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## THE SPECIALIST AND APPLICABLE REQUIREMENTS IN THE CRIMINAL-PROCEDURAL LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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### ABSTRACT

It is perceptible that a number of requirements are stipulated regarding the specialist in the process of proof by virtue of analyzing the Criminal-procedural Code of the Republic of Uzbekistan. The disinterestedness and worthwhile elements of the profession in performing the tasks assigned to the specialists as indispensable part of these requirements are vitally important in the criminal procedural relations. Ultimately, the lack of special knowledge of the specialists involved in the case shows their incompetence for their profession and inhibits them to participate in the proceeding.

### KEYWORDS

Specialist, requirement, interest, competence, incompetence, incompetence to the professional activity, criminal proceeding.

### INTRODUCTION

The laws require to be improved as the society develops. This, in turn, affects the criminal procedural legislation. Analyzing the criminal procedural law, it is apparent that the need to theoretically improve some concepts specified in the criminal procedural law and

to regulate the criminal procedural relations by clarifying them in the future.

The first and foremost is expedient to clarify the issue of the expert's suitability or incompetence for his profession as there are various requirements for the

specialist in the process of proof in the criminal proceedings.

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The requirement of disinterestedness of the specialist is stipulated in the rules of the Article 76 and the first part of the Article 78 of the Criminal-procedural Code of the Republic of Uzbekistan. According to them, if there are reasons to believe that the specialist is personally, directly or indirectly interested in the results of this criminal case, he cannot participate in the criminal proceedings. The specialist should be rejected in the presence of such cases. Disinterestedness in the result of proceeding is one of the main requirements for the specialist. The participation of specialist interested in the results of the case in a criminal proceeding may lead to the inadmissibility of the evidence obtained with his participation, in accordance with the Article 951 of the CPC1.

The specialist does not have the right to participate in criminal proceedings in the following cases and should be rejected in accordance with the first part of the Article 76 and the Article 78 of the current Criminal-procedural Code. In other cases, such as:

- 1) if the specialist participates in this case (or participated in the case before) as a victim, civil plaintiff, civil defendant, expert, interpreter, impartial witness, witness, defender, as well as a legal representative of the suspect, accused, defendant, or as a representative of the victim, civil plaintiff, civil defendant
- 2) if the specialist is a legal representative of an official responsible for conducting this case or a victim, civil plaintiff, civil defendant, expert, interpreter, impartial witness, defender, suspect, accused,

defendant or representative of the victim, civil plaintiff, civil defendant in this case if one of them is a relative;

- 3) if there are other suspicious circumstances in terms of assigning the specialist as impartial witness.

If the specialist previously participated in the conduct of this case as an official of the body conducting the preliminary investigation, as an investigator, interrogator, prosecutor, secretary of the court session, s/he cannot participate in the conduct of the same case in the future according to the second part of the Article 76 and the first part of the Article 78 of the current Criminal-procedural Code.

It is obvious that the specialist should not have any interest in the conduct of the case by virtue of the brief analysis of the Articles 76 and 78 of the CPC of the Republic of Uzbekistan. According to the requirements of these norms of the law, the specialist's interest in the results of the criminal case excludes his/her participation in the criminal proceedings.

The specialist must be considered to be interested in the results of the criminal case, and he must not be allowed to participate in the criminal case in the following circumstances:

- 1) if the specialist is a victim, civil plaintiff, civil defendant or a witness in this criminal case;
- 2) if the specialist participated in the proceedings of this crime in another capacity;
- 3) if the specialist is one of the participants in the proceedings in this criminal case and has a close relative or relatives;
- 4) if the specialist is dependent on the parties or their representatives for service or otherwise;

5) if the specialist's incompetence (lack of knowledge, lack of competence) is determined;

6) if the specialist is in a friendly, kindly or hostile relationship with the persons interested in the results of the criminal case.

The term of "interest" (Arabic - benefit, interest, income) refers to material, spiritual, physical and other (visible) benefits [1].

"The interest" is a system of activities carried out by an individual, person, people, nation, publics, state and society in order to gain some benefit, materially, morally, physically and in other ways, based on the requirements of the necessary objective and subjective factors that have arisen in the existing reality"[2, P. 161-168].

According to the second part of the Article 78 of the CPC, the specialist's previous participation as a specialist in the criminal proceedings is not considered a reason to reject him/her, therefore, it is not a basis for considering that s/he is interested in the results of this criminal case. Therefore, the specialist's participation in the investigation and other procedural actions several times and for different purposes does not cause the evidence obtained in the course of these procedural actions to be considered inadmissible.

The requirement that the specialist should not be subordinated to any of the persons involved in the case in terms of service or in any other way comes from the content of the first part of the Article 78 of the CPC. The essence of this requirement stipulates that the specialist should not be subordinate to the service or otherwise to the judge participating in case, as well as a public adviser, prosecutor, investigator, interrogator, official representative of the body conducting preliminary investigation, secretary of the court session. Moreover, the specialist should not be

dependent to a victim, civil plaintiff, civil defendant, expert, specialist, interpreter in this case, impartial, witness, defender, legal representative of the suspect, the accused, the defendant, or the representative of the victim, civil plaintiff, civil defendant and so forth. Regrettably, it is observed that the requirements of this norm are not always followed in the investigative practice.

The list of cases in which the specialist should be rejected is not limited to this basis. The specialist as well as other participants in the criminal proceedings may also be rejected on the grounds provided for in parts 1-3 of the Article 78 and the paragraphs 1-3 of the first part of the Article 76 of the Criminal-procedural Code.

If the specialist presents evidence confirming his/her direct or indirect interest in the results of the case, s/he has the right to refuse to participate in the case (paragraphs 1, 3 of the Article 76, 1, 3 of the Article 78 of the CPC). The specialist may be rejected if there are reasonable causes to believe that the specialist is personally, directly or indirectly interested in the results of the criminal case.

The requirement that the specialist's competence for his profession comes from the contents of the second part of the Article 78 of the CPC. If the specialist is found to be improper for his profession, he cannot participate in a criminal case in accordance with the second part of the Article 78 of the CPC. Therefore, professional qualification (competence) is one of the main requirements stipulated by law on a specialist. The content of this requirement is not wholly defined in the law, and there are different approaches to its definition in the criminal-procedural literatures.

A number of scholars attempt to define the meaning of the concepts of "professional competence" and

“professional incompetence”. Henceforth, it is commonly noted that the professional incompetence is “the absence or lack of special knowledge and practical skills necessary to solve issues related to the implementation of this or that investigative action put before the specialist” [3, P.18].

It can be agreed with the above statement on “professional incompetence”. In our opinion, having special knowledge, skills, practical experience and the ability to apply them in practice means that the specialist is “professional competent”, while having special knowledge and not being able to apply them in practice is regarded as “professional incompetence”.

A.V.Konstantinov defines the concept of “professional competence” as “the specialist’s having deep specialized knowledge, confirmed by the presence of appropriate education, professional and life experience” [4, P.124].

We cannot fully agree with A.V.Konstantinov’s views on the concept of “professional competence”. Because it is not necessary for a person with special knowledge to have relevant education, it is also possible to understand that the subject achieves special knowledge through life, practical or professional experiences.

A.G.Smorodina emphasizes that the existence of special knowledge and skills in a certain sphere of science, technology, art or practical activity is not the only thing that determines the professional competence of specialist, the significance is to what extent the specialist has mastered the techniques and methods of applying these knowledge and skills [5, P.78–79].

In our opinion, A.G.Smorodina explained in more detail the concept of “professional competence”. We believe that these opinions are justifiable, because it is

necessary to acquire knowledge and skills and be able to use them effectively at the same time, so that the specialist can be professional competent.

It can be concluded based on the above that “professional competence” means not only the possession of special knowledge, but also practical skills related to their application and the ability to use them effectively.

B.T.Bezlepkin defined the term “professional incompetence” as the absence of the necessary special knowledge, but also the skills to apply them in practice, in a person engaged as a specialist [6, P. 166].

From our perspective, it would be appropriate to agree with B.T.Bezlepkin’s comments on “professional incompetence”. Although a brief definition of this concept was given, it was able to fully explain this concept from the point of view of meaning.

E.B.Melnikova highlighted “a person’s lack of special knowledge” in defining the content of “professional incompetence” [7, P. 8]. From our personal standpoint, it is impossible to agree with E.B.Melnikova’s opinions in this regard. Because the fact that a person does not have “special knowledge” indicates the “professional incompetence”, but the “professional incompetence” of a specialist reflects a broader meaning than “having special knowledge”. More clarification is, the specialist does not have the skills to apply the acquired knowledge in practice, the ability to effectively use this knowledge is not formed.

To our way of thinking, “professional incompetence” means a person who does not have special knowledge or practical skills for their application, and does not have the ability to use them effectively.

## CONCLUSION



In conclusion, it is vitally important to have special knowledge of the specialist, the “professional competence” directly to participate in the case of criminal procedural relations. The specialist’s professional incompetence creates difficulties and shortcomings in the collection, formalization and research of evidence in the process of proof. The specialist’s participation in the case should not be limited to having special knowledge. In particular, one of the most important conditions is the specialist’s possession of special knowledge and skills in their application. Furthermore, the fact that the specialists involved in the case have an interest in the results of the case leads to the illegal registration of evidence in the future and prevents the impartiality of the evidence or the comprehensive consideration of the proceeding.

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