

## **Procedural features and tactics of using of special knowledge during investigation of corruption crimes**

**Abstract:** It is considered procedural features and tactics of using of special knowledge during investigation of corruption crimes.

Correlation of provisions of criminalistics and criminal process under using of special knowledge is studied, a system of special knowledge and its components is analyzed.

It is given criminalistical recommendations and suggestions on changing and supplementing of criminal procedure legislation.

**Keywords:** corruption crimes; special knowledge; tactics; procedural features; correlation.

In course of crimes detection and investigation, examination of criminal cases in a court, an investigator, judges, and other participants of criminal process are required to use special knowledge, which they are not possessed to.

Legal basis of using the knowledge is stipulated in the norms of criminal procedure legislation. But, unfortunately, legislation does not determine criterion difference between special knowledge and other non-special knowledge.

In spite of the fact that the CPC of Azerbaijan Republic gives a definition of an expert and specialist, but the norms of this Code do not determine a concept of “special knowledge”. For example, article 96.1 of the CPC of Azerbaijan Republic stipulates that a specialist is who does not have his interests in criminal process, in compliance with his agreement, he is appointed by the organ carrying out a criminal process. With this purpose, using his special knowledge and abilities in science, technology, art and other professional areas he assists in implementation of investigation and other procedural actions.

---

♦ **Qadirov Asif Xanoglan oglu** – PhD in Law, a member of International Organization for Legal Researches (Azerbaijan). E-mail: mopi\_sid@yahoo.com

According to article 97.1 of the CPC of Azerbaijan Republic, an expert is a person, who does not have a personal interests in criminal process and using his knowledge in science, technology, art and other professional areas, may give an expert report. In compliance with his agreement, he is appointed by the body carrying out a criminal process or on a request of this body by the Directoriat of expert enterprise in order to investigate the materials of criminal case.

It seems that a lawmaker made a decision for acceptance of united legal principle in definition in Azerbaijani criminal process of using of individuals possessing with special knowledge. Unfortunately, new criminal procedure law does not have an indication of “special knowledge” definition.

Definition of special knowledge and group forming principles creation in criminal process and criminalistics have been given by R.S. Belkin, V.I. Goncharenko, Y.G. Korukhov, V.I. Shikanov, A.V. Shlyakhov and others. Thus, it were determined and formed the main principles of definition of special knowledge. Subsequently, this definition were analyzed and specified in various directions by number of authors.

Special attention to the special knowledge was paid by I.N. Sorokotyagin (1992), V.N. Makhov (1993) in their doctoral dissertations.

A.A. Eysman writes that under special knowledge is understood the knowledge, which is possessed not much number of specialists but not a person or the body carrying out proving process [7, p. 89].

It is quite correct this position because forensic examination is served to establishing of the actual materials on the special knowledge application, as a judge, investigator or prosecutor who is assigned this expertise does not possess special knowledge. Expert may examine only presented him materials of criminal case. Most number of criminalists and procedure experts took attention and indicated this fact.

In connection with this, considering the fact that nowadays art and professional areas are using wide knowledge of science and technology then we believe to be right that lawmaker stipulates in the law that as expert may be drawn the individuals

possessing with special knowledge in science and technology but not experts in art and professional areas.

In opposite of an expert, a specialist does not conduct research, expert report, he assists an investigator only in detection, registration and seizure of evidence. Opinion of a specialist does not identify with expert one.

Forensic expertise is a procedural action that is carried out by an expert. The expert fulfills his activity in determination of the circumstances (facts) in compliance with written instruction of a body carrying out preliminary investigation, prosecutor or court. All implemented expert examinations are registered in special procedural document – an expert report. This report is a kind of independent evidence.

On the whole, knowledge is a result of objective reality (objects, incidents, nature and society laws cognition). Therefore, knowledge is a subjective image of the objective world.

“Knowledge is a result of human cognition activity. There are various kinds of knowledge: daily, simple (“healthy notion”), personal, uncertainty etc. Knowledge is determined with signs of speech (language)” [5, p. 425].

“Knowledge is a product of human society, material and moral activity; an ideal expression of the world objective and relations, nature and human sign...” [2, p. 60].

We consider that “special knowledge” definition may be indicated as follows: “Special knowledge is a collection of scientific knowledge, abilities and habits, which received by an individual through special professional education and trainings, and using in examination of the useful materials and events, and explanation of the essence of criminal case”.

We can indicate the following signs, which characterize the special knowledge: special knowledge is a systematized scientific knowledge in a certain area; using of special knowledge in criminal process is regulated by the law; special knowledge received in certain specialty is possessed only certain individuals in this area.

Definition of special knowledge and application of various forms and methods of special knowledge in course of criminal investigation were stipulated in procedural books [4, p. 127]. These forms are the following: a) forensic expertise is assigned by

an investigator who carrying out preliminary investigation on criminal case and a judge - on court proceedings (art. 264 of the CPC); b) receiving a reference and advice from individuals who possess special knowledge (art. 96.4.5 of the CPC); c) drawing of the specialists in impenetation of ivestiagtive actions (art. 85.4.3 of the CPC); d) conducting of inspection (art. 85.4.4 of the CPC).

R.A. Atashova writes: “Specialist is a person possessing with various non-legal knowledge and not being interested in the case, who is invited by an inquirer, investigator, prosecutor or court to assist in implementation of investigative and other procedural actions. As other participants of a process, procedural status of a specialist is characterized with the following features: 1) a specialist should possess with special knowledge and abilities in science, technology, art and other professional areas; 2) he should not have a personal interest in conducting research the materials of investigative criminal case or prosecution (in our opinion, as specialist might be assigned a person who should not have “personal” and other any interests)” [1, p. 312].

Application of special knowledge and a choice of any form should be substantiated from the tactic position. First of all, it should be specified the usefulness of a fact determined. Forensic expertise considered to be necessity if proven with special knowledge fact is useful, i.e. this fact may be used further proving process as evidence for confirmation or denying of suggested hypothesis.

Time that necessary for application, reliability of a fact establishing, usefulness of it should be considered as importnat criteria of special knowledge application.

In course of investigation process special knowledge is applied in various procedural forms by an investigator, specialist, expert. But, the special knowledge is differentiated by volume, content and, the mainly, application areas.

These knowledge are applied by investigator and specialist in investigative actions (ex., searching, inspection, investigation experiment, determination of the place of occurrence etc.), an expert is applied his knowledge in course of production of expertise. According to procedure legislation, expert report is considered to be a source of court evidence, and its results have a status of evidence. We believe that

based on undoubtfulness accepted provisions, results that received by an expert, together with their acceptance through using scientific and methodic requirement and critical approach to them, we can proper estimate a role of investigator in increasing and determination of useful evidential facts. Detected by investigator and included in protocol actual information have evidential power even if these facts are not proved. For example, carrying out examination of document through lighter or ultraviolet rays, an investigator finds useful for the case letters or figures deleted. Then, is it sufficient to produce investigative examination or it important to assign expertise? It is not necessary to assign expertise if results received by investigator through special knowledge are understandable and clear to all participants of a process. For instance, a content of document that was created on a base of pressing through shadowgraph becomes an obvious fact. Obvious facts are also presented in differentiated of comparative documents.

An investigator may invite a proper specialist to produce some investigative action. During production of investigative actions an investigator and specialist may use all ways and means, except illegal criminalistic technique and which subsequently make difficult producing expertise.

It is important to arrange expertise if results and process of application of the special knowledge is not clear and their explanation is required. For example, during comparative investigation evaluation of sufficiency of coordinating signs are found then it is required criminalistic expertise. Because these coordinating signs may be result of similiarity of various subjects.

Being a form of application of special knowledge, an forensic expertise characterizes a complex of number of signs. In spite of sufficient studying of the signs of forensic expertise in procedure books, some authors determined various signs for that. For instance, A.M. Zinin and N.P. Maylice refer the following to these signs: a) during preparation of expertise, its assignment and production together with observance of special legal regulation, execution and proper approach to the procedure, should be determined the rights and duties of an expert, a person who assign an expertise, including accused (suspected) person; b) production of

investigation on basis of special knowledge in compliance with proper areas of science, technology, art and craft; c) issue of a report, which has evidential status [3, p. 19-20].

An expert is distinguished from specialist due to his process status. “Using his special knowledge an expert on completion of material studying issues expert report as a source of evidence (art. 124.2.2 of the CPC). Specialist, being participated in production of investigation materials of criminal case or prosecution and also in other procedural actions, gives to a body carrying our criminal process written or verbal advice. In order to assign expertise an inquirer, investigator, prosecutor or court makes a separate resolution, but this resolution in respect of assignment of expertise is not stipulated in criminal procedure legislation. Expert report should be in written; specialist conclusion may be in written and verbal form. Expert for giving of intentionally false report bears criminal responsibility (art. 297 of the CPC of Azerbaijan Republic), but specialist does not hold criminal liability for intentional false advice or explanation. Therefore, an expert is notified by a body carrying our criminal process in respect of his criminal responsibility for refuse issue a report or giving intentional false report; specialist does not receive such notification. Expertise is assigned only when criminal case is initiated or court examination is produced. Specialist may be invited also before beginning of prosecution on criminal case. In addition, above stated article does not provided an opportunity replacement an expert report with specialist advice or recommendation” [1, p. 312].

Production of expertise by an investigator is required implementing the following actions: acceptance of resolution to assign expertise; a choice of expert institution or an expert; a choice of investigated objects and comparative materials; establishing of interrelations between investigator and expert in course of expertise production; evaluation of scientific reliability and evidential usefulness of expertise executed.

Considering importance of expertise production an investigator should exact determine assignment of expertise time. I.N. Sorokotyagin writes that “time of expertise assignment is detemined from speciality of criminal case assessment made

by investigator” [6, p. 141]. We suppose to do it an investigator should take into account the following:

a) accused person has to be familiarized with resolution on expertise assignment and expert report (such person is presented in a case). Accused person has to the right to lodge petition to an expert with his additional questions;

b) receiving important objects, documents and materials for expertise may be required producing additional independent procedural actions;

c) checking and assessment of the expert report may be required additional investigative actions.

Being determined the objects and duties of investigation, an investigator, when forms the questions to be asked, should be guided with the following requirements:

- clarifying a core of circumstances, which are determined on a case;
- familiarizing with scientific opportunities and methods by which is determined the circumstances on the case;
- presence of possibilities to obtain informational means, which have useful evidential character for expertise;
- exact determination of professional skills of the experts and in connection with their results, searching useful circumstances with other means;
- importance of correct scientific, logical and grammatical sufficiency formulating of the issues to an expert.

As evidence expert reports have an important significance in criminal cases in respect of corruption. Analysis of materials of criminal cases shows that expert reports regarding corruption criminal cases are used in 47.8% cases of evidential process. It was not used opportunity of expertise in some cases, when forensic expertise assignment and production was objectively necessary. Practically, during production of the forensic expertises were examined the materials, documents and items, which were received in course of investigative actions, operational searching measures.

Below stated expertises are assigned for court investigation, analysis of expert skill, criminal cases on corruption:

- criminalistic, including studying of documents, handwriting (graphology), trace expert examination (68%);
- phonoscopic expert examination (54%);
- chemical expert examination (30%);
- accounting expert examination (28%);
- merchandising and construction technology expert examinations (21%);
- autotechnical expertise (6%).

It is impossible to prove circumstances of some categories of the criminal cases without production of forensic expert examination. Forensic accounting expert and forensic economic examination had been assigned and produced in most part of bribe cases associated with the tax evasion (69.4%).

The purpose of assignment of fingerprint identification, phonoscopic, handwriting and other expert examinations were comparison of some objects and as result it had been possible to compare men and various items.

In course of criminal investigations linked with corruption criminalistical expertises, in special case the trace expert examination (determination of fingerprint in documents and items), graphology (comparasion of handwriting various employees), technological studying of documents (pressed trait, restoring of blacked writings, determination of a fact deleting of pages with writing, restoring whole documents from the parts collected) and other expert examinations are wide used.

Speaking about assignment and production of expertises, we should note that they may be conducted only with documents and items, which were found and seized as evidence in course of operational search activity and as such included in materials of criminal case.

We believe that according to results of operational and search activity, together with fingerprint examination may be produced phonoscopic expertise. Actually, the phonoscopic expert examination in compliance with procedure legislation is one of the ways to examine of operational and search results using as court evidence. First of all, this substantiates with usage of sound recorders in course of documenting process of bribe facts.



Either organizational and methodic or technological views the phonoscopic expertise is one of the wide assigned expert examinations in the serious criminal cases and the cases associated with corruption. This expertise is produced for comparison of a person, and with purpose to investigate information carriers (magnetic tape, discs etc.) and sound recorders.

The objects of the phonoscopic expertise are audio recorders seized during operational and search activity, about conversation between a bribe-giver and bribe-taker, record of their telephone speakings.

The phonoscopic expertise fulfills three groups of issues in this kind of investigative process of crimes. First group of issues arise under suspicious that are made some changes in sound record, its falsification or signs of change of meaning. Second group of the issues belongs to speech of persons in tape recorder. Third group of issues may be put in dependence on various circumstances of arisen during investigation process.

Graphology expert examination is assigned when accused person denies fact his handwriting or preparation of different official documents, which are subject of criminal examination.

Expertise of substances and materials is assigned for identification of chemical substance applied for development of subject of bribe (covering bill with special chemical substance). We need to note that chemical expert examination are wide assigned for investigation on corruption crimes when bribe is taken (on hands, clothes) are compared with chemical substances that were in advance covered bills or other bribe objects.

In criminal cases linked with corruption are assigned other expert examination to identification of personality of accused individuals (psychological and mental expertises), assessment of bribe object, rules of property register, turnover of securities, funds and documents (accounting, merchandising expertises).

Speaking about assignment and production of expertise detection of criminal cases results of operational and search activity in investigative process we should note that the expert examination should be assigned when as result of operational and

search activity was taken or seized documents and items, which as evidence added to criminal case.

In generally, production of the expertises on basis of results of operational and search activity assist in resolution of the most problems linked with insufficiency of evidential base in bribe and other corruption crimes.

### **Bibliography**

1. Commentary to the Code of Criminal Procedure of Azerbaijan Republic / edited by C.H. Movsumov. V. 1. Baku: Digesta, 2003.
2. Mammadov V.G. Problematic issues of combat to crimes associated with corruption. Baku: Adiloglu, 2006.
3. Zinin A.M., Maylice N.P. Scientific and legal basis of forensic expert examination. M.: Pravo i zakon (Right and Law), Yuright-Izdat, 2001.
4. Selina E.V. Application of special knowledge on criminal cases. M.: Yurlitinform, 2002.
5. Soviet Encyclopedic dictionary/ Edited by A.M. Prokhorov. 4<sup>th</sup> edition. M.: Sov. Encyclopediya, 1989.
6. Sorokotyagin I.N. Forensic expertise. Manual text-book. Rostov-on-Don, 2006.
7. Eysman A.A. Criteria and forms special knowledge using under criminalistical investigation in purpose to recieve judicial evidence// Issues of criminalistics. Issue 6-7, 1962, p. 38-42.