



## CRIMINAL PROCEDURAL FEATURES OF SAMPLE TAKING FOR EXPERT EXAMINATION

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**Annotation:** The article analyzes the legal nature of sampling for expert examination, its characteristics as an investigative action, factual and legal grounds, procedural order, and practical problems. The author studied the legal status of the subjects involved in the sampling process, the procedure for drawing up a sampling report.

**Keywords:** expert examination, sampling, investigative action, procedural order, evidence, criminalistics.

### Input

In the process of investigating criminal cases, obtaining samples for expert examination is of great importance. Through this procedural action, comparative materials necessary for conducting the examination are obtained, and based on them, circumstances related to the crime are established. However, the issue of the legal nature of obtaining samples for expert examination, its status as an investigative action, is interpreted differently in the scientific literature. Although Article 170 of the Criminal Procedure Code of the Republic of Uzbekistan establishes the procedure for obtaining samples for expert examination, there are a number of problems in the application of this norm in practice. Therefore, a comprehensive study of the theoretical and practical aspects of this investigative action is an urgent task.

Not all scientists recognize the collection of samples for expert examination as an investigative action. Some authors call this a "procedural action." [1] B. T. Bezlepkin considers it a "necessary condition of expertise" [2]. Other scientists supported the position that sampling is a "measure for preparing an expert study" and proposed excluding it from the system of investigative actions [3]. At the same time, such authors as A.A. Eshonkulov and F.M. Mukhitdinov classified the collection of samples for expert examination as an investigative action [4]. To resolve this issue, it is necessary to determine the main signs of the investigative action.

G.M. Mirazimova asserts that the main feature of the investigative action is its focus on the collection and verification of evidence [5]. Another important criterion is the presence of factual and legal grounds. M.M. Gafurov defines investigative actions as procedural actions related to the relationship between the investigator and the persons participating in the investigation [6]. U.A. Tukhtaboev indicates that one of the features of an investigative action is the application of methods of cognition and proof in the process of obtaining evidence [7]. D.M. Mirazimova highlights that one of the necessary features of an investigative action is its provision by state coercion [8]. Taking samples for expert examination meets all the above criteria: it is aimed at obtaining and verifying evidentiary data, there must be factual and legal grounds for taking samples, this process is carried out in a procedural order and is ensured by state coercion.

The factual grounds for an investigative action are understood to be the data that determine the necessity of its conduct[9]. B.T. Mirzaev divides factual grounds into general and special grounds[10]. F.Kh. Salimov proposes to use the structure enshrined in the search norm as a model of the factual basis for conducting an investigative action. In his opinion, factual grounds include three necessary elements: the source from which the investigator can obtain factual information, the purpose of the investigative action, and the volume of factual information necessary to conclude whether the source actually contains the information being sought[11]. Article 170 of the Criminal Procedure Code of the Republic of Uzbekistan defines the purpose of obtaining samples for expert examination as follows: "when it is necessary to verify that the suspect, accused, witness, and victim have left marks in a certain place or on material evidence"[12].

Investigative practice shows that the collection of samples for expert examination is not limited to the purposes established by the Code. O.Ya.Bayev and D.A.Solodov give an interesting example from investigative practice: K. was hospitalized with a gunshot wound, and, according to his explanation, an unknown person shot him while returning home. A few days later, K. was found dead near the wound site. To verify the hypothesis that both crimes were committed by the same person, it was necessary to appoint an expert examination and compare the bullet taken from K.'s body with the bullet taken from R.'s body[13].

The legal basis for obtaining samples is understood as the presence of appropriate procedural conditions for conducting the investigative action[14]. According to A.S.Kobilov, the legal basis is a system consisting of the following elements: a procedural document, i.e., the investigator's decision, a criminal procedural norm regulating the conduct of an investigative action, and the authority of the responsible person to conduct the investigative action[15]. Article 170 of the Criminal Procedure Code establishes that the investigator has the right to obtain samples for expert examination. At the same time, the investigator, the head of the investigative body, and the prosecutor are also authorized to take samples[16].

The suspects, accused, witnesses, and victims are indicated in the code as persons from whom samples are taken[17]. Each of these procedural figures has its own procedural status and has different rights and obligations when taking samples. The participation of a specialist in sampling is of particular importance. Legal literature emphasizes that the quality of future expertise largely depends on the quality and quantity of samples taken[18]. According to A.V. Kudryavtseva, in investigative practice, in 80 percent of the 110 criminal cases in which samples were taken for expert examination, samples were taken with the help of a specialist[19]. The role of a specialist in sampling is defined as follows: advising the investigator on the issues of sampling, packaging, storage, providing practical assistance for the correct sampling, assisting the investigator in determining the conditions for sampling[20].

Sampling for expert examination is carried out on the basis of the investigator's decision. The decision must contain the following information: the date and time of sampling, the name of the preliminary investigation body, the number of the criminal case from which the samples are taken, the factual grounds for sampling, the applicable norm, i.e., Article 188 of the Criminal Procedure Code, the types of samples taken, the data of the person from whom the samples are taken[21]. The process of obtaining samples begins with an explanation to the person from whom the samples are taken of the essence of the investigative action. The person is explained their rights and obligations. According to the Criminal Procedure Code,



persons from whom samples are taken have the right to use methods that do not demean their honor and dignity[22]. In the literature, it is proposed to apply rules similar to the general rules of the Criminal Procedure Code in cases of nudity of the person from whom the samples are taken[23]. In such cases, the examination should be conducted by a doctor.

The protocol of sampling for expert examination is drawn up in accordance with the general requirements established in Articles 90-91 of the Criminal Procedure Code[24]. The protocol reflects: the place, date, and time of drawing up the protocol, the time of commencement and completion of the investigative action, the position and information of the person who drew up the protocol, the procedural status and information of the persons involved, the address of the sampling, which samples and in what quantity were taken, the packaging of the samples, the use of technical means, the content of the petition and comments[25]. The protocol is read and signed by the participants in the sampling. If technical means were used in the sampling, this is separately noted in the protocol.

#### Conclusion

Taking samples for expert examination is an important investigative action in criminal proceedings. It is an action aimed at obtaining and verifying evidence, based on factual and legal grounds, carried out in a procedural order. In practice, there are a number of problems associated with sampling. Article 170 of the Criminal Procedure Code does not sufficiently detail the procedure for obtaining samples. Therefore, it is advisable to introduce the following changes to the legislation: more precise definition of the types of samples, concretization of the grounds for obtaining samples, strengthening the legal guarantees of persons from whom samples are taken, establishing mandatory conditions for the participation of a specialist, clarifying the limits of the application of compulsory measures. The implementation of these proposals will serve to increase the efficiency of sampling for expert examination and improve the quality of criminal investigations.

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