

Problems in The Practice of Appointing and Conducting Forensic Examinations During Judicial Investigation and Issues of Their Legal Resolution

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Abstract: Forensic examination is one of the most important procedural instruments for establishing objective truth during judicial investigation. Although the Criminal Procedure Code regulates the appointment and conduct of forensic examinations, the legal framework governing the hearing of expert opinions and the examination of experts in court remains insufficiently defined. This study analyzes the existing procedural regulation of expert participation during judicial proceedings, identifies practical challenges arising from inconsistent judicial approaches, and evaluates comparative legal experience from Russia, Kazakhstan, Germany, and France. The research employs comparative legal, systematic, logical-legal, and analytical methods to assess the procedural significance of expert testimony during trial. The findings demonstrate that the absence of a clearly regulated mechanism for hearing expert opinions may undermine the principles of adversarial proceedings, equality of parties, and comprehensive evaluation of evidence. Based on the comparative analysis and identified legislative gaps, the study proposes introducing separate procedural provisions into the Criminal Procedure Code of the Republic of Uzbekistan regulating the hearing of expert opinions during judicial investigation and the examination of experts in court. The proposed amendments are expected to strengthen procedural guarantees, ensure uniform judicial practice, improve the reliability of expert evidence, and enhance the fairness, legality, and transparency of criminal proceedings.

Keywords: Forensic examination, expert opinion, judicial investigation, criminal procedure, expert examination, evidence, adversarial principle, procedural guarantees, criminal justice, Republic of Uzbekistan.

Introduction: During the judicial investigation, forensic examination occupies a special place as an important procedural instrument for ensuring the comprehensive, impartial, and fair adjudication of criminal cases. In circumstances requiring specialized knowledge, it is through forensic examination that facts significant to the case are established, thereby ensuring the reliability of the evidentiary process.

The procedure for appointing and conducting a forensic examination during the judicial investigation is carried out in accordance with the requirements set forth in Articles 172–187 of the Criminal Procedure Code, as well as the procedural rules established by Article 446 thereof.

Although the current criminal procedural legislation

establishes the procedure for appointing and conducting forensic examinations, a number of systemic problems continue to persist in law enforcement practice. In particular, during the judicial investigation, an expert opinion constitutes one of the most important sources of evidence for establishing the circumstances that must be proven in a criminal case. An expert opinion is generally submitted in written form and is evaluated by the court together with the other evidence in the case.

However, in practice, the procedure for directly hearing the expert opinion during court proceedings—namely, allowing the expert to provide explanations and clarify the conclusions through questioning—has, in certain instances, not been regulated with sufficient clarity or procedural consistency.

Although the current criminal procedural legislation provides for the examination of an expert, the concept of "hearing the expert opinion" has not been expressly and systematically established as an independent procedural institution. This has resulted in inconsistent approaches in judicial practice. In some cases, courts consider the expert opinion solely as written evidence, whereas in other cases they summon the expert to court and allow the expert to provide oral explanations of the conclusions reached.

This situation gives rise to a number of legal issues, including:

First, the absence of clearly defined procedures for hearing an expert opinion directly during a court hearing may restrict the parties' ability to fully exercise their procedural rights. In particular, the parties have varying opportunities to question the expert and clarify the substantiation of the expert opinion.

Second, since the procedure for providing oral explanations of an expert opinion has not been clearly regulated by law, uniformity in judicial practice has not been ensured. This, in turn, adversely affects the consistency and predictability of judicial decisions.

Third, the lack of clearly established procedural safeguards governing the expert's participation in court proceedings and the explanation of the expert opinion also creates uncertainty regarding the expert's legal status. As a result, courts may adopt different approaches when assessing the evidentiary value of an expert opinion.

Fourth, in the context of the increasing implementation of the adversarial principle and the principle of equality of the parties in criminal proceedings, relying solely on the written expert opinion may hinder its comprehensive and impartial evaluation.

For this reason, there is a need to expressly establish, within criminal procedural legislation, the procedure for hearing an expert opinion during the judicial investigation as a separate procedural institution, and to provide a clear normative framework governing its form, legal grounds, and the procedure for the expert's participation.

During the judicial investigation, an expert opinion constitutes one of the principal sources of evidence for establishing the truth in a criminal case. However, its procedural nature and the procedure for its assessment during court proceedings have been interpreted differently in legal scholarship. In particular, scholars have advanced differing views regarding the institution of providing an oral explanation (hearing) of an expert opinion during a court hearing.

In particular, R. Alimova and S. Otaxo'jayev argue that

"forensic examination is an integral part of the evidentiary process, and the existence of an expert opinion solely in written form is insufficient to fully disclose its substantive content."

I. R. Astanov, in turn, maintains that "the examination and explanation of an expert opinion in court constitute essential elements of the evidentiary process, and without the expert's participation, the possibility of conducting a complete and reliable assessment of the opinion is significantly limited. Therefore, the oral clarification of an expert opinion serves as an important guarantee for the implementation of the adversarial principle."

1Alimova, R., & Otaxo'jayev, S. *Forensic Examination and the Assessment of Evidence in Criminal Proceedings*. Tashkent: Tashkent State University of Law Publishing House, 2019. 145 p.

2Astanov, I. R. *The Use of Specialized Knowledge in Criminal Proceedings*. Tashkent: Yurist Publishing House, 2020. 212 p.

According to A. V. Smirnov and K. B. Kalinovskiy, "an expert opinion constitutes 'active evidence' and is not automatically regarded as reliable evidence; rather, it must be examined during the trial. In this regard..." that the expert's participation in court and the explanation of the expert opinion constitute indispensable prerequisites for the proper assessment of evidence.

B. X. Po'latov, for his part, emphasizes that "an expert opinion is not binding upon the court. The court evaluates the expert opinion freely, alongside all other evidence. Therefore, the practice of summoning the expert to court and allowing the expert to explain the opinion enhances the possibility of conducting a comprehensive examination of the evidence."

The above-mentioned scholars unanimously agree that treating an expert opinion solely as written evidence in court is insufficient. According to their common approach, the institution of hearing and explaining an expert opinion is an important procedural mechanism that ensures the comprehensive, impartial, and reliable assessment of evidence during court proceedings. Consequently, there is a need to establish this institution clearly and systematically within criminal procedural legislation.

Furthermore, during the trial, an expert opinion constitutes one of the most significant sources of evidence for establishing the facts that must be proven in a criminal case. At the same time, the need to clarify the substance of the opinion, examine its scientific basis, and assess its consistency with other evidence in the case necessitates the expert's participation in court. However, the fact that the current criminal

procedural legislation does not regulate the procedure for examining an expert in court as a complete and clearly defined procedural institution gives rise to certain practical problems.

First, although the institution of examining an expert is generally provided for by legislation, its content, scope, and procedural mechanism have not been clearly and comprehensively defined. As a result, procedural actions such as summoning the expert, questioning the expert, and requesting explanations of the scientific basis of the expert opinion are interpreted differently in judicial practice, and no uniform practice has been established.

Second, the absence of a clearly defined procedure for examining an expert also affects the procedural equality of the parties. In certain cases, the parties are unable to fully exercise their right to question the expert, or this opportunity is limited at the discretion of the court. Such circumstances may adversely affect the effective implementation of the adversarial principle.

Third, because the procedural status of an expert's examination (i.e., providing explanations before the court) remains unclear, the expert's statements are sometimes confused with witness testimony or are not regarded as an independent source of evidence.

resulting in differing approaches to the assessment of expert statements as evidence. This undermines the systematic evaluation of evidence.

Fourth, in the context of the growing role of scientific and technical knowledge in criminal proceedings, it becomes increasingly difficult to fully understand and properly evaluate an expert opinion without the expert's participation in court. Therefore, the institution of examining an expert is significant not only from a legal perspective but also from a scientific and methodological standpoint.

During court proceedings, an expert opinion constitutes one of the most important sources of evidence for establishing the facts that must be proven in a criminal case. However, the need to clarify the content of the expert opinion and verify its scientific basis has led to the development of the institution of examining an expert in court. In legal scholarship, the nature and procedural significance of this institution have been interpreted in different ways.

In particular, M. S. Strogovich emphasizes that "an expert opinion should not be automatically accepted by the court as reliable evidence; rather, it must be thoroughly examined during the trial. In this regard, the expert's participation in court and the explanation of the expert opinion are of great importance in ensuring the reliability of the evidence."

V. M. Lebedev argues that "the expert's participation in court contributes to the formation of the court's inner conviction and enables a comprehensive understanding of the substantiation of the expert opinion. In this way, the validity and legality of the court's decision are ensured."

Y. V. Vlasova maintains that "an expert opinion should be explained orally in court and examined through questioning by the parties. This serves to ensure the exercise of the parties' procedural rights and the effective implementation of the adversarial principle."

According to A. V. Smirnov and K. B. Kalinovskiy, "an expert opinion acquires its full evidentiary value only after it has been examined and explained before the court. Therefore, the examination of an expert constitutes an integral component of the system for assessing evidence."⁸

An analysis of the views expressed by the above-mentioned scholars demonstrates that the institution of examining an expert in court constitutes an important procedural mechanism for ensuring the comprehensive, impartial, and reliable assessment of evidence. Accordingly, there is a need to establish this institution clearly and systematically within criminal procedural legislation.

Within the scope of this research, the experience of foreign jurisdictions in this field was examined from a comparative legal perspective. In particular, the Criminal Procedure Code of the Russian Federation establishes the institution of examining an expert as a separate legal provision. In particular, pursuant to Article 205 of the Criminal Procedure Code of the Russian Federation, an expert may be examined for the purpose of explaining and clarifying the expert opinion. The legislation further provides that an expert may be examined only after the submission of the expert opinion and that the questions posed must be confined to matters addressed in the opinion. In Russian criminal procedure doctrine, this institution is regarded as an important procedural safeguard for ensuring the implementation of the adversarial principle. In judicial practice, the opportunity for both the parties and the court to question the expert constitutes an essential mechanism for verifying the reliability of the expert opinion.

The Criminal Procedure Code of the Republic of Kazakhstan regulates the procedure for examining an expert in greater detail. In particular, Article 285 establishes the grounds for examining an expert, while Article 374 governs the procedure for examining an expert during court proceedings. Under the legislation of Kazakhstan, the expert opinion must first be announced in court, after which the parties are entitled

to question the expert. The party that initiated the appointment of the forensic examination has the right to question the expert first. At the same time, the court retains the authority to question the expert at any stage of the proceedings. This procedure is significant because it ensures the equality of the parties and facilitates the direct examination of evidence.

Under German criminal procedural law, an expert is regarded as an independent participant possessing specialized knowledge. Pursuant to the provisions of the Strafprozessordnung (StPO), an expert may participate in court proceedings and provide oral explanations of the expert opinion. Both the court and the parties are entitled to question the expert. A distinctive feature of German practice is that the expert opinion is assessed in accordance with the principle of the direct examination of evidence. Through the expert's oral explanations, the court determines the extent to which the opinion is scientifically substantiated.

In French criminal procedure, the expert participates in the proceedings as an auxiliary participant assisting the court. Pursuant to the French Code of Criminal Procedure, the expert is entitled to explain the expert opinion during the court hearing. The judge and the parties may examine the expert by asking questions concerning the opinion. In French judicial practice, the examination of an expert constitutes an important stage in assessing the reliability of evidence. In particular, the active participation of experts in court proceedings is widely employed in complex criminal cases.

A comparative analysis of the experience of foreign jurisdictions demonstrates that the institutions of hearing an expert opinion and examining an expert have been legally established in many countries as independent procedural institutions. These institutions serve such important functions as verifying the reliability of evidence, ensuring the procedural equality of the parties, implementing the adversarial principle, and assisting the court in forming its inner conviction. From this perspective, there is a need to expressly regulate, within the national criminal procedural legislation, the procedures for hearing an expert opinion and examining an expert in court as distinct procedural institutions. Such regulation would contribute to ensuring the comprehensive and impartial assessment of evidence during the judicial investigation.

Having comprehensively analyzed the above-mentioned factors and taken into account their impact on existing legal relations, it is considered appropriate, as an effective legal solution to these problems, to

supplement the Criminal Procedure Code of the Republic of Uzbekistan with Articles 446¹ and 446² in the following wording:

Article 446¹. Hearing an Expert Opinion During the Judicial Investigation

All participants to the proceedings shall be notified of the time scheduled for hearing the expert opinion during the judicial investigation, and the expert opinion shall be heard in their presence.

The participation of the parties and other participants in the court hearing at which the expert opinion is heard shall be determined in accordance with the rules set forth in Articles 410–413 of this Code, as well as other provisions governing the participation of persons in court proceedings.

At the court hearing, an expert opinion prepared during the pre-trial stage of criminal proceedings shall be read aloud by the public prosecutor, or by the defence counsel of the defendant who requested the forensic examination, or by the representative of the victim, civil claimant, or civil defendant, or by the expert who prepared the opinion, provided that the expert is present during the judicial investigation.

An expert opinion prepared pursuant to a forensic examination ordered by the court or by the judge during the preparation of the case for trial shall be read aloud by the expert who conducted the examination. Where it is impossible to secure the expert's participation, the opinion shall be read aloud by one of the participants referred to in the second paragraph of this Article. The expert opinion shall be attached to the record of the court hearing.

Where necessary, the expert opinion shall be read aloud through an interpreter.

Article 446². Examination of an Expert in Court

On the grounds provided for in the first paragraph of Article 186 of this Code, an expert may be examined at the initiative of the court or upon the motion of the parties.

The right to question the expert shall first be granted to the party that initiated the appointment of the forensic examination or requested that the expert be summoned for examination, followed by the other parties.

After the expert has presented the expert opinion, the expert may be examined during the court hearing with respect to the matters set forth in the opinion.

With regard to an expert opinion prepared during the stage of preparing the case for trial or during the judicial investigation, the court may grant the parties additional time to prepare questions for the expert.

The expert may also be examined as a witness regarding other circumstances that became known to the expert in the course of the criminal proceedings.

CONCLUSION

In conclusion, the introduction into the criminal procedural legislation of the institutions of "hearing an expert opinion during the judicial investigation" and "examining an expert in court" as separate procedural institutions would significantly expand the opportunities for the comprehensive, impartial, and direct examination of evidence during court proceedings. The explicit legislative regulation of these procedures would facilitate the effective assessment of the substantiation and reliability of expert opinions, ensure the full implementation of the principles of equality of the parties and adversarial proceedings, and strengthen procedural guarantees in criminal justice. At the same time, it would contribute to the establishment of a uniform procedural approach in judicial practice, thereby enhancing the legality, validity, and fairness of judicial decisions.

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