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**FEATURES OF CONDUCTING A FORENSIC EXAMINATION  
IN THE CONDITIONS OF THE CURRENT LEGISLATION  
OF THE RUSSIAN FEDERATION**

*Abstract: this article analyzes the features of the appointment and conduct of the examination at the stage of preliminary investigation and at the stage of trial by the court of first instance; the authors examine the content of the expert's opinion, consider the conditions under which the expert has the right to go beyond the subject of the examination.*

*Keywords: crime, criminal process, investigator, forensic examination, expert, expert institution, evidence.*

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**ОСОБЕННОСТИ ПРОВЕДЕНИЯ СУДЕБНОЙ ЭКСПЕРТИЗЫ  
В УСЛОВИЯХ ДЕЙСТВУЮЩЕГО ЗАКОНОДАТЕЛЬСТВА  
РОССИЙСКОЙ ФЕДЕРАЦИИ**

*Аннотация: в статье анализируются особенности назначения и проведения экспертизы на стадии предварительного расследования и на этапе судебного разбирательства судом первой инстанции. Авторы исследуют содержание*

*заклучения эксперта, рассматривают условия, при которых эксперт вправе выйти за пределы предмета экспертизы.*

**Ключевые слова:** *преступление, уголовный процесс, следователь, судебная экспертиза, эксперт, экспертное учреждение, доказательства.*

There are three stages in the examination system in the Russian Federation: a) the appointment of the examination; b) the working stage; c) the activity of the person who appointed the examination upon its completion. The examination is divided into several stages: 1) at the stage of preliminary investigation; 2) trial by the court of first instance. The appointment of an expert examination in the preliminary investigation is a procedural action that is carried out in compliance with the grounds and conditions defined by law. Unfortunately, the legislator does not specify specific grounds for the appointment of examinations. In this regard, in each specific case, they are determined by the person who conducts the investigation. At the preliminary investigation, the examination is appointed by the investigator, the inquirer, as soon as it becomes necessary. The decision on the appointment of an expert examination must be made in compliance with the procedural requirements. The legislative decision, which allowed the appointment and production of a forensic examination before the initiation of a criminal case, was not unexpected either for the legal community, nor for the theory of criminal procedure, nor for law enforcement practice. The literature pays a lot of attention to the history of the development of the author's proposals on the need for such a solution to the problem in Russia, as well as the analysis of foreign experience.

Previously, the prohibition of production, it is noted in the literature, examinations before the initiation of a criminal case were circumvented in two ways: either they were replaced by some kind of surrogate (for example, not provided for anywhere by a «forensic medical examination»), or by some kind of informal («preliminary») research, after the initiation of a criminal case, before a full-fledged forensic examination[1, p. 20]. However, not every forensic examination can be carried out at the stage of initiation of a criminal case. For example, forensic psychiatric, forensic accounting, forensic genetic, complex forensic psychological and psychiatric, etc. This is due to the fact that

their production is accompanied by numerous restrictions (a thorough expert study of a person's genetic identity, inpatient examination of a sub-expert in a psychiatric clinic). For example, the appointment of a forensic genetic examination will not be considered a priority investigative action. Before appointing an expert examination, the investigator must collect and study the necessary evidence, form questions that should be put to the expert, decide on an expert institution or invite an expert from among persons with special knowledge [2, p. 67].

The examination should be carried out by the investigator's decision, but why only after the initiation of a criminal case, if during the disclosure and investigation of non-obvious crimes in hot pursuit, the question arises of the need to conduct an examination of the situation of the scene itself, which is to be studied in its original state, not violated by the actions of the investigator. An example can be cases that are associated with transport accidents, industrial accidents, and the like. The examination at the scene of the incident, in parallel with its examination, in most cases becomes impossible for procedural reasons, because, as a rule, the examination of the scene of the incident is carried out before the initiation of a criminal case, and this does not allow the investigator, before they decide to initiate a criminal case, to appoint an examination. At the same time, it is often simply impossible to identify the signs of a crime, as well as to fix the traces in accordance with the requirements of the law, without conducting an expert study.

Everyone knows that before the initiation of a criminal case, investigative actions are carried out with the task of refuting or establishing the grounds for initiating a criminal case. E.R. Rossinskaya believes that scientists who are opponents of the appointment of a forensic examination before the initiation of a criminal case unnecessarily exaggerate the situation that may arise when appointing an examination [3, p. 213]. Moreover, the first step towards the possibility of appointing a forensic examination before the initiation of a criminal case, to some extent, has already been done earlier (Article 178 of the Criminal Procedure Code of the Russian Federation «Examination of a corpse. Exhumation», which provides for an examination of the corpse at the place of its discovery with the participation of a forensic medical expert) [4, p. 194]. In our

opinion, the legislator's fear was quite justified that the introduction of an article that would allow the examination before the initiation of a criminal case would infringe (restrict) the rights of interested persons and would contribute to the emergence of new proposals for conducting investigative actions before the initiation of a criminal case (for example, interrogation).

When appointing an expert examination, an investigator should be aware of the level of development of modern science, technology, and the capabilities of a particular expert institution or expert. When appointing an examination, quite often, investigators make mistakes that can be explained by a lack of knowledge about the capabilities of a particular examination. If the investigator finds it necessary to conduct an examination, then he makes a reasoned decision, which is the procedural basis for its conduct (Articles 38, 195 of the Code of Criminal Procedure of the Russian Federation). The conclusion consists of three parts: introductory, descriptive, and resolute. In the introductory part, the expert reflects the following information: 1) the date, time and place of expert research; 2) the grounds for the appointment and production of forensic examination; 3) the official who appointed the forensic examination (surname, position, body where he works); 4) the expert institution and the expert who conducted the research (surname, first name and patronymic of the expert, his education, specialty, work experience in the specialty, academic degree or academic title, position held); 5) warning of the expert about responsibility for giving a deliberately false conclusion; 6) questions put to the expert by the investigative body; 7) objects of research and materials submitted for expert research; 8) persons present during the forensic examination.

The descriptive part of the expert's conclusion contains the plot of the case, a description of the methods used and tested in practice for the study of the presented objects, the content of the expert study and its results. The articles of the Code of Criminal Procedure of the Russian Federation on the basis of which the examination was appointed are also indicated (Article 195). If the examination is entrusted to the experts of a forensic expert institution, then reference is also made to Article 145 of the Code of Criminal Procedure of the Russian Federation, in cases where the appointment of an

examination is mandatory, to Article 146 of the Code of Criminal Procedure of the Russian Federation.

In the operative part of the resolution, it is necessary to specify: the type or type of examination, formulate questions that are submitted for the expert's permission, appoint an expert or determine the forensic expert institution whose employees are entrusted with the examination, a list of materials submitted to the expert's disposal is provided (Article 199 of the Code of Criminal Procedure of the Russian Federation).

If, during the production of an expert study, a forensic expert establishes circumstances that, in his opinion, are important for the correct resolution of a criminal case, but about which he has not been asked the relevant questions, then he has the right to go beyond the subject of forensic examination, determined by the questions posed to him, and indicate them in his expert opinion.

It should be noted that the expert has the right to go beyond the subject of the examination, but in no case beyond the limits of his specialty. The objectives of such an initiative are as follows: a) for a comprehensive study of the objects of research; b) to reduce the time of forensic examination; d) to help the investigator in the timely use of expert conclusions during the investigation of a crime.

The examination is carried out either in expert institutions that are under the jurisdiction of the Ministry of Justice of the Russian Federation and the Ministry of Internal Affairs of the Russian Federation, or by an appropriate specialist (group of specialists) outside such an institution. When conducting a forensic examination in an expert institution, the investigator sends to the head of the relevant expert institution a resolution on the appointment of a forensic examination and the materials necessary for its production. The head of the expert institution, after receiving the resolution, entrusts the forensic examination to a specific expert or several experts from among the employees of this institution and notifies the investigator about it. At the same time, the head of an expert institution, excluding the head of a state forensic expert institution, must explain to the expert his rights and responsibilities, which are provided for in Article 57 of the Code of Criminal Procedure of the Russian Federation. The head of an expert institution has the right to return, without executing the decision on the

appointment of a forensic examination and the materials submitted for its production, if there is no expert of a specific specialty in this institution, or special conditions for conducting research, with mandatory indication of the reasons for which the return is made.

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