: ucheb. posob. Moskva [in Russian].
- Ekspertyzy u sudovii praktytsi [Forensic examinations in judicial practice] (2005) : nauk.-prakt. posib. / za zah. red. V. H. Honcharenka. Kyiv [in Ukrainian].
- Georgiou, N., Morgan, R. M., French, J. C. (2022). The Shifting Narrative of Uncertainty: a Case for the Coherent and Consistent Consideration of Uncertainty in Forensic Science. *Australian Journal of Forensic Sciences*. Vol. 7-31. DOI: [10.1080/00450618.2022.2104370](https://doi.org/10.1080/00450618.2022.2104370).
- Holovchenko, L. M. (1999). *Otsinka vysnovkiv kryminalistychnoi ekspertyzy* [Evaluation of forensic examination findings]: avtoref. ... dys. kand. yuryd. nauk. Kyiv [in Ukrainian].
- Ivanović, A., Naumenko, S., Briukhan, S. (2021). Evaluation of identification sings of handwriting for different types of forensic report. *Theory and Practice of Forensic Science and Criminalistics*. Is. 3 (25). DOI: [10.32353/khrife.3.2021.07](https://doi.org/10.32353/khrife.3.2021.07).
- Klymenko, N. I. (2007). *Sudova ekspertolohiia. Kurs lektsii* [Forensic expertology: Lecture course] : posibnyk. Kyiv [in Ukrainian].
- Klymenko, N. I., Koloniuk, V. P. (2009). Struktura i dokazove znachennia vysnovku eksperta yak dokumenta, shcho vidobrazhuie yoho doslidzhennia [The structure and probative value of the expert conclusion as a document reflecting his/her research]. *Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky*. Vyp. 9 [in Ukrainian].
- Kolmakov, V. P. (1951). O vnutrennem ubezhdenii sovetskogo sudebnogo ehksperta [On inner conviction of soviet forensic expert]/ *Voprosy sovetskoi kriminalistiki*. Moskva [in Russian].

- Lisichenko, V. K., Tsirkal, V. V. (1987). *Ispolzovanie spetsialnykh znaniy v sledstvennoi i sudebnoi praktike* [The use of specific expertise in investigative and judicial practice] : ucheb. posob. Kiev [in Russian].
- Panko, N. A. (2009). Dokazove znachennia vysnovku eksperta [Probative value of the expert conclusion]. *Forum prava*. № 1 [in Ukrainian].
- Serkevych, I. R., Lisitsyna, Yu. O. (2022). Psychological particularities of judge's internal convictions [Psychological particularities of judge's internal convictions]. *Herald of Lviv University of Trade and Economics. Law Sciences*. No 11. DOI: 110.36477/2616-7611-2022-11-08 [in Ukrainian].
- Shcherbakovskii, M. G. (2020). Sudebnaia praktika otsenki veroiatnykh vyvodov ehksperta [Judicial practice of evaluating probable conclusions of the forensic expert]. *Aktualni pytannia sudovoi ekspertolohii, kryminalistyky ta kryminalnoho protsesu* : mat-ly II Mizhnar. nauk.-prakt. konf. (Kyiv, 19.11.2020). Kyiv. URL: <https://m3rkxuttm8pk3eqapl5ynjvb3gjps8uao.cdn-freehost.com.ua/wp-content/uploads/2021/06/5fd09ad02772c.pdf> [in Russian].
- Shcherbakovskiy, M. H. (2008). *Sudova ekspertolohiia* [Forensic expertology] : posibnyk. Kharkiv [in Ukrainian].
- Simakova-Yefremian, E. B. (2017). *Teoretyko-pravovi ta metodolohichni zasady kompleksnykh sudovo-ekspertnykh doslidzhen* [Theoretical, legal and methodological principles of complex forensic research] : dys. ... d-ra yuryd. nauk. Kharkiv [in Ukrainian].
- Skachkova, T. Yu. (2014). Pro mozhlivyst vykorystannia vysnovkiv kryminalistychnykh ekspertyz iz virohidnoiu formoiu vysnovku pid chas rozsliduvannia kryminalnykh provadzhen [On the possibility of using conclusions of forensic examinations presented as probable conclusions during investigation of criminal proceedings]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu. Seriia Yurydychni nauky*. Vyp. 4. T. 2 [in Ukrainian].
- Vapniarchuk, V. V. (2017). *Teoriia i praktyka kryminalnoho protsesualnoho dokazuvannia* [Theory and practice of criminal procedural proof] : monohrafiia. Kharkiv. URL: <https://dspace.nlu.edu.ua/handle/123456789/13425> [in Ukrainian].
- Vorobchak, A. R. (2019). *Vysnovok eksperta yak dzherelo dokaziv u kryminalnomu provadzhenni* [The expert opinion as a source of evidences in criminal proceedings] : dys. ... kand. yuryd. nauk. Odesa. URL: <http://dspace.onua.edu.ua/bitstream/handle/11300/12104/%D0%94%D0%B8%D1%81%D0%B5%D1%80%D1%82%D0%B0%D1%86%D1%96%D1%8F%20%D0%92%D0%BE%D1%80%D0%BE%D0%B1%D1%87%D0%B0%D0%BA%203.pdf?sequence=6&isAllowed=y> [in Ukrainian].
- Yurchyshyn, V. D. (2007). *Vysnovok eksperta yak dzherelo dokaziv u kryminalnomu protsesi Ukrainy* [Expert's conclusion as a source of evidences in criminal proceeding of Ukraine] : dys. ... kand. yuryd. nauk. Ivano-Frankivsk [in Ukrainian].
- Yurchyshyn, V. D. (2013). Analiz ta klasyfikatsiia vysnovkiv eksperta u kryminalnomu provadzhenni: teoretychnyi ta praktychnyi aspekty [Analysis and classification conclusions of expert in criminal proceedings: theoretical and practical aspects]. *Prykarpatskyi yurydychnyi visnyk*. Vyp. 1 (3). URL: http://www.pjv.nuoua.od.ua/v1_2013/42.pdf [in Ukrainian].

Dementiev, M. (2022). Internal Conviction and Forms of Expert Conclusions. *Theory and Practice of Forensic Science and Criminalistics*. Issue 4 (29). P. 149—159. DOI: 10.32353/khrife.4.2022.08.