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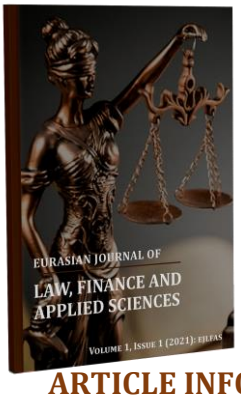

PROBLEMS IN EVALUATING CONCLUSIONS IN PROBABLE FORM

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ABSTRACT

The article discusses the special knowledge and features and features, the goals and significance of the conclusion of a forensic expert, the existing problems in assessing the expert's opinion, as well as conclusions in a probable form. Based on the scientific views of forensic scientists, analysis of investigative and expert practice, proposals were made about the important features of the expert's conclusion as evidence, equal legal force of his conclusions in a categorical and probable form, as well as the need to consider such conclusions within the evidence system.

The current Criminal Procedure Code of the Republic of Uzbekistan defines the opinion of an expert as one of the evidences considered along with other evidences in a criminal case. At the same time, the specified procedural document has a number of features:

- a forensic expert's conclusion (summary) - a written document prepared by a forensic expert or a commission of forensic experts and reflecting the conduct and results of forensic examinations [1];
- expert opinion is the result of using special knowledge;
- expert opinion - this is new knowledge obtained as a result of research;
- the expert opinion is presented by a procedural person whose legal status is strictly regulated - a court expert [1,2];
- the expert's opinion as a procedural document must meet the requirements for its form and content [1,2];

The main feature of expert opinion is the need to apply special knowledge to obtain evidence-based information. Due to the fact that the concept of special knowledge does not exist in normative legal documents, many researches of most criminologists are dedicated to revealing the nature and content of special knowledge. In many cases, scientists believe that this knowledge should be in a narrow range, that is, such knowledge will be acquired by a narrow range of people [3, B.286. 4, B.194], including professor I.Astanov "Special knowledge is a science that is used for the purposes of initiating a criminal case, preliminary investigation and trial, and is used to find, collect and evaluate factual information and evidence related to a

crime through modern research methods. , technical, professional knowledge in a narrow direction" [5, B.14] writes.

Approving the last definition given to this concept and based on the analysis of different approaches, special knowledge is applied to the investigator (an official of the pre-investigation body, the investigator or the court) and other participants in the criminal process, to determine the factual information in the case, to conduct preliminary studies and to evaluate it. It is appropriate to define it as a system of knowledge, skills, experiences and competences acquired as a result of professional education and activities and self-development in the field of science, technology, art or craft.

As A.R. Belkin stated, the purpose of expert research is: "to identify, extract and process information of evidentiary importance in order to create new evidence for the subject of proof and the participants of the process" [6, S.208]. Conducting a forensic examination is aimed at extracting and reproducing information of evidential value from the results of a criminal incident in cases where the subject of criminal investigation does not have special knowledge and cannot understand the information of evidential value that has not et been given a commonly understood form. Such extraction and reproduction (transformation) is observed not only with the application of special knowledge, but also with the knowledge of the methodology and means of their acquisition [7].

T.V. Averyanova, R.S. Belkin, Yu.G. Korukhov and E.R. Rossinskaya "Integration of the achievements of natural and technical sciences into the science of criminology, the development of technical tools and the improvement of their application methods - almost always followed by complex technological operations and for this reason, at present, it is necessary to think about criminalistic technology, not only criminalistic technique" [17, B.184] is very correct. Since the object of research and information about the committed act necessary for research are obtained from the person who appointed the expert, the forensic expert performs these actions (process) indirectly. In this regard, forensic examination is a combination of two interrelated processes.

The first is the activity of the investigator (the official of the pre-investigation body, the investigator or the court) to appoint an expert and obtain his conclusion, as well as to determine the evidential value of this conclusion, to identify, process and perceive the circumstances and reflections of the crime incident itself. .

The second is the activity of the forensic expert to reveal the content of these cases and reflections and to make them understandable for the majority in the form of conducting the necessary research and giving a conclusion.

Despite the interdependence of these processes and the cooperation of the investigator (the official of the pre-investigation body, the investigator or the court) with the forensic expert, an important guarantee of the impartiality and reliability of the obtained expert opinion is the independence of the expert, i.e. is independent from the body (person) that appointed the expert, the parties and other persons interested in the outcome of the case. The forensic expert makes a conclusion based on the results of the inspections conducted in accordance with his special knowledge in the field of science, technology, art or craft. It is not allowed to be influenced by the body (person) appointing the forensic expert, as well as other

state bodies, legal and natural persons, to obtain a conclusion for the benefit of one of the parties or other persons interested in the outcome of the case" [1].

The expert's conclusion is based on situations in which the investigator (an official of the pre-investigation body, an investigator or a court) is unable to obtain information related to this event and requires special knowledge for its identification, or is unable to perceive such information independently of the circumstances and reflections of the committed crime. depends. For example, an investigator should actually have the basic skills of basic forensic training. At the scene of the incident, together with the expert, by identifying the shoe print and conducting preliminary research, the investigator can decide on the suitability of this print for use in the future evidence process. Later, when identifying the suspect and removing the shoe from him, it is necessary to determine the mutual identity of this shoe and the determined trace (solving the identification problem). However, the question arises here - can the investigator form such a conclusion independently procedurally and reasonably?

Some criminologists-scientists give a positive answer to this question, believing that in some cases the investigator should make an independent conclusion on the relevance of the item to the crime [8, P.163]. The only way to do this is to compare the sole patterns and elements of the shoe prints found at the crime scene during the inspection with the sole patterns and elements of the shoe taken from the suspect. Another question arises in this case - can the conclusions of the investigator be trusted and how can their impartiality and reliability be checked?

On the one hand, when conducting such research, the investigator independently carries out his activities, the content and goals of which do not differ from those of other investigative actions, that is, he draws appropriate conclusions from the circumstances and reflections of the crime incident.

The only thing to check in this case is the presence of forensic training in this investigator. Although the current criminal procedural legislation states that "In necessary cases, the official of the body conducting the pre-investigation investigation, the investigator, the investigator, or the court, during the inspection, takes measurements, photographs, films, videotapes, makes plans, schemes, drawings, takes molds and copies of traces" [2], the level of competence and skills of the investigator in performing these actions should, first of all, ensure the ability to evaluate the actions of specialists and experts, and not the ability to conduct research independently.

In some cases, if the detected trace does not have clear identification marks, it can be assumed that the investigator can make this conclusion independently in order to shorten the duration of procedural actions. However, if the situation is complex and detailed analysis is necessary in conducting research using various criminalistic methods, in this case it is necessary to involve a competent person - an expert. Therefore, in the current Criminal Procedure Code, it is stated that "Experts may be involved in the examination to help perform these tasks" [2].

And the expert, having conducted relevant research and taking information of evidentiary value from the object presented to him, becomes the carrier of such information. At the same time, "due to the fact that he received the necessary information as a result of certain actions (that is, this information was not available before), the forensic expert does

not become a subject of passive reflection. The emergence of this information is the result of targeted research [9, P.70].

A peculiarity of such reproduction of evidentiary information is that the forensic expert does not perceive its importance for proof, because he cannot imagine the complete picture of the circumstances of the committed crime, but only knows a small part of it. This is because it is not the task of the expert to evaluate his findings and decide the evidentiary issues related thereto. The court expert will state only the specific circumstances of the questions assigned to him.

When talking about the issue of legal issues related to the evaluation of evidence not being resolved by an expert, it is worth noting that some authors, while conducting a forensic examination, the expert examines not only the objects presented to him, but also the materials of the criminal case, the investigator (the official of the body conducting the pre-investigation investigation, the investigator or the court) intervenes in the procedural activities and evaluates the evidence in this process. For example, M.S.Strogovich expressed similar opinions [10, P.44].

These opinions do not seem to be very correct, because now the types of expertise in which criminal case materials are studied - situational studies - have become widespread. For example, when conducting situational medical examinations that determine the probability of injury (harm) to the victim in certain cases, the expert examines the testimony of the victim, witness, suspect (accused) along with medical documents. Because this issue cannot be resolved only depending on the nature of the injury inflicted on the person under investigation.

At the same time, the expert evaluates the testimony of the persons not in terms of relevance, feasibility, reliability and sufficiency, but in terms of their suitability (or not) for the circumstances established in the case (in this case, the level of damage to health and the nature of the injuries) and expresses his opinion in the conclusion. Due to the fact that the forensic expert does not have such an opportunity, he does not directly interfere with the issue of evidence evaluation, because only the documents provided by the investigator are studied. The final decision on the compliance of the expert opinion with the requirements of the Code of Criminal Procedure of the Republic of Uzbekistan is taken by the investigator (the official of the body conducting the pre-investigation investigation, the investigator or the court).

As a result, one of the most serious problems faced by the participants in the criminal proceedings - the issue of evaluating the expert opinion. There is a problem in the critical assessment of expert conclusions, which is expressed by the lack of necessary special knowledge in the field of expert research among the participants of the criminal process. It will not be difficult to check the procedure for appointing an expert and conducting it in accordance with the norms of procedural legislation, as well as to determine the correlation of the expert's conclusions with other evidence in the case.

According to R. Belkin, evaluation of the expert's opinion in terms of its compliance with the law and its correlation with other evidence in the case cannot be a guarantee of the reliability of this opinion [11]. An indicator of the reliability of the expert's opinion is the correctness of the conducted research, the correct choice of research methods and the logic of

the obtained results, but they are complicated by the lack of special knowledge of the participants in the criminal process. In order to overcome this problem, according to T.V. Averyanova, "when drawing up an expert opinion, conducting research and forming conclusions, the forensic expert should follow the rules of literary language, pay attention to the signs and characteristics identified during the study of the research object and describe them in detail and based on the research. must use tried and tested methods in the process" [12, S.470].

When considering the expert's conclusion as a means of proof, the question of using the expert's conclusion in a probable form for proof is relevant.

Opponents of the probable conclusion of the expert point out that Article 463 of the Code of Criminal Procedure of the Republic of Uzbekistan stipulates that "Indictment cannot be based on assumptions and is issued only if the defendant is proven guilty of a crime during the trial." However, in this article, it is stated that "Indictment should be based only on reliable evidence collected as a result of checking all possible circumstances of the commission of a crime in the case, filling all the gaps that have become known in the case materials, and eliminating all doubts and contradictions that have arisen." defined. It follows from this that if the only evidence confirming the prosecutor's opinion in a criminal case is the opinion of an expert in a definite form, then a guilty verdict is issued in this criminal case or, if in a criminal case there is a conclusion of an expert in a probable form, confirmed by other evidence in the case, a verdict of acquittal cannot be imagined.

Any evidence should be considered only in the evidence system. The opinion of the expert in the form of probability does not mean that a certain situation has been determined in the case, but it does not deny this situation either. A conclusion in a possible form gives the investigator (an official of the pre-investigation authority, an investigator or a court) a specific "direction" that will guide the subsequent investigation to verify the information reflected in the study.

A number of scientists many ears ago came to the conclusion that "the conclusion of the probable form should not be rejected, because it is not separated from other evidence and can be determined using such a conclusion and other evidence" [13, P.714]. From these points, once again, the equality of evidence and the need to evaluate them only as a whole follows. Developing these thoughts, A. Lubin said that "any conclusion of a forensic expert is probable knowledge, and the requirement of absolute reliability does not belong to him. It is possible to agree with the opinion that a conclusion in an arbitrary form, like any evidence, has no evidential value outside of the set and system of evidence" [14, P.140].

Thus, any conclusion of an expert can serve as evidence. But in order for it to be correctly understood and perceived by all participants in the criminal proceedings, the conclusion must be properly presented, explained and justified in court.

The presentation of evidence generally refers to the process of providing information about any circumstances that need to be established. An important requirement for this procedure or process is an authorized person. Only the subject of evidence (investigator, investigator, court) authorized to collect evidence can enter information of evidentiary value in the form of evidence in the case [15, S.80].

Therefore, it is appropriate to divide these processes of proof into two stages: preliminary investigation and trial stages.

At the initial stage of the investigation, the initiative to generate information of evidentiary value by conducting expert research belongs to the investigator or investigator. After receiving the expert's opinion, the task of the investigator (an official of the pre-investigation body, the investigator or the court) is to evaluate the opinion and connect it with other evidence available in the criminal case in order to confirm the proposed investigative evidence, to decide on its use.

During the trial, the issue of the presence of an expert's opinion in the case file is decided by the judge. After receiving the expert's opinion, the court examines the expert's opinion, this process, according to M. Treushnikov, "consists of extracting facts and factual information from the expert's opinion by the court and conveying them to other participants in the criminal proceedings" [16, S.205].

According to Article 443 of the Criminal Procedure Code of the Republic of Uzbekistan, "At the request of the parties or at the initiative of the court, the presiding officer, one of the people's advisers, or the secretary of the court session, attached to the case in the inquiry and preliminary investigation, may be relevant to the case, written evidence, experts' conclusions and investigative actions will read out their minutes" [2].

Two types of conclusions can be drawn in cases where expert opinions are conducted in court:

- confirming the position of the accused party;
- contrary to the position of the prosecution and other evidence in the case.

In the second case, if the expert's opinion contradicts other evidence in the criminal case or the information presented in the opinion is difficult for the participants of the trial to understand, it is recommended to interrogate the expert in court to explain the research issues.

An important feature of presenting an expert's opinion in court is the need to convey the opinion to the participants together with other evidence confirming the information presented in the research.

In conclusion, it should be noted that the expert's opinion has an important feature as evidence - the need to use special knowledge to obtain evidentiary information from the situation and reflections of the crime scene. These actions are performed by the court expert indirectly, on the basis of the materials submitted to him by the body (person) appointing the expertise. Since the forensic expert is not authorized to evaluate the evidence, the circumstances identified by him serve as information for the investigator (an official of the pre-investigation body, the investigator or the court) about the circumstances related to the criminal incident, and the investigator can study, evaluate, and must solve.

An important condition for ensuring the principle of freedom of evaluation of evidence is that the expert's opinion does not have priority over other evidence in the case, at the same time, his conclusions in a definite and probable form have equal legal force and should be considered only within the framework of the evidence set (system). At the same time, it is an important issue to present an expert's opinion at a court hearing, because as a result of this

process, the court and other participants in the process must be sure of the impartiality of this opinion and the validity of the final answers (conclusions).

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