

RESEARCH ARTICLE

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ENSURING PROSECUTORIAL SUPERVISION OVER THE USE OF EXPERT KNOWLEDGE IN CONDUCTING INVESTIGATIVE ACTIONS

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Abstract

This article explores the role of specialists and experts in criminal investigations, emphasizing their legal involvement in procedural actions, such as interrogations and evidence collection. The distinction between specialists and experts is highlighted, with experts possessing broader procedural powers in analyzing case-relevant information. The participation of educators, especially in cases involving minors, is emphasized as critical for obtaining reliable testimony. Additionally, the role of interpreters is examined, emphasizing their importance in ensuring the rights of non-native speakers during criminal proceedings. The article underscores the prosecutor's responsibility in monitoring the proper use of specialists, experts, and interpreters, as well as the importance of maintaining accuracy and preventing potential misuse. The article also touches upon legal provisions related to the participation of third parties, such as educators and interpreters, during interrogations and investigative actions, providing insights into best practices.

KEYWORDS: Specialist, expert, criminal investigation, interrogation, procedural law, educator, interpreter, minor testimony, prosecutor supervision, legal rights, evidence collection.

INTRODUCTION

One of the ways to enhance the effectiveness of investigative actions is through the more extensive use of experts' knowledge. Therefore, when supervising the investigation of crimes, the prosecutor should pay close attention to the compliance with procedural norms regulating the participation of specialists, experts, educators, and interpreters in investigative activities.

The range of special issues for which experts are currently engaged is quite broad. Investigations into complex criminal cases rarely proceed without expert analysis, especially when it comes to

proving intricate facts. For example, in cases involving environmental crimes, investigative authorities may require forensic chemical, toxicological, radiological, technical, hydrotechnical, constructional, agrotechnical, forestry, veterinary, ichthyological, and other types of expert examinations.

Naturally, the specific type of expert examination depends on the questions posed to the experts, and different materials from the investigation or physical evidence will be required. In such instances, interrogation protocols of process participants may play a crucial role.

According to Article 68(1) of the Criminal Procedure Code (CPC), an expert is entitled to participate in interrogations and other investigative actions with the investigator's permission and ask the interrogated person questions relevant to the subject of the expertise. Additionally, as per Article 179 of the CPC, the accused has the right to be present during the expert examination, with the investigator's permission, and provide explanations to the expert.

This legal provision reflects the procedural activity of the expert, and in certain cases, it implies the expert's participation in the interrogation of the accused (or suspect), as their explanations during the investigation may be essential for ensuring the objectivity and reliability of the expert's findings. These explanations can be included directly in the expert report (for example, when the accused provides information about their living conditions and health status during an outpatient forensic psychiatric examination) or recorded in corresponding procedural documents, most commonly interrogation protocols.

However, the current CPC does not grant the victim a similar right, although the investigator is not precluded from interrogating the victim with the participation of an expert.

According to Article 78 of the CPC, an expert is prohibited from participating in the investigation (including interrogations) if they have previously been involved in the case as a specialist, except in cases where a forensic medical expert has participated in the external examination of a body.

During investigative actions, investigators receive information from a wide range of knowledge fields, often interviewing individuals from various professions, including those directly related to the case. For instance, in cases involving environmental pollution due to negligence by company executives, investigators may need to delve into the specifics of industrial processes and technologies. In such cases, the assistance of specialists often becomes indispensable.

In accordance with Article 69 of the CPC, a specialist, when involved in investigative actions, uses their knowledge and skills to assist the

investigator in detecting, securing, and seizing evidence, as well as providing insights into the circumstances related to the evidence. The specialist is an individual with specific knowledge and skills, invited by the investigator to participate in investigative actions and assist in the detection, securing, and seizure of evidence. While participating, the specialist may also offer recommendations regarding investigative theories, necessary actions, appropriate technical tools, and which types of expert examinations or documents should be requested.

The range of specialized knowledge and skills used in procedural evidence is extraordinarily broad, encompassing fields such as medicine, pedagogy, chemistry, physics, biology, and more. In practice, specialists like forensic experts, psychologists, environmentalists, safety engineers, and accountants are frequently invited to participate in interrogations and other investigative activities.

It is also worth noting that investigators often seek specialists' help to ensure the proper use of audio and video recording during interrogations (Article 91 of the CPC).

When supervising compliance with procedural norms related to the participation of specialists in investigative actions, the prosecutor should bear in mind that, under Article 78 of the CPC, specialists are prohibited from participating in the case under the same conditions as experts. These conditions include general grounds that preclude participation in legal proceedings (Article 76 of the CPC), as well as specific circumstances, such as a specialist being in a position of dependency (official or otherwise) on the accused, victim, civil plaintiff, or civil defendant, or having participated in an audit whose materials served as the basis for initiating the case, or being found incompetent in their field.

It is also important to note that the law explicitly states (Part 4, Article 78 of the Criminal Procedure Code (CPC)) that prior participation in the case as a specialist does not constitute grounds for their disqualification.

The role of a specialist and an expert in investigative actions differs in both form and

substance. These distinctions arise from the broader procedural powers granted to experts in understanding case-relevant circumstances compared to specialists. However, specialists are still considered significant procedural figures. This is evident from the fact that, under Articles 376-378 of the CPC, the defense counsel of the accused has the right to challenge a specialist and question them during subsequent investigative actions. Furthermore, Article 92 stipulates that a specialist must sign the protocol of the investigative action in which they participated.

Current criminal procedure law allows for the participation of specialists and experts during interrogations, and specifically highlights the possibility of involving an educator (Article 121 of the CPC) from the relevant pool of experts. A specialist, actively participating in interrogations, provides invaluable assistance to the investigator in clarifying matters directly related to the circumstances of the crime and suggesting methods for verifying obtained evidence.

The effectiveness of interrogating minors with the participation of an educator is a testament to this. Educators, with their knowledge and experience in understanding child psychology, including perception nuances, assist investigators in obtaining reliable testimony from children.

Regarding the participation of an expert in interrogations, it should be noted that the cognitive focus of such interrogations is relatively limited. It is primarily aimed at clarifying issues related to the preparation and conduct of a specific forensic examination and does not aim to enhance the objectivity or reliability of the testimony itself.

The prosecutor must ensure that the legal guarantees for the reliability of testimony from minors are upheld, particularly in cases where the interrogated individual is under the age of 14. In such cases, an educator, legal representatives, or relatives must be present (Article 121 of the CPC). The legislator, in this instance, takes into account the psychological peculiarities of children's perceptions and the need to establish rapport with adolescents. Summoning and interrogating minors is usually conducted through their parents or legal representatives. Article 121 of the CPC grants the

educator the right, with the investigator's permission, to ask questions of a minor witness. If the investigator dismisses a question, they are required to make a corresponding note in the interrogation protocol.

When interrogating a minor defendant (under the age of 16), an educator may participate at the discretion of the investigator or prosecutor, or at the request of the defense. Participation of an educator is also possible in interrogations of minors over 16 years old if they have been recognized as mentally challenged. Before the interrogation, the investigator must explain the rights of the educator, and this must be recorded in the interrogation protocol. The educator is entitled to ask questions of the defendant, with the investigator's permission, and at the end of the interrogation, they may review the protocol and make written comments regarding the accuracy and completeness of the recorded information.

The participation of an interpreter is one of the most crucial procedural guarantees of individual rights in criminal proceedings. According to Article 20 of the CPC, individuals involved in the case who do not speak the language of the proceedings are entitled to make statements, provide testimony, submit petitions, review case materials, speak in court in their native language, and use the services of an interpreter. Investigative and judicial documents are provided to the accused in their native language or another language they understand.

Unlike a specialist, an interpreter assists not only the investigator but also other participants in the case who are legally entitled to use the interpreter's services. The investigator, even if proficient in the necessary languages, cannot perform the functions of an interpreter.

The regulation of interpreter participation in pre-trial investigations is outlined in Articles 20, 71, 72, and 99 of the CPC.

The prosecutor must bear in mind that the presence of a third party during interrogation can often hinder the establishment of a psychological connection between the investigator and the interviewee, as well as the use of psychological

techniques based on verbal interaction. Additionally, there have been instances where dishonest interpreters have deliberately distorted translations in favor of the interviewee.

To prevent such occurrences, audio and video recording should be used during interrogations involving interpreters. Video recording, in particular, is crucial when interrogating individuals who are deaf or mute.

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