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APPOINTMENT OF EXPERT IN CRIMINAL CASES

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This scientific article examines the grounds for the appointment of an expert examination in criminal cases, the expert's conclusion, the decision on the appointment of a forensic examination, the sections of the resolution: introductory, descriptive, operative parts. The rights and obligations of the expert, the status of experts when appointing a comprehensive examination are indicated. When appointing an expert, the investigator must have an idea of the level of development of modern science, technology, art, crafts, types of expertise, as well as the capabilities of a particular expert institution or invited expert. Experience shows that investigators make mistakes when assigning expertise, which is often explained by poor knowledge of the capabilities of a particular expertise. Experience shows that investigators make mistakes when assigning expertise, which is often explained by poor knowledge of the capabilities of a particular expertise. Recognizing the need for an examination, the subject makes a reasoned decision, which is the procedural basis for its conduct.

Key words: expert, complex examination, investigator, expert opinion, resolution, criminologist.

Forensic expertise in criminal cases can be conducted at the following stages: preliminary investigation of the court of first instance, trial at the appeal and cassation stages.

In the preliminary investigation, the expert is appointed by the investigator, investigator, and prosecutor when necessary.

The experience of judicial investigation shows that it is better to conduct the examination as quickly as possible, because some material evidence deteriorates, it is necessary to quickly justify the fact of initiating a criminal case, etc.

In some cases, it is impossible to solve the issue of initiating a criminal case without appointing and conducting a judicial examination (for example, it is possible to determine whether the substance belongs to drugs only during the examination, harm to health can be attributed to private or public prosecution cases, etc.).

The appointment and conduct of a forensic examination before the initiation of a criminal case has caused ambivalence among practitioners.

It is known that not every forensic examination is carried out at the stage of initiation of a criminal case (for example, forensic psychiatric, forensic accounting, forensic genetic, complex forensic psychological-psychiatric, etc.), because their

production is associated with many limitations (a thorough expert study of a person's genetic makeup, inpatient treatment in a psychiatric clinic).

For example, appointing a forensic accounting expert is not a primary investigation. Before appointing an expert, the investigator collects and examines the necessary evidence, formulates questions for the expert, is determined by the expert institution or invites an expert from among people with accounting knowledge.

Investigations before the initiation of a criminal case are carried out in order to establish or refute the grounds for the initiation of a criminal case.

Appointment of a forensic examination does not mean searching for grounds for solving the problem in order to initiate a criminal case. The facts will emerge only after conducting a forensic examination.

E.R. Rossinskaya believes that opponents of the appointment of a forensic examination before the initiation of a criminal case unnecessarily dramatize the situation that may arise during the appointment of an examination. In addition, before the initiation of a criminal case, the first step was taken to appoint a forensic examination (Chapter 225 of the Criminal Code of the Republic of Kazakhstan «Exhumation» provides for examination of the body at the place of discovery with the participation of a forensic

medical expert (but not a specialist in the field of forensic medicine – p. 180 of the Criminal Code of the RSFSR of 1960).

It is recommended to make a timely judgment on the active appointment and conduct of forensic examination at the scene of the accident or «forensic situational examination at the scene of the accident».

In our opinion, the legislator was rightly afraid that the introduction of the article allowing the examination before the initiation of a criminal case would undermine (restrict) the rights of interested persons and contribute to the emergence of new proposals for the conduct of investigative actions before the initiation of a criminal case (for example, interrogation). In order to prevent such situations, it is necessary to strictly control compliance with legal norms during the appointment and conduct of forensic examinations.

When appointing an expert, the investigator must have an understanding of the level of development of modern science, technology, art, craft, types of expertise, as well as the capabilities of a particular expert institution or invited expert. Experience shows that investigators make mistakes when assigning expertise, which is often explained by poor knowledge of the capabilities of a particular expertise. Recognizing that it is necessary to conduct an examination, the entity issues a reasoned decision, which is the procedural basis for conducting it.

In the decree on the appointment of forensic examination of kr, it is indicated:

- grounds for appointment of forensic expertise;
- what expertise is assigned (type or origin of forensic expertise);
- to whom the forensic examination is entrusted (last name, first name, patronymic of the expert or the name of the examination institution);
- conclusion of each problem presented to the expert;
- what materials are recommended for the expert's review.

The resolution consists of three parts: introduction, description, resolution [2].

In the introductory section, the place, date, who

made the decision (surname, position and working body) and what criminal case are indicated.

The descriptive part of the resolution includes the plot of the case, enumerates the circumstances justifying the need to use special knowledge, and specifies the features of the research object. Articles of the Code of Criminal Procedure of the Republic of Kazakhstan to which the expert was appointed are indicated. If the examination is entrusted to the experts of the forensic institution, then Article 270 of the Code of Criminal Procedure of the Republic of Kazakhstan is also referred to, if the appointment of an examination is mandatory.

In the resolution part of the resolution, the type or origin of the expertise is indicated, the issues issued with the permission of the expert are formed, the expert is appointed or the forensic institution is determined, its employees are assigned to conduct the expertise, the list of materials presented for the expert's consideration is given.

It is very important to choose the point of contact between the investigator and the expert. The place of examination is usually determined by the type of examination. For example, it can be carried out in an outpatient forensic psychiatric detention center or a psychiatric institution, and an inpatient one in the forensic psychiatric department of a psychiatric institution (hospital). Forensic examination is carried out in premises specially equipped for this, as well as in the open air. In the legal literature, in some cases, it is recommended to conduct an examination «in the field».

During the investigation of the crime scene, the investigator often finds traces and physical evidence in a situation that requires urgent empirical research (for example, the risk of losing crime traces due to bad weather).

The objects of examination at the scene can be individual objects and the material situation as a whole, a corpse with traces of forced death (for example, it is necessary to determine the place of death or to identify the objects damaged in the corpse during an autopsy). Here, the investigator can be greatly assisted by specialized mobile forensic and biological laboratories.

Expert examination of the scene of the incident is not related to the investigation in time and can be conducted simultaneously with

it or after its completion.

Expertise in criminal cases is usually appointed in a state expertise institution (for example, in the expertise and forensic departments of the Ministry of Internal Affairs of the Republic of Kazakhstan, forensic institutions of the Ministry of Justice of the Republic of Kazakhstan, etc.).

Article 273 of the Criminal Procedure Code of the Republic of Kazakhstan shall be conducted by state and other experts among persons with special knowledge. The investigator sends a decision on the appointment of an expert to the head of the expert institution, the latter entrusts the production to a specific forensic expert, explaining to him the rights and responsibilities provided for in the article.

When conducting a forensic examination outside the expert institution, the decision and necessary materials are handed over directly to the expert, explaining to him the rights and responsibilities provided for in this article.

The time of conducting an examination often depends on the nature of the incident, the evidence collected, and the type of examination. For example, forensic medical, veterinary, chemical, ichthyological examinations should be carried out immediately, and forensic accounting, forensic economic, forensic psychiatric, forensic psychological and other types of examination are carried out only when the investigator has collected the required amount of expert materials.

The choice of the moment of appointment of the expert is determined by the specifics of the criminal case, the investigator's assessment of the situation. So, if perishable goods act as an object, forensic goods examination should be appointed as soon as possible.

The direction and scope of the expert research is determined by the problems the investigator puts before the expert. Formulation of problems is determined by the possibilities of science and technology, composition of the investigated crime, competence of the expert.

One of the tasks of the expert is to understand the meaning of the questions, their correspondence to the modern possibilities of science. Therefore, when formulating questions, the investigator should consult with knowledgeable people who will check the

correctness of conclusions, the possibility of asking new questions (within the limits of the circumstances of interest to the investigator), and the appropriateness of solving non-important issues. For example, when appointing an expert in a case of professional violations, it is necessary to consult a court doctor in advance.

Article 274 of the Criminal Code of the Republic of Kazakhstan, the investigator introduces the suspect, the accused, his defense attorney with the decree on the appointment of a forensic examination and explains to them their rights:- to get acquainted with the decree on appointment of judicial expertise;

- has the right to declare an objection to the expert or make a request to conduct a forensic examination at another expert institution;

- have the right to submit a petition to engage the persons they have indicated as experts or to conduct a forensic examination in a specific expert institution;

- has the right to submit a petition to introduce additional issues to the expert in the decision on the appointment of judicial expertise;

- to participate with the permission of the investigator during the forensic examination, to give comments to the expert;

- with the opinion of an expert or on the impossibility of giving a conclusion.

In the forensic literature, a sample list of issues that can be submitted to the permission of an expert (forensic-technical, forensic-medical, auto-technical, forensic, etc.) is formulated. The investigator can use these suggestions as a basis, but the questioning must be tailored to the specific investigative situation. Questions should be accessible, understandable, unambiguous and resolved for all participants of the criminal process, accurately define the scope of the research, and not allow double interpretation.

The investigator collects the samples voluntarily, but there may be cases of refusal to return the samples, and then they can be obtained by coercion. However, coercive collection of samples is considered objectionable, so every effort is made to ensure that the individual provides them voluntarily.

When appointing an expert, it is necessary to

explain to the accused his rights. He has the right to object to the expert, to appoint an expert from among the people he has indicated, to ask additional questions or to change conclusions, to request participation during the examination, to make a request for the appointment of a second and additional examination, to provide additional materials through the investigator. When the investigator rejects such a request of the accused, he is obliged to issue a reasoned decision, which will be notified to him by receipt.

After receiving the decision on the appointment of an expert and research materials, the expert conducts a number of preparatory activities:

1) get acquainted with the decision on appointment of expertise and case materials;

2) conducts a thorough preliminary inspection of objects and determines their suitability and adequacy;

3) when there is doubt about the quality of the samples or their adequacy for comparative research, the expert recommends elimination of identified deficiencies;

4) together with the investigator, the expert clarifies the assigned tasks, analyzes the questions, presents his own conclusion of the problem, competently analyzes the investigation task, etc. p.;

5) determines the investigator's intention to participate in the forensic examination.

Appointment of forensic expertise in criminal cases in court. The court may appoint a forensic examination at the request of the parties or on its own initiative. If a forensic examination was conducted in the preliminary investigation, then the expert's conclusion must be verified at the court session. It indicates that the verdict can be based only on the evidence examined at the trial. The court decision to summon an expert to the court is made in the process of preparation for the court session.

The judge issues an order to summon the expert to the court session, as well as takes measures to ensure his appearance in court. At the same time, calling an expert is carried out only in necessary cases. Where necessary, the following shall be understood:

– the expert's conclusion is a very important evidence in the case under investigation;

– the expediency of conducting an additional examination in court is clear;

– there are doubts about the correctness of the expert opinion or its validity (it contradicts other materials of the case);

– two examinations are conducted on the same fact, and the experts come to the opposite conclusion;

– disagreements arose between experts who conducted a commission or complex examination and each of them made their own conclusion;

– the expert was summoned to the court at the request of the interested party, who disagrees with the expert's conclusions;

– there is a reason to believe that the accused, the victim, the witness, based on the findings of experts, can change them.

If a commission or complex examination is conducted and the findings of the experts do not contradict each other, the court may invite one expert to the meeting. If there are disagreements in the experts' conclusions or some of the issues are resolved individually, the court has the right to invite all experts to the meeting.

If the forensic examination is not conducted at the stage of preliminary investigation, then the court may make a decision about the possibility of conducting an examination or returning the case to the prosecutor during the trial. When appointing and conducting a forensic examination at a court session, the presiding judge is obliged to propose to the prosecutor, the defendant, his defense counsel, and other participants of the court session to submit in writing the issues that they consider necessary to put before the experts. Questions can be asked orally, and they will necessarily be included in the minutes of the court session. The presiding officer announces issues, discusses them, rejects issues that are not related to the opinion of the court [3, p. 189].

The court formulates the final conclusions of the issues put before the expert.

The expert may declare a request for rejection of any issues, indicating the reasons for this rejection. In addition, the expert may suggest changing the concept of the questions.

The decision to appoint a forensic expert is not specifically regulated by the Code of Criminal Procedure of the Republic of Kazakhstan. It is stated in the law that forensic examination is conducted in accordance with

the procedure established by «conducting forensic examination». Therefore, in the general sense of the procedural law, the decision on the appointment of a forensic expert in court is similar to the decision of the investigator on the appointment of an expert. The decision to appoint a forensic expert is issued in the consultation room, and a copy is given to the expert. The court does not have the right to replace the decision on appointment of expertise with other documents (cover letter, list of questions, etc.) not provided for by law.

A person called as an expert at a court hearing has fairly wide rights, for example, he can ask the defendant, the victim or witnesses questions about the circumstances important for the examination.

The expert who participated in the preliminary investigation is immediately included in the evaluation of the evidence at the court session. An expert who did not conduct an examination in the preliminary investigation can start examining the evidence only after the decision on the appointment of an examination has been issued.

The expert can conduct the examination in the premises of the court or in a laboratory with the necessary equipment and technical devices. The expert's opinion will be published in court and will be executed together with the court's decision to appoint an expert. The court decides on the question of the duration of the expert's participation in the court.

LITERATURE

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НАЗНАЧЕНИЕ ЭКСПЕРТИЗЫ ПО УГОЛОВНЫМ ДЕЛАМ

СЕРИКОВА Лаура Серикқызы

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В данной научной статье рассмотрены основания назначения экспертизы по уголовным делам, заключение эксперта, постановление о назначении судебной экспертизы, разделы постановления: вводная, описательная, резолютивная части. Указываются права и обязанности эксперта, статус экспертов при назначении комплексной экспертизы. При назначении эксперта следователь должен иметь представление об уровне развития современной науки, техники, искусства, ремесла, видах экспертиз, а также о возможностях конкретного экспертного учреждения или приглашенного эксперта. Опыт показывает, что следователи допускают ошибки при назначении экспертизы, что часто объясняется плохим знанием возможностей той или иной экспертизы. Опыт показывает, что следователи допускают ошибки при назначении экспертизы, что часто объясняется плохим знанием возможностей той или иной экспертизы. Признавая необходимость проведения экспертизы, субъект выносит мотивированное решение, являющееся процессуальным основанием для ее проведения.

Ключевые слова: эксперт, комплексная экспертиза, следователь, заключение экспертизы, постановление, криминалист.