

CRIMINAL PROCEDURE CODE of RA, Procedure for appointment of judicial expertise

Investigative proceedings

The body in charge of the criminal proceedings both prior to institution of the criminal case and after that for fulfilling the tasks in time and fully, implements different by character proceedings.

As specific for collecting, checking, estimating and using process of evidences, in theory and practice a group of proceedings is defined as investigatory actions.

Investigatory actions

1. Interrogation
2. confrontation
3. examination
4. identification
5. exhumation
6. observations
7. arrest of property
8. monitoring of correspondence, mail, telegrams and other communications
9. supervision over conversation
10. investigatory experimentation
11. searches
12. seizures
13. acquiring samples
14. appointing and implementing of expert examination.

Judiciary enforcement carried out by court decree

The following criminal and judiciary enforcement measures are carried out only by court decree: detention, in cases specified in Article 150, part 2 of this Code, arrest as a measure to secure appearance, putting the suspect, the accused and other persons whose mental condition does not allow to impaled them as the accused in medical institutions for implementation of judiciary and psychiatric or forensic examination.

(Article 280 of the RA CPC)

Powers of the Body of Inquiry

II. Prior to institution of the criminal case, implements examination of the crime site based on prepared materials, and appoints expert inquiry.

V. After having instituted the criminal case, to discover the criminal, the traces of the crime, implements urgent actions, examination, searches, monitoring of correspondence, mail, telegrams, etc., wire-tapping, seizures, investigation, arrest of the suspect and interrogation, and questioning of the injured and the witness, cross-examination, appoints expert inure.

(Article 57 of the RA CPC)

The examination procedure of reports about crimes

1. Reports about crimes must be considered and resolved without delay, and when necessary to check the legitimacy of the reason for the initiation of prosecution and the sufficiency of the grounds, no less than in 10 days after their receipt.
2. Within this period additional documents can be requested, explanations and other materials, as well as the examination of the locus criminis and expert examination.

(Article 180 of the RA CPC)

The conditions of implementing study activities by specialist

1. The activity of specialist is aimed to subside the investigator's activity and it is not demonstrated as independent.
2. The specialist's neither make report nor conclusion, which has evidential value for the case. This kind of activity is fulfilled at the frame of the investigatory action in which the specialist takes part.
3. The results of the specialist's activities have not evidential value, but can be the part of the protocols of the relevant investigatory action.

Powers of the Investigator

I. prior to the institution of the criminal case, to conduct the examination of the site and to appoint expert inquiry;

II. To interrogate the suspect, the accused, the injured, the witness, appoint expert examination, conduct observations, searches, seizures, and other investigatory actions;

XII. draw in for the participation [in the actions] the witnesses to the search, interpreters, translators, specialists and experts;

XIX. Resolve challenges declared to the witness to the search, the translator and the interpreter, the specialist, the expert;

(Article 55 of the RA CPC)

The expert as specific subject of the criminal procedure

- the whole process of the expert's activities is regulated by the law
- the expert is independent (even by others) participant of the procedure
- the main function of the expert is with the utilization of special knowledge in sciences, technology, arts, crafts drawing a conclusion on the examination of the objects and the materials of the case
- the main aim of the expert examination is with the utilization of special knowledge in sciences, technology, arts, crafts on the examination of the objects confirming the evidential facts
- the expert is not obligated to collect the necessary information, has right to demand additional information from the body appointing the expertise, who should accept the petition of the expert
- the expert examines the materials of the case only within the scope of the represented questions on his competence
- the evidential value of the facts described in the expert conclusion should be estimated both as in factual and in procedural form

The competence of the expert

It is possessing of the theory and the methods of concrete type, subtype and form of the expert examinations. It is common to distinguish the scientific and subjective sides of the expert competence.

The capacity of the expert

It is the ability to solve the issues regarding the matter of expert examination. It can be defined by the educational, professional skills of the experts as well as by the experience in certain field of the expert examination.

The expert has a right

1. To require from the body in charge the criminal proceedings, the necessary objects, samples and other materials for expert assessment;

2. By permission of the body in charge of the criminal proceedings, to familiarize oneself with the case and write out, for the purposes of the expert assessment, necessary data, ask questions in order to perform one's duties properly, to the accused, the suspect, the injured, the witnesses, familiarize with materials related to the case and make notes;
3. To participate in investigatory and other proceedings as much as they relate to the subject of assessment and are necessary for the expert conclusion;
4. To turn the attention of the court and participants of trial to those circumstances which are related to subject of the expert assessment and the formulation of questions suggested to the expert;
5. To acquaint himself/herself with the protocols of investigatory or other procedure action, in which he/she participated, and also, in the respective part, with the protocol of the court session and to make remarks, subject to entry in the protocol of court session, regarding the fullness and correctness of the record of the course, substance and the results of the actions, conducted with his/her participation;
6. To receive compensation of the expenses, incurred during the proceedings of the criminal case;
7. The specialist has also other rights and bears other obligations, prescribed by this Code.

(Article 85 of the RA CPC)

The expert has the following obligations:

1. To submit to the body of investigation, documents certifying one's special qualifications;
2. To give grounded and objective answers to the suggested questions;
3. To refuse from expert assessment, if the suggested questions are beyond the scope of his knowledge, or if the submitted materials are not sufficient to answer to these questions, and to file a conclusion to that effect;
4. To give conclusion not only on the questions suggested, but also on circumstances within his competence which emerged during the expert assessment;
5. At the request of the investigative body, to submit the costs of the expert assessment and a report on expenses;
6. To appear at the summon of the investigative body, to answer the questions of the trial participants and explain the expert conclusion;

7. At the request of the criminal proceeding bodies and parties, to provide information about one's professional experience and relations with persons participating in the proceedings;
8. When participating in investigative actions or proceeding, not to leave the venue of these actions without the permission of the person in charge, or the presiding judge;
9. To obey the lawful instructions of the prosecutor, the investigator, body of inquiry and the presiding person;
10. To observe order at the court session;
11. Not to divulge, without the permission of the body, conducting the criminal trial, information, became known to him/her in connection with the participation in the investigatory action or during the closed-door session of the court.

(Article 85 of the RA CPC)

The payment of a translator, specialist and an expert

1. A translator, specialist and an expert involved in a criminal case shall receive:
 - I. A salary at the work place if they have performed all their assigned duties in the manner of proposal for services.
 - II. Awards are given at the expense the state budget in the amount agreed-upon together with the body which carries out the criminal proceeding, if they have fulfilled tasks assigned to them by the body which carries out the criminal proceeding.
 - III. Awards in the amount agreed-upon with the corresponding party, if they have fulfilled tasks by agreement with that party.
2. In case prescribed by paragraph 2 of the 1st part of the present Article the award shall be given to a translator, specialist or an expert by the body which carries out the criminal proceeding upon a bill being presented by the translator, specialist or expert.

(Article 166 of the RA CPC)

Explanation of the Rights and Obligations of the Participants, the Provision of the Possibility of their Implementation

1. Any person, participating in the criminal proceedings, is entitled to know his/her rights and obligations, the legal consequences of the position, selected by him/her and also to understand the meaning of the procedure actions, taking place with his/her participation.

2. The body, conducting the criminal trial, shall explain any to person, participating in the proceedings of the criminal case, the rights, belonging to him/her and the obligations, imposed on him/her, to ensure in the manner, prescribed by this Code the possibility of their implementation.

V. The body, conducting the criminal trial, and the person, conducting investigatory or other procedure action are obliged to explain the obligations and rights to the witness to a search, the interpreter, the expert prior to the beginning of investigatory or other procedure action. The rights and obligations of the expert may be explained to him/her by the head of the expert institution, appointed him/her in the respective capacity upon the demand of body, conducting criminal trial. The obligations and the rights of the witness may be explained to him/her once prior to his/her first interrogation by a body, conducting the criminal trial and repeatedly at the court session.

(Article 101 of the RA CPC)

Grounds for appointing and implementation of expert examination

Expert examination is implemented based on the decree of the body conducting the investigation, the investigator, the prosecutor, when to reveal circumstances relevant to the criminal case, the knowledge of science, technology, arts or crafts, including the knowledge of specialized expert examination methods, are necessary. The possession of special knowledge by the investigator, the prosecutor, the specialists, the attesting witnesses is not an exemption from the necessity to appoint examination in appropriate cases.

(Article 243 of the RA CPC)

Circumstances determined in case of availability of certain evidence

1. Cause of death and nature of health damage - report of the expert in forensic medicine is to be presented;
2. Incapability of the accused to control and realize the nature and importance of his actions (inaction), their being dangerous at the time of the incident as a result of mental disease, temporary mental depression, other mental incompetence or mental alienation - report of the experts in forensic psychiatry and psychology is to be presented;
3. Incapability of the witness or injured to perceive and reconstruct the circumstances to be determined at the criminal proceeding as a result of mental disease, temporary mental

depression, other mental incompetence or mental alienation - report of the experts in forensic psychiatry is to be presented;

4. Information on the injured, suspect, accused of reaching a certain age if it is relevant to the case, the document asserting the age is to be presented, if it is not available, a report of the experts in forensic medicine and psychology is to be presented.

(Article 108 of the RA CPC)

The obligations of the Injured

5. to be subjected, upon the demand of the body conducting criminal proceedings, to the medical investigation in order to check the ability to perceive and to reproduce correctly the circumstances, subject to discovery in criminal case, if forcible arguments are available to suspect the lack of such abilities.

(Article 108 of the RA CPC)

Concept of evidence

2. The following can be considered as evidence in criminal proceedings:

- I. testimony of the suspect
- II. testimony of the accused
- III. testimony of the injured
- IV. testimony of witness
- V. the convict's testimony
- VI. expert's report
- VII. material/demonstrative evidence
- VIII. records of court and investigative proceedings
- IX. other documents

(Article 104 of the RA CPC)

Expert's Report

3. The expert's report shall consist of grounded conclusions about issues through the examination of the materials of the case, and shall be written form, based on the knowledge of the expert in the sphere of science, technology, crafts or art, in his competence.
4. The expert can be interrogated for the purpose of explanation of his conclusions.
5. The protocol of the expert's interrogation cannot replace the expert's conclusions.

(Article 114 of the RA CPC)

The expert's conclusion

6. When necessary examinations are over, the expert compiles a written conclusion, confirms it with his signature and forwards it to the person who appointed the examination.
7. The expert's conclusion must indicate: when, where, by whom (name, surname, patronymic, education, profession, professional experience, degree and title, position) and on what basis the examination was conducted, that the expert is aware of the criminal responsibility for refusal or evasion from expert conclusion, or for giving obviously false conclusion, who participated, what materials of the criminal case were used by the expert, what exhibits, samples and other objects were examined, what kind of examinations were conducted, what methods were used, grounded answers to the given questions, the issues relevant for the case which were revealed by initiative of the expert.
8. The examined exhibits, samples and other materials must be attached to the expert's conclusion, as well as the photographs and schemes supporting the conclusions of the expert.
9. The expert's conclusion must contain grounding about the impossibility of answering to all or some suggested questions, if the presented materials or the special knowledge of the expert proved insufficient during the examination.

(Article 250 of the RA CPC)

The expert's conclusion can be

10. Categorical, when expert gives certain (positive or negative) answers to the represented questions.
11. Probable, when expert can't or has no possibilities to answer certainly to the represented questions, but upon the resume of some specifics makes hypotheses on it, for example, on the identity of the comparing objects, on the of trace forming mechanism and etc.
12. When the expert protocols the impossibility of answering to the represented questions. According to the ph.4, Article 250 of CPC of the RA, if represented questions are out of the scope of the special knowledge of the expert, the expert's conclusion should indicate the grounds for impossibility of answering to all or some questions.

The list of the grounds for documenting the impossibility of giving expert's conclusion

- if represented questions are out of the scope of the special knowledge of the expert (Article 250 of CPC of the RA). Sometimes questions are represented, which concerns the in the competence of the investigator or the court, or they are not addressed to proper expert in that field.
- Insufficient and improper materials are represented to the expert. It happens mostly in condition with the insufficient quantity of the samples or information on identification object, for example, there is not sufficient amount of the features of papillary patterns in the fingerprint.
- the modern condition of the science and the forensic practice is not able to solve the represented question. Sometimes only some of the represented questions the expert can solve. In this cases, the expert after the conclusions indicate and to what questions and why he didn't answer. It may happen, when it gives back to the body, who appointed the expertise without implementing the expert examination. It happens when:
 - violations of the procedural rules is existing,
 - there is lack of the necessary specialists, equipments and materials in the institution, where the expert examination should be implemented.

Decree on expert examination

The investigating body decrees the conducting of expert examination; the decree must indicate: the grounds for the examination, the exhibits sent for expert examination, and other articles, indicating when, where and in what circumstances they were discovered or acquired, and when conducting an expert examination for the criminal case, indicating information on which the conclusions of the expert can be based, questions asked to the expert, the name of the expert institution or the person's surname who was instructed to conduct the expert examination.

(Article 244 of the RA CPC)

Single-person and committee expert examinations

18. Complicated or repeated expert examinations can be conducted by a single person or by committee of experts. At the request of the parties, experts invited by them must be included into the committee. In case of achieving unified opinion, the experts sign the conclusion. In

case of differences, each expert writes a separate conclusion on all differences or those, which caused disagreement.

19. The decree on conducting a commission expert examination is mandatory for the administration of the expert institution. If the expert examination is delegated to an expert institution without the requirement to conduct a commission examination, its director is entitled to conduct a committee expert examination.

(Article 245 of the RA CPC)

Integrated expert examination

20. If the clarification of some issue in the criminal case is possible only through a various examinations based on methods and disciplines of different sciences or different fields of one science, an integrated examination must be appointed.
21. Based on the totality of facts clarified through the integrated expert examination, the experts within their scientific authority make conclusions on the issues which were supposed to be clarified during this examination.
22. The expert has no right to sign the part of the integrated expert examination which does not belong to his scientific authority.
23. If the examination is delegated to an expert institution without the requirement of integrated examination, the head of the institution is entitled to organize integrated examinations.

(Article 246 of the RA CPC)

The rights of the injured, the suspect and the accused during appointment and implementation of expert examination

24. When expert examination is appointed, the injured, the suspect and the accused are entitled:
 - I. prior to examination, to familiarize them with the investigator's decree on examination, and get an explanation of their rights, about which a protocol is compiled;
 - II. to challenge the competence of the expert;
 - III. to appeal for appointment of the expert from the list proposed by him;
 - IV. in case of disagreement with the expert's conclusion, to appeal for an additional or repeated examination;
 - V. to suggest additional questions to the expert;

- VI. by permission of the investigator, to be present at the implementation of the examination;
- VII. to give explanations to the expert;
- VIII. no later than 10 days after the receipt of the expert conclusion by the investigator, to familiarize oneself with the expert conclusion;
- IX. to participate in the expert investigation initiated by his own appeal.

25. The above mentioned rights also extend to the person who is liable to enforced medical measures, if the mental condition of the latter allows.

(Article 247 of the RA CPC)

Expert examination conducted in an expert institution

- 26. The investigator forwards his decree on examination, the examined object and when necessary, the criminal case to the head of the expert institution. The examination is conducted by the expert indicated in the decree. If no expert is specifically mentioned in the decree, the head of the expert institution must decide which expert from the given institution will conduct the examination, informs the appointed person about that.
- 27. The head of the expert institution familiarizes the expert with Article 85 of this Code about his rights and duties, warns him about the responsibility for refusal or evasion from expert conclusion, or for giving obviously false conclusion, organizes the implementation of the examination, provides the safe-keeping of examined objects, determines the deadline for the examination. The head of the expert institution has no right to give instructions to the expert, which would pre-determine the course and essence of the examination.
- 28. The investigator has a right to participate in implementing of the expert examination. While conducting the forensic medicine expertise during the examining the body of dead person the investigator as usual takes part. By agree of the investigator and by allowance of the expert the other participant of the criminal procedure can take part, if it will not interferences with investigation.

(Article 248 of the RA CPC)

Implementation of expert examination outside expert institution

- 29. If the examination is conducted outside expert institution, the investigator after making a decision on expert examination summons the person who was instructed to conduct the

investigation, ascertains the identity and accessibility of the latter, clarifies the relations of the expert with the suspect, the accused, the injured person and other participants of the proceedings and checks whether there are grounds for challenging the qualification of the expert.

30. The expert is handed the examination decree by the person who appointed the examination, the latter familiarizes the expert with Article 85 of this Code about his rights and duties, warns him about the responsibility for refusal or evasion from expert conclusion, or for giving obviously false conclusion. The investigator writes a protocol about the implementation of these actions, which is signed by the expert and confirmed by the investigator. The protocol also indicates the statements made by the expert and his petitions. In case of rejection of the expert's request, the person who appointed the examination makes a grounded decision.
31. The person who appointed the examination is obliged to provide the presentation of the expert to the accused, the suspect, the injured party and witness when necessity arises to examine their body or mental condition, if their participation in the examination is necessary.

(Article 249 of the RA CPC)

Additional and repeated examination

32. If the person in charge of the investigation, the investigator, the prosecutor disagrees with the expert's conclusion, for reasons of insufficient clarity or incompleteness, an additional examination can be appointed, delegating it to the same or some other expert.
33. Repeated examinations are done when the expert's conclusion is ungrounded or raises suspicion, or the evidences on which it was based were recognized invalid, or the procedural rules of examination were breached. Repeated examination is delegated to another expert. When appointing repeated examination, the issue of justification of the methods applied during the previous examination can be raised before the expert. The decree on repeated examination must indicate the motives of disagreement with the results of the previous examination. The experts who conducted the previous examination can be present at the repeated examination, give clarifications, however, they do not participate in the examination and writing the conclusion.

(Article 251 of the RA CPC)

Interrogation of the expert

34. If the conclusions of the expert are not sufficiently clear, and contain gaps, to fill which additional examination is not necessary, or there is a need to clarify the applied methods and used terminology, the investigator is entitled to interrogate the expert, observing the requirements in Articles 205, 206 and 209 of this Code.
35. The expert is not allowed to be interrogated prior to the presentation of his conclusions.

(Article 252 of the RA CPC)

Grounds to acquire samples

36. The investigator is entitled to obtain samples describing the specific features of a human being, corpse, animal, substance and other objects, provided their examination is significant for the case.
37. The investigator adopts a justified decree on the acquisition of samples in which the following must be indicated: the recipient of the samples, who shall provide the sample, in what amount and specifically what samples must be received, when and where the person should go to collect the samples, where and to whom the samples are presented after acquisition.
38. When necessary, the investigator can obtain samples with participation of an expert or specialist.

(Article 253 of the RA CPC)

Types of samples

39. The following can serve as samples:
- I. blood, sperm, hair, fingernail clippings, and microscopic skin scrubbings;
 - II. saliva, sweat, and other secretion;
 - III. patterns of skin prints, moulds of teeth and extremities;
 - IV. handwriting, signature, and other materials reflecting human skills;
 - V. audio records;
 - VI. experimental samples of finished products, raw materials, substances;
 - VII. weapons, cartridges, bullets, cartridge cases;
 - VIII. other materials and items.
40. It is prohibited to obtain samples by methods causing torturing to the human being or threatening health or corporeal integrity.

(Article 254 of the RA CPC)

Sample acquisition procedure

41. The investigator invites the person or visits the latter, takes a signature certifying the familiarization with the sample collection decree, explains the rights and duties to the person, the specialists, and the attesting witnesses.
42. With participation of the specialist, if the former was invited in the presence of attesting witnesses, the investigator conducts necessary actions and obtains the samples. All samples except documents are packaged and sealed.
43. In appropriate cases sample collection is conducted by means of search or seizure or at the same time with these actions.

(Article 255 of the RA CPC)

Sample collection protocol

44. After collection of samples the investigator writes a protocol which describes all sample collection activities in the same sequence in which they were carried out, used scientific and technical methods, and the obtained samples.
45. The obtained samples are attached to the protocol.

(Article 256 of the RA CPC)

Examination of the expert's conclusion during court trial

46. If an examination was done during preliminary investigation, at the court trial the parties and the court study the expert's conclusion. When necessary, the expert is invited to the trial and participates in the examination of the proofs relevant to the subject of examination, he asks questions related to the subject of examination during the interrogation of the defendant, the injured person and witnesses, participate in the examination of exhibits and other investigatory actions.
47. After having examined the expert's conclusion, the court is entitled, by appeal of parties or by its own initiative, to appoint repeated or additional examination, hearing in this case the opinion of each party.

(Article 344 of the RA CPC)

Expert examination during court trial

48. If no expert examination was appointed during the preliminary investigation, the parties are entitled to appeal for appointing it during court trial.

49. The party by whose appeal the expert examination is conducted presents those questions, in the written form, on which the expert must make a conclusion, indicating what must be examined, can indicate who should be involved as an expert. The other party is entitled to express its own opinion about that.
50. Appointing examination by court initiative, the chairman proposes to the prosecution and defense parties to formulate the questions to the expert and express their ideas as to whom the expert examination must be entrusted and what must be examined. The court makes the final decision.
51. A recess is announced, if any person makes an appeal on behalf of the defense or prosecution party during formulation of opinion. The parties are entitled to present items and documents as objects of expert examination. The court must make justified ruling when excluding the items from these objects.
52. The copy of the court decree on appointment of expert examination is handed to the appointed expert. An explanation is made about his rights and duties. The expert's conclusion is publicized and examined as established in article 344 of this Code.

(Article 345 of the RA CPC)

Interrogation of the expert

53. After publicizing of the expert's conclusion, he can be asked questions to clarify his conclusions or to complete them.
54. The expert is first interrogated by the person by whose appeal the examination was appointed, then, by other persons in that party, then, by the opposite party representatives and finally by the court.
55. When expert examination was conducted with the consent between the parties or by the court's initiative, the expert is first interrogated by the prosecution party, then by the defense party and finally by the court.

(Article 346 of the RA CPC)

Discussion of the defendant's immutability

56. When during investigation, preliminary investigation or court trial the issue of the defendant's immutability has arisen and the issue of feeling responsibility for his actions, on which

occasion a medical and mental examination was appointed, the court must discuss that issue again when adopting the verdict.

57. Finding that the defendant was in the imputable state at the moment of performing the actions, or after committing the crime he became mentally ill, which deprived him of the capacity to be responsible for his actions, the court adopts an appropriate decree.

(Base: Article 361 of the RA CPC)

Appointment of repeated or additional expert examination

When the expert's conclusion is regarded as not sufficiently clear or complete, in case of disagreement between the experts, the court can appoint additional or repeated examination, preserving the rules mentioned in this Code for execution of examination in pre-trial proceedings.

(Article 347 of the RA CPC)