THE GENESIS, CURRENT STATUS AND DEVELOPMENT PROSPECTS OF FORENSIC SCIENCE: PROBLEMS AND SOLUTIONS

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ABSTRACT

This article contains an analysis of the norms of the Criminal Procedure Code of the Republic of Uzbekistan and foreign countries, connected with the institution examination, to reveal the order of appointment and examination.At the same time, this article reflects the proceedings subjects of criminal procedural law, having the power to appoint directly conducting the examination and expertise, as well as the procedure for their improvement.

Keywords: Expertise, Code of Criminal Procedure, the expert, the purpose of the examination, examination, expert, expertise.

INTRODUCTION, LITERATURE REVIEW AND DISCUSSION

Modern scientific and technical achievements have big impacts on all spheres of human life, including on character and ways of commission of crimes and offenses. Criminals even more often apply new methods that in turn demands from law enforcement agencies of knowledge and skills of application of latest "hi-tech" of technologies, and for the legislator sets a task of development of new perfect legislative system.

The major role in this process is occupied by institute of examination as this institute is a peculiar way of establishment of truth on criminal case and uses of an achievement of science and technology. So, widespread introduction of achievements of science and technology in activity of law enforcement agencies increases quality of performance of problems of criminal trial by ensuring timely collecting the proofs relating to criminal case, fast establishment and exposure of the persons who committed a crime. In this sense, examination occupies the leading role in process of inquiry, preliminary investigation and legal proceedings.

This institute arose not yesterday. Still one of the most ancient written sources of the right – the Indian Laws of Manu, contains a mention that for disclosure of crimes and the analysis of traces hunters were involved as the experts. Data on separate category (caste) of the persons who were engaged in capture of criminals – "khoyakh" are also provided in the Indian historical sources. In Australia, pathfinders "trackers" specialized on search of the persons who stole someone else's property, or the got lost cattle in the wake of feet. In the ancient time for disclosure of crimes were widely used not only special knowledge of pathfinders, but also doctors who established a cause of death, investigated injuries, and also identified the persons who committed a crime. The historical sources which reached us contain data that the doctor by the name of Aktisny conducted research of a corpse of the Roman emperor Julius Caesar for establishment of to what of numerous knife blows to it the death was caused.

In Ancient China at the time of Tan's dynasty for establishment of someone's personality dactyloscopic expertize, that is research of traces of fingers of hands was carried out. At the time of a dynasty Sung this opening began to be used and in criminal trial.

In Byzantium, since the period of board of the emperor Justinian (5-6 centuries) at courts special persons to which duties carrying out pocherkovedchesky examination belonged carried out the activity.

Modern examination is regulated by four procedural laws: Criminally - the procedural code, Civil - the procedural code, the Code about administrative responsibility, Hozyaystvenno - the procedural code.

On criminal cases testifies to continuous increase of a role of judicial examination as well increase in number of the examinations appointed by law enforcement agencies. In particular, in 1995 3913 expertizes, in 2000 – 8671, in 2005 – 14583, in 2012 – 24261, in 2013 –26685, in 2014 –26903 were carried out. In 2013-2014 it was carried out in 9 times more of examinations more than in 1995. The main part of the carried-out expertizes, i.e. 56,9% was appointed by law-enforcement bodies, 15,8% – courts on criminal cases, 0,6% – economic courts, 12% – bodies of prosecutor's office, 1,4% – service of national security and 13,3% – other bodies.

About increase of a role of judicial examination also acceptance on June 1, 2010 in the Republic of Uzbekistan of the Law "About Judicial Examination", and also testifies to introduction in this regard of changes of additions in the Criminal Procedure Code. And though with their acceptance clear rules of appointment and carrying out examination were formulated, activity of experts is settled, and also the legal base of relationship between bodies of preliminary investigation and courts is created, on the one hand, and experts, with another, however, the single questions concerning purpose of examination, an assessment of its results, features of a subject and object of examination, and also some other questions of carrying out this investigative action still didn't find the scientific and practical solution.

On the basis of the above it is possible to allocate the following directions of researches in the field:

First, the theoretical side of the problem is made by a variety of opinions of scientists by definition of concept of examination and the expert, need of development of uniform norms on the basis of their generalization, and also need for wider analysis of the purposes, tasks and the principles of examination;

Secondly, the practical side of a problem is made by growth of quantity of cases of the appeal of bodies of inquiry, a consequence and justice to judicial and expert establishments, and also need for development of cooperation with foreign countries for questions of carrying out examination;

Thirdly, the legislative side of the problem is made by need of improvement of the standards of the Criminal Procedure Code regulating carrying out examination: rights and expert's duties; extension of the list of sluchayevobyazatelny purpose of examination; a complete definition of legal status of the head of judicial and expert establishment as the participant of an ugolovnogoprotsess; the solution of the disagreements arising in practice in connection with statement before the expert of legal questions; entering of clarity into the rights and duties of the victim, witness, civil claimant and civil respondent when carrying out examination; expansion of a circle of the investigative actions which are carried out before initiation of legal proceedings.

The above circumstances testify to need of complex studying of institute of examination, search of scientific-theoretical means and methods of the solution of the problems which are available in this area.

Development of institute of examination can be tracked as follows:

In 2000 in the Republic of Uzbekistan the first in the countries of Central Asia created department of judicial and biological examination of DNA of the person. This modern type of examination is carried out generally by establishments of judicial and genetic examination of the developed states, and here within more than 15 years is used by police and special services of such countries, as Australia, England, Germany, Canada, Russia, the USA and Japan.

Because development of suggestions for improvement of the legislation demands the analysis of the foreign legislation, we will consider standards of the current legislation of a number of the countries in the sphere of judicial examination.

Relevance of studying of the legislation of the countries of the Asian region and Russia is caused by that it in many respects is based on the identical principles. For example, the standards of article 197 Criminal Procedure Code of the Russian Federation regulating participation of the investigator in carrying out examination didn't find the reflection in separate article Criminal Procedure Code of the Republic of Uzbekistan. According to this article, the investigator participating in process of production of examination has the right to ask questions of the actions which are carried out by the expert, their value for a formulation of expert conclusions and other interesting questions. This circumstance, in turn, has to be noted in the expert opinion. In the Criminal Procedure Code of Uzbekistan, a question of powers of the investigator when carrying out examination I remained open, and it creates a certain confusion in practice. For this reason it is necessary to make addition according to which the investigator or the judge, participating in process of production of examination to our national criminal procedure legislation would have the right to ask the expert questions of the actions which are carried out by it, their value and other circumstances of carrying out this investigative action.

In article 198 Criminal Procedure Code of the Russian Federation the rights of the suspect accused, the victim, the witness are affirmed at appointment and production of examination. Unfortunately, in our legislation when fixing the rights of the suspect accused of the defendant during appointment and production of examination of the right of the victim and the witness there were bezvnimaniye. In our opinion, it limits the rights of the victim and the witness in the specified sphere. In this regard it is necessary to make the corresponding additions to the specified norm. In effect, participants of criminal trial need to create equal opportunities.

Besides, in the Criminal Procedure Code of the Russian Federation separately and to use the zakreplenynorma relating to the conclusion and indications of the expert (article 80) that it is possible to consider positive aspect for improvement of the domestic legislation. So, in our opinion, in addition to the article 184 "Expert opinion" it is necessary to enter into the Criminal Procedure Code of RUZ new statyyu1841 in which norms on indications of the expert as in our legislation there were many not resolved questions connected with indications of the expert would be given.

Proceeding izvysheizlozhenny, article 1841 needs to be stated in the following edition: "Article 1841. Indications of the expert. Indications of the expert – the evidences given by the expert after submission of the expert opinion for an explanation of its provisions and specification of its separate aspects. Ekspertp reduprezhdatsya about criminal liability for giving obviously false testimonies".

In the Criminal Procedure Code of Kyrgyzstan accepted on May 29, 1999 22 articles are allocated for institute of examination. Article 62 of this statutory act, being devoted to the expert, says that specified persons it can be invited for participation in business by participants of criminal trial, being the parties on business, without obtaining permission of the investigator or court, that is expertize can be carried out without resolution of the investigator or definition of court.

In addition in the mentioned article statement before the expert of legal questions is forbidden. After ours to opinion, such rule has to be fixed and in the Criminal Procedure Code of RUZ. In particular, article 172 Criminal Procedure Code RUZ needs to be added with part of the third of the following contents: "Purpose of examination on legal questions and their statement before the expert is forbidden". It will allow to prevent possibility of statement by the investigator, investigator, prosecutor and judge of legal questions before the expert at discretion.

According to article 150 Criminal Procedure Code of Moldova, in case of carrying out examination at the initiative of one of the parties, between the expert and this participant of criminal trial the contract has to be signed. This party presents to the expert questions of circumstances which establishment demands carrying out expert research.

In our national legislation carrying out examination according to own address of the persons defending the interests in criminal trial isn't allowed. In our opinion, participants of criminal trial, being the parties on business, and also their lawyers need to give the specified opportunity in cases when purpose of examination on business isn't obligatory. It will promote ensuring the rights of the lawyer on collecting and submission of proofs.

Analyzing the Criminal Procedure Code of Japan it is also possible to find the norms different from provisions of the legislation of Uzbekistan. So, according to article 168 Criminal Procedure Code of this country, the expert in necessary cases with the permission of the judge has the right to perform inspection and examination of a body of the person in the house accused if it contains under house arrest, or by the ship which is in open waters. For the entrance to the dwelling accused the expert it is obliged to present permission of court. In case these actions are carried out at a stage of judicial review of business, their production is allowed and without the permission of court. The most important provisions Criminal Procedure Code concerning use of special knowledge by criminal case production, that is productions of examination contain in article 173 Criminal Procedure Code. So, in spite of the fact that carrying out examination on criminal case is obligatory in 9 cases, development of the public relations demands extension of their list. In this regard we consider necessary to add article 173 Criminal Procedure Code with points 10 and 11i to establish that purpose of examination on criminal to business is obligatory and when it is necessary to establish:

- the fact of commission of crime with use of the computer equipment or computer programs;
- fact of commission of an ecological crime.

In our opinion, granting power to the lawyer to destination examinations will provide his right for collecting of proofs on business and action of the principle of competitiveness. So, now lawyers though can address to следователюс the petition for purpose of examination, however, satisfaction of their request can be refused. If the lawyer had the right to address to expert establishments with the obligatory requirement about carrying out examination, in cases when production of this investigative action is obligatory, it would serve business of formation of system of an objective assessment of crimes. Apparently, expansion of a circle of the subjects having rights of purpose of examination is advisable.

The code of criminal procedure of Germany consists of 495 articles. The norms connected with use of special knowledge on criminal cases contain in Chapter 7 of the Code of criminal procedure of Germany which is called "Experts and perception of material evidences".

Unlike the Criminal Procedure Code of Uzbekistan and other CIS countries, the Criminal Procedure Code of Germany doesn't carry out distinctions between the expert and the expert.

In article 73 Criminal Procedure Code of Germany called "Choice" it is fixed that definition of experts and their quantity at a stage of judicial proceedings is carried out by the judge. The most important, is specified that coordination with the judge of terms of carrying out examination, and also that in cases when obtaining the conclusion of the state judicial experts is required, involvement of other persons to carrying out examination possibly only in some cases is required. These separate cases can be proved by a lack of time at the state expert for preparation of the conclusion, and also at feeling of need of participation in business of the highly skilled skilled expert. The prosecutor's office can also agree on the expert opinion, however this conclusion will be считальтся preliminary.

In the Criminal Procedure Code of the Republic of Uzbekistan carrying out examination at a stage of preliminary investigation and during judicial proceedings are regulated by different chapters of the code. This circumstance gives the chance to carry out comparison of these two examinations.

Article 74 Criminal Procedure Code of Germany is called "Branches" and is devoted to questions of removal of the expert. According to it, removal of the expert is carried out on the same bases, as removal of the judge. However, involvement of the person as the witness doesn't interfere with his participation in matter in quality of the expert. Though our national legislation also contains similar norms, however this circumstance separately isn't mentioned.

The prosecutor, the private accuser accused are considered as persons who can declare removal of the expert. According to article 80 of the national criminal procedure law branch can be declared to the expert (in the presence of the corresponding bases) by the suspect accused, the defendant, and also the potervevshy, civil claimant, the civil respondent and their representatives, the defender, and during court session as well the state accuser, the representative of public association.

Article 75 Criminal Procedure Code of Germany is called "Obligation of making the expert opinion" and according to it the expert is obliged to participate in criminal case on which he was appointed the expert. Besides, the person who declared readiness to draw the conclusion before court, is also obliged to give it. According to article 67 of our national legislation any natural person who possesses special knowledge of science, equipment or craft can be

involved to participation in criminal case as an expert. In these cases pronouncement of the resolution of the investigator, investigator, prosecutor or definition of the judge is required.

In summary, it should be noted that improvement of institute of examination is one of the most important factors of protection of the rights and freedoms of the person – the supreme value, improvement of precepts of law on which protection is a guarantee of development of society.

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