

ANALYSIS OF PROBLEMS RELATED TO PARTICIPANTS OF THE CRIME SCENE INSPECTION IN CRIMINAL CASES

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ABSTRACT

This article analyzes the specifics of specialist participation in the investigative examination, its procedural aspects, and practical significance. The article examines the tasks, functions, and role of the specialist during the examination. The rights and obligations of the specialist and issues of their improvement are also considered. Based on the obtained results, proposals for improving the participation of specialists in the examination have been developed.

Keywords: examination, investigative action, specialist, crime scene, evidence, criminal process, rights and obligations.

Introduction

The task of quickly and completely solving crimes and exposing the guilty persons requires the persons conducting the investigation to have a high level of special training and knowledge. In this case, the role and importance of a specialist, who has the necessary knowledge and skills in a specific field, helps the investigator, prosecutor, and the court in finding and strengthening evidence during investigation and trial. Therefore, it is appropriate to analyze the norms of the participation of experts in the examination and some problematic issues in the judicial investigation practice in our national criminal procedural law.

Among all investigative activities in the criminal process, especially the investigative activity of examining the scene of the incident is distinguished by the presence of a high need for the participation of an expert. In some cases, including man-made accidents or disasters, it is almost impossible to inspect the scene without the participation of experts.

MATERIAL AND METHODS

The method of comparative legal and statistical analysis was used in the research work. Generalization, induction, and deduction methods were also used in the work.

RESEARCH RESULTS

According to Yan Wei Fen, the participation of an expert in the examination is one of the most important forms of using special knowledge, which ensures the effectiveness of the investigation process in advance. The help of a specialist in the implementation of

investigative actions increases the ability of the investigator to study things and events related to the crime scene in depth [1, P.118].

N.Yablokov said that many important traces, material evidence, and cases that are important for crime detection investigation and prevention work are identified in cases where the specialist personally participates in the investigation [2, P.68].

If we analyze the norms of the national legislation regarding the participation of an expert in the examination, in accordance with Article 136 of the Criminal Procedure Code of the Republic of Uzbekistan, the examination is conducted with the participation of impartial persons at the stage of investigation, inquiry or preliminary investigation. If there is a need for an inspection during the criminal case, the court will make a decision on this and conduct the inspection with the participation of the parties.

In necessary cases, the official of the body conducting the investigation before the investigation, the investigator, the investigator, or the court takes measurements during the inspection, takes photographs, films, and video recordings, makes plans, schemes, and drawings, and takes molds and copies of traces. Experts may be involved in the review to help with these tasks.

From the above, it can be seen that in legislative review, in the performance of several tasks of an expert, the person carrying out the review can act himself or use the help of an expert. The following are defined as such actions:

- taking measurements during inspection;
- takes photos, films, videos;
- drawing up plans, schemes, drawings;
- making molds and copies of prints.

In our opinion, the above-mentioned issues serve as grounds for engaging an expert to conduct an investigative action.

Also, according to the law, the persons participating in the review have the right to draw the attention of the investigator, the investigator, and the court to all the circumstances that, in their opinion, may help to clarify the circumstances of the case.

In our opinion, in the course of the investigative actions of the inspection in forensic practice, experts use the above right more and focus the attention of the person conducting the inspection on obtaining circumstances and traces of crime that, in their opinion, may be important for the case.

The above-mentioned rules are general and apply to all types of inspections. At the same time, in addition to the above, the legislator sets the norms for the participation of an expert for certain types of inspection and investigative actions. In particular, in accordance with Article 138 of the Criminal Procedure Code, the investigator or investigator examines the appearance of the corpse at the place where it was found, with the participation of impartial and forensic doctors.

If it is not possible for such a specialist doctor to participate, another doctor will participate. If necessary, other specialists, as well as experts, are involved to examine the corpse.

In general, in the science of criminal procedural law, some proceduralists suggest that the participation of an expert in the examination of the scene of the incident is mandatory.

In our opinion, such proposals create unnecessary obstacles and difficulties for the authorities and officials who are authorized to review criminal cases. In addition, there is not enough scientific evidence to show that such proposals are sufficiently substantiated.

Scientists such as E.Pyрева and I.Potanina also expressed their opinions on this issue, and in particular, they said that the proposals aimed at making the participation of an expert mandatory in the inspection of the place where the incident happened are inappropriate.

These scientists have stated that it may be desirable that the participation of photographers and videographers in this investigative action be mandatory because this investigative action can be carried out in full compliance with the procedural rules [3, P.58].

G. Malevsky put forward his remarkable view on this matter. In his opinion, he proposed to divide inspection actions into three groups according to the level of mandatory or voluntary participation of an expert:

- a simple inspection (can be done without the participation of a specialist);
- qualified examination (with the participation of an expert by an investigative team or an investigator);
- “research” of the incident site (field research carried out with the participation of a qualified expert) [4, P.29].

In our opinion, the organization of inspection practice in the above approach will not fail to contribute to its effectiveness. At the same time, since the implementation of this proposal requires a lot of resources and a material and technical base, the issue of its application should be thoroughly analyzed based on the criteria of the high level of crime and the large number of crimes.

As some scholars have rightly pointed out, the official conducting the review makes the decision to involve an expert in conducting the review based on the analysis and evaluation of existing investigative activities and cases. The choice of a specialist is determined by the nature of the special knowledge required [5, P.378].

It should also be taken into account that the specialist uses the rights and fulfills the obligations established by the legislation while participating in the inspection and investigation activities.

Analyzing the rights and obligations of an expert in national legislation, according to Article 69 of the Code of Criminal Procedure, an expert is called to assist the investigator, investigator, prosecutor, and court in finding and strengthening evidence during investigation and trial. A doctor, pedagogue, and other persons with the necessary knowledge and skills can be called experts.

At the defense's request, the investigator, investigator, prosecutor, and the court may call an expert to give an explanation. An expert may be called to use scientific and technical means (recorder, video recorder, film recording equipment, and other equipment) during the investigation and trial.

The analysis of expert practice shows a number of organizational-procedural issues that help to better look at the scene of the incident and increase the efficiency of crime investigation and solving in general. In particular, for specific crimes (accidents, fires, explosions, etc.), two groups of experts must participate in the inspection of the scene of the incident: one ensures safety at the scene of the incident, and the other (experts in the field of investigation of emergency explosions) in accordance with the procedural obligations assigned to them assists the investigator in identifying, recording and removing traces of the explosion.

While the activity of the second group of specialists in this category is regulated by law, there is no such regulation in relation to the activity of the first group of specialists. This often leads to the arrival of persons who do not have the appropriate professional training and cannot assess the importance of the available trace evidence.

Yan Wei Fen, who expressed his opinion on the above issue, believes that clearly defining the obligations of experts responsible for ensuring the safety of the process at the scene of the incident in the criminal procedural law will serve to regulate and improve the efficiency of this activity [6, P.178].

ANALYSIS OF RESEARCH RESULTS

In our opinion, although the above issues are considered to be of particular importance for the organization of inspection in the zones of various dangerous situations, they are not important enough to be clearly regulated in criminal-procedural legislation. After all, reflecting such activities not in the criminal procedural legislation, but in other legal documents is considered sufficient to achieve the expected result.

According to E. Pyreva and I. Potanina, the specialist performs the following main functions during the inspection of the scene of the incident:

- 1) recording the progress and results of investigative actions;
- 2) help in organizing criminal prosecution, identification, and arrest of the person who committed the crime;
- 3) to help the investigator in identifying, recording, and removing traces (primarily invisible and difficult-to-see traces) [7, P.256].

According to these scientists, photographers and videographers primarily help in recording the progress and results of the inspection. These experts must move in the inspection area in such a way that their movement does not damage the existing traces, the one hand, and on the other hand, it must allow them to record everything discovered during the inspection. It is during the inspection that the expert photographer uses the basic techniques of forensic photography.

According to E. Ishchenko and N. Egorov, the videographer also uses methods similar to the above. The following can be distinguished as methods specific to the operator: single-camera and multi-camera shooting, shooting by changing the direction and angle, using the pan-tracking method to take pictures by moving the camera closer to the object and moving away from it, taking pictures in frames [8, P.79]. The second function mentioned

above is performed by dog handlers working with service dogs during the inspection of the scene. According to A. Smushkin, the dog is the most successful tool in finding the person who committed the crime by taking a sample of something or a trace, as well as in chasing the “hot trail” [9, P.89].

In addition to the above opinion, we give an example of the following procedure for using the help of a dog specialist. After sniffing a trail or object left by the perpetrator, the service dog is given free rein to pass by each group of people who may be the perpetrator. Inspector-cynologists and operatives should pay attention not only to the reaction of the service dog but also to the behavior of the persons being sampled.

During hot trail pursuits, the dog handler should not restrict the service dog's targeted movement and should not try to direct it to suspicious tracks. At the same time, the dog handler should not give the service dog absolute freedom of movement so as not to attack bystanders or show excessive aggression towards the person being pursued.

In identifying, recording, and removing traces, the help of forensic experts is mainly used. However, forensics, explosives, and other experts may also be involved in the process. One of the organizational forms of the expert's participation is his involvement as a duty officer or as a part of investigative and operational teams formed to review individual cases.

During the preparation for the examination, even before going to the scene of the incident, the specialist can direct the investigator to the question of the forensic technique necessary for this investigative action and help in the preparation of preliminary versions. When preparing forensic equipment for inspection, the specialist first checks the completeness of the investigative suitcase. It is recommended to supplement the existing technical means with additional search equipment and recording tools based on the specific incident under investigation.

The specialist helps the investigator determine the scope of the inspection, and the method of movement during the inspection, and advises on the features of using technical and forensic assistance at the scene of the incident.

Participating in the inspection of the scene of the incident and the study of traces, the specialist can restore the image of the incident, and the mechanism of the crime in advance. Although it is recommended to remove all traces found at the scene of the incident, it is advisable for the expert to tell the investigator which traces are not related to the incident under investigation.

Reducing the amount of items taken away for examination helps to increase the efficiency of the appointed examinations. If it is not possible to make a clear conclusion about the connection of a particular trace to the incident under investigation, it is appropriate for an expert to express his opinion about taking a copy of this trace.

E.Pyрева and I.Potaninalpr stated that the specific duties of an expert in carrying out an examination in a specific criminal case are determined by the type of crime and the state of the investigation during the investigation. Thus, criminal explosives experts must ensure the safety of the scene, the absence of additional explosive devices, demining those found, collecting fragments of the detonated device and unreacted explosives, traces of the

explosion, soil samples, and damaged objects. In this situation, experts should also pay close attention to the search for other traces: fingerprints, footprints, micro-objects, and traces of vehicles.

In addition, the specialist should guide the investigator on the procedure for examining the scene of the accident and the procedure for examining the corpse. For example, usually, the corpse is the center of the scene, and during the examination, the movement itself must pass eccentrically [10, P.125].

In addition to the above, we also consider it appropriate to emphasize that during the examination of the corpse, it is appropriate for the expert to encourage the coroner to observe the following order of examination of the corpse:

- location and condition of the corpse;
- things on the corpse and near it; clothes and shoes of the corpse;
- general information about the corpse;
- the presence of biological changes specific to the corpse and their severity;
- the parts of the corpse and the characteristics of the wounds in it;
- characteristics of the place where the corpse lies.

As A.Zinin noted, the specialist should focus on searching for objects of biological origin (blood, saliva, sperm, hair, nail fragments, etc.) and taking samples from them [11, P.87].

In our opinion, the above opinion of A. Zinin cannot be denied. At the same time, it would not be appropriate for an expert to limit himself to the identification of one category, for example, "objects of biological origin" as mentioned above. In doing so, the expert should pay more attention to finding any traces that help to determine the mechanism of the crime (including traces that appeared when the victim and the accused came into contact) and to find out any important information about the person who committed the crime.

At the final stage of the examination, the specialist participates in the analysis of the results of this investigative action, determining the further fate of the seized traces and objects, determining the future directions of evidence collection, drawing up versions of the investigation taking into account the information obtained during the examination.

It should also be taken into account that the cases listed above apply not only to the inspection of the scene of the incident but also to other forms of inspection. In particular, similar tasks are performed by experts during the inspection of the environment, housing, or other buildings.

Some scientists say that when inspecting the scene of the incident, experts can evaluate the general situation, the nature and extent of work that can be done, and form the necessary ones from all the available tools in a short time. This allows specialists to effectively identify and take samples of all the necessary traces and fragments of important objects for work. Specialists should be equipped with mobile kits, including a theodolite or compass, plumber's tools, military digging, and other tools, as well as materials necessary for the detection, sampling, and sealing of blast traces [12, P.96].

In our opinion, we cannot agree with the above view. The reason is that professionals carrying such a wide range of tools as above can have a negative impact on the quality of

work. Therefore, it is appropriate for specialists to form and use a set of appropriate tools based on the nature of each investigated case, and this will increase the efficiency of their work.

If we analyze the issue of regulation of the rights and obligations of the specialist, according to Article 70 of the Code of Criminal Procedure, the specialist has the following rights:

- to know for what purpose he was called;
- refusal to participate in proceedings if one does not have relevant knowledge;
- familiarization with case materials related to the procedural actions in which he/she participates;
- to submit complaints and comments related to the procedural actions in which he/she participates;
- asking questions to persons participating in investigative activities and court proceedings with the permission of the investigator, investigator, prosecutor, and the court;
- filing complaints against the actions of the investigator, investigator, prosecutor, and the court.

Also, the obligations of the specialist are defined in the law. In particular, the specialist is required to fulfill the following obligations:

- to be present at the request of the investigator, investigator, prosecutor, and court;
- participation in investigative activities and court hearings, using scientific and technical means, special knowledge, and skills to find and strengthen evidence;
- drawing the attention of the investigator, investigator, prosecutor, and the court to the circumstances that are important for determining the truth in the case;
- to give explanations on the actions he is performing;
- to help the investigator, investigator, prosecutor, and the court in determining the causes of the origin of the crime, the conditions that allowed it to be committed, and developing measures to eliminate them;
- non-disclosure of inquiry and preliminary investigation materials without the permission of the investigator, investigator, or prosecutor;
- it is necessary to observe the order during the investigation of the case and the court session.

In our opinion, although the above-mentioned article defines the broad obligations of a specialist in a certain area, the legislator did not clearly define some necessary obligations of a specialist in the legislation. In particular, the expert's obligations, such as not to intentionally destroy traces, objects, and other information of evidentiary value, as well as not to intentionally give false advice, information, or explanations to the person conducting the inspection, are not specified.

These issues have been the cause of scientific debates by processualist scientists to a certain extent. In particular, in the opinion of B. Tkhakumachev, the legislator should regulate the obligation of the specialist not to commit the above actions [13, P.65]. Also, A. Charykov stated that the obligation of the expert not to intentionally give false advice, information,

or explanation to the person performing the inspection should be clearly defined in the legislation [14, P.78].

CONCLUSIONS

In our opinion, based on the above analysis, it is necessary to determine part 2 of Article 70 of the Code of Criminal Procedure of the Republic of Uzbekistan in the following version:

“Specialist: to be present at the summons of an investigator, investigator, prosecutor, court; participation in investigative actions and court hearings, using scientific and technical means, special knowledge and skills to find and strengthen evidence; drawing the attention of the investigator, investigator, prosecutor and the court to the circumstances that are important for determining the truth in the case; give explanations on the actions he is performing; to help the investigator, investigator, prosecutor and court in determining the causes of the crime, the conditions that allowed it to be committed, and developing measures to eliminate them; non-disclosure of inquiry and preliminary investigation materials without the permission of the investigator, investigator, prosecutor; do not intentionally destroy traces, objects and other information of evidentiary importance; does not intentionally give false advice, information or explanation during participation in investigative activities; must follow the order during the investigation of the case and the court session.”

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