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THE CONCEPT OF FORENSIC EXAMINATION IN CRIMINAL PROCEEDINGS OF THE RUSSIAN FEDERATION

***Abstract:** the article is devoted to the analysis of the substantive elements of the concept and essence of forensic examination in criminal proceedings, describes the definitions of forensic examination offered by various legal schools, examines the objects of expert opinions.*

***Keywords:** criminal procedure, legal proceedings, forensic examination, expert, special knowledge.*

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ПОНЯТИЕ СУДЕБНОЙ ЭКСПЕРТИЗЫ В УГОЛОВНОМ СУДОПРОИЗВОДСТВЕ РОССИЙСКОЙ ФЕДЕРАЦИИ

***Аннотация:** статья посвящена анализу содержательных элементов понятия и сущности судебной экспертизы в уголовном судопроизводстве,*

описываются определения судебной экспертизы, предлагаемые различными правовыми школами, исследуются объекты экспертных заключений.

Ключевые слова: *уголовный процесс, судопроизводство, судебная экспертиза, эксперт, специальные знания.*

The expert's opinion justifiably occupies a leading place in the system of evidence collected in a criminal case. With the help of an expert examination, which is carried out on the basis of special knowledge in science, technology, art or craft, a complete and objective investigation of the circumstances of the case, factual data of evidentiary value are established, which makes it possible to solve the main issue of legal proceedings about the guilt or innocence of a person.

The examination justifiably acts as an effective means of establishing the circumstances of a criminal case. It allows you to use the entire arsenal of modern scientific tools in the process of investigation and trial of criminal cases. It is the main channel for the introduction of scientific achievements into investigative and judicial practice during the investigation and consideration of cases by the courts. Thanks to the use of modern scientific techniques and special knowledge, proving pushes the boundaries and penetrates into areas of knowledge previously inaccessible to investigative bodies and the court. With the development of science, the possibilities of attracting its achievements in the interests of justice will certainly increase, and therefore appropriate legislative regulation is needed, keeping up with the times. All this underlines the relevance of the chosen research topic.

In a general sense, forensic examination is usually understood as the commission of procedural actions by an expert, including conducting research and giving an opinion on issues whose resolution requires special knowledge in various fields assigned to the expert by officials to establish the circumstances relevant to the case. This definition, in general, corresponds to the main tasks of the state forensic expert activity. However, in the doctrine of criminal procedure law, there are different opinions on the content of the concept of forensic examination.

The definition of forensic examination is given in Federal Law No. 73-FZ of May 31, 2001 «On State Forensic expert activity in the Russian Federation». Forensic examination is a procedural action consisting of conducting research and giving an expert opinion on issues whose resolution requires special knowledge in the field of science, technology, art or craft and which are put before the expert by a court, judge, body of inquiry, a person conducting an inquiry by an investigator or prosecutor, in order to establish the circumstances to be proved in a particular case. This concept is new to domestic legislation, therefore it is subject to careful analysis and evaluation. There have been discussions about this concept for a certain period of time.

The concept of «forensic examination» is a key one in the system of definitions. There is no consensus among scientists on this issue. This is caused by a different understanding of the essence of forensic examination, as well as insufficient correctness in the formulation of definitions. The latter can be divided into several groups formed due to the disparity of opinions.

The first group includes those definitions in which the examination is considered as a special study. The most prominent representative of this group can be called A.A. Eisman, who believes that the examination should be understood as a study carried out by an expert on the basis of special knowledge in order to give a conclusion serving as evidence in the case [6, p. 4]. In turn, I.L. Petrukhin believes that the examination is «a study of material evidence and other materials and objects identified during the investigation of a criminal case, carried out in accordance with the procedural form established by law, which is carried out on behalf of a court (investigative body) by persons knowledgeable in science, technology or other special branches of knowledge, and drawing up a reasoned conclusion on special issues arising during the investigation or judicial review of a criminal case» [3, p. 3].

The second group includes those definitions of expertise that are considered by scientists as an investigative (judicial) or procedural action. One of these definitions was given by A.R. Shlyakhov, who believes that «examination is a procedural action consisting in the investigation of the circumstances of the case, conducted on behalf of investigators and courts in accordance with the procedure prescribed by law by persons

knowledgeable in science, technology, art or craft to establish factual data serving in the form of an expert opinion as a means of judicial proof, and as a result – the establishment of objective truth in criminal and civil cases» [5, p. 7]. So, V.M. Galkin points out that forensic examination is an investigative (judicial) action aimed at establishing facts relevant to the case, using special knowledge, by involving a knowledgeable person for the purpose of conducting research and giving a conclusion. In his opinion, this definition is broader in relation to the definition of forensic examination formulated by him as an investigative (judicial) action, since it covers not only the activities of an expert, but also reflects the place of expertise in procedural activity [1, p. 6].

And, finally, the third group of authors, who claim that forensic examination is «an indirect means of proof, the essence of which is that the person conducting the inquiry, the investigator, the judge or the court, on the grounds and in accordance with the procedure established by law, instruct the expert to solve the question posed to him, and the expert, based on his special knowledge, conducts a study of the materials submitted to him and gives an opinion used as a source of evidence in criminal and civil proceedings» [2].

This formulation, from our point of view, gives the most reasonable definition. It is worth noting that forensic examination can be considered as a branch of knowledge that studies the general and specific patterns of objects that contribute to solving the tasks of investigation; as a criminal procedure institution; as an act of practical activity of an investigator or a court. Based on this, one or another definition can be given, which, unfortunately, is not always taken into account by scientists [4, p. 50].

The analysis of the above definitions shows that they differ in content. This is easily explained by the ambiguity of forensic examination and the meaning in which the term «forensic examination» is used. It can mean different levels of scientific branch of knowledge and practical activity.

Thus, summarizing all of the above, we can give the following definition: expertise in criminal proceedings – this is an investigative action, which is a special form of investigation of evidence established by the criminal procedure law (contained in evidence, on the body of the accused, suspect, victim or witness of information), carried

out on behalf of the investigator (inquirer, etc.), the court warned of criminal liability for giving deliberately false information by persons knowledgeable in special branches of knowledge, and culminating in the preparation of a conclusion on special issues.

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