



ANALYSIS OF THE CONCEPTS OF SPECIALIST AND SPECIAL KNOWLEDGE IN THE PRE-TRIAL STAGE

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Annotation: This article analyzes the specialist who participates in the criminal process of proof, requirements for specialists, the concept of special knowledge, the legal status of specialists, their regulation, opinions and considerations expressed by legal scholars about specialists and persons with special knowledge, issues that a specialist can directly address using their legal status, problems, as well as scientific-theoretical definitions of "person with special knowledge" and "specialist". These issues are analyzed and studied in the article. The article analyzes the concepts of specialist and person with special knowledge in the process of proof, engages directly in debate with legal scholars, and provides new definitions on the studied issue.

Keywords: criminal procedure, procedural relations, specialist in criminal procedure, expert, special knowledge, professional or life experience, skills, person with special knowledge.

One of the conditions for participating as a specialist in criminal proceedings and being a subject of law is having special knowledge in a specific field of science, technology, art, or craft, and having relevant work experience in the respective field.

In general, the concept of a specialist can be understood in a broad and narrow sense. According to L.V. Lazareva, in a broad sense, a specialist is understood as any person with special knowledge, and in a narrow sense, as a participant in criminal proceedings who has been involved in a criminal case and has a special legal status [1, p. 126].

One can agree with L.V. Lazareva's opinion because before involving a specialist in a case, their special knowledge and skills are determined, and a subject with these characteristics acquires legal status by being involved in the case.

The fact that the concept of a specialist is not covered in national encyclopedias and that its concept as a participant is not fully described in procedural codes indicates that this participant in the process has been insufficiently studied [2, p. 66].

The legal status of a specialist in criminal proceedings is closely related to the requirements placed on them by law, which predetermine their ability to participate in criminal proceedings.

Some authors call them characteristics [3, p. 77] and include the following: independence, lack of interest in the outcome of the case, qualifications, possession of special knowledge and skills, carrying out activities from the moment an application or report about a crime is submitted through all stages of the criminal process, conducting activities under the guidance of the subject of proof and providing scientific, technical, consultative, and other necessary assistance [3, p. 77]. Other authors understand the requirements for a specialist as having certain qualities and include the following: belonging to knowledgeable persons; possession of special knowledge in a particular field of science, culture, art, technology, or



craftsmanship necessary to determine circumstances relevant to the case; possession of skills in applying special knowledge due to professional or life experience; being involved in the process of detecting or investigating a crime by the person conducting the criminal proceedings; independence and lack of interest in a certain outcome of the case; not being organizationally, functionally, and legally subordinate to other participants [4, p. 124].

Agreeing with the opinions of A.G. Smorodinova and A.V. Konstantinov, the main requirements or characteristics for a specialist can be divided into the following: 1) having a legal status during participation in criminal proceedings; 2) possession of special knowledge; 3) having professional or life skills related to the application of special knowledge; 4) lack of interest in the results of the case.

The legal status of a subject in criminal proceedings and the requirements for them are reflected in their legal definition. Various definitions of the content of the concept of "specialist" have been given in criminal procedural literature.

In A.I. Vinberg's opinion, a "specialist" is understood as a person with knowledge in a particular field, who does not replace the investigator, whose help is needed in important issues for the case, and who assists the investigator with special knowledge when there is no need to appoint an expert [5, p. 44].

In our opinion, A.I. Vinberg's definition of a specialist is incomplete. In this case, a specialist in criminal proceedings cannot take the place of not only an investigator but also any process participant according to their status; they all have their own rights, obligations, powers, and certain boundaries regarding their participation in the case.

E.B. Melnikova considers a specialist to be a person with special knowledge who is not interested in the results of the case; who is involved to participate in investigative actions; who provides scientific and technical assistance in any form other than giving an expert opinion; who is managed by the person conducting the pre-investigation check, the inquirer, or the investigator during the investigative action [6, p. 24-25].

In our opinion, E.B. Melnikova's definition of a specialist cannot be fully accepted. This is because the need for a specialist's participation arises not only during the inquiry or preliminary investigation stages but also at all stages of court proceedings, where persons with special knowledge can be involved as specialists and their services can be used. Also, the specialist is not managed by the inquirer and investigator; they carry out their procedural tasks within the scope of powers granted to them by criminal procedural law.

Y.P. Grishina proposes to establish the concept of "specialist" in the law in the following wording: "A specialist is any competent person with special knowledge who is involved in procedural actions and investigative actions in the manner prescribed by law to assist in finding, recording, and seizing objects and documents, in applying technical means for studying case materials, in posing questions to an expert, as well as to explain issues within their professional competence to the parties and the court by providing testimony (witness testimony), presenting a specialist's conclusion, and drafting written information and documents" [7, pp. 18-23].

According to O.A. Isaeva, in criminal proceedings, a "specialist" is understood as a person with special knowledge who is not interested in the results of the criminal case and is involved in procedural actions to assist in finding, collecting, and studying evidence; conducting research and providing conclusions; assisting in the application of technical means; studying case materials and asking questions to an expert, as well as explaining issues



within their professional competence to the parties and the court and providing testimony [8, p. 6].

Professor I.R. Astanov, in his opinion, states that any person who is not interested in the criminal case and has special knowledge can be involved as a specialist [2, p. 68]. Providing advice or information within the scope of one's activities, although not considered a separate form of using special knowledge, demonstrates the types of activities of a person with special knowledge [2, p. 60].

It is appropriate to agree with the opinions of Y.P. Grishina, O.A. Isaeva, and I.R. Astanov. Although these scholars have given different definitions of "specialist", they have come to an agreement in terms of content.

The various approaches to defining the concept of "specialist" reflect the growing range of their functions.

In our opinion, in criminal proceedings, a "specialist" is a person who, based on the relevant decision of officials conducting pre-trial proceedings and court proceedings, possesses special knowledge, is not interested in the results of the criminal case, and is involved to assist authorized persons in finding, collecting, recording, and seizing objects and documents, studying them, and in determining the truth by posing questions to experts.

The definition given to a participant in criminal proceedings should reflect all its important characteristics, distinguish it from other participants, indicate their goals and objectives, and also show the procedural "requirements" placed on them.

The term "requirement" means "a request made with determination that must be fulfilled or complied with" [9, p. 647] and thereby allows for a full disclosure of the legal status of a specialist.

To determine the requirements that a specialist must meet, it is appropriate to analyze the norms of the Criminal Procedure Code (CPC). The requirement that a specialist must have special knowledge is indicated in the provisions of the first part of Article 69 of the CPC. The requirement that a specialist should not be interested in the outcome of the case follows from the content of the first part of Article 76 and Article 78 of the CPC.

To fully cover the issue of requirements for specialists, it is appropriate to analyze the norms established by the CPC on this matter. The current CPC has attempted to present the requirements for specialists in a way that is more convenient for practical compliance. Articles 69, 70, 76, 78 of the CPC reflect the requirements for specialists and the following provisions that ensure their ability to participate in criminal proceedings:

1) possession of necessary knowledge and qualifications; 2) ability to use scientific and technical means (tape recorders, video recorders, filming equipment, and other devices); 3) lack of interest in the results of the case, i.e., being impartial and unbiased; 4) not being subordinate to any of the persons participating in the case, either through service or in other aspects; 5) being worthy of one's profession.

Such requirements are reflected in various articles of the current CPC, but to identify them, it is necessary to systematically analyze the norms of criminal procedural legislation.

The requirement for a specialist to have the necessary knowledge and qualifications follows from the content of the first part of Article 69 of the CPC. According to it, to assist the inquirer, investigator, prosecutor, and court in finding and securing evidence during investigation and court proceedings, having the necessary knowledge and qualifications is required. The necessary knowledge and qualifications can relate to all fields of science and

profession and are required to find or secure evidence necessary to clarify the circumstances relevant to the case. There is no point in having a person who does not meet the requirement of having the necessary knowledge and qualifications participate in the case. Because their participation in the case would not have any significance in finding and securing evidence.

In legal literature, great attention has been paid to defining the concept of "special knowledge" and opinions on this issue have been presented in the works of various scholars. However, we think it is impossible to understand these concepts without clarifying the concepts of "special" and "special knowledge".

The concept of "special" (in Arabic - separate, different, related to a field) is defined as "belonging to a specific work or thing, designated for a specific work or purpose". Special means - understanding only in a certain direction of a narrow field, deep knowledge and long-term experience, information in a narrow specialization in a broad sense [10, p. 559].

It is possible to gain a deeper understanding of the content of the concept of special knowledge by analyzing the opinions expressed by scholars. In particular, A.A. Eysman was one of the first to define special knowledge as "knowledge that is not in general use, not used on a mass scale, and is used only by a limited range of persons" [11, p. 91].

In our opinion, one can partially agree with A.A. Eysman's definition of special knowledge. At the same time, "special knowledge" is also knowledge that is applied, known, and developed by those in a particular field of science or type of profession.

According to G.M. Nadgorniy, "special knowledge is knowledge that is not generally known, forms the basis of professional training in scientific, engineering, technical, and production specialties, as well as knowledge necessary for engaging in certain types of activities, which is not generally known, i.e., knowledge that forms the basis of people's professional training and determines their specialization" [12, p. 42].

In our opinion, G.M. Nadgorniy's views on "special knowledge" are debatable as being fully justified. This is because G.M. Nadgorniy has used the concept of "not generally known" in defining special knowledge and has enumerated limited types of specialties. It is appropriate to express the concept of "special knowledge" in a broad sense; it cannot be limited or defined.

According to legal scholars V.V. Sirkal and V.K. Lisichenko, "special knowledge is scientific, technical, and practical knowledge that is not widely known in court proceedings, acquired as a result of professional training (education) or work in a certain specialty by a person involved as a specialist or expert to assist the investigator or court in determining the circumstances of the case or resolving issues raised, and this knowledge is necessary to resolve these issues" [13, p. 19].

In our opinion, V.V. Sirkal and V.K. Lisichenko have given a detailed definition of the concept of "special knowledge". In our view, a person with special knowledge is someone who assists the official conducting the case in determining the circumstances of the case through their acquired professional, practical, or life experience.

From the definitions given to the concept of "special knowledge", it can be seen that specialists must possess special knowledge.

According to I.N. Sorokotyagin, special knowledge is modern knowledge in the field of science, technology, art, and profession that serves the purposes of conducting expertise,



implementing operational search activities, and investigating crimes, formed as a result of professional experience and special training [14, p. 42].

According to V.N. Makhov, "special knowledge is the activity of various field specialists, specialist for knowledge that is a professional requirement for investigators and judges, used for the purposes of investigation and court proceedings aimed at determining the truth established by criminal procedural legislation in criminal cases" [15, p. 46].

According to Y.R. Rossinskaya, special knowledge is a system of theoretical knowledge and practical skills in a specific field of science, technology, art, or profession, formed as a result of special training or professional experience and used to resolve issues arising in criminal proceedings [16, p. 33].

One can agree with the opinions of legal scholars I.N. Sorokotyagin, V.N. Makhov, and Y.R. Rossinskaya on this matter. Based on the opinions of these scholars, in our view, "special knowledge" is primarily the ability to possess and use various knowledge that serves to determine the truth in criminal procedural legislation.

According to V.M. Bishmanov, special knowledge is knowledge that is not related to conducting a criminal case, not limited in content to the scope of general and special education programs, and applied during criminal proceedings to achieve legal goals [17, p. 34].

In our opinion, V.M. Bishmanov's views on special knowledge need some clarification.

According to legal scholar A.I. Belskiy, "The investigator, inquirer, and court should not replace the specialist or interfere with their area of authority. For example, the investigator is not entitled to personally conduct documentary checks and audits, to make records in the name of a specialist in investigative action protocols, or to provide conclusions. Taking into account the current development trends of science and technology, with scientific and technical means becoming more specialized and complex, it is not difficult to assume that the process of knowledge differentiation and technological progress will continue" [18, p. 14-15].

One can fully agree with A.I. Belskiy's opinions on this matter. This is because all officials responsible for conducting a case having relevant special knowledge does not give them the right to participate in the case as specialists.

According to M. Klinkner, "special knowledge" differs from general knowledge and is a range of knowledge that only a limited number of people possess in a specific direction [19, p. 102-103]. In this regard, M. Klinkner's opinion has remained narrow in meaning.

According to Professor I.R. Astanov, "Special knowledge is professional knowledge in a narrow field of science, technology, profession that is applied for the purposes of initiating a criminal case, preliminary investigation, and court proceedings, and used to find, collect, evaluate factual information and evidence related to the crime through modern research methods" [2, p. 37-38].

In our opinion, Professor I.R. Astanov's views on "special knowledge" are presented in more detail.

The lack of legal regulation of the concept of "special knowledge" in the current CPC leads to ambiguity in approaches that clarify the content of this concept in scientific sources and the use of various criteria in practice when involving specialists to participate in criminal proceedings. Therefore, we consider it appropriate to introduce relevant changes to the legislation that include a normative definition of the concept of "special knowledge".



A court, prosecutor, inquirer, or investigator who possesses relevant special knowledge necessary for use in a criminal case is not entitled to act as a specialist in the case, because if procedural functions are combined in this way, they must be recused. The combination of the functions of a specialist with those of an inquirer, investigator, prosecutor, or judge in one person constitutes grounds for finding the obtained evidence inadmissible.

Based on the above opinions and analyses, in our view, *special knowledge should be understood as knowledge and skills that are not generally known in the legal field, acquired as a result of a person's professional training and practical experience, and used to identify, verify, and secure circumstances that need to be proven in a criminal case.*

The requirement that a specialist should be able to use scientific and technical means (tape recorders, video recorders, computer technology, electronic devices, and other equipment) follows from the content of the third part of Article 69 and Article 91 of the CPC. According to it, evidence is recorded with the help of a person skilled in using scientific and technical means designed to secure evidence, in a form that can be used later in the process of proof. This requirement is essentially the same as the requirement to have the necessary knowledge and qualifications.

In conclusion, various scholars have given theoretical definitions to a specialist with special knowledge in the process of proof in criminal proceedings within the framework of their views. The views expressed by scholars have in turn been reflected in existing legislation or have lost their relevance. The analysis of legal literature has shown that the definitions given to a person with special knowledge or a specialist have changed over time or been systematized. Most importantly, we can see that the role of a specialist as a person with special knowledge in criminal procedural relations has increased in the process of proof.

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