SOME PROBLEMS IN THE APPOINTMENT OF RE-FORENSIC EXAMINATION

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ANNOTATION: The article is devoted to problems in the appointment and conduct of re-examinations and ways to eliminate them.

Based on the Law of the Republic of Uzbekistan "on forensic examination", the theory of Criminal Procedure distinguishes five types of forensic examination in forensic activities: primary (basic), commission, complex, additional and re-forensic examination.[1]

In accordance with the law of the Republic of Uzbekistan "on forensic examination", "additional forensic examination is appointed to fill the gaps in the conclusion and carried out by one or another forensic examination (commission of forensic experts)".[2] "Also, a re-forensic examination is appointed when the conclusion is not substantiated or there is doubt about its correctness, or when the evidence based on it is found to be unreliable or in case of serious violation of the procedural rules for conducting a forensic examination"[3].

At the end of each year at the Ministry of Justice of the Republic of Uzbekistan, the Republican Forensic Center named after X.Suleymanova, constantly analyzes the procedural shortcomings that law enforcement agencies face when appointing forensic examination, including re-forensic examination. The analysis also showed that the following number of "specific" shortcomings could be present at the appointment of re-examination:

- the basis and procedural motives for the appointment of re-examination are not indicated (for example, the fact that the primary conclusion is not substantiated or doubts about its correctness, or the evidence based on it is found unreliable);
- when conducting a primary examination, all the objects of research and material evidence examined are not presented;
- additional materials are provided for re-examination, unverified in the primary examination;
- the number of questions asked from the expert is increased without justification;
- the procedural status of the appointed examination is not specified and it is assigned as a primary examination;
- the status of the examination is incorrectly determined: the examination is assigned as "re-examination", but in practice, in procedural terms, this will be an additional examination;
- incorrect appointment of the examination: although a primary examination is appointed in the case under consideration, a re-examination is appointed by the court with questions raised precisely in the primary examination, but the grounds for the appointment of a re-examination are not provided;

[1] Ўзбекистон Республикаси Жиноят-процессуал кодекси. – Т., 2021. / https://lex.uz/docs/111460#254256.
[2] Ўзбекистон Республикасининг 2010 йил 1 июндаги «Суд экспертизаси тўғрисида»ги қонуни. 18-м. / Ўзбекистон Республикаси қонун ҳужжатлари тўплами. – Тошкент, 2010. – 22-сон. – 173-м.
[3] Ўзбекистон Республикасининг 2010 йил 1 июндаги «Суд экспертизаси тўғрисида»ги қонуни. 18-м. / Ўзбекистон Республикаси қонун ҳужжатлари тўплами. – Тошкент, 2010. – 22-сон. – 173-м.

- in some cases, there are also cases of appointment of re-examination by the courts on the basis of the duty of the lawyer involved in the case (without specifying the grounds in the legislation).

From the above, it can be said that the grounds established by law in the appointment of re-forensic examinations by the court and law enforcement agencies are the basis for the appointment of additional expertise. At the same time, it should be noted that the obligation of a lawyer is not defined in the current legislation as a basis for the appointment of a re-examination.

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– additional accounting documents (invoices, source documents, acts of work performed, cash orders, declarations, etc.) are provided;

- the verification period of accounting and economic operations of one type or another provided is changed.

As another problem in the appointment of re-examinations, the decision on the appointment of an examination (decision) is that the grounds and reasons for the appointment of such an examination are not indicated. This is the case in Article 18 of the law of the Republic of Uzbekistan “on forensic examination”... “A re-forensic examination is appointed when the conclusion is not substantiated or there is doubt about its correctness, or when the evidence based on it is unreliable, or when the procedural rules for conducting a forensic examination are seriously violated. In the decision or judgment on the appointment of a re-forensic examination, the reasons for the non-compliance of the body (individual) with the conclusion of the first (previous) forensic examination is consider to be contrary to the stated rules”[4].

Therefore, there is a need to consider the content of the grounds for the appointment of a re-examination.

Bases – when there is a logical reason justifying a particular action, a cause (motive) is a useful ecstasy in relation to that action. The cause (motive) clarifies the foundations and it is consider to be its subject expression.

The following reasons (motives) may be the basis for the unsubstantiatedness of the expert's opinion:

- conclusion is made with insufficient research objects and materials, research is conducted with poor-quality samples for comparison, signs of examined research objects and the absence of clarification of cases when conducting an initial (basic) examination;

- the expert's final answers (conclusion) are not based on the results of the conducted research;;

- violation of the methodology in the research of objects;

- justification by the expert of his conclusion with various assumptions, etc.

Disagreement the accused, witnesses and other persons participating in the case with the expert conclusion, reasons (motive) consisting of contradictions between expert opinions, as

[4] Ўзбекистон Республикасининг 2010 йил 1 июндаги «Суд экспертизаси тўғрисида»ги қонуни. 18-м. / Ўзбекистон Республикаси қонун ҳужжатлари тўплами. – Тошкент, 2010. – 22-сон. – 173-м.

well as between the testimony of the accused, the suspect and witnesses is consider to be the basis for clarifying the contradiction between the expert's opinion and the case materials.

The following reasons (motives) may be the basis of doubts about the correctness of the expert's opinion: if the expert's conclusions are not derived from the results of the research carried out; if the research is incomplete (for example, the record is insufficient in the number of samples); if the methodology used by the expert is not sufficiently reliable; if the research part of the examination is not sufficiently described or does not exist at all; if the qualitative and quantitative assessment of the indicated signs is not clear in order to draw an appropriate conclusion.

In some cases, a re-examination is appointed even if the questions asked in the preliminary examination are not fully resolved, that is, it is shown that it is impossible to answer the questions. However, it should not be forgotten that the questions put before the expert are solved based on the modern state of forensic sciences and methodologies used in the research process, specific characteristics of the research objects.

In conclusion, it can be said that in a reasoned decision (judgment) on the appointment of a re-examination clearly indicates the reasons for not agreeing with the conclusion of the initial (previous) forensic examination (expertise) of the body (person) that appointed such an examination, as well as references to the relevant articles of the current procedural legislation on the appointment of re-examination should be clearly stated.

In addition, it is consider to be basis the violation of the requirements specified in Article 18 of the Law of the Republic of Uzbekistan "On Forensic Examination" or one of them is the basis for the head of the forensic examination institution to return the case materials without an expert examination.

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3.Ўзбекистон Республикасининг 2010 йил 1 июндаги «Суд экспертизаси тўғрисида»ги қонуни. 18-м. / Ўзбекистон Республикаси қонун ҳужжатлари тўплами. – Тошкент, 2010. – 22-сон. – 173-м.

4.Ўзбекистон Республикасининг 2010 йил 1 июндаги «Суд экспертизаси тўғрисида»ги қонуни. 18-м. / Ўзбекистон Республикаси қонун ҳужжатлари тўплами. – Тошкент, 2010. – 22-сон. – 173-м.