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Research Article

LEGAL NATURE AND TASKS OF EXAMINATION: ANALYSIS AND DESCRIPTION

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ABSTRACT

The article reveals the concept of expertise, its legal nature, theoretical foundations and objectives. A comparative analysis of the opinions of legal scholars was carried out. Approaches to the concept of expertise are analysed.

KEYWORDS

Expertise, expert, special knowledge, forensic expertise, object of expertise.

INTRODUCTION

It is not a secret that today at commission of crimes new methods are applied, modern technical means are for this purpose used, and level of knowledge of organized criminal groups significantly increased. In this regard naturally, there is a need for the persons possessing special knowledge in various spheres of the public relations. In the conditions of such positive tendency, value of institute of expertise is invaluable that is confirmation of the trust, which has significantly increased to it in connection with scientific and technical progress.

Today it is impossible to imagine effective activity of judicial bodies without wide use of achievements of science and technology.

Value expertise for justice can be compared to value of sight for the person. So, circumstances established the conclusion expertise are also important for disclosure of a crime, the correct legal assessment of act guilty, that is it is also important as well as eyes for establishment of legal truth about a crime.

Judicial expertise is the main form of use of scientific and technical achievements in activity of the

investigator, the investigator, the prosecutor and court and plays an important role in providing court with indisputable proofs.

At the moment use at investigation of crimes only interrogation of the witness who was injured and investigative actions accused along with some other is insufficient and doesn't give due effect, becomes the reason of incompleteness and an unilateralists of preliminary investigation. The role of expertise, which helps the investigator with not only collecting and verification of proofs, but with increase in number of investigative versions, increases in these conditions.

Thus, expertise is investigative action carried out during inquiry, a consequence and judicial proceedings at emergence of requirement for involvement of the participant possessing special knowledge of science, equipment, art or craft. Expertise is carried out based on appointment of the expert of the relevant expert institution or other person, which is the expert.

In legal literature, different views on a place and value of expertise are given in administration of justice on criminal cases and investigation of crimes.

According to M.Kh.Rustambayev, "won't be a mistake if we tell that when developing theoretical bases of disclosure and investigation of crimes among other legal sciences the special place is taken by criminalistics. Expertise carried out with use of the special knowledge based on criminalistics equipment take a special place in successful carrying out investigation and ensuring justice".

On pertinent to B.B.Khidoyatov, investigators in many cases without realizing value of expertise, treating it with mistrust, try to be based only on the knowledge, that in certain cases only expertise allows to solve the difficult and confused crimes.

Therefore, also R.A.Mukhitdinov notes, "the expertise role in counteraction of crime is extremely important. Value of the judgment in lawful, reasonable and fair permission of criminal cases, truth establishment on business" is invaluable.

K.I.Isarov also state the opinion on an expertise place for justice, notes that "effective use of achievements of science and technology in prevention and disclosure of crimes, observance of criteria of justice in criminal trial, providing an admissibility of proofs and the rights and freedoms of the person secures time requirement, and the expertise role in it is invaluable.

From this communication, S.A.Otakhuzhayev notes, "in modern conditions efficiency of any activity depends on broad application of achievements of science and technology. At introduction of these achievements, activity of law enforcement agencies the special place is played by expertise. For this reason wide use of modern technical capabilities expertise plays an important role, and development of its theoretical and practical aspects is of particular importance".

According to the statement Yu.S.Pulatova, "expert practice created the new effective methods directed on studying of material objects with use of achievements the tactics science, as physics, chemistry, biology, mineralogy, practical mathematics, etc. These methods use when studying various materials, substances and products. It not only expands process of expert research, but also leads to change of investigative tactics of carrying out expertise".

Generalizing the above-stated points of view we consider it expedient to note increasing of a year in years a place and value of expertise in criminal trial.

However, as some scientists note, it is necessary pertinently and to use correctly possibilities of expertise as it is as a result inappropriate the appointed expertise unreasonably a period of investigation lasts and judicial proceedings, resources of expert establishments and effort of experts ineffective are used. Also in practice cases when investigators, wishing to prove to the prosecutor meet that they carried out all investigative actions on business, try to carry out on it and expertise. In our opinion, it is necessary to stop similar unreasonable and inefficient practice.

We will stop also on value of the term expertise. In particular, the legal encyclopedia specifies that expertise (from Latin – "response" – the answer; "expertus" – "skilled, knowing from experience") – studying of questions demanding the qualified decision in this or that area from the expert or group of experts.

Expertise on criminal affairs is the separate give special status a type of the expertise, different carrying out research from the person possessing special knowledge. Expertise on criminal affairs differs from other types of expertise by that it is appointed and carried out according to strictly and precisely established Code of criminal procedure rather.

In theoretical literature, there are various opinions on the issue of concept definition expertise on criminal cases. In particular, B.B.Khidoyatov states, "in the course of preliminary investigation and judicial proceedings there can be various questions in the sphere of science, equipment, art and craft. The possession the investigator, the investigator, the prosecutor, the judge, the expert understood by this knowledge doesn't exempt from need of purpose of expertise".

A.Norbojev define expertise as follows: "expertise is the procedural investigative action directed on establishment of circumstances of subject to establishment and collecting proofs, by use of special knowledge of science, equipment, art and craft". In our opinion, this author when determining concept of expertise lost sight of that fact that expertise can be directed as well on verification of proofs. Also in this definition, the procedural documents, which are taken out by court or the investigator as the basis for carrying out expertise, are not specified.

S.A.Otakhuzhayev defines expertise, as "the main form of use of scientific and technical progress in activity of the investigator, the investigator, the prosecutor and vessels". Thus, he notes, "its important role in disclosure of difficult crimes and ensuring justice". In this case remained unaddressed, such main feature of expertise as its implementation from the persons possessing special knowledge in science, equipment, art and craft, and the difference between the expert and the expert isn't precisely specified.

B.A.Mirensky in his regard notes, "Expertise – the check which is demanding special knowledge and carried out on the basis of the resolution of the investigator, the investigator and the prosecutor or by court definition". In this definition the author doesn't specify on what this research (collecting, check, an assessment of proofs) is directed; also differences of expertise from other investigative actions, such as experiment and exhumation aren't opened.

R. Alimova writes, "Expertise is appointed by bodies of inquiry, a consequence or court on the basis of the procedural law is research conducted from the person possessing special knowledge – the expert which results are made out in the expert opinion". In this definition the author specifies such object as special knowledge, that is knowledge in the right sphere also

is special knowledge, however their existence at this or that person (for example, at the investigator or the judge) doesn't grant them the right for activity implementation as the expert.

U.A.Tukhtasheva also carried out expertise studying on criminal cases and notes that "during preliminary investigation and judicial proceedings there is a need for use the special of knowledge of area of science, equipment, art and craft. Existence of such knowledge at the investigator, an investigator, the prosecutor or court doesn't exclude need for purpose of expertise".

N.M.Kushayev and Sh.F.Faiziyev said: "at investigation and judicial proceedings for the correct permission of criminal case there can be a need for special knowledge for the scientific and technical sphere, art or craft, existence of such knowledge at the investigator, the investigator, the prosecutor, the judge, the expert and witnesses doesn't exclude need for purpose of expertise". In this case, researchers did not note one of the main conditions of carrying out expertise – persons appointing expertise and registration of results of expertise in the conclusion.

In this regard, F.Bakhtiyarova specifies, "Expertise is the main means of attraction of achievements of science and technology in activity of law enforcement agencies. For disclosure and crime investigation law-enforcement bodies, prosecutor's offices and courts in many cases use services of experts. In this case by research of material evidences the truth is reached and crimes" are solved.

According to the pertinent remark A.R.Shlyakhova "when we speak about expertise, we have to understand it as the investigative action directed on establishment of an objective truth and the actual circumstances on criminal case by means of the expert opinion, prepare at the request of the investigator or

vessels on the basis of knowledge in the sphere of science, equipment, art or craft and within the law".

In opinion E.R.Rossinsky, expertise is a research by the person possessing special knowledge, material evidences and various documents (protocols of investigative actions) according to the resolution of the investigator. Thus the author missed that expertise can be appointed not only on preliminary investigation, but also during judicial proceedings.

D.A.Kharchenko specifies: "expertise – the main form of use of special knowledge consisting in the analysis of objects of expertise, documents or the actual data provided by the investigator or court, carried out for the correct permission of criminal case in essence". This researcher, in our opinion, it is inappropriate I approached to consideration of objects of expertise. In particular, it is impossible to leave that fact without that object of expertise can be not only documents and actual data, but also objects of a material world, biological materials, etc.

It is visible, in all specialized sources indicates that expertise is the evidentiary fact yielding very big results, and in some cases and the only means of establishment of truth. This situation in our opinion can be described as follows: first, the legal nature of expertise is that it is objective way of obtaining data on the facts; secondly, it is based on continuous development of science and equipment.

On the basis of the above we can give the following definition to concept expertise: "Expertise – procedural action carried out under the resolution of the investigator, the investigator, the prosecutor or court definition, and consisting in research on the basis of special knowledge of science, equipment, art or craft of the objects of expertise directed on research for the purpose of establishment of the actual data

important on criminal business, and also giving about it the conclusions".

In this regard, we will consider basic elements of definition of concept expertise. Speaking about "the actual data important for criminal case" data on the facts, received of lawful a source are understood. However, N.A.Selivanov speaking about "the actual data", claims that a subject of expertise are already come true and available facts. In our opinion, the actual data, which are of great importance for criminal case, are data, which can be used as proofs on criminal case.

One of the main of the requirement to the expert is the possession to them special knowledge of science, equipment, art or craft.

In this regard, it is necessary to clear up concept of special knowledge also. Therefore, on opinion V.D. Arsenyev of and V. T. Zabolotsky, "it is necessary to understand system of data as special knowledge, appear result of scientific and practical activities".

If Yu.K.Orlov speak that "special knowledge – data which society or its part" possesses, T.V.Sakhnova writes, that it "receiving new data based on special knowledge of the expert".

R. S. Belkin says that "special knowledge, it first of all a form of theoretical and practical skills which others don't possess, and received as a result of use definition science, equipment, craft", and A.M. Zinin notes that "special knowledge, it is knowledge not gained as a result of the general education, not reached as a result of usual vital activity and received as a result of professional activity".

In turn, moves notes that feature of special knowledge is that that they are a set of knowledge gained as a result of occupation certain labor activity. Z. M.

Sokolovsky and E.R.Rosxingskaya support this opinion.

Thus, under the special knowledge used at carrying out expertise on criminal cases, it is necessary to understand the skills arising at long occupation by certain science, technicians, art or craft. Here too it should be noted, what not any research based on special knowledge can receive the expertise status, the status researches connected with criminal legal proceedings and pursue definite legal purposes can possess only. The place and value of expertise in criminal trial is determined by this reason not only qualitatively conducted research, but also observance of the corresponding legal order, objective interrelation of the proofs which have found the reflection in the expert opinion, with circumstances (data) of a crime.

Yu.K. Orlov marks out the following features of expertise: a) support on special knowledge; b) special order of carrying out expertise; c) carry out for establishment of the certain circumstance important for business; d) participation of the special subject which is carrying out expertise; e) reflection of a course and results of expert research in specially made out document, being independent evidentiary fact – the expert opinion.

Speaking to S. Otakhuzhayev's words" judicial expertise has two features, on the one hand, it is scientific (technical or other) research, and on the other hand – the procedural action directed on establishment of the facts, having evidentiary value. The principles of carrying out judicial expertise work and in all other types of legal proceedings, and include legality, objectivity of an expertise research, completeness, compliance of the expert of the specialty, procedural independence, a personal responsibility for the issued conclusion, initiative, etc."

In our opinion if purpose of expertise is included into power of the investigator or the judge, carrying out expert research and issue of the corresponding conclusion is assigned to the expert, and the assessment and use of the expert opinion are within the competence of the investigator or court.

Thus, actions of the investigator or court consist in the following:

definition and involvement of expert institution and the expert who has to draw the conclusion; definition of the circumstances which are subject to establishment by the expert; control of legality of carrying out expertise; obtaining expert opinion, its assessment and determination of evidentiary value. These actions are of great importance for the solution of a question on admissibility evidence. Expertise is considered investigative action carried out not only special – the subject – the expert, but also other participants of criminal trial.

On a row with the above, one of features of expertise is that it acts as the investigative action uniting in not only collecting, but also verification of proofs. Expertise can be directed on establishment, confirmation or a denial of the facts connected with a crime.

It is also necessary to note the following features of expertise: use of special knowledge at research of objects or the subjects provided on criminal case; carrying out research by the special subject – the expert in an order of the authorized officer (the investigator, the judge); existence of order of appointment strictly established by the law, a registrations of results of expertise; registration of results of expert research in special to the document, being independent proof – the expert opinion.

We will stop also on expertise signs. Unfortunately, in spite of the fact that the institute of expertise is rather studied, in literature there is no uniform approach to its signs.

In particular, notes that treat signs of expertise: value of research conducted on a basis the special of knowledge, a legal and special research objective; object, subject and method of expert research.

E.R. Rossinskaya includes in a row expertise signs: purpose of expertise from authorized participant of criminal trial; definition of the rights and duties of the expert special rules of law; research leaning on knowledge in various spheres of science, equipment, art and craft; giving the conclusion having evidence value.

A.G.Davtyan as the main signs of expertise specifies a subject, object, and the subject. I.L. Petrukhin in a row the main signs of expertise included the subject, object of research, use of special knowledge at detection and collecting of proofs, a procedural form of research.

T.V. Sakhnova writes "for the description of features of expertise in a row its signs it is especially important to include procedural independence of the expert and his personal responsibility".

Giving an assessment from the practical point of view, when determining signs of expertise it is necessary to proceed from requirement of body appointed expertise, purpose of expertise and circumstances on which establishment it is directed is whole. To these signs, in our opinion, it is necessary to carry a subject, object and a method. Thus, data need to give definition to these concepts.

Subject of expertise are the actual data established based on special knowledge (the facts, circumstances of a crime) (Art. 172 of the Criminal Procedure Code).

This our opinion on a subject of expertise is shared by S. A. Smirnova. In her opinion a subject of expertise are the facts established because of research of object of expertise.

D.Ya.Mirsky noted, "A subject of expertise is evidentiary information on the crime, established by means of special knowledge by research of objects provided by the investigator or court".

The subject of expertise is to necessary signs of each look and group of expertise. Value and sources of special knowledge decides on its help and it is of great importance for comprehensive establishment of circumstances of a crime. As a conclusion idea to note that, the subject of expertise is established on concrete business by means of statement before the expert of a certain circle of questions. That is, the subject of expertise is reflected in the resolution on its appointment in a look the correspond of questions to the expert following from features of object of expert research.

The important element distinguishing one type of expertise from another, and opening its features the object of expertise is. Expertise is object the facts and circumstances directed on expert research by the investigator or the court, forming a basis for establishment of facts of the case.

According to S. A. Smirnova, object of expertise – a subject, contain in itself the evidentiary information, directed on research of the expert.

While studying expertise is important also as a method of expert research. Through M. Abdullaeva's words, "as a result of carrying out scientific researches by modern methods and means complex methods of expert researches were developed. Introduction of these methods in expert practice creates opportunity

for increasing of scientific and technical level of conducted researches, and also scientific validity and evidentiary value of the expert opinion".

It should be noted that techniques of carrying out judicial expertise are a subject of studying of criminalistics, and in this regard, we will be limited to consideration of only their criminal procedure aspects. In practice the system of scientifically reasonable special methods, which have received the name an expert technique, was created, it is applied in the order determined by the tasks set for the expert. E.R.Rossinskaya defines methods of carrying out expertise in quality "ways from ignorance to knowledge, achievements of the purpose of action, understanding of a theoretical subject", and L.V.Kudryavtseva notes that they are understood "as system of practical actions and action on a solution of practical problems of expertise". In our opinion, abstracting these two definitions it is possible to tell "a method of expert research – system the corresponding of the managements on a way to achievement of the objectives of the expertise, applied in a certain order".

In legal literature, give various classifications of expert methods. In particular, T.V.Averyanova classifies expert methods as follows: supervision, comparison, description, measurement, experiment, modeling; historical methods; private and scientific methods; special (multi-object) methods. E.R.Rossinskaya allocates the following types methods: logical method; all-expert method; personal method of the expert. The right choice of an expert method is an important condition implementation of expert research in a right direction.

CONCLUSION

In the conclusion, it would be desirable to note that expertise is the main form of use of special knowledge

of criminal trial. The essence of expertise consists in the analysis of relevant objects and the documents, directed on establishment of the actual circumstances of criminal case and carried out according to the decision of the investigator, the investigator, the prosecutor or court.

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