

Individual problems that arise in the process of conducting forensic examinations

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Abstract. The scientific article analyzes the problems that arise during the production of expert examinations in the investigation of crimes. It describes the basis of forensic examinations, the quality of implementation. The objectives and the issue, the objects of forensic examinations are outlined. The necessity of conducting expert examinations is determined, the significance of their conduct in the process of judicial and pre-trial consideration of criminal cases in the criminal process is displayed.

Keywords: expertise, forensic activity, reform, freedom, security, investigation, criminal case.

Introduction

The irreversibility of Russia's course towards global integration calls for fundamental changes in the political, legal, economic and social spheres of our state. One of the key areas of reform at the present stage is the implementation of judicial reform, which should implement the practical implementation of the rule of law and ensure the functioning of the judicial system and related legal institutions in accordance with international standards and best practices. In this context, special attention should be paid to the issues of forensic practice, the meaning of which is to equip the judiciary with autonomous, professional and valid expertise, which is aimed at fully exploiting the achievements of science and technology.

When building a legal state, one of the acute problems of today is the problem that is associated with the development of effective models [5, p.66] of the production of forensic examinations. The extreme importance of this institute is eloquently evidenced by the opinion of E. Yu. Samuticheva, who noted that "the authority of the conclusions of experts is extremely high, since

they focus on advanced scientific thought and the repeatedly proven experience of professionals. Therefore, despite the fact that in our criminal proceedings none of the evidence has a pre-established force, when assessing the evidence by the subjects of proving the expert's conclusion, special importance is involuntarily attached, special trust is expressed" [6, p. 2].

And as Mishin A.V. notes, forensic examination is one of the most effective ways to establish the truth on issues that are the subject of proof [4]. It should be noted that the study of the organizational and legal foundations of forensic activity is devoted to the work of such famous scientists as T. V. Varfolomeeva, V. I. Galagan, A.V. Mishin, E. Yu. Samuticheva and many others. However, there are still relevant issues related, in particular, to the protection of the freedom of a forensic specialist and the accuracy of his conclusion. As stipulated by the Constitution of the Russian Federation (Part 1, art. 46), exclusively the laws of the Russian Federation determine the basis of forensic expertise [2].

This constitutional provision emphasizes the national significance of this issue, which cannot be regulated at the level of subordinate legal acts. From the point of view of forensic expert work, the main normative provision is the Federal Law "On State Forensic Expert Activity in the Russian Federation" of May 31, 2001, which defines the legal, organizational and financial bases of forensic expert activity. At the same time, Article 7 of the Law declares the protection of the freedom of the judicial specialist and the accuracy of the final decision [3]. At the same time, a systematic analysis of the provisions of the current legislation makes it possible to make sure that some of the declared protections for the freedom of the judicial specialist and the legality of the final decision do not have a sufficiently realistic content. In particular, this applies to the inaccessibility under the threat, calculated by the law of obligation, to interfere with someone in the implementation of forensic expertise.

Purpose of the study – to establish the current problems that arise in the activities of forensic experts, and after analyzing the current legislation, to propose solutions for its improvement.

Materials and methods

The methodological basis of this research is based on the general scientific dialectical method of cognition, as well as on the use of structural-functional, system-structural, comparative-legal, formal-legal, and other particular methods of scientific cognition.

Results and discussion

First of all, the legislation on expert activity corresponds to the norms of Article 195 of the Criminal Procedure Code of the Russian Federation, which takes into account the responsibility for preventing the appearance of an expert in court, bodies of inquiry, temporary investigative bodies and a special temporary investigative commission, pressuring him to refuse to give the necessary information or decisions, including giving deliberately false testimony or the conclusion of a specialist by threatening murder, violence, destruction of the property of a forensic specialist or his relatives, or disclosing information that compromises the expert, or corruption of an expert with the same meaning, as well as blackmail in order to perform these actions out of revenge for previously given testimony or conclusion [2].

The analysis of the objective side of the specified corpus delicti allows us to conclude that it does not cover all cases of illegal influence on the expert. For example, forcing an expert to refuse to give, or even to give deliberately false testimony, or it is not excluded that the final decision can be made by the only means of threats of murder, pressure, liquidation of property or disclosure of information that disgraces the victim. In this situation, the logic of the legislator regarding the significant truncation of possible forms of influence on the expert is absolutely incomprehensible, since in practice there are much more such forms.

At the same time, the legislation of the Russian Federation on criminal liability contains many examples of criminalization of any form of influence on a certain person in order to prevent them from fulfilling their official obligations, and may achieve criminal results.

It is also necessary to establish that Article 307 of the Criminal Code of the Russian Federation takes into account the obligation not more than for the pressure of the expert to refuse to give evidence or conclusion, at the same time to give deliberately false testimony or conclusion. At the same time, illegal influence on the expert may not pursue the goal of deviating from giving evidence or conclusions, including giving deliberately false testimony or conclusions. On the other hand, such influence may pursue the goal of countering or hindering the implementation of forensic activities in general.

Conclusion

Thus, on the one hand, a direct ban is established, under penalty of punishment, for non-performance of the duties provided for by law for the implementation of forensic expertise, and on the other hand, the legislator provides for liability only in a small number of cases and does not cover many elements of influence on the personality of the expert. Another serious problem in the implementation of forensic activities is interference in the activities of a forensic expert, which negatively affects the independence of such a person.

Thus, there are frequent cases of abuse of the right during the interrogation of an expert by the investigating authorities during the pre-trial investigation, as a result of which pressure is exerted on the experts and interference in their activities. The solution to this problem may be to amend certain articles of the Criminal Procedure Code of the Russian Federation, which show the position of an eyewitness in criminal proceedings, fix the guarantees of an expert, and so on. In the first place, the Criminal Procedure Code of the Russian Federation should provide that experts cannot be questioned as witnesses-about the conclusions they provided. Secondly, the Criminal Procedure Code of the Russian Federation should remove the provisions that oblige the expert to come to the investigator or prosecutor and give answers to questions during the interrogation, leaving the corresponding duty of the expert exclusively to the court. Third, similar in content to the previous sentence, the corresponding changes should also be made to the Code of Criminal Procedure of the Russian Federation, providing for the obligation of the expert to give evidence only to the court.

The next issue that needs to be considered concerns the development of important provisions for the work of a forensic expert, its financial and social support. In particular, it was assumed that employees of state specialized institutions (not military personnel and those who do not have the ranks of ordinary and commanding personnel), who have the qualification of a forensic expert, official salaries are set at an amount that is not less than 10 of the subsistence minimum established for able-bodied persons.

This provision should be an important step towards improving the material security of the forensic expert. At the same time, the State Budget for 2020 stopped the action on the amount of official salaries of forensic experts for this year. In this regard, we can express the hope that in the State Budget for 2021-2022, the expenses for the remuneration of judges within the limits of official salaries will be supported by appropriate financial capabilities.

Thus, it can be stated that the regulation at the level of the law of forensic expert practice at the present stage is characterized by certain gaps and shortcomings, the presence of which does not contribute to the full protection of the autonomy of the forensic expert and the accuracy of his conclusions. This situation requires an urgent solution, given the special role of expert activities in the context of judicial reform.

References

1. *The Constitution of the Russian Federation of December 12, 1993 (as amended)*. from 14.02.2020, No. 1-FKZ) [Electronic resource] // URL: http://www.consultant.ru/document/cons_doc_LAW_28399/ (date of appeal: 24.02.2021).

2. *The Criminal Procedure Code of the Russian Federation of December 18, 2001 (as amended. from 30.12.2020, No. 543-FZ) [Electronic resource] // URL: http://www.consultant.ru/document/cons_doc_LAW_34481/ (accessed: 24.02.2021).*
3. *Federal Law No. 73-FZ of May 31, 2001 "On State Forensic Expert Activity in the Russian Federation" (as amended). dated 26.07.2019, No. 224-FZ) // URL: http://www.consultant.ru/document/cons_doc_LAW_31871/ (accessed: 24.02.2021).*
4. *Mishin A.V. Actual problems of appointment and production of forensic expertise // VEPS. 2017. No. 1. URL: <https://cyberleninka.ru/article/n/aktualnye-problemy-naznacheniya-i-proizvodstva-sudebnoy-ekspertizy> (accessed: 31.01.2021).*
5. *Muzalev S. V., Brager D. K., Litvinov I. I., Novoselova Yu. V. Theoretical and methodological aspects of the development of modern research science: Monograph. Issue No. 4. Moscow: SIC MISI, 2019. 96 p.*
6. *Samuticheva E. Yu. Expert opinion and its assessment in the criminal process (comparative legal research): autoref. dis. ... cand. jurid. M., 2016. 32 p.*