



THE PROCEDURAL STATUS OF THE EXPERT AND THE LEGAL-SCIENTIFIC NATURE OF EXPERT INITIATIVE

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Abstract: *This article analyzes the procedural significance and role of expert initiative in criminal proceedings. It substantiates the independent status of the expert as a source of evidence and examines the right to initiate the investigation of circumstances beyond the scope of the main questions.*

Keywords: *Expert, procedural status, expert initiative, criminal proceedings, forensic expertise, evidence, objective truth, Criminal Procedure Code, investigator-expert cooperation, specialized knowledge, legislative reform.*

The role and significance of an expert in criminal proceedings are, first and foremost, determined by the objective necessity of utilizing specialized knowledge. The emergence of the expert as a procedural figure in criminal proceedings is justified by the need to clarify questions that arise during the investigation and in the administration of justice in court, which require specialized knowledge.

As a researcher, it should be noted that the significance of the expert in the process of proving is ensured by their function of providing evidence and the specific procedural form through which this function is implemented.

Precisely, the procedural essence of the expert's opinion is determined by several important aspects. First, the expert opinion has a

scientific and technical basis and introduces new factual information into the case that cannot be obtained through other investigative actions. Second, the expert forms their conclusion based solely on the impartial results of the conducted research, rather than on the opinions of interested parties or the body that appointed the investigation; this increases the reliability of the evidence and guarantees objectivity.

In our opinion, the independent procedural status of the expert as a provider of evidence is the primary factor that distinguishes them from other persons who are not subjects of proof (for example, a specialist). That is, the independent procedural status of the expert serves as an important guarantee of their impartiality and objectivity.

The procedural basis of this objectivity, as noted by the Russian scholar

V.Y. Tarasov, strictly emphasizes that the expert's main task is to "analyze facts" and "interpret them from the perspective of their own science" [1]. In our view, it is precisely such an analytical and cognitive approach that determines the high importance of the expert opinion in the proving process, as it introduces new evidentiary information based on scientific and technical knowledge that cannot be obtained through other investigative actions. This function highlighted by Tarasov serves as a guarantee of the objectivity and reliability of the expert opinion and plays a crucial role in establishing the truth.

Supplementing this view, I.S. Lifintseva views the expert as a "procedural action consisting of conducting research and providing an opinion in order to determine circumstances relevant to the proof of a specific criminal case" [2]. As a researcher, we acknowledge the correctness of the approach that separates the substantive (scientific

basis) and legal (procedural admissibility) aspects when evaluating the importance of an expert opinion in proving.

As a researcher, in our opinion, this investigative role of the expert finds its proof in one of the important guarantees of their procedural status — the right to expand the scope of research on their own initiative. This norm recognizes the legislator's high level of trust in the expert opinion and acknowledges the expert not merely as a technical executor, but as an active researcher participating in the establishment of truth. The effective implementation of this right requires close cooperation between the expert and the investigator. Practically, it is advisable for the investigator to consult with an experienced expert to clarify the range of questions before appointing an expert examination, and the expert, in turn, should keep the investigator informed about new, important circumstances identified during the research. Ultimately, the opinion formed as a result of such cooperation should not only have evidentiary value but also fulfill a preventive function by identifying the causes and conditions of the crime.

Supporting precisely this creative approach, the current Criminal Procedure Code of the Republic of Uzbekistan grants the expert the right to "express their opinions in their report not only on the questions posed to them, but also on other issues related to the subject of the expert examination and significant for the case"[3]. This right does not limit the expert to merely answering questions but gives them the initiative to conduct additional research within their competence and perform certain actions to identify new evidentiary information.

As a researcher, such broad powers given to the expert determine the level of initiative in their procedural activity. From this perspective,

it is appropriate to define the scientific-theoretical essence of the concept of "expert initiative."

According to Russian scholars N.A. Zuykova and S.A. Golovko, the generally accepted view is that expert initiative is understood as the expert's right to identify and reflect in the report circumstances significant to the case, even if questions were not posed to them during the research process [4]. Specifically, R.S. Belkin defines initiative as "the expert's identification, at their own discretion, of facts and circumstances not provided for in the expert assignment but significant for the case"[5]. As a researcher, we evaluate this institution of initiative as a high manifestation of expert activity. The implementation of initiative serves to establish the truth and expand the evidentiary base, especially in the investigation of complex crimes. At the same time, as Zuykova and Golovko emphasize, the boundaries of expert initiative must be strictly defined.

However, the expert's right to initiative does not negate procedural control over their activities. In the literature, there is an opinion regarding the necessity of mandatory coordination of expert initiative with the investigator and the court. In particular, O.A. Kotova emphasizes that if expert initiative involves actions affecting the integrity of physical evidence or requiring additional information from the investigative body, then coordinating such initiative with the investigator or informing them is a procedural necessity [6]. As a researcher, we partially agree with this view. If expert initiative involves actions affecting the integrity of physical evidence (destruction or alteration) or requires additional information from the investigative body, then coordinating such initiative with the investigator or informing

them is a procedural necessity. This, above all, ensures the admissibility of evidence and the principle of preserving physical evidence in the case.

The evidentiary significance of expert initiative arises from the specific conditions of modern criminal proceedings, particularly the right of defendants to refuse to give testimony. Under such conditions, as I.N. Gorbulinskaya notes, the main task of the expert becomes "activity aimed at obtaining the maximum amount of information available in the objects of expert research" [7]. In our opinion, the person appointing the expert examination (investigator or court) often does not know all the possibilities of the methodology; therefore, the questions posed may be incorrect or incomplete. It is at this point that expert initiative, as defined by R.S. Belkin, transforms the expert from a passive executor into an active researcher. We believe that these views of I.N. Gorbulinskaya are a practical manifestation of the expert's analytical function emphasized by V.Y. Tarasov. The expert's task is not to overlook signs that the investigator did not pay attention to but which, if researched, could lead to obtaining evidentiary information on the case. Thus, the successful application of initiative clearly demonstrates the importance of the expert in forming evidence and serves to implement the principle of objective truth.

Turning to the procedural boundaries of such creative activity of the expert, V.V. Yarovenko notes that the law grants the expert the right to provide an opinion on issues not posed to them but related to the subject of expert research. However, for an expert to independently pose questions significant for the case is contrary to legislation and leads to the expert usurping the role of the investigator, which consequently results in such evidence being declared inadmissible. In his view, expert

initiative should not apply to changing the content and scope of questions or independently posing additional questions. On the contrary, initiative should focus on formulating questions competently and in a logical sequence (without changing the meaning of the words) [8].

As a researcher, we fully support V.V. Yarovenko's strictly procedural and objective approach to expert initiative. Yarovenko's rejection of expert independence in protecting the interests of the parties is a fundamental condition for ensuring the principle of objective truth. Also, his position that the expert does not have the right to independently pose questions serves to preserve the powers of the investigator. However, while there is logic in Yarovenko's idea to limit initiative only to correcting questions and applying modern methodologies, in practice, the goal of "obtaining sufficient evidentiary information" often involves expanding the scope of research (for example, the technical serviceability of a weapon). For this reason, we propose the conclusion that expert initiative should be accepted as a professional obligation rather than just a procedural right, and its evidentiary significance must always be under procedural control.

As a researcher, it is worth emphasizing separately that the approach of some scholars on the fundamental issue of expert independence and impartiality causes serious debate. In particular, A.V. Frolova's opinion that an expert is obliged to protect the interests of the party that appointed the expert examination [9] fundamentally contradicts the principle of procedural independence. In our view, an expert must be independent and impartial and must not be dependent on any party.

Taking into account the above comprehensive scientific discussions (views of R.S. Belkin, I.N. Gorbulinskaya, V.V. Yarovenko, O.A. Kotova, etc.) and the dual nature of the expert's procedural status, as a researcher, we propose the following conceptual approach to the definition of "Expert Initiative":

"Expert Initiative" is a type of professional activity based on specialized knowledge and professional duty, involving actions such as identifying circumstances not directly posed in the main assignment but significant for establishing the truth of the case, reflecting them in the report, and, when necessary, applying to the competent body to conduct additional research.

Having defined the essence of expert initiative, it is important to evaluate its effectiveness in criminal proceedings and identify possible negative consequences.

The main advantage of expert initiative is that it serves to establish objective truth and ensure the comprehensiveness of the investigation. As a researcher, the practical significance of this norm can be clearly demonstrated through the following hypothetical example:

Suppose one of two hunters (A and B) shot the other. Suspect B explained this as negligence, i.e., that the gun went off by itself when he fell. The investigator appoints a forensic ballistic examination and poses a general question to the expert: "Is it possible for the gun to be fired without pressing the trigger?"

It is in this situation that the invaluable importance of expert initiative in the proving process is manifested. During the research, by dropping the gun from various heights, the expert determines that it fires specifically when dropped from a height of 1 meter. Under the current

procedure, the investigator only becomes aware of this clear and important fact when receiving the final report. By this time, the suspect, knowing that such a possibility exists in his gun, may adapt his testimony to this new fact, changing his intentional crime to negligence and achieving a lighter sentence. The mechanism for preventing such an undesirable situation should be formed such that as soon as the expert determines the possibility of firing from 1 meter (provided that the information provided by the investigator does not contain specific data on how the gun went off or from what distance it fell), they immediately inform and coordinate with the investigator who appointed the expert examination. This, in turn, creates a procedural opportunity for the investigator to re-interrogate the suspect, ask specific questions ("From approximately what height did you fall?"), and expose the falsehood in their initial testimony.

As a researcher, it should be noted that this right of initiative given to the expert, while strengthening their procedural status, also creates the need to clearly define the scope of authority. In this regard, a comparative legal analysis shows that in the Criminal Procedure Code of the Republic of Kazakhstan, a similar right is given to the expert, but with one important condition: they may provide an opinion on such additional circumstances "in agreement with the body that appointed the expert examination" [10].

This precisely is the main advantage of the Kazakhstan model, because in the legislation of Uzbekistan, the investigator or the court only becomes aware of new circumstances identified by expert initiative when they receive the final report. The Kazakhstan model, however, provides for mutual cooperation between the expert and the body that appointed

the expertise. As soon as the expert identifies a new circumstance significant for the case during the research, they immediately inform the investigator and include it in the report only after agreement.

Such an approach significantly increases the effectiveness of the investigation. It allows the investigator to be prepared for new circumstances, to interrogate the participants of the process regarding these circumstances even before receiving the report, to make additional clarifications, and to quickly change the direction of the investigation.

As a researcher, in order to increase the effectiveness of the investigation, balance the creative-investigative powers of the expert with procedural control, and more precisely regulate expert activity, it is proposed to formulate the relevant norm in Article 68 of the Criminal Procedure Code of the Republic of Uzbekistan as follows:

"...in agreement with the body (person) that appointed the expert examination, to express their opinions in their report not only on the questions posed to them, but also on other issues related to the subject of the expert examination and significant for the case;"

The objectivity and reliability of the expert opinion are guaranteed by its scientific and technical basis. The main focus is on the concept of expert initiative, which is characterized as a professional activity of the expert aimed at identifying and reflecting in the report circumstances significant for establishing the truth of the case, beyond the main assignment. In the study, the independence and impartiality of the expert are strictly defended, but the necessity of procedural control over their initiative is justified. In particular, for the purpose of increasing investigation efficiency and ensuring the integrity of physical evidence, it is conceptually proposed to introduce a mechanism in Article 68 of the

Criminal Procedure Code of the Republic of Uzbekistan for the immediate notification and coordination with the body (investigator or court) that appointed the expert examination regarding new, important circumstances identified by the expert.

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