



QUESTIONS REGARDING THE APPOINTMENT AND EXECUTION OF FORENSIC EXAMINATIONS IN THE PROCESS OF JUDICIAL PROCEEDINGS

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Article history:	Abstract:
Received: December 10 th 2023 Accepted: January 8 th 2024 Published: February 10 th 2024	The article examines the procedural order of conducting forensic examinations during judicial investigation.
Keywords: Evidence, Expertise, Court, Expert Testimony, Expert Interrogation	

Forensic examination is a key tool in the process of collecting, analyzing, and evaluating evidence in criminal cases. It contributes to the formation of a reliable evidentiary base, which is necessary for rendering well-founded and fair judicial decisions. It is important to emphasize that the application of expert knowledge is not limited to just the judicial stage of criminal proceedings but is also actively used during the preliminary investigation stage. Legal science has developed strong views on the importance and influence of forensic examinations in the context of criminal proceedings. The procedure for conducting forensic examinations includes several stages: from appointment and preparation to the actual conduct and presentation of the expert's conclusion. The expert's conclusion is an important piece of evidence in the case and should be objective, justified, and unbiased. Procedurally, expertise consists of three stages: 1) appointment of expertise; 2) expertise itself; 3) evaluation of the expert conclusion. From a forensic standpoint, expertise consists of several stages: 1) preparation for expertise; 2) appointment of expertise; 3) expertise; 4) formulation of the expert conclusion; 5) questioning the expert; 6) evaluation of the expert conclusion; 7) additional or repeat examinations may be included. Among these stages, the appointment of expertise holds particular significance. This stage requires a specific procedural order and the correct selection of the sequence of forensic actions. The appointment of expertise is a very important process, and at this stage, the establishment of such a system as the correct selection of experts, preparation of relevant materials, and adherence to tactical recommendations will enable the timely conduct of the investigation. The appointment of expertise is primarily related to determining the nature of the work, choosing the field of expertise and experts, preparing materials for the expertise, and making a decision. Expert

capabilities should be used effectively and correctly, as the appointment of improper expertise can unjustifiably prolong the investigation and trial of a criminal case, wasting the material and technical resources of state expert institutions and the efforts of experts. It should be noted that conducting expertise without the corresponding ruling or determination is prohibited. In the ruling on the motion for additional expertise in connection with the initial expertise, the following must be indicated: grounds for the motion for additional expertise; what exactly reflects the incompleteness or misunderstanding of the conclusion; information about the reasons for expanding the questions asked during the initial examination; which expert conducted the initial examination and on what basis; what conclusion was reached during the initial examination; it is appropriate to include only those cases that were not studied. Attachments supplementing the information may also be attached to the decision. When appointing expertise, the court must perform the following actions: establish the factual and legal grounds; prepare information and samples for examination deemed important for the criminal case; select the expert institution or expert who will conduct the expertise (determine the expert's competence, personal capabilities, and skills). The legislation does not specify the timeframe for appointing expertise, and its content is determined independently by the investigator (judge). However, in cases where it is necessary to appoint and conduct expertise, it is advisable to determine the exact timeframe for appointing expertise. During judicial proceedings, the appointment of expertise also plays a significant role and contributes to the fair resolution of the criminal case. Expertise during judicial investigation is appointed and conducted in accordance with the requirements provided for in Articles 172-187 of the Criminal Procedure Code of the Republic of Uzbekistan.



The expert acquires their procedural status after the official issuance of the decision to conduct the examination during the stage of judicial proceedings. Only after this does the expert have the right to analyze the evidence related to the object of examination and familiarize themselves with the case materials. Therefore, it is necessary to take into account the established procedural order for the appointment and implementation of examinations within the framework of judicial proceedings. When the court or judge decides on the necessity of an examination, whether initiated by the court itself or requested by the parties, a determination is made indicating the expert and the initial list of questions for investigation. Subsequently, during the judicial investigation, these questions can be detailed and discussed considering all parties, document analysis, and inclusion of the expert's opinions. The final formulation of questions occurs in a judicial consultation, taking into account the positions of all participants.

If obtaining samples, whether biological or otherwise, for comparative analysis on living individuals is required for the examination, the court or judge issues the corresponding decision. The action of collecting samples is carried out by the expert in the presence of the judge and those participants in the process who have been admitted to this stage upon their request. The decision on the participation of the judge and process participants in the collection of samples is made considering the nature of the samples and the necessity to respect personal physical and mental integrity.

The process of collecting samples is accompanied by the drafting of a protocol, which is signed by the expert and attached to the court decision on the collection of samples.

Additionally, the possibility of the judge and other parties participating in the examination is provided, especially if there is a possibility of discovering new important evidence. The decision on such participation is made considering the opinions of experts, the specifics of the examination, and respect for the rules regarding the personal integrity of the participants.

It is important for the judge to carefully plan the issue of appointing an examination even at the stage of the preparatory part of the court session. Even if the examination is appointed during the trial, the expert usually conducts the examination within their institution.

However, when objects sent for examination by the court are found unsuitable for examination due to incorrectly formulated questions in the ruling, the judge must conduct a thorough analysis of the criminal case and all related documents. It should be understood that

the questions asked to the expert during the judicial proceedings are not equivalent to the direct appointment of the expert.

During legal proceedings, when there is a need for expertise from someone with specialized knowledge, it is conducted to verify and reassess the conclusions made during the preliminary investigation. At this stage, the judge has several important tasks: to determine the expert's participation in the proceedings, inform the expert of their rights and obligations, explain to the parties the right to refuse the services of the expert, warn about the responsibility for providing false conclusions, consider requests for expertise, and decide whether the expert should remain in the courtroom during the proceedings. Thus, the judge must approach the organization of the expertise process attentively and responsibly, paying special attention to details and accuracy of formulations to guarantee the reliability and effectiveness of the legal proceedings.

During a court session, the expertise can be conducted by either experts who have already participated in the preliminary investigation or new ones appointed by the court. It can involve one or several experts appointed at different stages of the investigation. Responding to a motion from one of the parties or based on its own considerations, the court may decide to appoint an expert and announce it during the court session. This decision specifies the specific person or institution responsible for conducting the expertise and formulates tasks for the expert.

The court is obliged to explain to the parties their right to refuse the expertise, include an additional person proposed by one of the parties in the expert group, ask the expert additional questions, demand the participation of the parties in the expertise, as well as the right to make comments during the expertise process.

During the judicial investigation, the expert has the right to ask questions to the interrogated persons, familiarize themselves with written evidence, protocols of investigative actions, conclusions of other experts, as well as participate in inspections, experiments, and other court procedures related to the subject of expertise.

Thus, the process of judicial expertise during the session requires a careful approach, ensuring the rights and opportunities of all participants in the process, including experts, which contributes to a more complete and comprehensive consideration of the case.

In criminal proceedings, expert interrogation is a key element for a deep understanding and interpretation of the conclusions of expert examination. This process is not just a formality; it provides an opportunity for the



investigation and the court to obtain detailed explanations on complex aspects of the case that can only be understood with specialized knowledge. Expert opinions often contain complex terms and concepts that require additional explanations for their correct understanding and use within the criminal process.

The purpose of expert interrogation is to clarify unclear terminological or stylistic points, provide additional arguments to confirm the conclusions of the expertise, provide general information from the relevant field of knowledge, and identify new facts relevant to the case. However, it is important to understand that expert interrogation never replaces the expertise itself. Interrogation is possible only after the expert has conducted the expertise and concerns questions specifically related to this expertise. An expert can be interrogated both during the preliminary investigation after providing their conclusion and during the judicial proceedings.

According to Part 1 of Article 186 of the Criminal Procedure Code of the Republic of Uzbekistan, an investigator, prosecutor, or court has the right to interrogate an expert who has provided a conclusion during the preliminary investigation. This is done in order to obtain explanations or additions to their conclusion, which can be critically important for a thorough and comprehensive consideration of the case. However, Article 81 of the Criminal Procedure Code of the Republic of Uzbekistan, which lists the types of evidence, does not include expert testimony. Specifically, it states: "Evidence in a criminal case includes any factual data based on which, in a certain legal procedure, the inquiry authority, investigator, and court establish the presence or absence of a socially dangerous act, the guilt of the person who committed this act, and other circumstances relevant to the correct resolution of the case. These data are established by: testimony of witnesses, victims, suspects, accused persons, conclusions of experts, material evidence, audio and video recordings, protocols of investigative and judicial actions, and other documents."

We can say that expert testimony is the information provided by an expert during interrogation after presenting their conclusion, with the aim of providing additional explanations or clarifications regarding the conclusion they drafted. The absence of explicit recognition of expert testimony as evidence leads to certain problems in practice, as courts summon and interrogate experts as witnesses, which in turn causes dissatisfaction among experts.

Based on the above, we believe it is necessary to add "expert testimony" to the list provided in Part 2 of Article

81 of the Criminal Procedure Code of the Republic of Uzbekistan.

In order to improve the interaction of experts with employees of investigative authorities, investigators, prosecutors, and judges, it seems practical to implement the procedure of electronic appointment of expertise in practice. Such an approach will allow coordinating the actions of all participants within a single system. With the help of this system, it will be possible to electronically appoint an expert and send the conclusion back to the authority that made the appointment. This will expedite the process of reviewing documents and quickly assess the results obtained, thanks to electronic summaries. Such innovation contributes to improving the quality and accelerating the process of appointing experts.

On such an electronic portal, authorized persons can ask questions regarding the possibility of examining specific objects, learn about available experts in a particular field (a list of experts), determine research methods, and formulate relevant questions for the expertise. Thus, electronic appointment of expertise becomes a significant stage that directly influences the quality of expertise execution and anticipates its results. Proper implementation of this stage significantly affects the effectiveness of subsequent stages of expertise.

Considering the criteria for appointing and conducting judicial expertise at the stage of judicial proceedings, based on the general conditions of the judicial process and the basic principles of criminal procedure, our analysis shows that the adversarial principle plays a key role in the criminal process as a whole, including the stages of appointing and conducting expertise. This principle is reflected in the implementation of the basic principles of the judicial process, which the law defines as general conditions of judicial proceedings. It is proposed to allow the appointment and conduct of judicial expertise at the stage of preliminary hearing. This will allow the parties to discuss the appointment of expertise, determine questions for the expert, inform the expert of their rights and obligations at this stage, and also warn them of potential criminal liability. It will also provide the expert with access to the necessary materials of the criminal case for their examination and allow the judge to make decisions on the appointment and conduct of expertise in a separate room.

A proposal is made to develop and adopt a resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On Judicial Expertise in Criminal Cases" in connection with the issues that arise in courts when applying the norms of the Criminal Procedure Code of the Republic of Uzbekistan regulating the appointment and conduct of judicial expertise in criminal cases.



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