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ETHICAL AND PSYCHOLOGICAL REQUIREMENTS FOR A FORENSIC EXPERT IN THE CRIMINAL PROCESS

Until recently, due attention has not been paid to issues of professional ethics and morality of justice workers as an important element of the culture of criminal proceedings. However, without the implementation of certain judicial-ethical rules, criminal procedure activity will not be able to fulfill the tasks formulated in the law. Observance by an expert of not only legal, but also moral standards is a certain guarantee of the reliability of his conclusions, the validity of his conclusion. The need for a thorough study of the moral principles of a forensic expert is determined by the very essence of the expert examination as a way of obtaining evidence through the use of special knowledge, and also by the great role that examination plays in legal proceedings. The purpose of the article is to analyze the current state of this problem from the point of view of ethics, law and psychology. Based on modern scientific methods and a wide range of foreign sources and legislative acts of different countries, an analysis of the global discussion on the issue of professional ethics and morality of experts is carried out. The application of general scientific methods made it possible to compare the domestic and international methodology of work. The classification of states based on the criteria of professional ethics and morality. The examples of the legal framework on the professional ethics of experts examined issues of legal regulation.

As a result of the study, conclusions are drawn about the legal personality of the expert and his legal awareness. In particular, the assumption is justified on how the legislation of the Republic of Kazakhstan should regulate these issues in an ethically consistent manner.

Key words: law, forensic expert, professional ethics, legal awareness, inner conviction.

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Қылмыстық процестегі сарапшыға қойылатын этикалық және психологиялық талаптар

Қылмыстық сот ісін жүргізу мәдениетінің маңызды элементі ретінде әділет қызметкерлерінің кәсіби этикасы мен адамгершілік мәселелеріне жақын уақытқа дейін тиісті көңіл бөлінбеген. Сонымен қатар, белгілі бір сот-этикалық ережелерді орындамай қылмыстық іс жүргізу қызметі заңда тұжырымдалған міндеттерді орындай алмайды. Сарапшының тек құқықтық қана емес, сондай-ақ адамгершілік нормаларды сақтауы оның тұжырымдарының шынайылығына, оны қорытындының негізділігіне белгілі бір кепілдік болып табылады. Сот сарапшысы қызметінің адамгершілік бастауларын терең зерттеу қажеттілігі арнайы танымдарды пайдалану арқылы дәлелдемелерді алу тәсілі ретінде сараптаманың мәні, сондай-ақ сот ісін жүргізуде сараптама атқаратын үлкен рөлімен айқындалады. Мақаланың мақсаты этика, құқық және психология тұрғысынан осы проблеманың қазіргі жай-күйіне талдау жүргізу болып табылады. Қазіргі заманғы ғылыми әдістер мен шетелдік дереккөздердің кең ауқымы мен әртүрлі елдердің заңнамалық актілері негізінде сарапшылардың кәсіби этикасы мен адамгершілік мәселесі туралы жалпы әлемдік пікірталасқа талдау жүргізілді. Жалпы ғылыми әдістерді қолдану жұмыстың Отандық және халықаралық әдіснамасын салыстыруға мүмкіндік берді. Мемлекеттерді кәсіптік этика мен адамгершілік өлшемдері негізінде жіктеу жүргізілді. Сарапшылардың кәсіби әдеби туралы заңнамалық-құқықтық базаның мысалында құқықтық регламенттеу мәселелері қарастырылды.

Жүргізілген зерттеу нәтижесінде сарапшының құқық субъектілілігі және оның құқықтық танымы туралы тұжырымдар жасалды. Атап айтқанда, Қазақстан Республикасының заңнамасы осы мәселелерді этикалық тұрғыдан жүйелі түрде регламенттеуі тиіс деген болжам негізделген.

Түйін сөздер: құқық, сарапшы, кәсіби этика, құқықтық сана, ішкі наным.

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Этические и психологические требования к эксперту в уголовном процессе

Вопросам профессиональной этики и нравственности работников юстиции как важному элементу культуры уголовного судопроизводства, до недавнего времени не уделялось должного внимания. Вместе с тем без выполнения определенных судебно-этических правил уголовно-процессуальная деятельность не сможет выполнять задачи, сформулированные в законе. Соблюдение экспертом не только правовых, но и нравственных норм является определенной гарантией достоверности его выводов, обоснованности его заключения. Необходимость в глубоком исследовании нравственных начал деятельности судебного эксперта определяется самой сущностью экспертизы как способа получения доказательств путем использования специальных познаний, а также той большой ролью, которую играет экспертиза в судопроизводстве. Целью статьи является проведение анализа современного состояния данной проблемы с точки зрения этики, права и психологии. На основе современных научных методов и широкого круга зарубежных источников и законодательных актов разных стран осуществлен анализ общемировой дискуссии о вопросе профессиональной этики и нравственности экспертов. Применение общенаучных методов позволило сопоставить отечественную и международную методологию работы. Проведена классификация государств на основе критериев профессиональной этики и нравственности. На примерах законодательно-правовой базы о профессиональной этике экспертов рассмотрены вопросы правовой регламентации.

В результате проведенного исследования сделаны выводы о правосубъектности эксперта и его правосознании. В частности, обосновано предположение о том, как законодательство Республики Казахстан должно регламентировать данные вопросы этически последовательным образом.

Ключевые слова: права, судебный эксперт, профессиональная этика, правосознание, внутреннее убеждение.

Introduction

Today, he can become the subject of a qualified expert study with significant, often fateful consequences. Thus, one can easily conclude that ethical and psychological forms are necessary for this vital sphere of application of scientific knowledge. This proves the reliability of his conclusions, the validity of his conclusion. This is necessary, regardless of the specific objects of examination (handwriting, a trace of a papillary pattern, traces of an explosion, etc.) and sometimes life. The study should be proved that forensic examinations are evidence of the use of special knowledge, which plays the role of expertise in legal proceedings.

The object of research is public relations, due to ethical and psychological criteria that must be observed by a forensic expert in the production of forensic examination. Empirical sources and the regulatory framework govern various aspects of forensic issues in modern conditions.

The purpose of the article is to analyze the current state of this problem, analysis of general research

and discussions on professional expertise. The application of general scientific methods made it possible to compare the domestic and international methodology of work. The classification of states based on the criteria of professional ethics and morality, in accordance with the legal framework of professional expertise.

As a result of the studies, conclusions are drawn about the legal personality of the examination and its legal consciousness. In particular, a reasonable assumption that the legislation of the Republic of Kazakhstan should regulates data in an ethically consistent manner.

Materials and methods

In order to study the problems studied and analyzed. When conducting an analysis of ethical and psychological requirements, the following methods are used: analysis and synthesis, induction and deduction, formalization, comparative analytical, scientific analysis, logical methods that allow comparing national and international methodological work.

Results and discussion

The authors of the “Judicial Ethics” also consider judicial ethics “as a science of the moral principles of judicial and related activities”, including expert, but they are limited only to a brief consideration of the ethical aspect of the relationship between the body that appointed the expert and the expert. Kotov D.P. relates to a special part of judicial ethics issues related to the study of the moral principles of preliminary investigation, trial, procedural activities of a prosecutor, lawyer, expert research, as well as questions about important moral qualities of participants in legal proceedings (Gorskij, 1973).

Krylov I.F. and others also believe that the ethics of a forensic expert is an integral part of judicial ethics. “Provisions of judicial ethics. – he points out – they apply both to the expert’s activities in the preliminary investigation, and to his activities in court.” In the course of the criminal process, attention is paid to the professional ethics of the expert, but it is noted that the moral qualities of the expert “must be discussed especially” (Boikov, 1989).

However, there is another point of view. Its supporters are Strogovich M.S., Ratinov A.R., Zarhin. The problems of expert ethics, in their opinion, are not included in the range of issues resolved by judicial ethics. The authors do not explain why they exclude expert ethics from the judicial ethics system. However, Strogovich relates the issue of assessing expert opinions to a special part of judicial ethics. The list of specialties that cover the beginnings of judicial ethics did not include experts and Tsyarkin. People who are not employees of expert institutions are often involved as experts in the preliminary investigation and in court, and because of this, their activities are not professional. A survey of investigators and judges, as well as a study of criminal case materials, shows that experts working in expert institutions in the vast majority of cases (99.8%) are involved.

The work of any expert is always closely connected with the activities of the judicial investigative bodies and has the same goal – to help establish the truth in criminal cases by special means and methods. It is on the basis of this provision that we can say that experts have a sense of justice in its content is very close to the professional legal consciousness of lawyers. The activities of forensic experts are regulated by the same legislative acts as the activities of judges, prosecutors, investigators, lawyers, criminal

procedural and civil procedural laws. Deviation from the requirements of the law and morality is equally unacceptable both on the part of the investigator, judge, and on the part of the forensic expert.

The expert’s opinion as a source of evidence largely determines the course of the criminal and civil cases, and affects the fate of people. Therefore, all participants in the process must be convinced not only of his high professional qualifications as an expert, but also of his moral stamina. The slightest doubt about the impeccability of the moral character of the expert makes his conclusion doubtful, not having evidentiary value.

Also Koni A.F. believed that “a series of ethical rules that form the necessary moral side” applies equally to both the judge and his “closest assistants.” The question of the place of expert ethics in the judicial ethics system is still open and requires special consideration.

Currently, in the criminal process, attention is drawn to the role of organizational, psychological and ethical factors in improving expert activity. These factors can significantly improve the scientific organization and performance. In this regard, it seems to us that there is a need to identify and study the role of the individual in the process of producing expertise and humanistic content in using data from scientific and technological progress.

In its basic constants, the activity of an expert refers to the activity of a scientific one: “expert research differs from scientific research only in that it does not learn general patterns that are characteristic of a large set of phenomena, but particular ones that are characteristic of single or small groups of phenomena” (Jakobs, 2000).

But unlike the traditional scientist, the expert is placed in more severe conditions, determined by the procedural nature of his activity. An expert’s activity is, first of all, a judicial activity, where everything is painted in moral tones. An expert does not deal with abstract truth, but actual truth, associated with the protection of the highest values of human existence, and therefore affects social life. “An expert is not only a competent person, but also an impartial researcher who serves justice with a clear conscience, using all the achievements of science and technology to give an objective, reliable conclusion,” writes Shlyakhov A.R. The requirement of an objective approach contains both legal and moral meaning.

Morality plays an important role in the formation of the moral qualities of an expert. The legal

literature still does not pay attention to the moral education of experts, the course of judicial ethics is taught at the law faculties of not all universities, and a significant part of the experts are persons of non-legal specialties. A survey of experts showed that, as a rule, persons with no special education work in expert institutions. This question is only part of the complex problem of expert training; the question of assessing whether an expert observes one or another moral norm remains open.

The authors of the above-mentioned "Judicial Ethics" believe that the inclusion in the judicial ethics of not only moral standards of official activity, but also norms of extra-judicial conduct cannot raise objections.

It seems that, along with criminal liability for giving an obviously false opinion, it is necessary to provide in the departmental instructions and disciplinary liability for violation of moral standards: "If an expert commits acts incompatible with moral and ethical standards, he may be deprived of the qualification of a judicial expert in the established manner".

It remains inexplicable that the task of selecting expert staff has still been ignored by researchers and drafters of the instruction on the procedure for conducting expert examinations: who can be entrusted with this, according to Koni, "a moral and responsible business" (Koni 1967). There is no qualification, i.e. conditions for persons applying for an expert position. Requirements for the personality of the expert, professionally important moral qualities have not been developed, for the occupation of this position only the presence of higher education, the preparation of the relevant field of forensics and the qualification of a forensic expert are provided.

In the legal literature, issues related to the professional deformation of the personality of an expert have not been properly developed. According to Arotsker L.E., her most characteristic manifestations are a reassessment of her capabilities, knowledge, hasty conclusions, ignoring the opinions of her colleagues, simplifying research methods, etc. (Arocker 1973). Studying the manifestations of professional deformation and identifying ways to overcome them are of particular interest.

Relationships in the collective of an expert institution cannot be moved beyond the limits of expert, and therefore judicial ethics, because they also affect the effectiveness of professional activity. With regard to participants in expert activities, there are parties that are not amenable

to legal settlement. Moral relations in the team of the expert institution include the relationship of the expert and the head, participants in the commission, complex and repeated examinations. The named relationships are built in accordance with general moral standards about relationships in the team. However, the specificity of expert activity also implies certain differences from the work of any other team.

Arotsker L.E. considers the relationship of an expert and the head of an expert institution only in a situation where their opinions on the results of the study do not coincide. He also covered some issues of a moral order in the relationships of participants in repeated examinations.

The legal literature pays attention to issues of the procedural settlement of the relations of participants in commission and complex examinations, but ignored the moral aspects of their relationship.

The procedural relations that develop during the appointment and conduct of the examination are determined by the principles of the criminal process, but they also have a certain moral aspect.

One of the manifestations of moral principles in an expert's activity is that his conclusion should reflect an internal belief i.e. confidence in the reliability of conclusions. The objective side of an internal conviction can only be a body of evidence established during an expert study, regardless of any external influences and influences. In some cases, the impact on the expert may be indirect: to be the result of the influence on him of the criminal case materials containing an assessment of the object investigated by other persons, conclusions obtained using computers, and conversations with the investigator.

As mentioned above, Strogovich considers it appropriate to classify the issues of assessing the expert's opinion by the investigator and the court as a special part of judicial ethics. A historical review of the role and place of the expert, the assessment of the expert's opinion in the system of judicial evidence from the theory of a scientific sentence, to the current state of this issue was given by Cheltsov, Rakhunov, reviewed by Petrukhin, however, moral assessment criteria have not been developed to date.

The authors of "Theory of Evidence in the Soviet Criminal Procedure" indicate that "additional prerequisites for the objectivity of expert research" can be created by the active actions of participants in the process, in particular,

by the participation of a suspect in conducting an examination.

A detailed statement in the expert's opinion of the methods and results of the studies, as well as a thorough justification of the answers to the questions posed are the absolute factors for the examination in court. How can this be regarded from the point of view of morality and correlated with the fact that all expert methods in the recent past are described in the literature with the heading "for official use"? Each of the principles of forensic examination, which we examined in the previous chapter, has not only its own legal, but also moral aspect. Thus, the principle of independence and autonomy of an expert when conducting an moral examination for an expert means responsibility for his conclusions, and the expert bears this responsibility personally, not putting it on the shoulders of the head of the expert institution, investigator or judge (Ogloff, 1996).

The principle of ensuring the rights of citizens in the appointment and conduct of an examination in moral terms involves the formulation of a number of ethical requirements during the examination, in the relationship of an expert and an object of research – a person. These ethical requirements can be expressed as follows:

1. During the examination, the expert is obliged to respect the honor and dignity, as well as other moral interests of the subject.

2. The expert during the research should not allow actions that are unnecessarily related to the intervention in the subject's body.

3. The expert during the study is not entitled to allow actions that threaten the life and health of the subject.

4. An expert is required to keep secret the information that has become known to him in connection with the examination (Sanders 2007).

In the legal literature, a fair proposal has been formulated, according to which the Code of Criminal Procedure of the Republic of Kazakhstan needs to introduce a general rule on respect for the honor, dignity and other moral values and interests of the person, which would be addressed not only by bodies and persons conducting criminal proceedings, but also by experts. The Law of the Republic of Kazakhstan "On Forensic Activities" contains some ethical requirements for the activities of an expert. The Code of Ethics of a Judicial Expert, approved in 2017 by an order of the Minister of Justice of the Republic of Kazakhstan, is also noteworthy. The psychological problems of expert activity

are inextricably linked with ethical problems. It seems that the problem of the psychology of expert activity is intertwined with the legal consciousness of the expert and such an integral part as legal psychology.

When talking about the psychology of expert activity, it is necessary to consider this problem from the point of view of the psychology of the relationship of the body, the person appointing the examination and the expert, the psychological processes that occur during the expert study, as well as the psychology of the relationship of the expert and the expert. It should be noted that we proceed from the fact that the majority of experts appointed in a criminal case are employees of expert institutions, which means that they are constantly engaged in activities that can safely be called law enforcement in the broad sense of the word. Moreover, experts, of course, are not persons and bodies carrying out criminal proceedings.

However, most employees of expert institutions, due to their constant interaction with investigators, judges, prosecutors, as well as persons who have committed a crime or were its victims, have an exaggerated idea of the importance of their own activities. Most experts believe that it is with the help of special knowledge that crimes are revealed and the perpetrators are exposed, and that the deprivation of their right to collect evidence is an obstacle to the expert's work and entails unnecessary formal red tape. On the other hand, it is precisely the features of the expert's activity that give rise to the expert's special legal consciousness, which is very close in content to the professional legal consciousness of a lawyer (Golding, 1990).

It seems to us that the legal consciousness of experts is characterized by:

1. The conviction of justice and the usefulness of law, the condemnation of criminal behavior.

2. The level of punitive claims in comparison with law-abiding citizens among experts working in expert institutions also tends to expand methods and methods of investigating and solving crimes by providing additional powers to experts and by reducing the rights and freedoms of the person, its inviolability, privacy of correspondence, telephone negotiations and telegraph communications.

3. Leading for experts are interests and goals that are consistent with national values.

4. Prestigious assessments of their own activities and the activities of expert institutions of various departments are different. The assessment of the activities of its own department is higher

than the assessment of the activities of other departments.

The basis for the formation of legal consciousness and professional psychology among experts is, in our opinion, special knowledge possessed by an expert of a particular specialty. It seems that the forensic expert has a different legal consciousness than the expert psychologist. The legal awareness of experts of various specialties is also caused not only by the difference in special knowledge, but also by the affiliation of expert institutions to various departments.

I would especially like to say about the legal consciousness of forensic and forensic psychiatric experts. A significant role in the formation of legal awareness of experts in the field of forensic medicine and psychiatry is played by medical education, which is the basis for the formation of their special knowledge in the field of forensic medicine and forensic psychiatry, as well as the norms of medical deontology, with which medical education is permeated.

The legal consciousness of an expert working in an expert institution is characterized by typically positive characteristics of law, special professional guidelines, a negative assessment of criminal activity, and a high level of professional discretion. The negative characteristics of the expert's legal consciousness (professional deformation of the expert's personality) include an overestimation of the importance of expert activity, the desire to assume the functions of an investigator and judge, a high level of punitive claims, the attitude to the suspect and the accused as criminals, a critical approach to assessing legal reality (Otto 1990). These negative qualities tend to be strengthened by forensic and psychiatric experts. In our opinion, this has historical and psychological roots in the theory of an expert – a scientific judge. If, when interviewing experts working in expert institutions of the Ministry of Justice, only 60% answered the question about the ability of the investigator and judge to evaluate the scientific validity of an expert's opinion, then experts forensic doctors and psychiatrists believe that without the help of knowledgeable persons, they can independently evaluate the scientific validity of an expert's opinion the investigator nor the judge can.

The appointment and conduct of an examination is a complex set of procedural and cognitive techniques and actions carried out by the body or person appointing the examination and the expert himself, as well as by persons in respect

of whom the examination is appointed or whose interests it affects. Proceeding from the general structure of cognitive activity, in our opinion, the psychological structure of the activity for appointing and conducting an examination includes: the psychology of cognitive activity of an expert, investigator, judge; psychology of constructive activity of an expert, investigator and judge; the psychology of the communicative activity of the investigator and the judge in the appointment and conduct of the examination and the activity of the expert in conducting the research; psychology of the organizational activities of the investigator and judge in the appointment and conduct of the examination and expert in conducting expert research; psychology of certification activities for the appointment and conduct of the examination and certification activities of an expert.

Quite a lot of legal literature has been devoted to the psychology of the activities of the investigator and judge for the designation and examination of experts (Yakovlev, 1975). The psychology of expert activity is devoted to the work of Arotsker and Yakovlev. A very interesting analysis of the cognitive and behavioral characteristics of a human expert and their consideration in assessing the evidence-based value of an examination made by Belkin A.R. (Белкин, 1999).

It seems interesting to us to consider the psychological characteristics of expert activity from the point of view of the psychological structure (or methods) of this activity.

The cognitive activity of an expert proceeds according to the same epistemological laws as the cognitive activity of an investigator, judge. We have already said that expert research combines elements of practical and scientific knowledge. The fundamental concept in the chain of psychological states of an expert in carrying out research is the awareness of the goals of the examination. The purpose of the expert study is to formulate conclusions based on the study on the questions posed to the expert. The structure of expert research can be divided into the following stages:

- 1) familiarization of the expert with the circumstances of the case;
- 2) the establishment by the expert of the tasks and scope of the study;
- 3) inspection of objects received for examination;
- 4) direct research of objects using expert techniques;
- 5) expert evaluation of the research results;

6) writing a conclusion and formulating expert conclusions.

In the process of an expert's research activities, cognitive and practical activities are combined. The inextricable connection of practice and knowledge is devoted to many works in philosophy, in the theory of knowledge. In particular, Loifman writes: "The reproduction of reality in the forms of cognition is a complex process of its display, transformation and assessment by the subject according to his nature and actual needs, and the objectivity of knowledge, the isolation of knowledge in knowledge that is independent of either man or humanity, is the result of creative efforts subject. At the same time, it is impossible to create, to create new things in practice and in cognition, without reflecting the laws of the object, the laws of means of activity (in the field of cognition, these are the ways of operating concepts, mathematical objects, musical forms, etc.) and the regular connections of the subject (his needs, experience)" (Loifman, 1987).

Cognitive activity in the legal literature is understood as the mental operation of a certain set of facts and the establishment and finding of the necessary facts. The unity of the cognitive and practical in the research of an expert is also manifested in knowledge and action. In psychological and forensic literature, it is noted that in cognitive activity empirical and logical forms of cognition are combined, in the process of expert research they are solved as simple.

Identification studies distinguish within this stage a separate study of identifiable objects and a comparative study of identifiable objects (typical) and complex (heuristic) tasks. The latter are characterized by the absence or insufficient amount of initial information, the uncertainty of the conditions of the problem, and the unknown method of solution. The main ways to solve expert problems can be called discursive thinking (conceptual and logical). This way of thinking is characterized by the presence of prior knowledge of methods for solving the problem. For example, a situation where an expert is faced with a typical task and it is possible to use the developed and approved methods and techniques of expert research. In cognition, heuristic thinking is used when an atypical task is set for the expert and for its solution it is necessary to develop a solution method and a complex of ways of thinking. A variety of heuristic thinking is expert experimentation and expert modeling.

The effectiveness of the expert's cognitive activity, in our opinion, depends on a number of

objective and subjective factors. In particular, the process of cognition in the course of expert research is influenced by: the expert's awareness of the goals and objectives of cognitive activity; the presence of sufficient psychological activity, which is determined by interest, need, consciousness of duty, responsibility; availability of sufficient experience, knowledge to solve problems of a certain type; sufficiency of material and technical base for research; the presence of mental, emotional states that provide the proper level of perception.

When interviewing experts, 100% of respondents indicated the lack of funds for research as the main difficulty that arises in the work of experts. Information processing, which depends on the external conditions of cognition, mental activity at the time of cognition.

Constructive activity in the process of expert research is characterized by such actions (signs) as forecasting, planning, decision making. By forecasting expert research, it is necessary to understand specific mental activity aimed at predicting the results of expert research. Expert forecasting activities can be of high quality only if it is carried out in the presence of special knowledge and experience of an expert (qualification), lack of bias and prejudice, with the correct use of specific forecasting methods; clear presentation of the goals of the forecasting. Expert forecasting differs from forecasting in the activities of the investigator and judge in that the expert predicts only his activities to achieve the results of the study. Forecasting always involves planning action for expert research (Hardwig 1994).

Planning a specific expert study involves the development of paths, stages for achieving predicted goals, as well as the means and conditions for the implementation of expert research, a type of constructive activity is the adoption of expert decisions. The complexity and exclusivity of the process of cognitive activity leads to the appearance of fixed stages of assessment of certain stages of cognitive activity. So, for example, during identification studies, after the stage of separate and comparative study of objects, an assessment of the revealed properties of the objects of study and a decision on the conclusion of conclusions are made.

In connection with the problem of expert decisions, it is necessary to consider the problem of expert discretion when making a decision. This is especially true in the framework of the problem of the development of probable knowledge into reliable.

In legal literature, the concept of the development of probable knowledge into reliable was developed by Eisman, the development of this concept by Orlov and Aubakirov. Probable knowledge is considered by them as a certain intermediate stage between the impossibility of resolving the issue and the reliable establishment of facts. The accumulation of empirical data, the theoretical interpretation of the results of the study from the standpoint of distinguishing a single from a certain group, allows us to justify the possibility of obtaining reliable knowledge.

In the course of expert research, it is difficult to identify a clear line between the development of probable knowledge into reliable. It is in this regard that it is necessary to consider the category of expert discretion. The problem of discretion in the literature was considered in relation to judicial discretion or to the discretion of a professional lawyer.

Based on the analysis of various definitions of judicial and professional discretion, expert discretion should be defined as the ability to choose between two lines of action in a professional assessment of the characteristics of an object and the degree of probability, turning it into reliable knowledge.

But the pioneer in this area was professor Vladimirov L.E., who characterized reliability as a certain combination of probabilities, capable of leading the judge to the inner conviction that the past event, which constitutes the subject of the study, took place in reality.

The communicative activity of an expert involves communication not only with the person who appointed the examination, but also with the persons with respect to whom it is appointed or whose interests it affects. Describing the communicative activity of an expert, I would like to draw attention to the following problem. In general, the relationship of the expert and the person who appointed the examination is characterized as a relationship of cooperation. The literature draws attention to the leading role of the investigator and judge in communicative communication with experts in the process of appointing and conducting an examination, but in practice a paradoxical situation sometimes develops, especially when appointing an examination at the stage of preliminary investigation. Unfortunately, investigators with a change in the political and economic system of Russia have undergone significant changes, and not for the better. Currently, an investigator who has worked for more than three years is considered

an experienced one. The overwhelming majority of experts working in expert institutions have experience of 5 to 10 years (65%), over 10 years (20%), up to 5 years (15%). An increasingly specific situation arises in the interaction of an experienced expert and an inexperienced investigator. That is why when the expert and the investigator interact, a situation of psychological pressure of the expert on the investigator arises, more and more often experts formulate questions for themselves, give instructions to the investigator on how to use this or that information obtained as a result of expert research in the investigation of the case. This situation can be overcome only with the help of an expert knowledge of the basic rules of communicative cooperation, as only with such interaction of the investigator and the expert it is possible to achieve positive results in the appointment and conduct of the examination (Gross 2003).

Organizational activities in the course of expert research are of particular relevance in the context of organizing and conducting complex and commission examinations. Based on the provisions of decision psychology developed by Dulov A.B., it seems that the activity of organizing complex and commission examinations consists of the following stages:

1. Definition of the emerging task and subject of research.
2. Determination of the methods and means necessary for solving problems and achieving the goals of expert research.
3. Distribution of necessary funds, participants in accordance with the overall objective of the study, taking into account the tasks of each expert and his specialty.
4. Communication to all participants in the activity on the nature of the upcoming study, on its individual stages and methods of achieving goals.
5. A collegial discussion of upcoming activities, which helps to clarify the subject, objectives and goals of the study by all participants in the expert study.
6. Liaising with related expert institutions during a comprehensive or commission examination involving specialists from other expert institutions.
7. Monitoring the timeliness, focus, activity of the quality of actions of all organized persons to implement the tasks.
8. Implementation of coordination actions between all parts of the organized group, introduction of amendments, changes to ongoing or previously planned actions.

9. Collection and processing of information about the work done.

10. Assessment and discussion of the results of actions taken.

11. If necessary, the formulation of general conclusions based on the results of expert research (Dulov, 1975).

The certification activity of an expert is aimed at drawing up an expert opinion as a source of evidence. The expert must have the skills to compile this document, as well as the basic rules for evaluating the expert's opinion set out in the criminal procedure law, as well as the rules that have been developed by the investigative and judicial practice. The legal literature draws attention to the fact that the certification activity is not limited to the written record of the actions performed, but also includes the mental processing of facts, the systematization of the detected signs and properties of the object, the logical sequence, reasonedness and validity of the presentation of the entire course of the expert research and conclusions made an expert. All this allows us to consider certification activity as a component of the cognitive activity of an expert (Smith, 1989).

Conclusion

Thus, the expert activity assumes the following psychological structure: cognitive, constructive, communicative, organizational and certifying aspects of the expert's activity and psychology.

The legal personality of an expert is a potential opportunity for a person with special knowledge in the field of science, technology, art or craft to be a participant in criminal procedural relations, the elements of which are legal capacity, legal capacity and tort. The legal personality of the expert is a necessary prerequisite for the emergence of criminal procedural relations, of which the expert is one of the parties.

A prerequisite for the emergence of legal personality in an expert is the presence of his special knowledge or his competence in certain areas of special knowledge.

The determining method in the legal regulation of the appointment and examination as an element of the legal regulation mechanism is the procedural status of the subjects of destination and examination, as well as the content of the subjective rights of participants in legal relations that develop in the process of appointment and examination.

The principle of publicity in the criminal process is fundamental in determining the

procedural position of an expert as an element of the mechanism for legal regulation of the appointment and examination. The action of this principle predetermined the imperative method of regulation in the appointment and conduct of the examination. Elements of dispositiveness in the regulation of appointment and examination take place, but only as auxiliary methods of regulation, and are manifested in the right of the expert to choose the methods of expert research, in the right to initiative and to refuse to give an opinion.

The mechanism of legal regulation of the appointment and examination is as follows. Its initial link is the binding norms, its second link is the relative legal relationship between the expert and the person who appointed the examination, and the final link is the implementation of legal duties.

The subjective right of an expert to get acquainted with the case materials is a legal means of ensuring such behavior of the person conducting the inquiry, investigator, prosecutor or court, which requires the creation of appropriate conditions for the examination.

The right of an expert to initiate is one of the means of establishing objective truth in the investigation and resolution of criminal cases. The right of an expert to initiate is the right to establish, on the basis of special knowledge, the actual circumstances of the case, as well as the reasons and conditions for committing a crime, if the expert has not been asked about them. The right of the expert to the initiative can be realized if: 1) factual data about which he has not been asked questions are included in the subject of examination of this kind (type); 2) the establishment of such evidence follows from the research and does not require separate independent research; 3) the factual data are established by the expert within the framework of the objects and materials of the case that are presented to him by the investigator and the court.

In the criminal procedure law, it is necessary to formulate independent grounds for challenging an expert.

When determining the competence of an expert in resolving issues that are of a legal nature in their form, it is necessary to proceed from the following premises: 1) the actual data by the expert should be derived from the study on the basis of special knowledge; 2) experts can establish only such evidence that relates to the establishment of objective signs of corpus delicti. An exception to the second premise is forensic psycho-psychiatric and forensic psychiatric examination.

In difficult cases of qualification of the act, the investigator, interrogator, prosecutor, court (judge) may turn to legal scholars in the relevant branch of law for advice. The results of this consultation are not relevant evidence in a criminal case, however, the arguments of scientists serve as the basis for the formation of the internal conviction of the investigator, inquiry officer, prosecutor and the court in the legal assessment of socially dangerous acts.

Internal conviction must be considered as a system of elements that form a new qualitatively complex phenomenon. As elements of internal conviction as a concept having a heterogeneous nature, one can determine: 1) the individual knowledge of the subject, which he possessed before the act of evaluating the information; 2) the process of cognition of the information presented or received by the subject of the assessment of information; 3) the subject's awareness of the degree of his independence in evaluating information; 4) volitional incentive that prompts the subject to certain practical actions based on the assessment of information; 5) the emotional state of the subject in assessing information; 6) the external validity and argumentation of the decision in the procedural acts.

The inner conviction of an expert is the psychological emotional and intellectual state of the expert, which consists in a feeling of confidence

in the correctness of the applied knowledge, expert methods, techniques, in the correct assessment of the properties and features, expert objects and in the correctness of the conclusions made.

A prerequisite for the formation of an inner conviction of an expert is his legal awareness as a subjective factor and independence, the autonomy of an expert as an objective factor in the process of expert research: the basis for the formation of an inner conviction is the information received by the expert in the process of studying expert objects and criminal case materials submitted to him.

An expert's legal consciousness consists of his special knowledge, knowledge of the procedural foundations of an expert examination, the expert's attitude to special knowledge, law, legal principles, the psychological qualities of the expert himself, as well as his feelings, value relationships, moods, desires, predetermined by his professional aspirations. The legal awareness of an expert working in an expert institution can, in our opinion, be attributed to professional (legal) legal awareness.

Expert intuition plays a role in the process of expert research, especially when solving heuristic problems. Any expert hypothesis, version should be justified by scientific research, professional assessment of evidence, logical conclusions, which are reflected in the procedural document – the expert's opinion.

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