

**Actual problems of criminal law,
criminal procedure and criminalistics**

Materials of scientific conference

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Instructions for authors

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Expert mistakes, arising at the research of proofs

In this article, the questions of expert mistakes arising at a research of objects of examination, and the correct observance of expert techniques are considered. In the course of appointment and conducting judicial examination mistakes both are made by the investigator (court) at purpose of examination, and the expert (experts) by its production. Assessment of the expert opinion allows establishing mistakes of the investigator and the expert.

Keywords: expert mistakes, activity of the expert, expert opinion, internal belief of the expert.

Defining an expert mistake, practically all authors accent on abnormality of judgment of the court expert. A bit different definition was offered to Granovsky G. L.: "The mistake of the expert can be considered his conclusions (the main or intermediate) untrue and also abnormalities in the actions or reasonings reflecting process of an expert research - in representations, judgments, concepts" [1, page 2]. Dealing with this problem Belkin R. S. wrote that "in a general view the expert mistake can be defined how the expert inappropriate to objective reality of judgment or his action, not leading to the purpose of an expert research if the distorted judgment, and incorrect actions represent result of a conscientious delusion" [2, page 335-336].

Criminalist Klimenko N. I. limited expert mistakes from other terms to signs of importance and typicalness and defined them as "shortcomings of an expert research of inadvertent character which entailed making the wrong conclusion" [3, page 36]. Definition of an expert mistake as shortcoming, in our opinion, does not allow to open fully the nature of this phenomenon, to understand its structure. So, in the explanatory dictionary of Dahl V. I. the shortcoming is interpreted as "an error, a mistake ..." [4, page 515]. Proceeding from it it is represented that for the correct interpretation as in general mistakes, and an expert mistake it would not be absolutely right to use the synonymous concept which is not allowing to catch specifics of the studied definition.

In the dictionary of Russian "mistake" is defined in the general semantic meaning without

any specification as "abnormality in actions, thoughts" [5, page 430].

It should be noted that determination of content of the term "mistake" is developed not only by jurisprudence, but also such branches of knowledge as philosophy, logic, medicine, mathematics, etc. All scientific approaches to the analysis of a phenomenon of a mistake, development of the structural and substantial party of the basic term acquired by various branches of knowledge, certainly, are important help when determining the legal nature of the concept "mistake".

Activity of the expert, as well as any other, is not insured from mistakes. Expert mistakes are non-uniform and can be divided into three classes: 1) errors of procedural character; 2) gnoseological mistakes; 3) activity mistakes [6, page 213].

1. Errors of procedural character consist in violation by the expert of the procedural mode and the procedure of production of examination: a) the expert's exit out of limits of the competence; b) expression of an expert initiative in the forms which are not provided by the law; c) non-compliance on ignorance of procedural requirements to the expert opinion, including absence in the conclusion of requisites, necessary on the law, justification of conclusions not results of a research, but case papers, etc. For example, by production of judicial fire investigation the state court expert received directly from the defendant the electrical protection device, allegedly from the place of the fire, made its research and gave a categorical conclusion in favor of the defendant that the device of