

SUMMARY

Key Words: evidence, forensic evidence, types of forensic evidence, digital evidence, electronic evidence, audio and video recording.

Subject matter: a set of legal norms regulating various types of evidence; the development of scientific views on the procedural form of evidence.

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The relevance of the research topic In procedural law, the institution of evidence is one of the most ancient and fundamental, since it arose together with the appearance of the judicial process itself.

Despite the fact that this institution has a certain degree of conservatism, and some evidence has existed for thousands of years in almost its original form, it should not be regarded as static. It has changed and improved, adapting to the needs of the legal proceedings of a particular historical stage, and at present, in the period of serious reform of the procedural legislation, the development does not stop.

The above statement is also true for lists of proofs that represent systems capable of transformation.

In the modern scientific community, opinions are expressed about the need to change them, in particular, in civil proceedings, it is proposed to expand the existing list or abandon the construction of a closed list as such.

These positions deserve special attention, since, indeed, a number of proofs have a non-standard procedural form, which is not directly named in the relevant legal norm.

During the consideration of the case, the court faces a peculiar dilemma: either the exclusion of this evidentiary information from the process, or its qualification in accordance with the legally established list. In the absence of proper legal regulation, the second approach is forced, since it allows you not to ignore important information that is important for the consideration and resolution of the case. It is particularly evident in civil proceedings when determining the legal nature of expert opinions (documents obtained as a result of out-of-court examinations).

The next aspect that deserves attention is related to the evidence obtained with the help of modern means of technology and electronics. What is their legal nature? Do they need to be legislated as a separate independent category? The answers to the questions raised are of a debatable nature. Thus, the study of the procedural form of the above-mentioned evidence, which causes problems of a scientific and practical nature, in modern conditions is very important and relevant. It will allow to form a certain position in the debate on the expediency of changing the relevant provisions of the legislation and to propose a uniform development of judicial practice.

The purpose of the work: to conduct and present a scientific study of evidence that has atypical properties, to develop practical recommendations for improving Russian legislation in the field under study.

Objective: 1. to consider the history of the formation and development of scientific ideas about judicial evidence and its procedural form, defining its features;

2. analyze certain types of evidence, taking into account both the positions of scientists and the approaches formed by judicial practice;

3. propose amendments to the procedural legislation that will help solve the problems of using evidentiary information in the consideration and resolution of civil cases by the courts.

The theoretical and practical significance of the research in the fact that the author formulated conclusions that contribute to the further continuation and development of scientific discussion in the field of evidence-based law.

The results of the study can be used in the course of the educational process when teaching

various special disciplines of the civil law cycle, the field of study of which is judicial evidence.

Results of the study:

In the course of the conducted research, the following conclusions can be formulated.

The chronological period of the beginning of the formation of scientific views on judicial evidence coincides with the moment of the birth of the science of civil procedure law and is determined by the middle of the XIX century. The view of proof as a complex structure with a unity of content and formal elements was formed much later, at the beginning of the XX century, and became widespread only in the 60s of the XX century.

Information that is important for the proper consideration and resolution of the case can be obtained in various ways and stored on various material media, the number of which is not limited. In turn, the number of ways to bring information to court is strictly limited by procedural legislation. The role of these methods is the procedural form of evidence.

The procedural form "other documents and materials", which is fixed in civil proceedings as an independent category, has a declarative character, since the law does not have clear and unambiguous criteria for separating it from other evidence. Other documents and materials are examined by the court according to the rules provided for this evidence, due to the lack of an appropriate procedure in the procedural legislation.

Evidence with different procedural forms can exist in electronic form, which indicates that there is no need to separate an independent category of "electronic evidence". Currently, the procedural legislation does not need changes of this kind.

The conclusion of a specialist has the signs of independent proof, which should be reflected in the procedural legislation. The existing judicial practice of qualifying expert opinions as written evidence in civil proceedings and other documents and materials in arbitration proceedings is forced in conditions of legal uncertainty. This approach allows us not to exclude important information obtained as a result of special studies in a non-procedural form, which is important for establishing the circumstances of civil cases.

Recommendations:

- to include in the civil procedure legislation the criterion of admissibility and reliability of electronic evidence: an electronic document must be readable, have the necessary details, including an electronic digital signature, and also have certain characteristics;
- at the legislative level, to establish an open list of electronic evidence that is currently actively used in court by participants in civil proceedings, as well as to separate electronic evidence from written evidence and allocate them as a separate independent means of proof.