



### Issues of appointing and conducting forensic examinations in criminal proceedings in some CIS countries.

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**Annotation:** The development of modern ideas about forensic expertise in domestic criminal justice and some CIS countries is being studied.

In the article, taking into consideration the comparative legal analysis of the legislation of some CIS countries regulation of forensic examination, the features of the national approaches to this activity are revealed.

**Keywords:** forensic examination, appointment and conduction of forensic examinations, special knowledge, expert.

#### Introduction.

In accordance with fundamental international documents, the Constitution of the Republic of Uzbekistan, judicial protection is an inalienable, absolute human right that cannot be limited under any circumstances (Article 44 of the Constitution of the Republic of Uzbekistan). The right to judicial protection is exercised through a set of powers: the right to go to court, the right to an objective and fair court, the right to make a lawful and reasoned decision, the right to review a court decision. Thus, the right to judicial protection covers absolutely all stages of the judicial process.

Within the framework of the trial, a forensic examination is an independent procedural action aimed at obtaining information about the facts (evidence), on the basis of which the court establishes the presence or absence of circumstances that are important for the correct consideration and resolution of the case. Moreover, one of the types of evidence in the criminal process is the conclusion of an expert (Article 87 of the Code of Criminal Procedure of the Republic of Uzbekistan).

Although the law determines that "no evidence has a predetermined force for the court" (Article 187 of the Code of Criminal Procedure of the Republic of Uzbekistan), an opinion of an expert can be decisive in the outcome of a case. Thus, the role of forensic examination in the implementation of the right to judicial protection is extremely important. Since the fate of a person ultimately depends on the result of the examination.

The issues of appointing and conducting forensic examinations in the criminal proceedings of the CIS countries is an important topic for consideration, since the judicial system should not stand still and must constantly develop. By studying this area in other states, one can evaluate the pros and cons of our state. Legislative regulation in this area among the CIS countries is very similar, but there are also interesting differences.



In the following paragraphs, a consistent analysis of the appointment and conduct of forensic examinations of some CIS countries will be presented.

### **Body.**

The Code of Criminal Procedure of Kazakhstan consists of 674 articles, articles 79, 80, 92, 93, 262-287 are devoted to the process of using special knowledge. Article 79 of this code is devoted to the legal status of an expert, according to which a person with special knowledge who is unbiased in work can be involved as an expert. In our opinion, if in Article 67 of our national legislation, dedicated to an expert, the word “unbiased” would be included in the rule explaining an expert, the article would be improved.

Another positive provision in the Code of Criminal Procedure of Kazakhstan is devoted to “reimbursement of expenses and receiving incentives for an expert for engaging in activities that are not within the competence of an expert” within the framework of the rights of an expert. In our opinion, taking into account the fact that in practice experts sometimes have to work outside the scope of their work, this addition should also be made to Article 67 of the Code of Criminal Procedure of the Republic of Uzbekistan.

Unlike our national legislation, the Code of Criminal Procedure of Kazakhstan includes actions prohibited by an expert, including: 1) communication without notifying the person conducting the criminal case on expert examination; 2) collection of materials for independent work; 3) examination of the object of expertise without the permission of the body appointed by the expert, which resulted in its complete or partial damage. In our opinion, this procedure should be included in Article 68 of the Code of Criminal Procedure of the Republic of Uzbekistan after the rights of an expert and before duties.

The important part is that Article 79 of the Code of Criminal Procedure of the Republic of Kazakhstan on an expert defines only responsibility for giving a false opinion. Our national legislation provides for “criminal liability for refusal or evasion to give an opinion without good reason”. In our opinion, this procedure should be excluded from the Criminal Procedure Code of the Republic of Uzbekistan, as it restricts a person's right to free work.

Article 80 of the Code of Criminal Procedure of the Republic of Kazakhstan is dedicated to a specialist, according to which it is possible to participate in the work of a psychologist as a specialist. In our opinion, taking into account that this person is also a specialist in our national legislation, it is necessary to include in article 69 a psychologist called a specialist registration in the following form: “A doctor, teacher, psychologist and other persons with the necessary knowledge and qualifications can be called a specialist.” In addition, the actions prohibited by the expert by our national legislation should include the procedure, which is also provided for the expert by Article 80 of the Code of Criminal Procedure of the Republic of Kazakhstan in relation to the expert.

Another norm that can be taken into account in our national legislation is Article 274 of the Code of Criminal Procedure of the Republic of Kazakhstan (“Rights of a suspect, accused, defendant, witness, defense counsel, representative of the victim in the appointment and conduct of an examination”), according to which in the relevant article 179 of our national legislation rights are provided only for suspects, accused, defendants. Since this situation is contrary to the principle of equality, in our opinion, the title and content of Article 179 of the Code of Criminal Procedure should include a witness, a defense counsel and a representative of the victim.



Another unique norm of the Criminal Code of the Republic of Kazakhstan, which is not in our national legislation, is called "Participation of participants in the criminal process in the production of expertise." According to it, "The entity that appointed the expert and conducts the case has the right to participate in the process of conducting an expert examination and may receive explanations from the expert regarding his actions. The fact of its participation in the examination process is reflected in the expert's opinion. People interested in the work or their representatives may also participate in the examination process, and their participation in the examination process entails the mandatory participation of the entity that appointed the expert.

In the Code of Criminal Procedure of the Russian Federation, the issue of appointing and conducting a forensic examination is regulated in Chapter 27 of the Code of Criminal Procedure of the Russian Federation, namely, Articles 195-207.

The provisions regarding the participation of the investigator in the production of a forensic examination, provided for in Article 197 of the Criminal Code of the Russian Federation, are not reflected in a separate article in the Criminal Code of the Republic of Uzbekistan. According to this rule, the investigator may also participate in the examination process and ask questions about the actions performed by the expert, their explanation and other cases of interest to it. This provision, in turn, is required to be reflected in the expert opinion. In the Criminal Procedure Code of the Republic of Uzbekistan the question of what powers the investigator has in the process of conducting an examination remains open, which causes a number of ambiguities in the practice of judicial investigation.

Article 198 of the Criminal Code of the Russian Federation establishes the rights of a suspect, accused, victim and witness in the appointment and production of an expert examination. Unfortunately, our legislation does not provide the rights of the victim and witness in the appointment and conduct of an examination. In our opinion, this limits the ability of the victim and the witness to exercise this right. In article 179 of the Code of Criminal Procedure of the Republic of Uzbekistan, it is advisable to state as the rights of the suspect, the accused, the defendant, the victim and the witness in the appointment and conduct of the examination. It is necessary to create equal opportunities for participants in criminal proceedings.

The rules on the institution of expertise in the Code of Criminal Procedure of the Russian Federation are regulated somewhat systematically, and some of its advanced ideas can be used to improve the expert norms of our domestic criminal procedure legislation. The Code of Criminal Procedure of Kyrgyzstan, adopted on May 29, 1999, singles out 22 articles regulating the institution of expertise.

Article 63 of the Code of Criminal Procedure of Kyrgyzstan deals with the rights and obligations of an expert and describes cases in which the exercise of the rights and obligations of an expert is prohibited. In accordance with it: dialogue on issues related to the participants in the process; collect information for independent research; it is prohibited to conduct research that can change the form and nature of the objects sent for research, without the permission of the investigator or the court. The use of this provision will improve article 68 of the Criminal Procedure Code of the Republic of Uzbekistan. The norm of the Code of Criminal Procedure of Kyrgyzstan on the removal of an expert (Article 78), essentially similar to the norms of the Code of Criminal Procedure of the Republic of Uzbekistan.



The Azerbaijani Code of Criminal Procedure of July 14, 2000 is very close to the norms of expertise in our national criminal procedure law. However, the first part of Article 271 of the Azerbaijani Criminal Procedure Code, known as the expert opinion, specifies the term for issuing the opinion, which is not in our legislation. This period is 1 month, its beginning is determined by the receipt of the decision of the investigator or the court or the request of the lawyer or the parties to conduct an examination and includes the period until the expert issues an opinion. In our opinion, limiting an examination to a certain period may adversely affect its quality. Thus, the effective use of the positive experience of foreign countries in conducting examinations in criminal cases is an important criteria for further improving of our domestic criminal procedure legislation and increasing the effectiveness of this institution.

### Conclusion.

Criminal liability for refusal to give an expert opinion or deviation should be removed from the Code of Criminal Procedure and the Criminal Code. Because this is the work of an expert.

In article 179 of the Code of Criminal Procedure of the Republic of Uzbekistan, the title and content of article 179 of the Code of Criminal Procedure should include a witness, a defense counsel and a representative of the victim.

### List of used literature:

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