

Research, Verification and Evaluation of Forensic Expert Conclusion: Forensic Veterinary Aspect

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The author aimed to outline the grounds and criteria, to single out methods and characterize procedural of research specifics, verification and evaluation of forensic veterinary expert conclusion. In order to achieve this goal, a set of interrelated research methods (dialectical, systemic-structural, systemic-functional, comparative-legal, formal logic (analysis, synthesis, deduction, induction, analogy), modeling, statistical) was applied. The grounds, criteria, methods and procedural specifics of the research, verification and assessment of forensic expert conclusion are considered. Attention is focused on forensic and veterinary aspect of this issue. It is claimed that during verification of forensic expert conclusion, it is necessary to assess its comprehensiveness, completeness and objectivity, as well as scientific validity, reliability, correctness, admissibility of using methods and techniques, means and methods of conducting expert research, as well as adequacy and relationship with other evidence collected within the framework of a criminal proceeding (case) with the aim of making a correct procedural decision (for evidence of factual data and circumstances proven by expert research). The criteria for completeness and reasonableness of the expert's conclusion are proposed, as well as the algorithm for evaluating such a conclusion by the investigator, prosecutor, defense attorney, investigative judge, and court. The application of a set of these criteria to the assessment of a forensic expert's opinion will guarantee the reliability of the verification and assessment of such conclusion, as well as create reliable conditions for making procedural decisions in legal proceedings.

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Keywords: forensic veterinary medicine; forensic expert conclusion; research, verification, forensic expert conclusion evaluation; objectivity; comprehensiveness; reliability; validity; research completeness; source of evidence.

Research Problem Formulation

Forensic science in general and forensic veterinary medicine (hereinafter referred to as FVM) in particular occupy an important place in the proceedings as a scientifically substantiated means of proof, and expert's conclusion is a source of evidence ¹. FVM function of is a research on objects performed by "veterinarian, namely: forensic veterinarian according to the procedural document on the appointment of a forensic veterinary examination in order to provide an conclusion on veterinary issues that arose during pre-trial investigation in criminal proceedings or trial in any type of proceedings" ².

Certainly, forensic expert's conclusion can be considered doubtful or incorrect

for various reasons: forensic expert was provided with incorrect initial data, false objects; the expert applied unreliable methods and/or made mistakes. Therefore, the appointment subject of forensic examination and the court should carefully examine, check and evaluate expert's conclusion on a general basis ³.

In criminal, administrative, civil and economic proceedings, the main criteria for assessing evidence, in particular forensic expert conclusion, are relevance and admissibility.

Analysis of Essential Researches and Publications

Various aspects of verification and evaluation of forensic expert conclusion

- 1 Чорноус Ю., Лелюк Т. Актуальні питання організації проведення судових експертиз у кримінальному провадженні. *Актуальні питання судової експертизи і криміналістики* : зб. мат-лів міжнар. наук.-практ. конф. з нагоди 100-річ. ННЦ «ІСЕ ім. Засл. проф. М. С. Бокаріуса» (Харків, 10.11.2023). Харків, 2023. С. 416. URL: <https://drive.google.com/file/d/1Kwin74kcc8IVhymxGLXWEOAccvxnpxA6/view> (date accessed: 10.02.2024) ; Satiani Bh. Expert witness testimony: rules of engagement. *Vascular and Endovascular Surgery*. 2006. Vol. 40. Is. 3. Pp. 223–227. DOI: [10.1177/153857440604000307](https://doi.org/10.1177/153857440604000307) (date accessed: 10.02.2024).
- 2 Яценко І. В. Судова ветеринарна медицина як навчальна компонента для професійного формування лікарів ветеринарної медицини та її значення у системі підготовки судово-ветеринарних експертів у державних експертних установах України. *Current trends in the development of modern scientific thought* : Proceedings of the I International Scientific and Practical Conference (Хайфа, Ізраїль, 27–30.09.2022). Haifa, Israel, 2022. P. 183. DOI: [10.46299/ISG.2022.2.1](https://doi.org/10.46299/ISG.2022.2.1) (date accessed: 10.02.2024).
- 3 Юнацький О. Установлення достовірності висновку експерта під час його оцінки. *Актуальні питання судової експертизи і криміналістики* : зб. мат-лів міжнар. наук.-практ. конф. з нагоди 100-річ. ННЦ «ІСЕ ім. Засл. проф. М. С. Бокаріуса» (Харків, 10.11.2023). Харків, 2023. С. 434–437. URL: <https://drive.google.com/file/d/1Kwin74kcc8IVhymxGLXWEOAccvxnpxA6/view> (date accessed: 10.02.2024) ; Biedermann A., Kotsoglou K. N. Decisional Dimensions in Expert Witness Testimony – A Structural Analysis. *Frontiers in Psychology*. 2018. Vol. 31. Is. 9. Art. 2073. DOI: [10.3389/fpsyg.2018.02073](https://doi.org/10.3389/fpsyg.2018.02073) (date accessed: 10.02.2024).

were investigated by A. Amelina and A. Vorobchak ⁹, M. Dementiev ¹⁰, B. Bilousov ⁴, V. Bazhaniuk ⁵, D. Barbash ⁶, V. Zhmudinskiyi ¹¹, O. Kozhushko ¹², O. Baulin and O. Izotov ⁷, D. Viter ⁸, V. Korzh ¹³, H. Kutskir ¹⁴, O. Lukianchuk ¹⁵,

- 4 Амеліна А. С., Білоусов Б. Л. Оцінка висновку експерта та його доказове значення. *Міжнародний юридичний вісник: актуальні проблеми сучасності (теорія та практика)*. 2018. Вип. 1–2 (10–11). С. 185–192. URL: http://nbuv.gov.ua/UJRN/muvnudp_2018_1-2_33 (date accessed: 10.02.2024).
- 5 Бажанюк В. В. Оцінка висновку експерта у кримінальному провадженні. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція*. 2021. № 54. Т. 2. С. 110–113. DOI: [10.32841/2307-1745.2021.54.2.24](https://doi.org/10.32841/2307-1745.2021.54.2.24) (date accessed: 10.02.2024).
- 6 Барбаш Д. Оцінка висновку експерта судом у кримінальному провадженні: теоретичні та прикладні аспекти у світлі судової практики. *Актуальні питання судової експертизи і криміналістики* : зб. мат-лів міжнар. наук.-практ. конф. з нагоди 100-річ. ННЦ «ІСЕ ім. Засл. проф. М. С. Бокаріуса» (Харків, 10.11.2023). Харків, 2023. С. 87–89. URL: <https://drive.google.com/file/d/1Kwin74kcc8IVhymxGLXWOEAccvxnpzA6/view> (date accessed: 10.02.2024).
- 7 Баулін О. В., Ізотов О. І. Перевірка і оцінка висновку експерта у кримінальному провадженні. *Криміналістика і судова експертиза*. 2021. Вип. 66. С. 95–108. DOI: [10.33994/kndise.2021.66.11](https://doi.org/10.33994/kndise.2021.66.11) (date accessed: 10.02.2024).
- 8 Вітер Д. Оцінювання допустимості та достовірності висновку експерта слідчим під час розслідування злочинів у сфері фінансування соціальних цільових програм. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2020. № 3. С. 256–264. DOI: [10.31733/2078-3566-2020-3-256-264](https://doi.org/10.31733/2078-3566-2020-3-256-264) (date accessed: 10.02.2024).
- 9 Воробчак А. Р. Висновок експерта як джерело доказів у кримінальному провадженні: дис. ... канд. юрид. наук. Одеса, 2019. 254 с. URL: <https://dspace.onua.edu.ua/server/api/core/bitstreams/d2df00ad-7eb3-460f-965f-698f2d97b889/content> (date accessed: 10.02.2024).
- 10 Дементьев М. Умови та критерії достовірності висновку експерта. *Knowledge, Education, Law, Management*. 2021. № 6 (42). С. 155–159. DOI: [10.51647/kelm.2021.6.25](https://doi.org/10.51647/kelm.2021.6.25) (date accessed: 10.02.2024).
- 11 Жмудінський В. П. Механізм оскарження та способи перевірки висновку експерта в кримінальному провадженні. *Copernicus Political and Legal Studies*. 2022. Vol. 1. Is. 3. Pp. 46–54. DOI: [10.15804/CPLS.20223.06](https://doi.org/10.15804/CPLS.20223.06) (date accessed: 10.02.2024).
- 12 Кожушко О. В. Методичний підхід до оцінки висновку судового експерта по результатам проведення судово-економічної експертизи. *Ефективна економіка*. 2020. № 6. DOI: [10.32702/2307-2105-2020.6.53](https://doi.org/10.32702/2307-2105-2020.6.53) (date accessed: 10.02.2024).
- 13 Корж В. П. Оцінка висновку експерта: процесуальні підстави, криміналістичні рекомендації. *Сучасні тенденції розвитку криміналістики та кримінального процесу в умовах воєнного стану* : тези доп. Міжнар. наук.-практ. конф. (25.11.2022, Харків). Харків, 2022. С. 229–232. DOI: [10.5281/zenodo.7339681](https://doi.org/10.5281/zenodo.7339681) (date accessed: 10.02.2024).
- 14 Куцкір Г. М. Процесуальні особливості допиту експерта в суді. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2020. Вип. 60. С. 168–171. DOI: [10.32782/2307-3322/2020.60.37](https://doi.org/10.32782/2307-3322/2020.60.37) (date accessed: 10.02.2024).
- 15 Лук'янчук О. І. Правомірність рецензування висновку експерта в судовому процесі. *Криміналістичний вісник*. 2021. № 1 (35). С. 38–47. DOI: [10.37025/1992-4437/2021-35-1-38](https://doi.org/10.37025/1992-4437/2021-35-1-38) (date accessed: 10.02.2024).

Yu. Myroshnychenko¹⁶, D. Puchko¹⁷, Yu. Fedyk and I. Besaha¹⁸, M. Shcherbakovskyi¹⁹.

Instead, the scientists did not pay attention to the grounds, criteria and methods of investigating forensic expert conclusion, as well as the procedural specifics of its verification and evaluation during pre-trial investigation and consideration of the case in court.

Article Purpose

Outline the grounds and criteria, to single out the methods and to characterize the procedural research specifics of, verification and evaluation of conclusion of a forensic veterinary expert.

Research Methods

Achieve this goal, a set of interdependent research methods was used, namely:

dialectical, system-structural, system-functional, comparative-legal, formal logic (analysis, synthesis, deduction, induction, analogy), modeling, statistical.

Main Content Presentation

Final stage of any examination is preparation of forensic expert conclusion is a conclusion made with the use of specific expertise — and the verification and evaluation of this conclusion by the relevant entities, in particular the investigator, prosecutor, investigating judge, court “based on... internal conviction, which is based on a comprehensive, complete and impartial study of all circumstances... guided by the law” (Article 94 of Criminal Procedural Code of Ukraine²⁰; Article 89 of Code of Administrative Proceedings of Ukraine²¹; Article 86 of Commercial and Procedural Code of Ukraine²²; Article 90

- 16 Мирошниченко Ю. М. Дослідження, перевірка та оцінка судом висновку експерта. *Форум права*. 2009. № 3. С. 445—450. URL: http://nbuv.gov.ua/UJRN/FP_index.htm_2009_3_67 (date accessed: 10.02.2024).
- 17 Пучко Д. В. Належність і допустимість висновку експерта як критерії оцінювання судової експертизи. *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 22. С. 226—239. DOI: [10.32353/khrife.2.2020.17](https://doi.org/10.32353/khrife.2.2020.17) (date accessed: 10.02.2024).
- 18 Федик Ю. Я., Бесага І. В. Доказове значення висновку фахівця у галузі ветеринарної медицини у судовому процесі. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2023. Вип. 77. Ч. 2. С. 258—263. DOI: [10.24144/2307-3322.2023.77.2.44](https://doi.org/10.24144/2307-3322.2023.77.2.44) (date accessed: 10.02.2024).
- 19 Щербаківський М. Г. Проведення та використання судових експертиз у кримінальному провадженні : монографія. Харків, 2015. 560 с. URL: <https://dspace.univd.edu.ua/xmlui/handle/123456789/6020> (date accessed: 10.02.2024) ; Idem. Стандарт достовірності висновку експерта у кримінальному процесі. *Теорія та практика судової експертизи і криміналістики*. 2021. Вип. 3 (25). С. 21—39. DOI: [10.32353/khrife.3.2021.03](https://doi.org/10.32353/khrife.3.2021.03) (date accessed: 10.02.2024) ; Щербаківський М. Г., Дементьев М. В., Проценко А. М. Критерії та види процесуальних порушень як підстави недопустимості висновку експерта. *Вісник Луганського державного університету внутрішніх справ ім. Е. О. Дідоренка*. 2022. Вип. 3 (99). С. 173—186. DOI: [10.33766/2524-0323.99.173-186](https://doi.org/10.33766/2524-0323.99.173-186) (date accessed: 10.02.2024).
- 20 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: 10.02.2024).
- 21 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 10.02.2024).
- 22 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 10.02.2024).

of Code of Administrative Proceedings of Ukraine²³).

Since forensic expert conclusion has no predetermined force among other means of proof, it is necessary to find out whether this conclusion can be used as a source of proof of the fact of offense.

As O. Baulin and O. Izotov noted: “assessment of forensic expert conclusion is a complex mental process aimed at establishing the admissibility of this source of evidence and the completeness and reliability of information contained therein to prove the circumstances that are relevant to criminal proceedings”²⁴.

Since scientific and practical authority of expert is not unconditional, his conclusion cannot be considered impeccable. We consider the position of Supreme Court of Ukraine on the court’s assessment of each of forensic expert conclusions to be reasonable, if several of them were provided in one case²⁵.

In our opinion, the *purpose of research and evaluation of forensic expert opinion* is:

- find out legal personality, competence and competence of the expert; validity and motivation,

reliability and appropriateness, significance for the system of evidence of factual data contained therein, taking into account their informativeness;

- familiarize subject of forensic examination appointment with the conclusion content;
- determine possibility of its use as a source of evidence; assess the facts clarified by an expert, on which decisions in criminal proceedings (case) are based.

Scientists distinguish the following ways to check and evaluate forensic expert conclusion:

- analysis of compliance with stipulated procedure for appointment of forensic examination and compliance with the expert conclusion content with requirements of procedural legislation²⁶;
- comparison of forensic expert conclusion with other evidence or with other conclusions, if any;
- summoning forensic expert for interrogation in order to clarify his/her conclusion²⁷;

23 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 10.02.2024).

24 Баулін О. В., Ізотов О. І. *Op. cit.* С. 103. DOI: 10.33994/kndise.2021.66.11 (date accessed: 10.02.2024).

25 Про судову експертизу в кримінальних і цивільних справах : Постанова Пленуму ВС України від 30.05.1997 р. № 8 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/v0008700-97#Text> (date accessed: 10.02.2024).

26 Яценко І. В., Дереча Л. М., Парилівський О. І. Особливості структури висновку судово-ветеринарного експерта за результатами дослідження трупа тварини з ознаками насильницької смерті. *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 21. С. 615–639. DOI: 10.32353/khrife.1.2020.44 (date accessed: 10.01.2024) ; Яценко І. В. Гносеологічна характеристика та процесуальне значення етапів і стадій призначення та проведення судово-ветеринарної експертизи. *Ibidem*. 2023. Вип. 1 (30). С. 70–111. DOI: 10.32353/khrife.1.2023.05 (date accessed: 10.01.2024).

27 Шабаровський Б. В. Способи перевірки висновку експерта у кримінальному процесі України. *Право і безпека*. 2019. № 2 (73). С. 85–86. DOI: 10.32631/pb.2019.2.13 (date accessed: 10.01.2024).

- simultaneous interrogation of two or more experts ²⁸;
- provision by the party to criminal proceedings of information related to forensic expert competence ²⁹;
- appointment of a repeated or additional examination.

It can be confidently stated that in order to verify and evaluate the expert opinion, the subject of evidence assessment (according to Art. 94 of the Criminal Procedural Code of Ukraine ³⁰) should investigate and evaluate its *content* (substantiated and reliable final conclusions) and *form* (compliance with the requirements of the procedural law), because the content and form of the expert conclusion characterize its evidentiary component in criminal proceedings: non-compliance with at least one of them excludes the possibility of recognizing the expert opinion as evidence in court. It should be noted that verification and evaluation of the forensic expert conclusion can be carried out exclusively at the stage of trial and is almost impossible at the stage of pre-trial investigation.

As Yu. Myroshnychenko rightly notes, “research on forensic expert conclusion by the court consists in its announcement, perception and analysis of its text in order to understand the essence and content of

this procedural document” ³¹. We share the position of the scientist regarding the rule: “If the court considers the case without the participation of an expert, then his conclusion is announced by the court; if the expert is present in courtroom, then it is he who should announce, justify, explain, illustrate his conclusion” ³².

Announcement of the expert’s conclusion on the results of forensic examination should contain: the name of the examination; its number in the Unified Register of Pre-Trial Investigations; initiators of forensic examination appointment ; expert questions and answers to; list of objects provided for research, a description of their condition and suitability for research.

Consequently, the study, verification and evaluation of the forensic expert conclusion is a complex and multi-vector mental activity aimed at verifying compliance with the requirements of procedural law during the appointment and conduct of forensic examination (in particular, FVM), as well as verifying the reliability, scientific validity and completeness of forensic expert conclusion.

Evaluation of the expert conclusion, as M. Shcherbakovskiy ³³ notes, has several levels of the proof process: expert, investigative and judicial (*see table*).

28 Жмудінський В. П. Оп. cit. P. 49. DOI: [10.15804/CPLS.20223.06](https://doi.org/10.15804/CPLS.20223.06) (date accessed: 10.01.2024).

29 Амеліна А. С., Білоусов Б. Л. Оп. cit. С. 189. URL: http://nbuv.gov.ua/UJRN/muvnudp_2018_1-2_33 (date accessed: 10.01.2024).

30 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 10.02.2024).

31 Мирошніченко Ю. М. Оп. cit. С. 445. URL: http://nbuv.gov.ua/UJRN/FP_index.htm_2009_3_67 (date accessed: 10.02.2024).

32 Ibidem.

33 Щербаківський М. Г. Проведення та використання С. 355. URL: <https://dspace.univd.edu.ua/xmlui/handle/123456789/6020> (date accessed: 10.02.2024).

Levels of forensic expert conclusion assessment and their content

Levels	Subject	Content
1. Expert one	The head of forensic science institution or his deputy	<ul style="list-style-type: none">• Verification of compliance with procedural requirements for appointment and conducting forensic examination;• verification of compliance with the formal requirements for the expert conclusion preparation
2. Investigative one	Investigator, prosecutor	<ul style="list-style-type: none">• Comparison of facts found by the forensic expert with other evidence collected;• determination of degree of research completeness and scientific validity of final conclusions;• verification of compliance with procedural requirements for appointment and conducting forensic examination;• ascertaining reliability of results obtained by forensic expert
3. Legal one	Investigator-judge, court, defense counsel	<ul style="list-style-type: none">• Determination of evidentiary force of circumstances clarified by forensic expert, specific event of investigated crime;• final resolution of the issue of availability or lack of facts and their adding to the system of evidence in criminal proceedings

It is worth noting that at the stage of judicial debate, prosecutor and the defense lawyer have the right to evaluate the evidence collected in criminal proceedings, in particular forensic expert conclusion, and the court can both agree with them and reject them (Article 364 of Criminal Procedural Code of Ukraine)³⁴.

According to Art. 94 of Criminal Procedural Code of Ukraine, in criminal proceedings, it is necessary to evaluate each evidence separately, in particular the

expert opinion, *according to the criteria of* “belonging, admissibility, reliability, and the totality of the collected evidence – <...> sufficiency and interconnection for making the appropriate procedural decision”³⁵.

General tasks of assessing forensic expert conclusion are set out in the monograph by M. Shcherbakovskyi³⁶.

Criteria for assessing forensic expert conclusion, in particular forensic veterinary conclusion are interrelated and complement each other; this is the

34 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 10.02.2024).

35 Ibidem.

36 Щербаківський М. Г. Проведення та використання ... С. 362. URL: <https://dspace.univd.edu.ua/xmlui/handle/123456789/6020> (date accessed: 10.02.2024).

coincidence of conclusions of the forensic expert with other data in the criminal proceedings (case).

M. Shcherbakovskyi emphasizes that epistemological and procedural criteria of reliability of forensic expert's conclusion are the basis for formation of the proof standard regarding the correspondence of forensic expert's conclusions to objective truth. The scientist notes: "Regarding the opinion of the expert, such a standard has not yet been proposed, so we will try to fill this gap"³⁷ with provisions of "beyond a reasonable doubt" standard (Article 17 of the Criminal Procedure Code³⁸), which is actively used by the European Court of Human Rights in practice. "Standard of reliability of the expert's conclusion means that conditions of propriety and admissibility of the opinion are met, the objects submitted for examination are benign, the expert's conclusions are substantiated by general scientific and methodological provisions and the results of a specific expert research based on, logically argued, consistent with the rest of the evidence of criminal proceedings and recognized as corresponding beyond a reasonable doubt to the actual circumstances of the offense"³⁹.

D. Viter expressed the right opinion that the reliability of the expert's conclusion means that it correctly reflects algorithm of conducting and the results of forensic research, that reliable evidence has been investigated, and the facts established by forensic expert are true⁴⁰.

Summarizing, it should be noted: it is practically impossible to clearly distinguish between individual components of the expert conclusion assessment, in particular the forensic veterinary one, because they are interrelated, partially complement each other, so they need to be evaluated and checked exclusively jointly.

In assessing forensic expert conclusion, two components can be distinguished: 1) logical and procedural (*formal*) one, implemented by the initiator of appointment of forensic examination, and 2) *special* one, performed only by a subject who has specific expertise in a particular field of knowledge for conducting an forensic research of provided objects.

We adapted criteria proposed by M. Shcherbakovskyi⁴¹ to check the conclusion of forensic veterinarian, summarizing the corresponding algorithm of actions.

Algorithm for assessing forensic expert conclusion (in particular, forensic veterinary) by the inquirer, investigator, prosecutor, defense lawyer, investigating judge, court

I. Logical and procedural (formal) assessment of forensic expert conclusion

1. Assessment of compliance with requirements of the procedural procedure for FVM conducting

- a) Correctness of preparation of materials for the CEE and verification of availability of following documents in the materials of criminal proceedings:

37 Idem. Стандарт достовірності С. 35. DOI: 10.32353/khrife.3.2021.03 (date accessed: 10.01.2024).

38 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 10.02.2024).

39 Щербаківський М. Г. Стандарт достовірності С. 36. DOI: 10.32353/khrife.3.2021.03 (date accessed: 10.01.2024).

40 Вітер Д. Ор. cit. С. 256–264. DOI: 10.31733/2078-3566-2020-3-256-264 (date accessed: 10.02.2024).

41 Щербаківський М. Г. Проведення та використання С. 364–373. URL: <https://dspace.uni-ivd.edu.ua/xmlui/handle/123456789/6020> (date accessed: 10.02.2024).

- protocol of inspection of the scene or detection of animal corpse at the scene;
 - minutes of sampling for forensic research with a description of the method and conditions of sampling, their quantitative and qualitative characteristics;
 - documents required from institutions, establishments, officials, etc.
- b) Procedural order to FVM appointment on the basis of the analysis of case files:
- “Is there a procedural document in the materials of the criminal proceedings on FVM appointment (resolution, ruling, lawyer’s request for forensic expert involvement)?”;
 - “Has a forensic expert been appointed (involved) in the FVM conducting in accordance with the procedure established by law?”;
 - “Is a forensic expert authorized to perform tasks regarding FVM objects containing information about the offense circumstances, conducting research and provide forensic expert conclusion or report on impossibility of its providing?”;
 - “Was the FVM conducted on written instructions of the head of forensic science institution in case of its appointment (order) to the forensic science institution which employee is forensic expert?”;
 - “Is the FVM accepted for execution by a certified forensic expert who does not work in a State specialized forensic science institution, if it is not entrusted to him personally?”;
- “Are there preliminary conclusions of forensic experts in content of criminal proceedings (in case of forensic re-examination)?”;
 - “Has the expert independently collected and/or removed materials subject to forensic examination?”;
 - “Did not forensic expert independently collect the initial data for the FVM, if they are displayed ambiguously in the content provided to him?”;
 - “Have the rights of participants in trial been respected during appointment and conduct of FVM?”.
- c) Procedure for FVM conducting:
- “Are expert tasks not performed that go beyond FVM topic, special veterinary knowledge or expert qualification?”;
 - “Has the FVM been delegated to another person?”;
 - “Are there grounds for recusal of forensic expert?⁴²”;
 - “Did forensic expert not resolve the issue of law and/or assess the violation of procedures regulated by regulatory legal acts?”;
 - “Did forensic expert independently involve other forensic experts or persons in FVM conducting assigned to him?”;
 - “Did the expert not enter into personal relationships with the trial participants that are not provided for by the regulations and without the consent of the subject of FVM appointment (if this calls into question his lack of interest in the results or if such persons are

42 Яценко І. В. Правовий статус судово-ветеринарного експерта як суб’єкта судово-експертної діяльності у контексті новітнього законодавства України. *Теорія та практика судової експертизи і криміналістики*. 2022. Вип. 4 (29). С. 68–109. DOI: 10.32353/khrife.4.2022.04 (date accessed: 10.01.2024).

directly or indirectly interested in FVM results)?”;

- “Is the procedural form of forensic expert conclusion followed? ⁴³”;
- “Has the subject of FVM appointment satisfied forensic expert request”;
- “Are the expert’s references in the conclusion to normative legal acts, literature sources and instructional content correct?”;
- “Did the expert indicate the reasons for the discrepancies between conclusions of the repeated and primary FVM?”.

2. Assessment of compliance of objects provided for FVM with the objects examined by forensic expert

- Acquaintance with inscription on the tag placed on packaging of objects submitted for examination;
- getting acquainted with the appearance of the objects depicted in the photo table attached to the expert’s conclusion;
- clarifying compliance of objects used in the repeated FVM with the objects used in the primary FVM and specified in the procedural document on its appointment

3. Assessment of completeness and scope of the conducted research, as well as comprehensibility of final conclusions

- “Has forensic expert examined all the objects submitted to FVM?”;
- “Are all the questions posed to the expert in the procedural document on FVM appointment or formulated at the expert initiative of the ,

resolved in reliable or probable forms or in the form ”it is not possible to provide an answer?”;

- “Do the questions posed to forensic expert correspond to the field of knowledge: *Veterinary Medicine*?”;
- “Is completeness and scope of forensic research set out in the research part of forensic expert conclusion sufficient to answer the questions posed to the expert?”;
- “Is there a complete description of the course of the research performed by expert in the conclusion?”;
- “Are the final conclusions in the *Forensic expert conclusion* convincing, clear, logical and justified for all participants in the process?”.

4. Assessing conformity of the expert’s final conclusions with results of the conducted research

- “Do the expert’s final conclusions correspond to intermediate ones formulated in the conclusion research part (in multidisciplinary examinations or examinations with a multi-quality object composition)?”;
- “Are there any contradictions between the individual parts of forensic expert conclusion?”;
- “Do the descriptions of results of the conducted research in research part of the conclusion correspond to illustrations provided in the photo table?”;
- “Are arithmetical or other errors, incorrect references to normative-

43 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 25.01.2024) ; Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказ. Мін’юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 10.01.2023).

legal or normative technical acts, methods, methodical recommendations revealed in conducted researches?”;

- “Are there factual data and circumstances case files of criminal proceedings or in conclusions of the primary FVMs, which forensic expert refers to in order to substantiate his final conclusions?”.

5. Assessment of relationship between the facts stated in forensic expert's conclusion and the subject of investigated crime

- “Does the content of forensic expert's conclusion correspond to offense circumstances?”;
- “Is information contained in forensic expert's conclusion capable of confirming or refuting the facts and circumstances relating to the offense under investigation?”.

6. Assessing conformity of forensic expert's conclusion with other evidence collected in criminal proceedings

- Is a means of proof if factual data formulated in correlate with other evidence collected in the case;
- is subject to verification if it reveals a discrepancy caused by expert errors or defects in other evidence based on case files of criminal proceedings (case).

II. Content evaluation of forensic expert conclusion

1. Correctness evaluation of forensic expert conclusion

- “Is there a record in introductory part of forensic expert's conclusion that forensic expert has been

warned about criminal liability for providing a knowingly false conclusion?”;

- “Is there a record in the introductory part of the expert's conclusion that he has a certificate for the right to conduct forensic examination and is its validity specified period?”;
- “Is there expert's signature after the record that he is warned of criminal liability?”;
- “Is forensic expert's signature and the seal of forensic science institution in the final part of conclusion?”;
- “Do the photo tables that are appendices to the expert's conclusion, have the expert's signature and the imprint of the seal of forensic science institution?”.

2. Assessment of sufficiency of the objects of expert research to resolve the issues raised in procedural document on FVM appointment

- “What objects (tangible and materialized ones) are provided to the expert for research?”;
- “Do the objects provided on the FVM by the initiator of forensic examination correspond to the objects examined and described by forensic expert in the conclusion?”;
- “Are the provided objects sufficient (by mass, volume, dimensions, integrity) to apply appropriate methods of forensic research to?”.

3. Evaluation of quality of forensic research objects

- “In what condition are objects on the FVM provided?”;
- “Are the objects suitable for research and providing answers to the questions posed to the court

expert in the procedural document on FVM appointment of?”;

- “Has the principle of maximum preservation of objects during FVM been observed?”.

4. Assessment of feasibility and scientific validity of the use of forensic methods

- “Do the scientific methods and expert research methods used during the FVM belong to the expert competence?”;
- “How research methods affected condition of objects (did not affect properties of the objects; did not change outward appearances, but partially affected characteristics of objects; changed the integrity of the object, destroyed its shape and significantly changed its properties; destroyed objects)?”;
- “Has scientific validity, reliability, and provenance of the research methods used during the FVM been confirmed?”;
- “Are the forensic research results obvious and clear for all participants in the process?”;
- “Do the applied research methods ensure maximum preservation of FVM objects?”;
- “Does methods used by forensic expert correspond to performance of expert tasks set before?”;
- “Did forensic expert choose the right methods to identify the necessary characteristics of the objects provided for research and to solve specific expert issues?”;
- “Didn’t the expert have grounds for using another expert methods together with the chosen one?”;
- “Do the methods used by forensic expert contradict each other?”;

- “Does performed expert research correspond to the chosen methods?”;
- “Do the methods of expert research make possible to verify obtained results?”;
- “Is there a method used by the expert in the Register of methods of conducting forensic examinations?”.

5. Completeness evaluation of conducted research

- “Have all objects (tangible and materialized ones) been examined by the expert (research completeness)?”;
- “Are the course and results of research fully described in forensic expert’s conclusion?”;
- “Are all object research algorithms implemented in accordance with prescriptions of selected expert methods?”;
- “Did forensic expert apply additional research methods and reflect their results in the expert’s conclusion?”;
- “Are photo tables attached to the expert’s conclusion and do illustrations placed there fully reflect research component of the conclusion?”;
- “Did the expert make a forensic veterinary diagnosis?”;
- “Did the court expert answer all the questions and did they provide complete answers?”;
- “Is the expert’s refusal to answer some questions justified?”;
- “What are the reasons for the expert’s refusal to provide conclusion or limited resolution of certain issues?”.

6. *Correctness evaluation of description and explanation of identified characteristics of objects*

- “Are there all characteristics of the research objects necessary for formulation of final conclusions?”;
- “On what criteria did forensic expert base his evaluation of signs during the formulation of intermediate and final conclusions?”;
- “Did forensic expert correctly describe the signs of the objects during application of a specific method of expert research?”;
- “Has forensic expert comprehensively evaluated every sign of the object to formulate a diagnosis and find out the cause(s) of the animal death or the cause(s) of the health disorder of live animal?”;
- “Is diagnosis correctly formulated and does it correspond to results described in the research part of forensic expert conclusion?”;
- “Did forensic expert’s conclusion reveal errors and contradictions?”.

7. *Evaluation of scientific validity of the expert’s intermediate and final conclusions*

- “Are the identified signs sufficient for formulating expert’s intermediate conclusions?”;
- “Is it diagnosed?”;
- “Do the interim conclusions correspond to the results of the conducted EIA?”;
- “Is the expert’s conclusion justified in general?”;
- “Is forensic expert conclusion consistent with other sources of evidence?”.

8. *Clarification of forensic expert’s competence*

- “Is the expert competent enough to conduct the FVM?”;
- “Does the expert have higher veterinary education (educational degree not lower than specialist or master’s degree)?”;
- “Does forensic expert have a certificate of expert training in the 18.1 *Veterinary researches specialization*?”;
- “Does the expert have a certificate of qualification of forensic expert?”;
- “Was the FVM not conducted during the temporary suspension of the expert’s right to conduct forensic examination, his stay on vacation or on sick leave, after cancellation of expert’s certificate?”;
- “Did the forensic expert go beyond the limits of his competence during FVM?”;
- “Are there any reasons why this expert cannot perform powers of forensic expert?”.

In our deep conviction, among the subjects of evaluation of evidence (in particular, forensic expert conclusion) there should be an inquirer, therefore we propose to add him to the list of such subjects in Part 1 of Article 94 of Criminal Procedural Code of Ukraine.

Observance by forensic veterinarians of the current regulations governing the implementation of forensic activity in Ukraine, as well as the rules, techniques, procedures⁴⁴ and methods of⁴⁵ conducting FVM guarantees: “ensuring justice of

44 Яценко І. В., Парилівський О. І. Правила судово-ветеринарного визначення ступеня тяжкості шкоди, заподіяної здоров’ю тварини (методичні рекомендації). Харків, 2022. 47 с.

45 Яценко І. В. Методика судово-ветеринарного дослідження тварин з метою встановлення їх каліцтва. Харків, 2021. 50 с. ; Яценко І. В., Казанцев Р. Г. Методика судово-ветеринарної експертизи трупів тварин. Харків, 2022. 336 с.

Ukraine with an independent, qualified and objective examination focused on the maximum use of scientific and technical achievements” and the application of the above-mentioned algorithm of criteria for assessing forensic expert conclusion; reliability of its verification and evaluation, creating conditions for making lawful decisions in legal proceedings⁴⁶.

Our algorithm is confirmed by the position of Supreme Court of Ukraine, which, during the verification and evaluation of forensic expert conclusion, considers it necessary to find out:

- “• whether legislation requirements were observed when appointing and conducting forensic examination;
- *whether there were circumstances that excluded participation of forensic expert in the case;*
- *expert competence and whether he/she has exceeded the limits of his/her powers;*
- *sufficiency of research objects submitted to forensic expert;*
- *completeness of answers to questions raised and their compliance with other factual data;*
- *consistency between the research part and the final conclusion of forensic examination;*
- *validity of forensic expert conclusion and its consistency with other case files”⁴⁷.*

We are not alone in our desire to unify the assessment of forensic expert conclusion: for example, according to results of the forensic economic examination, O. Kozhushko proposed to apply theory of games⁴⁸. It may be

appropriate to adapt this approach to the assessment of forensic expert conclusion.

Possible results of a comprehensive assessment of forensic expert conclusion:

- 1) conclusion is recognized as *complete, categorical, scientifically substantiated, objective, reliable, correct and true*, if it meets other materials of the case and regulatory requirements for the form and content. Correctness of expert’s conclusion means the correspondence of his conclusions to objective reality. Doubts about correctness of the expert’s conclusion arise when he contradicts other means of proof (testimony of witnesses, conclusions of other forensic examinations, documents in the case, etc.);
- 2) expert’s conclusion reveals inaccuracies (deviations from the truth, from the norm, incorrectness), minor discrepancies in dates, unintentional errors that arose due to the expert’s carelessness and do not affect conclusion reliability;
- 3) expert’s conclusion is *considered unconvincing* (not containing evidence, unprovable) due to incomplete answers to the questions posed and insufficiently clear wording of the conclusions, namely:
 - fuzzy, ambiguous and vague, which do not provide categorical conclusion about the fact to be clarified;
 - which require specific expertise for their understanding;
 - presentation of factual data is vague, unspecified;

46 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: 10.01.2024).

47 Про судову експертизу в кримінальних URL: <https://zakon.rada.gov.ua/laws/show/v0008700-97#Text> (date accessed: 10.02.2024).

48 Кожушко О. В. Оп. cit. DOI: [10.32702/2307-2105-2020.6.53](https://doi.org/10.32702/2307-2105-2020.6.53) (date accessed: 10.02.2024).

4) expert's conclusion is recognized as *scientifically unfounded and unconvincing* (when the truth of the expert's conclusions is not proved and is not confirmed by facts, considerations and evidence), if:

- research methods used by forensic expert raise doubts;
- amount of research conducted is insufficient;
- set of defined characteristics (signs) of objects, arguments for conclusions are based on outdated, inaccurate data or unfounded assumptions of the expert;
- final conclusions of the expert are not logical results of research or contradict them, as well as the data given in the annexes to the expert's conclusion, and do not correspond to what is depicted in research photographs, etc.;

5) research is considered *incomplete* when:

- expert did not answer part of the questions put to him;
- scope of tasks, formulated in the document on the assignment of forensic examination has been increased or decreased;
- not all objects submitted for examination have been examined (this is possible in case of examination of a large number of objects);
- all circumstances of the case that are important for resolving the issues raised are not taken into account;
- while investigation, new facts and circumstances have arisen that are not reflected in this forensic expert conclusion;

6) *exceeding by forensic expert of the powers granted to him by law* (in particular, resolving legal issues, or issues that go beyond his competence, or issues that do not require specific expertise);

7) *contradiction of the expert's conclusion with other evidence*, which may indicate both the fallacy of the expert's conclusion and unreliability of other evidence.

Therefore, the appointment subject of forensic examination will have grounds to consider the expert's conclusion unfounded, unreliable, doubtful, unclear and incomplete or even incorrect under the following conditions:

- expert was provided with incorrect initial data or improper objects (due to negligence of the appointment initiator of forensic examination or due to insufficient experience in appointing such an examination); inadmissibility of the objects of research entails the recognition of the expert's conclusion as inadmissible in general;
- expert did not examine all objects submitted for examination; or examined objects not specified in the document on the appointment of forensic examination; or investigated an insufficient number of objects necessary to obtain objective factual data about the offense; or examined low-quality objects, from which it is impossible to reach conclusions that are formulated in his conclusion; or investigated the object incompletely;
- expert violated the rules for the selection of biological material for additional laboratory tests;

- expert applied incorrect or contradictory methods (techniques);
- interim and final conclusions of the expert are not the result of research;
- disagreements among forensic experts as part of the expert commission (in the case of commission or comprehensive forensic examination);
- availability of factual errors (miscalculations, incorrect or outdated references to scientific sources or regulations);
- general incompetence of the expert in the investigated issue. Forensic expert's conclusion is inadmissible evidence if it was provided by an expert who was subject to impeachment⁴⁹.

Forensic veterinary expert practice indicates that the most common cases of forensic expert going beyond his competence are: performing functions that belong to other participants in the process (gathering initial information, involving other people in the examination, etc.); interference in legal matters; analysis of procedural mode of registration of materials submitted for research.

Discrepancy between the expert's conclusion and case files can be caused

not only by improperly conducted expert research, but also by erroneousness, limited or inaccurate testimony of participants of criminal proceedings (case), poor quality of documents, etc. Therefore, in case of disagreement with the expert's conclusions, appointment of a re-examination is not mandatory: in this case, it is necessary to take into account availability of other evidence, topic peculiarities of forensic examination, etc. (for example, a re-examination is sometimes impossible due to significant changes in the corpse after its dissection).

At the stage of assessing the expert's conclusion on FVM results due to topic specifics⁵⁰, objects⁵¹ and tasks solved by this examination, subject⁵² of the appointment of forensic examination is unable to correctly assess the scientific validity of such a conclusion, reasonableness of the expert's application of research methods, etc., since he does not have special veterinary knowledge. In view of this, we have developed an algorithm for assessing conclusion of a forensic veterinary expert by an inquirer, investigator, prosecutor, defense lawyer, investigating judge, court (*see above*).

Taking into account the above, we propose an algorithm of actions based on the results of assessing forensic expert conclusion (*see Fig.*).

49 Яценко І. В. Правовий статус ... експерта С. 88–90. DOI: [10.32353/khrife.4.2022.04](https://doi.org/10.32353/khrife.4.2022.04) (date accessed: 10.01.2024).

50 Idem. Предмет судово-ветеринарної експертизи та його значення в теорії і практиці судової експертизи. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2022. Вип. 73. Ч. 2. С. 168. DOI: [10.24144/2307-3322.2022.73.55](https://doi.org/10.24144/2307-3322.2022.73.55) (date accessed: 10.02.2024).

51 Idem. Правовий статус і ґносеологічна характеристика об'єктів судово-ветеринарної експертизи. *Теорія та практика судової експертизи і криміналістики*. 2023. Вип. 2 (31). С. 84–94. DOI: [10.32353/khrife.2.2023.05](https://doi.org/10.32353/khrife.2.2023.05) (date accessed: 10.02.2024).

52 Idem. Завдання судово-ветеринарної експертизи: теоретичні й праксеологічні проблеми та шляхи їх вирішення. *Форум права*. 2023. Вип. 74. № 1. С. 72–82. DOI: [10.5281/zenodo.7319900](https://doi.org/10.5281/zenodo.7319900) (date accessed: 10.02.2024).

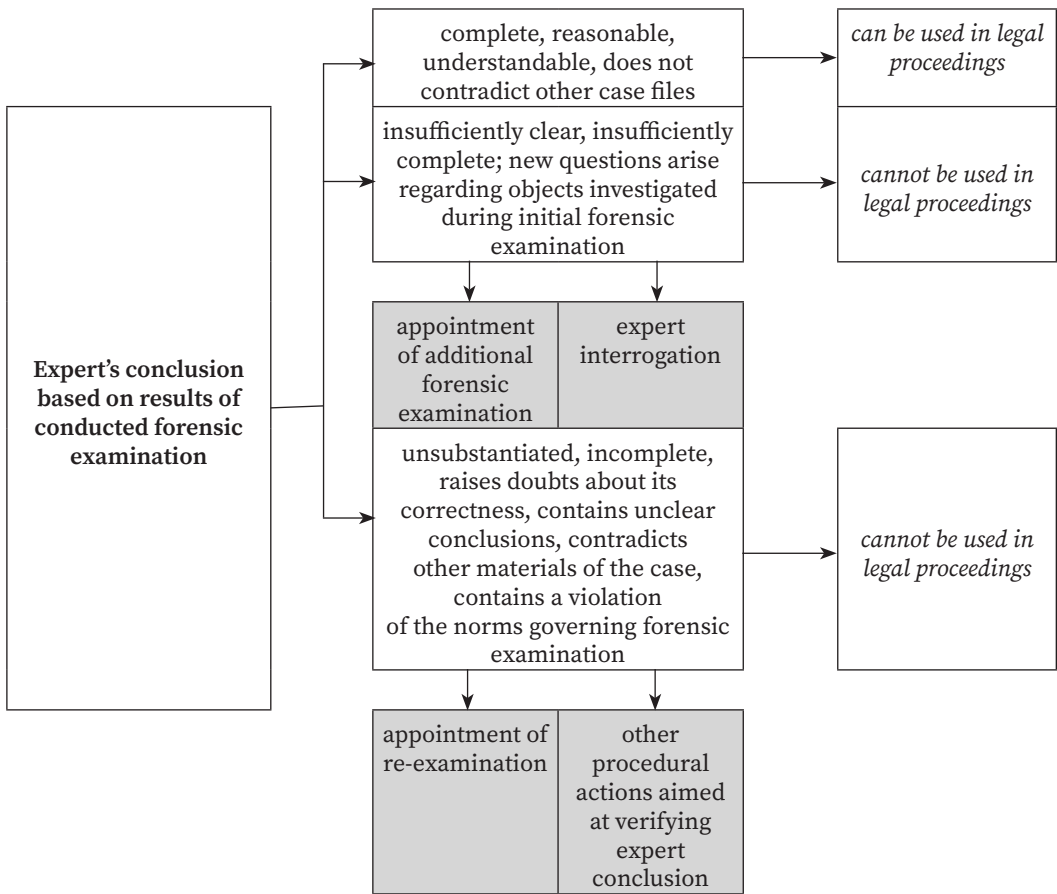


Fig. Algorithm of actions based on the results of forensic expert conclusion evaluation

The court makes the final assessment of the expert's conclusion and its evidentiary value during the sentencing.

Therefore, it is worth agreeing with D. Barbash that “providing a proper assessment of the expert’s conclusion in the court decision is a mandatory condition for recognizing such a decision as legal, justified and motivated”⁵³.

Conclusions

Evaluation of forensic expert conclusion is a complex multidimensional procedure aimed at clarifying affiliation, admissibility and reliability of this source of evidence according to internal conviction of the evaluation subject; confirmation of the legality, validity and objectivity of the re-

⁵³ Барбаш Д. Оп. cit. С. 89. URL: <https://drive.google.com/file/d/1Kwin74kcc8IVhymxGLXWOEAc-cvxnpzA6/view> (date accessed: 10.02.2024).

sults of the examination and the qualifications and competence of the expert who conducted it; clarification of the consistency of interim conclusions with the research part results of forensic expert conclusion and final conclusions; with other sources of evidence; determination of the completeness and reliability of information contained therein to prove circumstances that are relevant to criminal proceedings (case).

Since, in our deep conviction, *investigating officer* should be among the subjects of evidence evaluation (in particular, the expert conclusion), we propose to add him to the list of such subjects in Part 1 of Art. 94 of Criminal Procedural Code of Ukraine.

Algorithms proposed by us for assessing the expert conclusion by investigating officer, prosecutor, defender, investigating judge, court and actions based on assessment results of such conclusion will speed up its verification and evaluation and create reliable conditions for making the right procedural decisions in legal proceedings.

Дослідження, перевірка й оцінювання висновку експерта: судово-ветеринарний аспект

Іван Яценко

Автор мав на меті окреслити підстави та критерії, виокремити способи та схарактеризувати процесуальні особливості дослідження, перевірки й оцінювання висновку судово-ветеринарного експерта. Для досягнення поставленої мети застосовано комплекс взаємообумовлених методів дослідження (діалектичний, системно-структурний, системно-функційний, порівняльно-правовий, формальної логіки (аналіз, синтез, дедуцію, індукцію, аналогію), моделювання, статистичний). Розглянуто підстави, критерії, способи та процесуальні особливості дослідження, перевірки й оцінювання висновку експерта. Увагу акцентовано на судово-ветеринарно-

му аспекті цього питання. Стверджується, що під час перевірки висновку судового експерта необхідно оцінити його всебічність, повноту й об'єктивність, а також наукову обґрунтованість, достовірність, правильність, допустимість використання методів і методик, засобів і способів проведення експертних досліджень, а також достатність і взаємозв'язок з іншими доказами, зібраними в межах кримінального провадження (справи) із метою ухвалення правильного процесуального рішення (для доказовості фактичних даних та обставин, доведених експертним дослідженням). Запропоновано критерії повноти й обґрунтованості висновку експерта, а також алгоритм оцінювання такого висновку слідчим, прокурором, захисником, слідчим суддею, судом. Застосування сукупності цих критеріїв до оцінювання висновку судового експерта гарантуватиме надійність перевірки й оцінювання такого висновку, а також створюватиме надійні умови для ухвалення процесуальних рішень у судочинстві.

Ключові слова: *судово-ветеринарна експертиза; висновок експерта; дослідження, перевірка, оцінювання висновку експерта; об'єктивність; усебічність; достовірність; обґрунтованість; повнота дослідження; джерело доказів.*

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Declaration of Competing Interest

Author declares no conflict of interest.

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