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Opinion and testimony of a specialist and their use by the defense attorney in providing criminal cases

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INTRODUCTION

Relevance of the research topic. The need to use specialized knowledge in criminal proceedings and in criminal procedural proof is obvious. The use of scientific and technological achievements to ensure rapid and complete disclosure of crimes, exposure of those guilty of their commission and prevention of prosecution of the innocent has long been a recognized need.

In this regard, the growing importance of specialized knowledge and persons possessing such knowledge is not surprising and requires increased attention from the legislator, scientists and practitioners. Evidence of this is the introduction in 2003 of[1], in essence, a new participant in the process - a specialist giving opinions and testimony. The specialist has become not only a person facilitating the conduct of individual investigative actions, but also, along with the expert, a person directly forming evidence - giving opinions and testimony. (p. 3.1 h. 2 Art. 74 Code of Criminal Procedure RF). The visible is there extension applications special knowledge, associated with the expansion of the means of evidence in the arsenal, first of all, of officials of the bodies conducting criminal proceedings. The court, the prosecutor's office, the bodies conducting preliminary investigations have received the opportunity to more quickly and less time-consuming satisfy their need for special knowledge by obtaining written (conclusions) and oral (testimony) judgments on various issues, including for determining the need for an examination (initial, repeated, additional, comprehensive) and the range of issues to be resolved.

Of no less importance are the named means of proof for the defense attorney, the provision of which may be considered in quality favored protection, corresponding to the constitutional right of everyone to it (in the sense expressed in Article 16 of the Criminal Procedure Code of the Russian Federation, in its agreement with Article 48 of the Constitution of the Russian Federation).

[1] Federal Law of the Russian Federation of 04.07.2003 No. 92-FZ "On Amendments and Additions to the Criminal Procedure Code of the Russian Federation" - SPS "Consultant Plus" https://www.consultant.ru/document/cons_doc_LAW_43124/ (date of access 16.06.2024).

At the same time, the legal possibility and practice of using these means by the defense attorney provoked scientific discussions about whether the specialist has the right to conduct research, whether the conclusions and testimony he provides have evidentiary value, whether they can be regarded as full-fledged means of proof, whether they do not provide an unjustified advantage to the defense attorney[2], etc.

The emergence of these sometimes quite heated discussions is not accidental. The fact is that the evidentiary activity of the defense, which is discussed here, in the absence of appropriate regulatory algorithms creates in practice complex problems that are not always properly resolved[3]. Thus, to date, neither the law, nor science, nor practice provide unambiguous answers to questions concerning the procedural status of a specialist, his involvement in criminal proceedings by a defense attorney, the regulation of the specialist's giving of an opinion and/or testimony, the documentation of the specialist's opinion, the giving of the information received from him of the proper form, the procedure for warning a specialist involved by a defense attorney about criminal liability for giving knowingly false opinions or testimony.

Despite the fact that the above questions concern the parties and the court, the answers to them are of greatest importance for the defense. Analysis of judicial practice has shown that some of the judiciary uses formulations not provided for by law in order not to recognize the expert's opinion as admissible (legally obtained) evidence: prepared on a commercial basis at the request of lawyers[4]; paid for by the defendant, and the experts' conclusions were made at the request of the defense[5]; were conducted on the

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[2]Garmaev Yu. P. Illegal activities of lawyers in criminal proceedings: textbook. Moscow: Examen Publishing House, 2005. P. 37-39.

[3]Zakhokhov Z. Yu. Expert's conclusion and testimony as types of evidence in criminal proceedings: diss. … candidate of legal sciences. Volgograd, 2012. P. 6.

[4] The verdict of the Bagrationovsky Court of the Kaliningrad Region dated June 21, 2018 in case No. 1-31/2018 - https://sudact.ru/regular/doc/fzVF3GVmHjUR/?regular-txt=&regular-case_doc=1-31%2F2018&regular-lawchunkinfo=&regular-date_from=21.06.2018&regular-date_to=21.06.2018&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718198924255 (date of access 12.06.2024).

[5] Verdict of the Volgograd Regional Court of August 5, 2019 in case No. 2-1/2019 – https://sudact.ru/regular/doc/5Jw5gbCZQTVw/?regular-txt=&regular-case_doc=2-1%2F2019&regular-lawchunkinfo=&regular-date_from=05.08.2019&regular-date_to=05.08.2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718623641285 (date of access 12.06.2024); Verdict of the Leninsky District Court of Kostroma dated February 21, 2020 in case No. 1-1/2020 - https://sudact.ru/regular/doc/N4vAgQzD6YZZ/?regular-txt=&regular-case_doc=1-1%2F2020&regular-lawchunkinfo=&regular-date_from=21.02.2020&regular-date_to=21.02.2020&regular-workflow_stage=&regular-area=1036&regular-court=&regular-judge=&_=1718623786829 (date of access 12.06.2024).

initiative of a person interested in the outcome of the case, on a paid basis[6]; there is no warning of the specialist about the liability for giving a knowingly false opinion; the form of the opinion does not correspond to the procedural form. Of the entire volume of cases studied (presented in Application No. 7), the specialist's opinion is recognized as obtained in violation of the requirements of the criminal procedure law, due to non-compliance with the procedural form (in violation of the requirements of the criminal procedure law), in the absence of requirements for such in the law, in 62% of cases, while the following are indicated as reasons for non-compliance: lack of warning of the specialist about the liability for giving a knowingly false opinion, the alleged interest of the specialist, giving an opinion without relying on the case materials, inadmissibility of reviewing (assessment) of other opinions of persons with special knowledge, as well as other reasons and grounds not provided for by the current legislation. Only in 6.9% of cases was the expert's opinion recognized as having been obtained without violating the criminal procedure law.

The above gives grounds to say that the giving of opinions and testimony as the formation of evidence by a specialist (under procedural guidance and jointly with officials of the bodies conducting the process and the defense attorney), as well as the form and content of opinions and testimony of a specialist as independent types of evidence in criminal cases, have not been developed sufficiently fully and clearly (including due to the lack of a single agreed doctrine for the use of specialized knowledge in criminal proceedings[7]).

That is why the study of the above-mentioned issues is relevant, allowing us to theoretically rethink and practically overcome the lack of system and fragmentation of their regulatory framework[8].

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[6]Verdict of Zadonsky District Court of Lipetsk Region dated December 23, 2019 in case No. 1-42/2019 - https :// sudact . ru / regular / doc / SRbmipzs 2 hlN /? regular - txt =& regular - case _ doc =1-42%2 F 2019& regular - lawchunkinfo =& regular - date _ from =23.12.2019& regular - date _ to =23.12.2019& regular - workflow _ stage =& regular - area =& regular - court =& regular - judge =&_=1718199170798 (accessed on June 12, 2024).

[7]There is no scientific and methodological basis for updating regulatory framework and modernizing law enforcement practice (See: Grishina E.P. Conceptual and legal problems of using special knowledge in criminal proceedings in Russia: monograph. Moscow: Yurlitinform, 2018. P. 4).

[8]Thus, the changes in the criminal procedure legislation in the area under study that occurred in 2017 and in 2021 became almost mutually exclusive, which indicates the absence of a single scientific and regulatory approach (See: Federal Law of the Russian Federation of 17.04.2017 No. 73-FZ "On Amendments and Additions to the Criminal Procedure Code of the Russian Federation" - SPS "Consultant Plus" https://www.consultant.ru/document/cons_doc_LAW_215473/ (date of access

The degree of scientific development of the topic . General issues of evidence and proving directly related to the topic of the dissertation were the subject of scientific interest of such famous scientists as V. D. Arsenyev, R. S. Belkin, L. E. Vladimirov, L. V. Golovko, K. F. Gutsenko, V. Ya. Dorokhov, V. I. Zazhitsky, L. D. Kokorev, P. A. Lupinskaya, N. N. Polyansky, M. S. Strogovich, I. Ya. Foinitsky, S. A. Sheifer, P. S. Elkind and others.

Issues related to the use of special knowledge and the participation of persons possessing it in criminal proceedings are reflected in the works of T. V. Averyanova, V. D. Arsenyev, R. S. Belkin, V. M. Bykov, E. I. Galyashina, Yu. P. Garmaev, L. V. Golovko, V. G. Zablotsky, A. M. Zinin, Ya. V. Komissarova, Yu. G. Korukhov, A. V. Kudryavtseva, L. V. Lazareva, V. N. Makhov, T. F. Moiseeva, Yu. K. Orlov, R. D. Rakhunov, E. R. Rossinskaya, S. B. Rossinsky, E. V. Selina, I. N. Sorokotyagin, M. S. Strogovich, M. A. Cheltsov , L. G. Shapiro, S. A. Shafer, V. I. Shikanova, A. A. Eisman, A. A. Eksarkhopulo and others.

Of particular importance for the research are the works of V. D. Arsenyev, E. I. Galyashina, L. V. Golovko, E. P. Grishina, E. A. Zaitseva, A. M. Zinin, V. I. Zazhitsky, A. V. Kudryavtseva, V. S. Latypov, Yu. K. Orlov, E. R. Rossinskaya, S. B. Rossinsky, E. Yu. Samuticheva, A. A. Tarasov, A. R. Sharipova , A. A. Eksarkhopulo, which touched upon the problems of using special knowledge in proving, the problems of the procedural status of a specialist, the participation of a specialist in the formation of criminal procedural evidence, the participation of a specialist in proving in criminal cases.

A number of dissertations are devoted to the opinion and testimony of an expert as evidence and the participation of an expert in criminal proceedings, among which special attention should be paid to the works of S. N. Eremin, “The Opinion of an Expert as a New Type of Evidence in Criminal Proceedings (Criminal Procedure and Forensic Research)”, 2004; A. A. Novikov, “The Institute of a Specialist in Criminal Proceedings in Russia”, 2007; A. I. Belsky, “The Opinion and Testimony of an Expert as Evidence in

16.06.2024), Resolution of the Plenum of the Supreme Court of the Russian Federation of 29.06.2021 No. 22 "On Amendments to Certain Resolutions of the Plenum of the Supreme Court of the Russian Federation on Criminal Cases" https://www.consultant.ru/document/cons_doc_LAW_388946/ (date of access 16.06.2024)

Criminal Proceedings in Russia", 2007; A. N. Petrukhina, "The Opinion and Testimony of an Expert and Specialist as Evidence in Modern Criminal Proceedings in Russia", 2009; A. E. Denisov, "The Specialist as a Participant in Criminal Proceedings", 2009; Z. Yu. Zakhokhov, "The Opinion and Testimony of an Expert as Types of Evidence in Criminal Proceedings", 2012; V. Yu. Yargutova "Participation of a specialist in the formation of evidence in criminal cases of crimes in the sphere of economic activity: theoretical and applied aspects", 2019, N. S. Rasulova "Specialist's opinion as a means of proof in criminal proceedings", 2022 .

Most of the dissertation research was carried out at the stage of the formation of the specialist's institute, that is, in the period from 2003 to 2012, and is devoted to evidence obtained with his decisive participation.

At the same time, the above-mentioned dissertation studies did not seriously reflect or resolve the problems of participation in proving of a specialist engaged by the defense. The issues of the evidentiary value of the conclusion and testimony of a specialist engaged by the defense remain controversial . The requirements for the form of this evidence, the procedure for obtaining it, and the procedure for warning the specialist about liability for giving knowingly false conclusions and/or testimony have not yet been sufficiently regulated. To date, there is no uniform approach in the scientific literature to the types and forms of participation of a specialist in proving in criminal cases, as well as to the rules for assessing the admissibility of his conclusions and testimony.

The object of this study is a set of criminal procedural legal relations that arise through the use of specialized knowledge through the provision of conclusions and testimony by a specialist.

The subject of the research is norms of criminal procedural legislation related to the object of study, materials of judicial practice on the application of these norms, results of surveys of practitioners participating in proving in criminal cases, investigative, prosecutorial, advocacy and judicial practice, as well as theoretical provisions of criminal procedural science on the institution of a specialist in general and his participation in proving by giving opinions and testimony.

The purpose of this study is to obtain new theoretical knowledge about proof by giving (and using) expert opinions and testimony, as well as to optimize law enforcement practice in this area.

To achieve this goal, the following **tasks were set** :

1. Define and classify the types and forms of participation of a specialist in proving within the framework of a separate evidentiary action.
2. Consider the theoretical and legal foundations of using the opinion and testimony of a specialist as a means of evidence in criminal cases.
3. Identify the specifics of obtaining, verifying and evaluating the expert's opinion and testimony as evidence in a criminal case.
5. To study the problems of collecting, verifying and evaluating the opinions and testimony of a specialist obtained at the initiative of the defense.
6. To establish the reasons for the emergence of problems associated with the use of the expert's opinion and testimony obtained at the initiative of the defense in proving, as well as the methods and ways to resolve them.
7. Develop and formulate proposals for amending and supplementing criminal procedure legislation, optimizing law enforcement practice in terms of the procedure for the defense to obtain and attach expert opinions to case materials, as well as for them to give testimony.

The methodological basis of the study was general scientific and specific scientific methods of understanding legal phenomena and the activities of participants in criminal proceedings in the area under study. Among the general scientific methods, one can highlight the use of descriptive, comparative and formal-logical methods (analysis, synthesis, deduction, induction, analogy). In combination with the doctrinal approach, they made it possible to carry out a comprehensive study of the institution of a specialist and his function of giving conclusions and testimony, to study the features of legal regulation and the practice of using the conclusions and testimony of a specialist involved by the defense.

The following specific scientific methods were used: the formal-legal method in interpreting legal norms; the comparative-legal method in comparing normative and

doctrinal provisions; the statistical method in generalizing empirical and sociological data; the sociological method in conducting a survey on the subject of the study. This made it possible to identify gaps in the normative regulation of the issues under study and the difficulties of resolving them in practice.

The application of these methods in combination contributed to the formation of a holistic theoretical and practical solution to the tasks set.

Theoretical basis dissertation research consists of monographs, results of dissertation research, scientific articles devoted to the problems of criminal procedural proof and participation in proving of a specialist within the framework of a separate evidentiary (investigative) action, including a specialist involved by the defense. The author's view on the formation of theoretical provisions of the dissertation research was influenced by the works of such scientists as T. V. Averianova, V. D. Arsenyev, R. S. Belkin, E. I. Galyashina, L. V. Golovko, V. I. Zazhitsky, E. A. Zaitseva, Ya. V. Komissarova, Yu. G. Korukhov, A. V. Kudryavtseva, V. S. Latypov, Yu. K. Orlov, E. R. Rossinskaya, S. B. Rossinsky, A. A. Tarasov, A. A. Eksarkhopulo and others.

The normative basis of the dissertation research were the Constitution of the Russian Federation, the Criminal Procedure Code of the Russian Federation, the Criminal Code of the Russian Federation, the Federal Law of 31.05.2001 No. 73-FZ "On state forensic activity in the Russian Federation", the Federal Law of 31.05.2002 No. 63-FZ "On advocacy and the Bar in the Russian Federation", the draft Federal Law "On forensic activity in the Russian Federation", other federal laws and regulations of ministries and departments related to the topic of the dissertation research.

In addition, the work used acts of the Constitutional Court of the Russian Federation, resolutions of the Plenum of the Supreme Court of the Russian Federation, decisions of courts of various levels for the period from April 2003 to April 2024, and the results of the generalization of judicial practice.

The empirical basis of the dissertation research consists of:

- results of surveys of 285 practitioners, including: 90 investigators and heads of investigative bodies from the regions of St. Petersburg and Leningrad Oblast, as well as other regions of the Russian Federation, who improved their qualifications at the St.

Petersburg Academy of the Investigative Committee of the Russian Federation, 90 prosecutors who improved their qualifications at the St. Petersburg Law Institute (branch) of the University of the Prosecutor's Office of the Russian Federation, 15 federal judges of Leningrad Oblast, the city of St. Petersburg, the Republic of Tatarstan, 90 lawyers who are members of the bar associations of St. Petersburg, Leningrad and Belgorod Oblasts.

- the results of the analysis of a number of published decisions of courts of general jurisdiction of the Russian Federation, issued in the period from May 2017 to December 2024.

- the author’s personal experience of practical work as a lawyer from 2014 to the present.

Scientific novelty of this study consists of the following specific results obtained by the author in the course of the research: 1) providing the author's definition of the types of expert opinions; 2) formulating the author's vision of the differences between expert research and expert opinion; 3) defining the objectives of involving a specialist in criminal proceedings both at the pre-trial stages and at the trial stage; 4) developing and formulating requirements for the form of the specialist's opinion and the procedure for obtaining it, including those obtained at the initiative of the defense; 5) defining the admissibility criteria for the expert's opinion and testimony, both obtained at the initiative of authorities and obtained at the initiative of the defense and other persons acting in their personal interests; 6) formulating proposals aimed at improving the criminal procedural regulation of the specialist's participation in criminal procedural evidence.

The theoretical significance of the dissertation research lies in the fact that its provisions develop the provisions on proof, defining a specialist as a participant in proof, participating in proof within the framework of a separate evidentiary (investigative) action and a participant in proof providing scientific evidence; in substantiating the author's classification of types and forms of participation of a specialist in criminal procedural proof and the rules on admissibility imposed on the conclusion and testimony of a specialist; in substantiating the author's approach to the procedure and order of involving a specialist invited by the defense in criminal procedural proof. The conclusions and proposals contained in the scientific study can serve the development of the doctrine

of criminal procedure, improvement of the institution of proof, the institution of a specialist and the institution of special knowledge.

The practical significance of the study is determined by the fact that the data obtained during the study and the conclusions drawn on their basis, related to the resolution of problems of obtaining the opinion and testimony of a specialist (including one involved by the defense) and establishing with their help the circumstances of a criminal case, can be used to improve the current criminal procedure legislation, as well as in the preparation of manuals, educational and methodological recommendations and conducting lectures and practical (seminar) classes on the subject of "Criminal Procedure of the Russian Federation".

Approbation of the research results . The main provisions of this research are reflected in 16 scientific articles of the author, with a total volume of over six printed sheets, published in scientific journals, including those recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation.

The findings and results of the study were presented at scientific events of various levels: international scientific and practical conferences, international and all-Russian round tables: the XII International Scientific and Practical Conference of Students, Master's and Postgraduate Students "Problems of Improving Legislation and Prosecutor's Activity" (Saratov, 2018); the All-Russian Round Table "Interrogation in Jurisprudence and Legal Linguistics" (St. Petersburg, 2019); International Scientific and Practical Conference "Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University" (St. Petersburg, 2019); VIII International Scientific and Practical Conference: Criminal Proceedings: Procedural Theory and Forensic Practice (Simferopol-Alushta, April 23-24, 2020); All-Russian Scientific and Practical Conference "Verification of the Legality and Validity of Court Decisions in Criminal Procedure" (St. Petersburg, October 16-17, 2020); XV International Scientific and Practical Conference: Problems of Rights Protection: History and Modernity (St. Petersburg, October 29, 2020); International Scientific and Practical Conferences "Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State

University" (St. Petersburg, 2020-2021); All-Russian Round Table: Admissibility of Testimony in Criminal Proceedings (St. Petersburg, December 19, 2020); IV International Scientific and Practical Conference: Discussion Issues in the Theory and Practice of Forensic Science (Moscow, March 25-26, 2021); XIII International Conference: Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University, (St. Petersburg, June 24-25, 2021); International Scientific Conference "Modern Legal Monitoring: Results and Prospects" (St. Petersburg, June 22-23, 2022); XIV International Scientific and Practical Conference: Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University "Criminal Procedure Code of the Russian Federation: 20 Years Later" (St. Petersburg, June 24-25, 2022); XV International Scientific and Practical Conference: Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University "Actual Problems of Obtaining and Using Evidentiary Information in Criminal Proceedings" (St. Petersburg, June 23-24, 2023); Annual All-Russian Scientific and Practical Conference "Criminal Procedure: from the Origins to the Present" (St. Petersburg, September 22, 2023); V Annual All-Russian Forensic Forum "St. Petersburg School of Forensic Science" (St. Petersburg, October 20, 2023); All-Russian Conference on Natural Sciences and Humanities with International Participation "SCIENCE OF SPbU - 2023" (St. Petersburg, November 21, 2023); XV Annual Scientific and Practical Conference "Medicine and Law in the 21st Century" (St. Petersburg, December 22 - 23, 2023); III International Scientific and Practical Conference Kazan Criminal Procedure and Forensic Readings , (Kazan, March 1, 2024); Scientific and Practical Seminar "Problems of Maintaining Public Prosecution in Court with the Participation of Jury Members" (St. Petersburg, March 29 - April 1, 2024); XV International Scientific and Practical Conference: Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University "Outstanding University Scientists and Modern Criminal Proceedings: on the 300th Anniversary of the University" (St. Petersburg, June 21-22, 2024); II International Scientific and Practical Conference "The Role and Importance of Forensic Activity and Forensic Expertology in Ensuring National Security" (Minsk,

Republic of Belarus, October 17-18, 2024), and were also tested within the framework of the author's pedagogical practice.

The structure and volume of the work are determined based on the goals and objectives of the study. The dissertation consists of an introduction, three chapters, including nine paragraphs, a conclusion, a list of references, and appendices.

The introduction substantiates the choice of the topic of scientific research, its relevance, defines the goals, objectives, object, subject and methodology of the research, theoretical and legal foundations, empirical base; reveals the scientific novelty of the research, formulates the provisions submitted for defense, determines the theoretical and practical significance of the work, indicates information about the testing of the research results, the structure and volume of the work.

The first chapter "Participation of a specialist in proving in criminal cases" consists of two paragraphs and is devoted to the general provisions of participation of a specialist in proving. In the first paragraph, a specialist is considered as a participant in criminal procedural proving within the framework of a separate evidentiary (investigative) action . The second paragraph is devoted to research into the types and forms of participation of a specialist in criminal procedural proving.

The second chapter "Giving an expert's opinion and testimony as the main forms of an expert's participation in proving in criminal cases", consisting of four paragraphs, is devoted to giving an expert's opinion and testimony as the main forms of his participation in proving. The first paragraph contains a study of the concept and content of an expert's opinion and testimony as evidence. The second, third and fourth paragraphs are devoted to the procedure for obtaining, checking and evaluating an expert's opinion and testimony, respectively.

The third chapter "Characteristics and problems of using the expert's opinion and testimony invited by the defense" touches upon the characteristics and problems of using the expert's testimony and opinions obtained as a result of the defense attorney's activities and consists of three paragraphs. The first paragraph is devoted to the characteristics of obtaining the expert's opinion and testimony invited by the defense attorney. The second paragraph identifies the causes and conditions for the emergence of

problems with the use of the expert's opinion and testimony by the defense attorney. The third paragraph of the third chapter of the dissertation is devoted to ways of resolving the problems of using the expert's opinion and testimony by the defense attorney.

The conclusion presents the results of the dissertation research and formulates the main conclusions that have scientific and practical significance.

The appendices contain the results of surveys of practitioners and the results of a summary of judicial practice .

List of works published on the topic of dissertation research :

1. Vatutina, O. Yu. Problematic issues of interrogation of a specialist in criminal proceedings / O. Yu. Vatutina // Humanitarian, socio-economic and social sciences. - Krasnodar. - 2019. - No. 4. - P. 90 - 92.
2. Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35 - 39.
3. Vatutina, O. Yu. Legal significance of the participation of a specialist in criminal procedural proof / O. Yu. Vatutina // Legal science. Scientific and practical journal. - 2025. - No. 2. - P. 225 - 228.
4. Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22 - 26.
5. Vatutina, O. Yu. "Adversarial Expertise" in Russian Criminal Procedure / O. Yu. Vatutina // Law and Power. - 2021. - No. 2. - P. 26 - 29.
6. Vatutina, O. Yu. Specialist in the science of criminal procedure: historical and legal aspect / O. Yu. Vatutina // Proceedings of the International scientific and practical conference "Scientific school of criminal procedure and forensic science of the St. Petersburg State University". - M.: KroNus . - 2019. - P. 19 - 27.
7. Vatutina, O. Yu. Use of legal expertise by a defense attorney in proving / O. Yu. Vatutina // Problems of protection of rights: history and modernity: XV International scientific and practical conference, St. Petersburg, October 29, 2020. - St.

Petersburg: Leningrad State University named after A.S. Pushkin, 2021. - P. 320 - 322.

8. Vatutina, O. Yu. "Adversarial Expertise" in Russian Criminal Procedure / O. Yu. Vatutina // Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University: Conference Proceedings 2020-2021, Moscow, December 10, 2020 – 2021 / Ed. by N.P. Kirillova, S.P. Kushnirenko, N.G. Stoyko, V.Yu. Nizamov. - Moscow: Limited Liability Company "KnoRus Publishing House", 2021. - P. 57 - 62.
9. Vatutina, O. Yu. Admissibility of expert testimony in a jury trial / O. Yu. Vatutina // Admissibility of testimony in criminal proceedings: Collection of articles based on the materials of the All-Russian round table, St. Petersburg, December 19, 2020. - St. Petersburg: Center for Scientific and Information Technologies "Asterion", 2021. - Pp. 35 - 39.
10. Vatutina, O. Yu. Special knowledge and digital technologies: new opportunities for the defense // Proceedings of the conference “Regulation of legal relations in the context of digitalization during a pandemic: current state and development prospects, 2021. - P. 280 - 285.
11. Vatutina, O. Yu. Expert opinion and specialist opinion in a jury trial: problematic aspects of assessment / O. Yu. Vatutina // Controversial issues of the theory and practice of forensic examination: Proceedings of the IV International Scientific and Practical Conference, Moscow, March 25-26, 2021. - Moscow: Russian State University of Justice, 2021. - P. 156 - 160.
12. Vatutina, O. Yu. The Impact of Forensic Expertise on the Outcome of Criminal Cases in a Jury Trial in the Russian Empire / O. Yu. Vatutina // Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University: Proceedings of the XIII International Conference, St. Petersburg, June 24-25, 2021 / Edited by N.P. Kirillova, V.D. Pristanskov, N.G. Stoyko, V.Yu. Nizamov. - Moscow: Rusains Limited Liability Company, 2022. - P. 53 - 57.
13. Vatutina, O. Yu. Specialist as an expert for the defense: evolution of the institution / O. Yu. Vatutina // Scientific School of Criminal Procedure and Forensic Science

of St. Petersburg State University "Criminal Procedure Code of the Russian Federation: 20 Years Later": Proceedings of the XIV International Scientific and Practical Conference, St. Petersburg, June 24-25, 2022 / Editors-in-Chief: N. G. Stoyko, V. Yu. Nizamova. - Moscow: Rusains Limited Liability Company, 2022. - pp. 267-273.

14. Vatutina, O. Yu. Specialist as a participant in a separate evidentiary action // III International scientific and practical conference Kazan criminal procedure and forensic readings, Kazan, March 1, 2024. – P. 40 – 46.
15. Vatutina, O. Yu. Forms of specialist participation in criminal procedural proof / O. Yu. Vatutina // Judicial power and criminal procedure. Scientific and practical journal. - 2024. - No. 1. - P. 71 - 77.
16. Vatutina, O. Yu. Legal examinations and legal opinions of a specialist in criminal proceedings in Russia // II International scientific and practical conference "The role and importance of forensic activities and forensic expertology in ensuring national security", Minsk, Republic of Belarus, October 17-18, 2024. - P. 28-30.

Main scientific results are reflected in scientific publications, including peer-reviewed scientific publications from the list approved by the Ministry of Education and Science of the Russian Federation, in accordance with which,

1. It has been established that a specialist, within the framework of proving in a criminal case, acts as a participant in a separate evidentiary action, is involved by participants in the criminal process who have a public-law interest in the outcome of the case, and by participants who have a personal interest in the outcome of the case recognized by law, or their representatives. The involved specialist independently produces evidentiary information, putting it in the form of a conclusion and/or testimony, without having his own interest in the results of proving in a criminal case[9]. The conclusion and testimony of a specialist are provided for by law as evidence (clause 3.1, part 2, article 74 of the Criminal Procedure Code of the Russian Federation) and represent the result of the use of special knowledge and are divided into a specialist conclusion

[9]Vatutina, O. Yu. Legal significance of participation of a specialist in criminal procedural proving // Legal science. Scientific and practical journal. - 2025. - No. 2. P. 225 - 228.

given on the basis of a request from an authority and a specialist conclusion given at the request of participants (and their representatives) personally interested in the outcome of the case[10].

2. The task of involving a specialist in criminal proceedings is defined, which is the specialist giving an opinion that is within the scope of his professional knowledge, including regarding or in relation to an expert opinion or a specialist opinion available in the case materials.[11].

3. The criteria for distinguishing a specialist's judgment (given in the form of a conclusion or testimony) from an expert examination have been identified[12].

4. The procedure and methods for requesting and/or presenting a specialist's opinion in pre-trial proceedings and at the stage of trial are defined and delineated, in order to resolve issues, for the answers to which, special knowledge is required and the use of materials presented by the inviting party is permissible . Including, by sending a written request to the specialist by the inquiry officer, investigator, court (at the request of the parties or at the initiative of the court), including an explanation to the specialist of his rights, duties and responsibilities, a list of questions put to be resolved and, in certain cases, materials necessary for answers[13].

5. It has been determined that the presentation of an expert opinion by participants (and their representatives) personally interested in the outcome of the case, both in pre-trial proceedings and at the stage of trial, is carried out in accordance with Part 2, 3 of Article 86 of the Code of Criminal Procedure of the Russian Federation on the basis of an agreement with the expert, which includes the questions put to the expert for resolution and the materials necessary for this, and also contains the obligation of the expert to appear before the investigator (inquiry officer) or the court to participate in the application of a petition by the inviting party for the inclusion of the expert opinion, to

[10]Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35-39; Vatutina, O. Yu. Forms of Participation of a Specialist in Criminal Procedural Proving / O. Yu. Vatutina // Judicial Authority and Criminal Proceedings. - 2024. - No. 1. - P. 71-76.
[11]Vatutina, O. Yu. Problematic issues of interrogation of a specialist in criminal proceedings / O. Yu. Vatutina // Humanities, socio-economic and social sciences. - 2019. - No. 4. - P. 90-92.
[12]Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22-26.
[13]Vatutina, O. Yu. "Adversarial examination" in Russian criminal proceedings / O. Yu. Vatutina // Law and power. - 2021. - No. 2. - P. 26-29.

sign a written undertaking on liability for giving a knowingly false opinion, and also to confirm his readiness to present this evidence in the case materials[14].

6. The requirements for the form of the expert's opinion, subject to regulatory regulation[15], the author's concept of expert testimony, as well as the methods and procedure for obtaining it at the stage of preliminary investigation and during trial are formulated[16].

7. The requirements for the admissibility of a specialist's opinion and/or testimony have been formulated, including the proper subject of giving an opinion and/or testimony; the form of evidence provided by law; the existence of a request for a conclusion from the person conducting the criminal proceedings or an agreement concluded by the specialist with a participant (his representative) personally interested in the outcome of the case, containing the specialist's obligation to appear before the investigator (inquiry officer) or the court, to participate in the application of a petition by the inviting party to attach the specialist's opinion, to sign a written undertaking of liability for giving a knowingly false opinion and to confirm his readiness to present this evidence in the case materials[17].

As a result of the conducted research, the following new or novel **provisions are submitted for defense**:

1. A specialist, within the framework of proving in a criminal case, acts as a participant in a separate evidentiary action, is involved by participants in the criminal process who have a public-law interest in the outcome of the case, and by participants who have a personal interest in the outcome of the case recognized by law, or their representatives. The involved specialist independently produces evidentiary information, putting it in the form of a conclusion and/or testimony, without having his own interest

[14]Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35-39.
[15]Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22-26.
[16]See: Vatutina, O. Yu. Problematic issues of interrogation of a specialist in criminal proceedings / O. Yu. Vatutina // Humanitarian, socio-economic and social sciences. - 2019. - No. 4. - P. 90-92; Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedure legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22-26.
[17]Vatutina, O. Yu. "Adversarial examination" in Russian criminal proceedings / O. Yu. Vatutina // Law and power. - 2021. - No. 2. - P. 26-29.

in the results of proving in a criminal case. The conclusion and testimony of a specialist are provided for by law as evidence (clause 3.1, part 2, article 74 of the Criminal Procedure Code of the Russian Federation) and represent the result of the use of special knowledge and are divided into a specialist conclusion given on the basis of a request from an authority and a specialist conclusion given at the request of participants (and their representatives) personally interested in the outcome of the case.

2. The purpose of involving a specialist in criminal proceedings is for the specialist to provide an opinion on issues within the scope of his professional knowledge, including regarding or in relation to an expert opinion or a specialist opinion contained in the case materials. The objective is to evaluate the methods used by the expert from the point of view of their relevance, scientific validity, testing, use of appropriate equipment, sufficiency of the material used, correctness, completeness and accuracy of the formulations of the questions posed and the answers to them, compliance of the opinion available in the case materials with modern expert capabilities.

3. The expert's opinion (given in the form of a conclusion or testimony) differs from an expert examination according to the following criteria:

3.1. Basis of activity of a person with special knowledge:

- for an expert, as a rule, this is a decision on the appointment of an examination by an authority, or by an authority with the participation of a party;
- for a specialist, as a rule, this is a request from the party.

3.2. Different volumes of material studied:

- the expert has the right to study any materials related to the subject of the examination, has the right to demand the provision of additional materials if he believes that they are necessary for conducting the examination and providing a reasoned conclusion on it;
- the specialist is limited by the materials presented by the inviting party.

3.3. Possibilities of using the toolkit:

- the expert uses instrumental laboratory methods, equipment, the application (use) of which is, as a rule, a condition for answering the questions put to him; - the specialist, as a rule, does not use instruments, answering the questions put to him on the basis of the knowledge he has.

3.4. The procedure for engaging a person to provide an opinion:

- the expert is engaged by the authority conducting the criminal case;

- a specialist may be engaged by persons who have their own or represented private interest in the outcome of the case, including the accused (suspect), the victim, the civil defendant, the civil plaintiff and/or their representatives, that is, any persons interested in the outcome of the case.

3.5. Asking questions to a person with specialized knowledge:

- the expert answers both the questions of the engaging authority and the questions posed by the authority conducting the criminal proceedings, taking into account the opinions or positions of other participants in the process who are interested in the outcome of the case;

- the specialist answers questions only from the engaging party.

3.6. Form of the conclusion (final document):

- the form of the expert's report has a clearly regulated structure, determined by law, and includes the expert's signature warning him of liability for giving a knowingly false report;

- the form of the specialist’s opinion is not regulated by law;

3.7. Procedure for obtaining a conclusion:

- the procedure for conducting an examination is regulated at the legislative level;

- the procedure for giving an opinion is not regulated by law and requires formulation and introduction at the legislative level.

4. An expert opinion may be obtained by requesting, by persons conducting proceedings on the case or by participants in criminal proceedings interested in the outcome of the case, a written opinion on the questions posed, the answers to which require special knowledge and the use of materials submitted by the inviting party is permissible, but, as a rule, does not require research using special instruments, including laboratory instruments .

5. Requesting a conclusion in pre-trial proceedings is carried out in accordance with Part 1 of Article 86 of the Criminal Procedure Code of the Russian Federation by an investigator or inquiry officer by sending a written request to a specialist, which includes

an explanation of the specialist's rights, duties and responsibilities, a list of questions posed for resolution and, in certain cases, the materials necessary for answers. The received conclusion is subject to attachment to the criminal case. If the resolution of the questions posed requires instrumental or laboratory research, the investigator or inquiry officer must appoint a forensic examination.

6. Requesting a conclusion during a trial may occur at the request of the parties or at the initiative of the court and occurs by sending a written request to the specialist, including an explanation of the specialist's rights, duties and responsibilities, a list of questions posed for resolution and, in certain cases, materials necessary for answers that do not require instrumental or laboratory testing. The received conclusion is subject to attachment to the criminal case. If the resolution of the questions posed requires instrumental or laboratory testing, the court must appoint a forensic examination.

7. Submission of an expert opinion by participants (and their representatives) personally interested in the outcome of the case, both in pre-trial proceedings and at the trial stage, is carried out in accordance with Part 2, 3 of Article 86 of the Code of Criminal Procedure of the Russian Federation on the basis of an agreement with the expert, which includes the questions posed to the expert for resolution and the materials necessary for this, and also containing the specialist's obligation to appear before the investigator (inquiry officer) or the court to participate in the filing of a petition by the inviting party to include the expert opinion, to sign a written undertaking on liability for giving a knowingly false opinion, and to confirm their readiness to submit this evidence to the case materials . The opinion, together with the petition for its inclusion in the case, is sent to the inquirer, investigator or submitted to the court. If the petition is granted, the inquirer, investigator or judge is obliged to explain to the expert his rights, duties and responsibilities.

8. The expert’s opinion must have a form regulated by law and consist of three parts (similar to the corresponding parts of the expert’s opinion):

- an introductory part containing information about when, where, by whom (last name, first name and patronymic (if any), education, specialty, academic degree, academic title, position held) and on what basis the specialist’s opinion was given, who

was present when the opinion was given, what materials, information, and documents the specialist used;

- the main part, containing the specialist's reasoned opinions on the questions posed and demonstrating the process of applying the specialist's specialized knowledge to a specific case of studying the circumstances of a case, object, subject, or document;
- conclusions (the operative part), containing reasoned, qualified, specific and understandable for other persons answers to the questions posed to the specialist, formulated in the form of conclusions.

9. The testimony of a specialist is evidence formed within the framework of a criminal case through his interrogation, in order to obtain information about circumstances requiring special knowledge, or in order to clarify the conclusion of an expert or specialist (including his own).

10. During the preliminary investigation, interrogation is carried out by the investigator or inquiry officer on his own initiative or at the request of participants who have a personal interest in the outcome of the case, which must be satisfied if interrogation is required to clarify the conclusion of a specialist or expert.

11. During the trial, the court, at the request of the parties or on its own initiative, is authorized to summon a specialist for questioning in order to obtain information about circumstances requiring special knowledge, or in order to clarify the expert's or specialist's opinion (including his own).

12. When deciding on the admissibility of a specialist's conclusion and/or testimony, the following must be taken into account:

- the proper subject for giving an opinion and/or testimony (a person who has special knowledge, meets the requirements for qualifications, specialization, competence and has no grounds for challenge);
- the form of evidence provided by law (conclusion and/or testimony);
- the presence of a request for a conclusion from a person conducting criminal proceedings or an agreement concluded by a specialist with a participant (his representative) personally interested in the outcome of the case, containing the specialist's obligation to appear before the investigator (inquiry officer) or the court, to participate in

the application of a petition by the inviting party to attach the specialist's conclusion to confirm his readiness to submit this evidence to the case materials.

CHAPTER 1. PARTICIPATION OF A SPECIALIST IN PROOF IN CRIMINAL CASES

§ 1. Specialist as a participant in criminal procedural evidence

Criminal procedural evidence is the “core” of the criminal process[18], an activity that is carried out throughout its entire duration[19] and is a type of cognitive process, the content of which is revealed through the activities of subjects of criminal procedural proof in collecting, verifying and evaluating judicial evidence in order to establish the circumstances listed in Article 73 of the Criminal Procedure Code of the Russian Federation[20].

Proof in the procedural sense is an activity of working with evidence aimed at obtaining, confirming, certifying it, a form of substantiating the existing conviction with the help of arguments, reasons, facts. At the same time, the cognitive-certifying and argumentative-logical[21] component of proof, including the mental and practical[22] activity of the subjects of proof, is carried out in relation to already collected (received) and presented evidence[23], thus, criminal procedural proof is a cognitive process that has its own specific objects and goals.

The law associates the concept of criminal procedural proof with the establishment of the presence or absence of certain circumstances[24], carried out through a number of actions of subjects and participants in criminal procedural proof aimed at

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[18]See: Eisman A. A. Expert opinion. Structure and scientific substantiation. Moscow: Legal Literature, 1967. Page 91; Theory of evidence in Soviet criminal proceedings. Moscow: Legal Literature, 1973. Page 702.

[19]See: Rakhunov R. D. Participants in criminal procedural activity. Moscow: Gosyurizdat, 1961. P. 41; Sheifer S. A. Collection of evidence in a criminal case: problems of legislation, theory and practice. Moscow: Norma, 2015. P. 12.

[20]Criminal Procedure Code of the Russian Federation of 18.12.2001 N 174-F Z as amended on 29.05.2024 - SPS "Consultant Plus" - https://www.consultant.ru/document/cons_doc_LAW_34481/ - (date of access 16.06.2024); See: Arsenyev V. D., Zablotsky V. G. Use of special knowledge in establishing the factual circumstances of a criminal case. Krasnoyarsk: Publishing house of Krasnoyarsk. University, 1986. pp. 45 - 46.

[21]See: Ratinov, Yakubovich N.A. End of the preliminary investigation. M., 1962. P. 101 - 102. Also, similar positions characterize the publications of M. S. Strogovich, V. D. Arsenyev, S. A. Sheifer, A. R. Ratinov, Yu. K. Orlov, A. A. Davletov, S. B. Rossinsky and many other authors.

[22]On the functioning and development of the “procedural actions-evidence” system, see Stoyko N.G. Lack of Proof of Circumstances of a Criminal Case. Krasnoyarsk: Publishing House of Krasnoyarsk University, 1984. P. 10.

[23]See: Arsenyev V.D., Zablotsky V.G. Ibid.

[24]Arsenyev V.D., Zablotsky V.G. Op. cit. P. 45.

collecting, verification and evaluation of evidence[25], to substantiate conclusions on the case, to achieve the truth[26]. Proof is carried out with the help of evidence obtained in a certain way, by which the legislator understands any information if it is significant for the criminal case, is included in the number of admissible as evidence, is capable of establishing the presence or absence of circumstances subject to proof and is introduced into the criminal case as evidence by using one of the methods of collecting them provided by law: through investigative and other procedural actions.

The process of achieving the truth acts as an activity for the reliable establishment of specific factual circumstances and, in conditions of limitation by the circumstances of a separate crime, is the task of criminal procedural proof[27]. Such an approach is fully justified, since the circumstances of the case act as objects of knowledge (proof)[28]. The process of knowledge is aimed at obtaining (achieving) those final results that must be achieved. (to establish) in a specific criminal case: to understand the factual circumstances of the case, with all possible reliability (truth)[29], to solve the problem of evidentiary activity.

The solution to the problem of evidentiary activity involves the implementation by subjects and participants of criminal procedural proof of all possible measures and

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[25]See: Strogovich M. S. Course of Soviet Criminal Procedure. Vol. 1. Moscow, 1968. Pp. 40–50; Gorsky G. F., Kokorev L. D., Elkind P. S. Problems of Evidence in Soviet Criminal Procedure. Voronezh: Voronezh University Publishing House, 1978. Pp. 221–226; Stoyko N. G. Op. cit. Pp. 8–9.

[26]There is a widespread opinion in science that establishing (achieving) the truth is the goal of criminal procedural proof, along with solving crimes and exposing those guilty of committing them, and preventing the prosecution of innocent people. The question of whether the truth should be absolute or objective (material) has been the subject of debate in criminal procedure science for many years. See: Vyshinsky A. Ya. The Problem of Assessing Evidence in Soviet Criminal Procedure // Problems of Criminal Policy. V. IV . pp. 13–38; Balakshin V. Truth in Criminal Procedure // Russian Justice. 1998. No. 2. pp. 18–19; Golovko L. V. Theoretical Foundations of Modernizing the Doctrine of Material Truth in Criminal Procedure // Library of a Criminalist: Scientific Journal. 2012. No. 4. pp. 73–75; Mezinov D. A. Is the Truth Established in Criminal Proceedings Objective? // Library of a Criminologist: Scientific Journal. 2012. No. 4. P. 178. See also: Trusov A. I. Fundamentals of the Theory of Forensic Evidence. Moscow: Gosyurizdat, 1960. P. 10; See: Orlov Yu. K. Modern Problems of Proof and Use of Special Knowledge in Criminal Proceedings: Scientific and Practical Manual / Yu. K. Orlov. Moscow: Prospect, 216. P. 6.; Zazhitsky V. I. Truth and the Means of Its Establishment in the Criminal Procedure Code of the Russian Federation: Theoretical and Legal Analysis // State and Law. 2005. No. 6. P. 67-74; Zinatullin T.Z. The problem of truth in light of the purpose of criminal proceedings // Current problems of reforming the economy and legislation of Russia and the CIS countries - 2002: materials of the International scientific and practical conference / edited by V.A. Kiseleva. Chelyabinsk, 2002. Part 3. P. 47 and others.

[27]The purpose of criminal procedural proof is determined by the doctrine rather abstractly and this issue is debatable (See: Lazareva V. A. Proof in criminal proceedings: a teaching and practical manual. 2nd ed., revised and enlarged. Moscow: Yurait, 2010. p. 33; Smirnov A. V. Adversarial process: a monograph. St. Petersburg: Alfa, 2001. p. 81).

[28] See: Arsenyev V.D., Zablotsky V.G. Op. cit. P. 13 .

[29]P. A. Lupinskaya spoke about the truth, understood as the correspondence of the established circumstances of the case to what actually took place (See: Criminal Procedure Law of the Russian Federation: textbook / ed. P. A. Lupinskaya. Moscow: Yurist, 2003. p. 222; Lupinskaya P. A. Decisions in Criminal Proceedings: Theory, Legislation and Practice. Moscow, 2006).

actions to prove, including individual evidentiary actions, the final result of which is the reliable (true) establishment of the factual circumstances of the case.

The subject of proof "is determined based on the procedural position of the participant (in legal proceedings – author's note) and his ability to influence the process of proof, taking into account the concept of the "process of proof", which is defined from the standpoint of the content, essence, and nature of the activity, as the process of learning the legally significant circumstances of a criminal case and the process of verifying this knowledge with the help of procedural (formal) actions; and from the standpoint of such elements (stages of the process) of proof as collecting, verifying, and evaluating evidence[30]".

At the same time, subjects of proof, as participants in criminal proceedings, carrying out proof in criminal proceedings, are distinguished from persons participating in the case[31] as subjects of procedural activity[32] (from participants in criminal procedural proof)[33], despite the fact that all persons participating in the case (subjects of the process) perform certain functions, including secondary and auxiliary ones[34], and carry out a certain part of criminal procedural activity .

Groups of subjects of criminal procedural evidence can be distinguished as follows[35]:

[30]See Ratinov A. R. Questions of knowledge in judicial proof // Soviet state and law. 1964. No. 8. pp. 106 - 108; Kudryavtseva A. V. Is an expert a subject of proof [Electronic resource]. URL: https://wiselawyer.ru/poleznoe/6290-yavlyaetsyaehkspert-subektom-dokazyvaniya/ (date of access: 04/29/2021).

[31] Kaz Ts. M. Subjects of proof in Soviet criminal proceedings: (Government bodies) / Ts. M. Kaz; Saratov Law Institute named after D. I. Kursky; Ed. R. F. Noskov. - Saratov: Publishing House of Saratov University, 1968. P. 26-34.

[32]A different opinion on this issue was expressed by N. N. Polyansky, who came to the conclusion that since all those involved in business faces (V volume including witnesses, experts and etc.) enter V certain legal relations, All They are participants process, its subjects. (See: Proof V criminal process: Educational and methodological materials / Krasnoyarsk. state University; Comp. A. S. Barabash. Krasnoyarsk, 1997, (p. 1063).

[33]At the same time, for example, R. D. Rakhunov believed that there was no reason to distinguish between the subjects of procedural activities And participants procedural activities. (See: Proof V criminal process: Educational and methodological materials / Krasnoyarsk. state University; Comp. A. S. Barabash. Krasnoyarsk, 1997, (p. 1064).

[34] Gorsky G.F., Kokorev L.D., Elkind P.S. Decree. op. pp. 221 – 226.

[35]For example, K. B. Kalinovsky divides the subjects of proof on persons conducting criminal proceedings and authorized to collect, verify and evaluate evidence for decision-making and the parties using evidence to substantiate their position (carrying out logical proof) and participating in the collection of evidence. (See: Criminal Procedure: textbook / Smirnov A. A., Kalinovsky K. B.; general editor Smirnov A. V. 8th ed., revised. Moscow: Norma: INFRA-M, 2020).

1) entities acting in public law interests, bearing responsibility for the result of proof and who are obliged to carry out criminal procedural proof[36];

2) subjects who have a personal interest in the case and have the right to participate in criminal procedural evidence (the accused, the victim, the civil plaintiff, the civil defendant);

3) subjects representing someone's personal interest and obliged to take part in the process of proof (defense counsel for the accused, representative of the victim, civil plaintiff, civil defendant)[37], as "a special group of subjects of proof, consisting of persons defending the interests of other persons[38]", acting in the interests of the protected (represented) persons.

A more common approach is to divide the subjects of criminal procedural proof into the first two groups[39]. However, the above classification, in our opinion, is more complete[40], since it allows us to speak separately about a specific group of subjects of proof who protect the interests of other persons. This group primarily includes the defense attorney, due to the "obligation to carry out protective activities in the form of proof, taking an active part in the examination of evidence, in their assessment, actively using in the interests of the accused, the victim all the methods and means provided by law for a comprehensive, complete and objective clarification of the circumstances of the case[41]", due to the "obligation to actively participate in proving in criminal proceedings[42]".

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[36]Thus, Ratinov A.R. classified them as subjects who carry out proof not only "for themselves", but also for subsequent addressees of proof (the prosecutor and the court). See Ratinov A. R. Questions of knowledge in judicial proof // Soviet state and law. 1964. No. 8. P. 106–108.

[37]See: Kokorev L. D., Kuznetsov N. P. Criminal Procedure: Evidence and Proving: Monograph. Voronezh: Voronezh University Publishing House, 1995. P. 230.

[38]Nasonova I. A., Sidorova E. I. On the subjects of proof in criminal proceedings in Russia // Bulletin of the Voronezh Institute of the Ministry of Internal Affairs of Russia. 2021. No. 2. P. 237.

[39]As the basis of the said division accepted procedural position And appointment V proving individual participants legal proceedings and a group of persons and bodies is identified that are charged with the responsibility of a comprehensive, complete and objective investigation of the circumstances of the case, which include: the court, the judge, the prosecutor, the investigator, head of the investigation department, inquiry bodies, person conducting the investigation inquiry and group of participants process, personally interested in the outcome of the case, such as the accused, the victim, the civil plaintiff, the civil defendant and their representatives. See: Gorsky G. F., Kokorev L. D., Elkind P. S., Op. cit., p. 224.

[40]Earlier, a similar classification was proposed by Gorsky G. F., Kokorev L. D. and Elkind P. S. in the work "Problems of evidence in Soviet criminal proceedings" in 1978, as well as by V. D. Arsenyev, with features that meet the requirements of contemporary authors of legislation. (See: Proving V criminal process: Educational and methodological materials / Krasnoyarsk. state University; Comp. A. S. Barabash. Krasnoyarsk, 1997, P. 1065; .: Arsenyev V. D., Zablotsky V. G. Op. cit. (p. 58).

[41]Kokorev... Ibid. P. 232.

[42] See: Advocacy / edited by Cand. of Law V. N. Burobin. 2nd ed., revised and enlarged. Moscow, 2003. P. 377.

A defense attorney[43], as a subject of proof, who is obliged to participate in it, in order to carry out his/her activity on proof, realizing his/her function, has the right to involve a person who is not a subject of proof in a strictly procedural sense, but who is capable of assisting in proof through his/her activity as a participant in criminal procedural proof within the framework of a separate investigative (procedural) evidentiary action[44]. Among such persons "involved" in proof, it is necessary to single out a specialist.

This thesis does not contradict the fairly widespread opinion that "others", in the context of Chapter 8 of the Criminal Procedure Code of the Russian Federation, participants in criminal proceedings (to whom the legislator refers a specialist (Article 58), an expert (Article 57), etc.) are not included among the subjects of proof, since these participants, based on the position of the legislator, are not mentioned among the persons vested with the right to collect, verify and evaluate evidence . At the same time, their role in criminal procedural proof is obvious: proof is an action that cannot be imagined without the participation and activity of individuals, since, in their absence, the process of proof will be difficult, and sometimes impossible, due to the fact that certain types of evidence will not be formed[45]. Accordingly, without the involvement of such persons, proof is not feasible[46].

Without the participation of "other" persons, the testimony of a witness, the conclusion and testimony of an expert, the conclusion and testimony of a specialist will not appear, while this evidence is directly mentioned in Article 74 of the Criminal Procedure Code of the Russian Federation as information on the basis of which the

[43]Of course, it should be noted that other groups of subjects of criminal procedural proof are not deprived of this right and, based on current judicial practice, they exercise this right, but to a somewhat lesser extent than subjects representing someone's personal interest and obliged to take part in the proof process.

[44]The most important function of investigative action is the transformation of "evidence – traces" into evidence in the procedural sense of this word (See: Sheifer S.A. Collection of evidence in Soviet criminal proceedings. Methodological and legal problems. Saratov University Publishing House, 1986. P. 100).

[45]The procedural activities of experts, specialists, as well as attesting witnesses and other persons, assist in proving, despite the fact that they do not carry out proving in the sense of collecting, checking and evaluating evidence, and in this regard, do not relate to subjects of proving in a strictly procedural sense. See: Gorsky G. F., Kokorev L. D., Elkind P. S., Problems of Evidence in Soviet Criminal Procedure, Voronezh, 1978, pp. 221–226.

[46]"Involved" participants in a separate evidentiary action do not carry out the activity of proof in full: they do not collect, verify and evaluate evidence, since they are not subjects of proof, but since a separate evidentiary action cannot be carried out without their participation, they cannot be excluded from the number of participants in proof and are such within the framework of a separate evidentiary action.

presence or absence of circumstances subject to proof in criminal proceedings is established.

At the same time, the emergence of the above-mentioned evidence as a result of the independent activity of the relevant participants in the proceedings is also impossible: evidence arises exclusively through the joint activity of the "other" participant, the victim, the accused and the investigator (inquiry officer), and in some cases the defense attorney or the court. The expert's opinion cannot be given without the participation of the person conducting the criminal proceedings, the court, or the defense attorney. The expert's opinion cannot arise without the relevant procedural decision of the person conducting the proceedings or in the absence of an agreement with the defense[47].

Accordingly , “other” participants in criminal proceedings, and in particular persons with special knowledge, do not enter into the process of proof independently, but indirectly, as a result of the procedural activities of participants in criminal proceedings on criminal procedural proof, such as the investigator, inquiry officer, defense attorney, and they drop out of the process upon completion of a separate investigative action.

For example, a witness, endowed by law with certain rights and obligations, during his testimony, is a participant in the evidentiary action of obtaining testimony, as a person containing information used in proof and which is "extracted" by the subject of proof (investigator, inquiry officer, public prosecutor, court) in the process of a separate evidentiary action - interrogation of a witness. In other evidentiary activities that go beyond the separate evidentiary action - interrogation, the witness does not participate. The above applies equally to other participants in criminal proceedings who are not subjects of proof, including persons with special knowledge.

The above gives grounds to speak not only about the subjects [48](participants) of proof (i.e. persons vested with the right and/or duty to collect, verify and evaluate evidence) but also about the participants of individual evidentiary actions. We are talking

[47]The legal significance of the agreement concluded between the defender (lawyer) and the specialist is discussed in more detail in the second chapter. this dissertation.
[48]The term "subjects of proof" appears here as a general term.

about persons involved in proving its subjects and having different degrees of independence, different degrees of involvement in the process of proof.

Thus, the participants (subjects) of proof include:

- participants (entities) acting in the public-law interest (having a public-law interest);

- participants (subjects) acting in their personal interests;

- participants (subjects) acting in the "entrusted" interest, that is, persons defending the interests of other persons.

Participants in a separate evidentiary investigative action include:

- participants acting in the public-legal interest (persons conducting criminal proceedings, which include the investigator, inquiry officer, state prosecutor, court, judge);

- participants with a private interest (holders of a private interest, personally interested in the outcome of the case, which include the suspect, the accused, the victim, the civil plaintiff, the civil defendant);

- participants acting in the "entrusted" interest[49] (representatives of holders of private interest, which include the defense attorney of the accused, the representative of the victim, the representative of the civil plaintiff, the representative of the civil defendant);

- participants[50] - involved persons (participants in a separate evidentiary action who do not have their own interest in the outcome of a criminal case (in the results of evidence in a criminal case), which include various types of specialists).

In turn, the participants of the last named category represent a fairly wide circle of persons in the general sense assisting justice and proof, including various kinds of specialists with knowledge and experience in a specific field of science or life. Such

[49] We will not consider separately the particular case of interrogation of an "other" participant by the accused or the victim, since we believe that it is "absorbed" by the procedure of interrogation by his lawyer or representative .

[50]This does not contradict the well-reasoned position of A. V. Kudryavtseva that an expert (like a specialist) is not a subject of criminal procedural proof, since persons with special knowledge are participants in individual investigative (evidential) actions and are involved in the process by other participants in proof. See: Kudryavtseva A. V. Is an Expert a Subject of Proof [Electronic Resource] // URL: https://wiselawyer.ru/poleznoe/6290-yavlyaetsyaehkspert-subektom-dokazyvaniya/ (date of access: 09.08.2023).

persons have no personal interest in the outcome of the case, and perform auxiliary actions in the proceedings on a criminal case.

According to the degree of involvement in the process of proof within the framework of a separate evidentiary (investigative) action, such participants can be divided into:

- technical specialists who assist in proving during individual evidentiary (investigative) actions, including the processing and recording of evidence[51] (for example, a translator, a forensic scientist, a forensic specialist , a teacher, a psychologist[52]);

- carriers of evidentiary information that is extracted and analyzed (processed) by subjects of proof acting in the relevant interest (for example, a witness, attesting witness, victim, accused, specialist giving testimony);

- persons who independently " produce" evidentiary information within the framework of investigative (evidential) action (for example, an expert and specialist giving an opinion).

At the same time, technical specialists provide assistance in processing and recording evidence, and carriers of evidentiary information and persons who independently "produce" evidence, are indirectly involved in the process of proof, or, they produce evidence themselves.

The carriers of evidentiary information, within the framework of a separate evidentiary action, in turn, are subdivided:

- on carriers of specific information (witness[53], specialist giving testimony), who provide the participants in the evidence with information and data that became known to

[51]Arsenyev, for example, in a similar group, which he called "persons involved in the collection and verification of evidence" For execution various auxiliary actions", included, in addition to the translator and teacher, a witness, specialist and manager expert institutions (See: Arsenyev V.D., Zablotsky V.G. Op. cit. P. 51) .

[52]At the same time, a teacher and a psychologist can be included in this group with some reservations, since their activities within the framework of a criminal case go beyond the purely technical and have their own characteristics, more complex according to the legislator's intention. In addition, with a significant degree of conventionality, the secretary of the court session and the judge's assistant can be classified as such specialists.

[53] A witness, in accordance with Article 60 of the Criminal Procedure Code of the Russian Federation, is a source (carrier) of identification information, a guarantor of the reliability of the results of investigative actions. (See: Criminal Procedure Code of the Russian Federation of 18.12.2001 No. 174-F Z (as amended on 04.08.2023) (as amended and supplemented, entered into force on 12.10.2023) [Electronic resource] // https://www.consultant.ru/document/cons_doc_LAW_34481/a3c8328be5f6240b55ac1c22ce81975ece4ff2c1/ (date of access: 06/16/2024).

them in connection with their professional or other specific activities, as a result of the commission of active, conscious actions;

- “passive” bearers of evidentiary information (witnesses[54]), who report information that became known to them in connection with the event under investigation, in most cases, for reasons beyond their control, against their will;

- and “active” carriers of evidentiary information (victim, suspect, accused), who provide information about events and circumstances in which they were participants (which affect them) or may refuse to provide such information at all[55].

Independently perform intellectual processing[56] of the information they possess within the framework of evidentiary action[57]. The activity of collecting and evaluating information received from carriers of evidentiary information, giving it the form of evidence, occurs on the part of the person conducting the proceedings, the court or the defense attorney.

Persons who independently give (produce) evidence (expert, specialist, giving an opinion), by their own active actions process the information, data, objects, provided to them and give the subjects of proof the direct result of their intellectual activity, which has one or another normatively fixed form[58]. At the same time, both the specialist and the expert, unlike other persons involved in proof, carrying out activities in the status of participants in a separate evidentiary action, have the maximum degree of

[54]Of course, the suspect, the accused, the victim, the civil plaintiff and the civil defendant are also “passive” sources of evidentiary information in the sense that the information they provide, which became known to them in connection with the criminal event under investigation, is intellectually processed and introduced into the process, in most cases, by the subjects of proof.

[55] For example, the accused or suspect may not testify against himself or herself and refuse to give evidence in accordance with Article 51 of the Constitution of the Russian Federation. Moreover, the information provided may be intentionally or unintentionally distorted.

[56]With the exception of a specialist's generalization of the knowledge and information he possesses when answering questions posed to him from the relevant area of specialized knowledge.

[57]In this situation, special cases of deliberate deformation of the original knowledge by its bearer are not considered.

[58] Of course, the activity of collecting and evaluating, in this case, also occurs on the part of the person conducting the proceedings or the defense, but the giving of such information the form of evidence is carried out by the person producing the evidence, although, Arsenyev V.D. noted in his 1986 work that "By presenting a conclusion to the person (body) that appointed the examination, the expert also acts as a subject participating in the collection (presentation) of evidence (See: See: Arsenyev V.D., Zablotsky V.G. Op. cit. P. 59). The procedure for transforming evidentiary information belonging to persons independently "producing" evidence is discussed in more detail later in this paragraph.

independence[59], arising from the special status of a person who has special (scientific) knowledge and uses this scientific knowledge in proof.

A specialist and an expert are involved in the case by the subject of criminal procedural proof, however, they then come out from under the authority of the inviting party, since they carry out their direct activities within the limits of their own scientific competence, basing them exclusively on their scientific knowledge and experience, as a result of the application of which they give a conclusion and/or testimony ("produce" evidence)[60].

Giving a conclusion[61] - is a separate evidentiary action, which is part of the process of collecting evidence, including conducting research by a person with special knowledge and placing the results of such research in the appropriate procedural form (an expert report, an expert opinion or expert commission opinion) for an expert and a specialist opinion for a specialist)[62].

However a specialist's opinion differs from an expert's opinion according to the following criteria:

1. The basis of the activity of a person with special knowledge varies:

- for an expert, this is a decision to appoint an expert examination, issued by an authority, or by an authority with the participation of a party;
- for a specialist this is a request from the party.

2. The difference in the volume of the material being studied, since the expert has the right to study any materials related to the subject of the examination, has the right to

[59]A certain degree of independence in the activities of the main participant in such a separate investigative (evidentiary) action as an examination has been and is widely noted in science. V. D. Arsenyev has repeatedly emphasized that the expert draws up the results of his research independently of the person (body) that has appointed the examination and that his procedural activity is carried out, although under the procedural control of the investigator (court), but, on the whole, independently (See: Arsenyev V. D., Zablotsky V. G. Op. cit. pp. 41, 59). The provision on the independence of the examination and the expert's opinion, which is the source of evidence, is reflected in the works of M. S. Strogovich, M. A. Cheltsov, A. Ya. Vyshinsky, V. M. Nikiforov, A. I. Vinberg, R. D. Rakhunov (See: Strogovich M. S. Criminal Procedure, M., 1946. pp. 215-234; Cheltsov M. A., Soviet Criminal Procedure, M., 1951. pp. 167-181; Vyshinsky A. Ya. Theory of Forensic Evidence in Soviet Law. M., 1950. p. 276; Vinberg A. I., Basic Principles of Forensic Criminalistics Examination, M. 1949. p. 80; Rakhunov R. D. Theory and Practice of Examination in Soviet Criminal Procedure, M. 1950. P. 8 - 10). "Procedural independence and individual responsibility of the forensic expert" as a feature of expertise was also identified by A. Ya. Paliashvili (See: Paliashvili A. Ya. Expertise in Court on Criminal Cases. Moscow, 1973. P. 3 - 19).

[60]For more details on this, see: Arsenyev V.D., Zablotsky V.G. Op. cit. Pp. 59, 76–77.

[61]Details on the expert's opinion can be found in Chapter 2 of this dissertation.

[62] At the same time, it is incorrect to speak about the identity of the process of giving conclusions and testimony by a specialist and an expert, since they are formed in different ways, are transferred to the person conducting the proceedings in different ways, and are recorded in the case materials in different ways.

demand the provision of additional materials if he believes that they are necessary for conducting the examination and giving a reasoned conclusion on it, and the specialist is limited to the materials presented by the attracting party.

3. Differences in the possibility of using instruments, in which an expert uses instrumental laboratory methods and equipment, while a specialist does not use such instruments.

4. Differentiation of the procedure for engaging a person to provide an opinion, which involves engaging an expert by an authority conducting criminal proceedings and engaging a specialist by persons who have a private interest in the outcome of the case, including the victim, civil defendant, civil plaintiff and/or their representatives, that is, any persons interested in the outcome of the case.

5. The difference in posing questions to a person with special knowledge is expressed in the fact that an expert answers both the questions of the engaging authority and the questions posed by the authority, taking into account the opinions or positions of the parties , while a specialist answers questions only from the engaging party.

6. There are also differences in the form of the final document (conclusion), since the form of the expert's conclusion has a clearly regulated structure, determined by law, and includes the expert's signature warning about his liability for giving a knowingly false conclusion, while the form of the specialist's conclusion is not regulated by law and has not been regulated to date.

7. The procedure for a specialist to provide an opinion also remains unregulated, despite the existence of a strictly regulated procedure for conducting an examination.

Also, the question of whether the activity of a specialist giving an opinion is research or whether the opinion is given by the specialist without conducting it remains debatable[63]. The law directly speaks of an expert opinion as the content of the research and conclusions presented in writing, on the questions put to the expert by the person

[63]A comparative analysis of Parts 1 and 3 of Article 80 of the Criminal Procedure Code of the Russian Federation allows us to see the absence in Part 3, devoted to the expert's opinion, of an indication of the need (possibility) for him to conduct research, while with regard to the expert's opinion there is such an indication, despite the fact that both the expert's opinion and the specialist's opinion are given by persons possessing special knowledge, at a sufficiently high level, which does not allow any inequality between these persons (See: Orlov Yu. K. Problems of the Theory of Evidence in Criminal Procedure. - M., 2009. P. 111).

conducting the criminal case or by the parties[64], and in relation to the expert opinion it is limited to the wording "an opinion presented in writing".

It is obvious that the peculiarity of the expert's activity is manifested in its research nature: the expert examines the case materials[65], material evidence, documents, objects, animals, corpses, seized samples, living persons and, with the help of indirect knowledge, establishes factual data, obtains information[66], analyzes (processes) it, using his special knowledge[67], and forms the final result – the conclusion (findings)[68].

With regard to a specialist, the possibility of conducting research for the purpose of giving an opinion, as already noted above, is not directly provided for in the law, however, there is no prohibition on conducting research by a specialist[69]. Also, the law does not contain conditions and requirements for the formation of an "opinion" by a specialist , with the exception of the written form and the limitation of the subject of the conclusion to the framework of the questions posed to the specialist. At the same time,

[64] Criminal Procedure Code of the Russian Federation of 18.12.2001 No. 174-F Z (as amended on 04.08.2023) (as amended and supplemented, entered into force on 29.05.2024) [Electronic resource] // https://www.consultant.ru/document/cons_doc_LAW_34481/ (date of access: 06/29/2024).

[65] For example, M.K. Treushnikov noted that an expert opinion is a written statement by an expert of information on circumstances that are significant for the case, established by the expert on the basis of his/her special knowledge and obtained as a result of the expert examination of the case materials, based on the court's assignment, formulated in the ruling on the appointment of an expert examination. At the same time, he noted that an expert opinion is always connected with other evidence in the case, since it is the result of their special examination (See: Treushnikov M.K. Judicial evidence. Monograph. Moscow: Legal bureau "GORODETS", 1997. Page 281).

[66]Kudryavtseva A. V., Semenov V. A. Forensic examination in domestic criminal proceedings: monograph. Moscow: Yurlitinform, 2021. Pp. 182–183.

[67]Thus, D. S. Karev noted that an expert opinion is a written communication by a specialist, engaged as an expert, of information about the facts and conclusions obtained by him in resolving special issues on behalf of the investigative bodies, the prosecutor's office and the court. (See: Soviet criminal procedure / ed. D. S. Karev. Moscow, 1975. P. 157.

[68]G. M. Minkovsky spoke about the transformation of several integrated streams of information by merging them into new evidentiary information (See: Theory of Evidence in Soviet Criminal Procedure. 2nd ed., corrected and supplemented / editorial board: N. V. Zhogin (editor-in-chief) et al. Moscow, 1973. P. 395).

[69]For example, S. A. Sheifer, noting that a specialist actively identifies the information sought, actually speaks about the specialist's study of the materials and information provided to him, by making logical conclusions using specialized knowledge (See: Sheifer S. A. Investigative actions: system and procedural form. Moscow, 2011. Page 136)

the position[70] that a specialist does not conduct research[71], and his activity is not research[72], is quite widespread in the literature.

At the same time, the specialist's answers to the questions put to him and reflected in the conclusion are not limited to the reproduction of his knowledge, which is typical, for example, for the activities of "reference (knowledgeable) witnesses[73]". On the contrary, when formulating a "judgment"[74] and "producing" a conclusion, the specialist, in one way or another, using case materials (copies of case materials), individual objects and information provided to him by the subject of proof, processes the information received (examines it) and, as a result, obtains new factual data[75].

Indeed, the concept of "research" is broader than "judgment", however, this does not exclude the possibility of conducting research when forming "judgments", "opinions"

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[70] Judgment - this is an opinion, a conclusion (on some) issue, a product and result of a thought process, in connection with which, the literature has reflected the position that the opinion of a specialist, reflected in his conclusion, is a consultation (advice of a specialist on some issue), drawn up in writing (See: Explanatory Dictionary of the Russian Language: 72,500 words and 7,500 phraseological expressions / S. I. Ozhegov, N. Yu. Shvedova; Russian Academy of Sciences, Institute of Russian Language, Russian Cultural Foundation. - 2nd ed., corrected. and enlarged. - Moscow: Az, 1994, Newest Philosophical Dictionary: 3rd ed., corrected. - Minsk: Book House. 2003. - 1280 p.) .

[71] There are opinions expressed in the literature that the specialist does not conduct research. For example, E. A. Zaitseva, being an active supporter of such an approach, emphasizes that a specialist should not conduct research in principle, since this contradicts the path of historical development of the Russian (Soviet) institute of knowledgeable persons and "blurs" the line between an expert and a specialist (See: Zaitseva E. A. Application of special knowledge through the prism of the Federal Law of March 4, 2013 No. 23-FZ // Legislation and Economics. 2013. No. 6 (350). P. 32) or does not conduct a study of material objects (See: Belsky A. I. Expert's conclusion and testimony as evidence in criminal proceedings in Russia: diss. ... Cand. of Law. - M., 2006. - Pp. 14-15), also, there is an opinion that a specialist explains in his conclusion only issues that are hidden from the understanding of non-specialists, he is not authorized by law to conduct any research independently (See: Antonov O. Yu. Problems of using special knowledge in criminal proceedings and ways to solve them // Current problems of Russian law. 2017. No. 6. pp. 149-157), and also that the conclusion of a specialist in relation to the expert's conclusion plays a supporting role, since the judgments of a specialist cannot be of the same categorical and absolute nature as the expert's conclusions. According to V. M. Bykov, one of the main differences between a specialist and an expert is that a specialist does not conduct a full and comprehensive study of the object using special knowledge, giving conclusions at the request of the investigator or the court, which is how he differs from an expert (See: Bykov V. M. Expert's opinion // Legality. 2004. No. 9. P. 21).

[72]A similar position is held, for example, by V. I. Zazhitsky, E. A. Zaitseva, pointing out that the conclusion of a specialist, as opposed to the conclusion of an expert, cannot be verified, since the process of the emergence of traces of a crime and their transformation into the content of evidence has a gnoseological nature, therefore information, as an objective basis for any evidence, cannot be replaced by any logical judgments, opinions or conclusions, no matter how attractive they may be. (See: Zaitseva E. A. Concept of development of the institute of forensic examination in the conditions of adversarial criminal proceedings: diss. ... Doctor of Law. Moscow, 2008; Zazhitsky V. I. Conclusion and testimony of a specialist in the system of evidentiary law // Russian Justice. 2007. No. 9. P. 57-58).

[73]See: Vladimirov L. E. The doctrine of criminal evidence. Tula: Avtograf, 2000. Pp. 238, 239, 242.

[74] The etymology of the terms "judgment" and "research" allows us to conclude that "judgment" is a form of thinking, which is the performance of mental operations in which one phenomenon is defined and revealed through another, as a result of which a conclusion (inference) is formed, and "research" is a scientific and experimental analysis of any phenomena or processes, carried out through inspections, surveys, familiarization and scientific (mental) studies to form conclusions (inferences).

[75] The investigation involves obtaining new factual data that was previously unknown to the court and that cannot be obtained in any other way (except by contacting a person with special knowledge). (See: Sakhnova T.V. Forensic examination. Moscow, 2000. P. 47).

and "conclusions[76]". A specialist, using his special knowledge, resolves the questions posed by interpreting, interpreting, generalizing scientific knowledge applicable to a specific situation, in the context of the questions facing him and forms a conclusion as the final result of his activity[77]. Moreover, the study of an object conducted by a specialist, in depth, completeness and comprehensiveness, may not be inferior to the study conducted by an expert, or even surpass it[78].

To say that a specialist, in the absence of direct access to the case materials[79] (which is provided for an expert), does not have the objects and information necessary for conducting the study. Not only the persons conducting the criminal proceedings, but also the defense attorney and the accused have access to the case materials and evidence. The defense attorney, in the manner prescribed by Article 53 of the Criminal Procedure Code of the Russian Federation, has the right to collect and present evidence (in the sense of Article 86 of the Criminal Procedure Code of the Russian Federation) necessary for providing legal assistance, has the opportunity to obtain copies of the criminal case materials and protocols of individual investigative actions, copies of expert opinions, and use such a procedural tool as a lawyer's request to obtain information and documents. The accused has the opportunity to obtain medical documents regarding himself, samples of his handwriting or his own biomaterial, as well as information about the event posted in

[76] Thus, according to T. V. Averianova, the legislator, using such a formulation, had in mind not a logical, but a philosophical category of "judgment", and in the process of cognition, to obtain a certain judgment, methods of both empirical (observation, measurement, description) and theoretical levels (analysis, synthesis, etc.) will be used, characteristic of research (See: Averianova T. V. Problems of the Theory and Practice of Forensic Science // Fundamental and Applied Problems of Crime Investigation Management: A Collection of Scientific Papers. In 2 Parts. Part 2. Moscow: Academy of Management of the Ministry of Internal Affairs of Russia, 2005. P. 169. Agreeing with T. V. Averianova, S. N. Eremin points out that the legislator, having used the term "judgment" (i.e., statement) in relation to the expert's opinion (Part 3 of Article 80 of the Code of Criminal Procedure of the Russian Federation), had in mind not just the logical category of "statement", which exists in both formal and modal logic, but a judgment that requires an assessment both from the standpoint of truth-falsehood and reliability-probability, that is, he considers the concept of "judgment" as a logical and philosophical category that includes any methods of empirical and theoretical knowledge (For more details, see: Eremin S. N. Expert's Opinion as a New Type evidence in criminal proceedings: diss. … candidate of legal sciences. Moscow, 2005. Pp. 57 – 101).

[77] A specialist, like an expert, provides a professional assessment of the established factual data (See: Eisman A. A. Expert opinion. Structure and scientific substantiation. Moscow, 1967. P. 98; Orlov Yu. K. Expert opinion as a source of inferential knowledge in judicial proof: author's abstract. diss. ... doctor of law. Moscow, 1985. P. 44; Kudryavtseva A. V., Semenov V. A. Forensic examination in domestic criminal proceedings: monograph. - Moscow: Yurlitinform, 2021. P. 14).

[78] Ovsyannikov I. Conclusion and testimony of a specialist // Legality. 2005. No. 7. P. 32 - 33.

[79] The survey results showed that only 16% of the surveyed lawyers noted the need for a regulatory framework for the right of a specialist to access criminal case materials when providing an opinion (See: Appendix No. 6, question 10).

open sources (for example, videos and photos posted on the Internet)[80], etc. That is, objects for analysis and research within the framework of giving an opinion can be provided to the specialist [81]by the defense (defender).

Moreover, not in every case does the research require the provision of material objects, since its object may be events and phenomena[82] for the study of which it is not possible a specific toolkit is used[83]. The process of developing new knowledge, the process of cognitive activity[84] is based not only on the mandatory conduct of experiments and physical research (which require material objects), but can also occur exclusively in the process of the mental activity of a specific subject[85]. The result of such mental activity can be the judgment (opinion) of a specialist, reflected in the conclusion given by him, as a judgment based on a certain type of research - intellectual.

Accordingly, the research itself, as a set of specific actions[86], carried out in stages with the purpose of a comprehensive study of the object, can be carried out by any person who has the appropriate specialized knowledge and the necessary level of qualification[87].

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[80] At present, there is no tool for providing a specialist, for the purpose of preparing answers to questions put to him and giving an opinion, with access to the original materials of a criminal case in full or to material objects, even if they have not been lost as a result of previously conducted research or the specifics of the object itself.

[81] Also, the defense attorney puts questions to the specialist, often after a preliminary consultation with the specialist. The fact that in this case the direction of the study will be set by the defense does not indicate its bias, since, in the case of a forensic examination, the direction of the study is set by the person conducting the criminal case.

[82]See: Arsenyev V. D. Correlation of the concepts of object and subject of forensic examination // Problems of the theory of forensic examination. Moscow, 1980. pp. 7 - 9; Vinberg A. I., Malakhovskaya N. T. On the principles of classification of objects in forensic objectology // Methodology of forensic examination. Moscow, 1986. p. 34.

[83]To conduct a study of material objects, specific tools are required, determined by the relevant field of knowledge and type of forensic examination. A fairly complete (but not exhaustive) list of types of forensic examinations is given in Appendix 2 to the order of the Ministry of Internal Affairs of Russia dated 29.06.2005 No. 511. SPS "Consultant Plus" https://www.consultant.ru/document/cons_doc_LAW_55315/ (date of access 12.06.2024)

[84]New Encyclopedic Dictionary … P. 449.

[85]Thus, M. A. Cheltsov and N. V. Cheltsova noted that "there are cases when the expert does not conduct the examination of the materials himself, but uses the results of the examination conducted before him (examination of the case materials). Such an examination can be conducted by a qualified specialist on the basis of correctly and thoroughly drawn up protocols of external examination and autopsy of the corpse, examination of material evidence, etc. (See: Cheltsov M. A, Cheltsova N. V. Conducting an examination in Soviet criminal proceedings. Moscow: Gosyurizdat, 1954. P. 21.)

[86]The following are considered as the main stages of the study: preparatory (familiarization with the basis for conducting the study and the initial data), analytical (analysis of the characteristics and properties of objects), synthetic (comparison, comparison with reference objects) and the evaluation stage (evaluation of the results of the study and formulation of conclusions).

[87] According to Ya. V. Komissarova, there is a need to grant a specialist the right to conduct research at the legislative level in order to ensure verification of the scientific validity of the expert's opinion contained in the case materials, to clarify issues from the field of science, technology, art or craft, where the implementation of higher professional education programs in Russia is not provided, as well as when there is a demand for knowledge from a field that has not previously been covered by the production of examinations, for example, when we are talking about an examination for which experts have not yet been trained (See: Komissarova Ya. V. On the issue of the grounds for distinguishing between the procedural status of an expert and a specialist as participants in criminal proceedings // Bulletin of the O. E. Kutafin University (MSAL). 2017. No. 5. P. 140; Kirillova N. P. Procedural functions of professional participants in adversarial judicial proceedings of criminal cases in the court of first instance: diss. ... Doctor of Law. St. Petersburg, 2008).

This applies both to an expert and to a specialist who, in his activity, applies the same logical methods and forms of knowledge as an expert, and the result of their application (the result of his cognitive, research activity) is made available to the subject of proof[88].

Thus, the activities (functions[89]) of an expert and a specialist in individual evidentiary actions are homogeneous, aimed at obtaining scientific knowledge and giving it an appropriate procedural form, at the “production” of so called scientific evidence[90].

As has already been said earlier, in order to "produce" evidence, the specialist, using his own knowledge and experience, gives written or oral answers to questions put to him by the investigator, inquiry officer, lawyer, court. At the same time, the specialist independently gives the form of the conclusion to his findings, and the testimony of the specialist takes a procedural form, with the additional participation of the person conducting the interrogation[91].

The additional participation of the interrogating person is mandatory regardless of whether the testimony of the specialist is connected with the conclusion previously given by him, or has an independent nature, since the activity of the specialist in giving testimony is most similar to the activity of “reference witnesses”, as L. E. Vladimirov called them[92], that is, knowledgeable persons who provide information from the area of their experience, illuminating certain aspects of criminal cases[93], using which, the persons conducting the proceedings on the case independently resolve the issue that has arisen from the area of specialized knowledge.

Despite the fact that the giving of evidence, a general term, in fact, the conclusion is given (“produced”) by the person possessing special knowledge, while the testimony, given and intellectually processed by the person possessing special knowledge, is

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[88]Information, the reliability of which depends on the depth and completeness of his own specialized knowledge, training, convictions, professional skills and (See: Grishina E. P., Abrasimov I. V. Specialist as a knowledgeable person and participant in the process of proof in criminal proceedings // Modern Law. 2005. No. 8. P. 55).

[89]The functions of a specialist in criminal proceedings are discussed in more detail later in this paragraph.

[90]Not excluding the peculiarities associated with the “limited” capabilities of a specialist.

[91] As a result, information orally communicated by a specialist takes the form of a protocol of his interrogation, and evidence obtained within the framework of such evidentiary action as interrogation of a specialist is called "testimony" and not "protocol of interrogation of a specialist. Such a result of legislative technique is caused, in our opinion, by the imperfection of the conceptual apparatus and ambiguity of formulations.

[92]See: Vladimirov L. E. Op. cit. Pp. 238, 239, 242.

[93]In this case, the person conducting the interrogation independently “directs” the specialist in carrying out this separate evidentiary action.

recorded and placed in the protocol by the person conducting the proceedings on the case[94].

Thus, "giving evidence" is a conditional formulation, since, ultimately, the evidence obtained is introduced into the process, into the case materials, by the investigator or another person endowed with such a right by the legislator, but the source of evidentiary information is the person giving evidentiary information (specialist)[95], which allows us to speak about the giving of testimony and/or conclusion by a specialist as his legally defined procedural function[96].

One of the most common ways of interpreting the concept of procedural function is "its (function's) relationship with the directions of criminal procedural activity and, accordingly, the identification of three main functions – prosecution, defense and resolution of the case, as the basis of the adversarial process[97]", which is also reflected in Article 15 of the Criminal Procedure Code.

Also, in science, an auxiliary function (the function of assisting justice) is distinguished[98], which is separate from the functions of defense, prosecution or resolution of the case, and "among other participants in criminal proceedings[99] who actually assist

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[94]For example, a technical specialist, such as a court secretary.

[95]The above applies equally to both the specialist and the expert, although their essential equality as participants possessing special knowledge is often denied. For example, E. A. Zaitseva points to the absence of essential differences between the expert and the specialist and notes only the difference in the formal plan, which, in her opinion, is not a sufficient basis for the existence of separate independent procedural figures, "mixing the figures of the specialist and the expert" she considers unfounded and having a negative impact on the institution of forensic examination. Almost ironically, E. A. Zaitseva asks about the need to preserve the institution of forensic examination, given the presence of a specialist with the authority to conduct research, indicating that such an approach by the legislator "leads to the blurring of the boundaries of the procedural institutions of forensic examination and the specialist and, ultimately, to the erosion of the legal institution of forensic examination" (See: Zaitseva E. A. Application of Specialized Knowledge through the Prism of the Federal Law of March 4, 2013, No. 23-FZ // Legislation and Economics. 2013. No. 6 (350). P. 33).

[96]For example, A. V. Smirnov and K. B. Kalinovsky understand procedural functions as directions of procedural activity that unite various participants in legal proceedings into separate groups, determine the content of their status, delineate interests in procedural activity, that is, they are understood as the main directions of procedural activity in which the special role and purpose of participants in legal proceedings are expressed. According to the above-mentioned authors, since the concept of the criminal procedural function cannot be reduced to a simple sum of the powers, rights and obligations of certain participants in the proceedings, it is precisely this that makes it possible to distinguish between the conflicting interests of various participants in the process, ensuring the implementation of the common goals and objectives of the proceedings (See: Smirnov A. V. Criminal Procedure: textbook / A. V. Smirnov, K. B. Kalinovsky; edited by A. V. Smirnov. 7th ed., revised. Moscow: NORMA: INFRA-M, 2018. pp. 117-119).

[97]Kirillova N. P. Procedural functions of professional participants in adversarial criminal proceedings: monograph. SPb.: Publishing House of St. Petersburg State University, Publishing House of the Law Faculty of St. Petersburg State University, 2007. P. 52.

[98]Elkind P.S. Goals and means of achieving them in Soviet criminal procedural law. Moscow, 1976. P. 52.

[99]At the same time, M. S. Strogovich proposed that "other participants in the process should not be considered as such at all on the grounds that they allegedly do not perform any procedural function, are called upon to participate in the production of various investigative and judicial actions and, upon fulfilling their duties, are effectively eliminated from the process." (For more on this, see Strogovich M. S. Course in Soviet Criminal Procedure. Vol. 1. Moscow, 1968. Pp. 111, 204-205).

justice, there are persons providing technical assistance and persons who are sources of evidence, to which the specialist is also included[100]".

In this regard, we believe that the most correct approach is to consider the function of a specialist as a direction of his activity, since, "the question of the functions of criminal proceedings actually (substantively, not conceptually) comes down to what certain participants do, i.e. it is a question of the legal opportunities with which they are endowed and the legal relations into which they enter to achieve their goals[101]".

A specialist enters into legal relations on proof, on the initiative of the party that attracts him, which, with the aim of obtaining a certain scientific evidence, provides data, information, in some cases, objects for research (materials), establishes its limits (raises questions), within which the specialist creates evidence, having the legal opportunity to independently use for this, the scientific knowledge and experience that he has, to conduct research based on current scientific methods, having as a limitation in his activities not the interest of the attracting party, but the volume of his scientific knowledge, the level of qualification and competence, the requirements of science.

A specialist who carries out a certain purposeful activity and is endowed with the necessary competence, rights and obligations for this, being a participant in a separate evidentiary action aimed at collecting and checking evidence, carries out the function of "giving, producing" (forming) scientific evidence. This formulation in relation to the function of a specialist in criminal procedural proof is, of course, conditional and far from perfect, since the terms "giving", "creation", "production", "formation" are multifaceted, can be used in different situations and carry a different meaning, at the same time, for this work we accept this version of the definition of the function of a specialist.

The above-mentioned view of the function of a specialist as an activity on "producing" evidence (giving opinions and testimony), a special activity within the framework of a separate evidentiary (investigative) action, corresponds to and does not contradict the opinion of P.S. Elkind that "functions are a special purpose and role of

[100]Smirnov A. V. Ibid. P. 121.
[101]Stoyko N. G. Criminal Procedure of Western States and Russia: A Comparative Theoretical and Legal Study of the Anglo-American and Romano-Germanic Legal Systems. Monograph. SPb.: Publishing House of St. Petersburg State University, Publishing House of the Law Faculty of St. Petersburg State University, 2006. P. 145.

participants in the process, determined by the rules of law and expressed in the relevant areas of criminal procedural activity[102]", which determines the functions of participants in the process in in a broad sense.

The absence of a contradiction is explained by the fact that the giving of an opinion and testimony by a specialist directly corresponds to his role in the criminal process as a participant assisting justice and proof, through the use of his special (scientific) knowledge, clothed in the form provided by the legislator.

Accordingly, giving an opinion and testimony is a function of a specialist, implementing which the specialist "produces" evidence. And as a task of involving a specialist in criminal proceedings, one can define the specialist's giving an opinion on or in relation to an expert opinion or a specialist's opinion available in the case materials. The task, in fact, is to evaluate the methods used by the expert (or other specialist), from the point of view of their relevance, scientific validity, testing, use of appropriate equipment, sufficiency of the material used, correctness, completeness and accuracy of the formulations of the questions posed and the answers to them, the compliance of the opinion available in the case materials with modern expert capabilities[103].

We believe that the designation of the specialist's function as an activity of providing (creating, forming) such evidence as the expert's conclusion and testimony is entirely justified, since the activity of a specialist in using special (scientific) knowledge, relevant data and information has as its final result evidence determined by the rule of law - the criminal procedure law . Providing (forming) evidence occurs on the basis of the specialist's own knowledge and experience, on the basis of objective scientific data, applicable methods and techniques, regardless of the will of the person (party) engaging the specialist, other participants in the proceedings or the court, regardless of which of the participants and at what stage the specialist is involved in the process for the purpose of proving.

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[102] Elkind P.S. On the question of the function of the prosecution in the Soviet criminal process // Questions of the theory and practice of prosecutorial supervision. Saratov, 1974. P. 4.

[103]See: Vatutina, O. Yu. Problematic issues of interrogation of a specialist in criminal proceedings / O. Yu. Vatutina // Humanitarian, socio-economic and social sciences. - 2019. - No. 4. - P. 90-92.

The law in this part is stated neutrally, allowing the initiation of evidentiary activity of a specialist by any persons, including a defense attorney, as a subject of criminal procedural evidence, obliged to take part in the proof, collect evidence (in the sense of Part 3 of Article 86 of the Criminal Procedure Code of the Russian Federation), which must be accepted and considered in the formal conditions of the criminal process.

Thus, a specialist, being a participant in a separate investigative action, provides ("produces") evidentiary information (information in the form of a conclusion and/or testimony) by using his own knowledge and experience, based exclusively on objective (reliable) data from science, technology, crafts and art, obeying exclusively the requirements and provisions of the listed types of activity, in conditions of independence from the will and demands of the attracting party, thereby participating in criminal procedural proof, which, accordingly, provides grounds for including a specialist among the participants in criminal procedural proof and determining the types and forms of his participation in proof.

§ 2. Types and forms of participation of a specialist in criminal procedural proof

Traditionally, the forms of participation of a specialist in criminal proceedings include the provision of assistance by a specialist in the detection, securing and seizure of objects and documents, the use of technical means and the examination of materials of a criminal case; the provision of a conclusion by a specialist; the provision of testimony by a specialist and his consulting activities[104].

[104]However, some authors do not recognize the possibility of a specialist's procedural activity and participation in criminal procedural proof. For example, B. M. Bishmanov in his 2003 monograph (in the presence of the amendments already adopted on 04.07.2003 by Federal Law No. 92-FZ in Part 2 of Article 74 of the Criminal Procedure Code), does not indicate the giving of an opinion and testimony by a specialist as a separate type of his activity, moreover, as an activity in criminal procedural proof. On the contrary, the provision of reference and information assistance, consulting activities by a knowledgeable person by a specialist is attributed to activities "beyond the scope of procedural status" (See: Bishmanov B. M. Expert and specialist in criminal proceedings. Moscow: Moscow Psychological and Social Institute, 2003. P. 40). And Yu. K. Orlov (before the adoption of the current Criminal Procedure Code of the Russian Federation) indicated that "a specialist does not give an opinion and does not formulate any conclusions at all that have evidentiary value... the results of the specialist's activities do not have independent evidentiary value, but act as an integral part of the protocol of the corresponding investigative action" (See: Orlov Yu. K. Production of an expert examination in criminal proceedings. Moscow: Publishing house of the All-Union Correspondence Law Institute, 1982. P. 25).

It appears that the participation of a specialist in criminal procedural proof is carried out in the same forms. At the same time, the question of the forms of participation of a specialist in both criminal proceedings and criminal procedural proof cannot be considered resolved. A significant number of authors have studied this issue, offering their own diverse approaches to classifying the forms of participation of a specialist in criminal legal proceedings. Among such authors, we can highlight B. M. Bishmanov[105], L. V. Lazareva[106], L. G. Shapiro[107], E. A. Zaitseva[108], A. M. Zinina[109] and others. The named authors proposed classifying the forms of specialist participation in criminal proceedings according to various criteria and, in the overwhelming majority, primarily distinguished between procedural and non-procedural forms of participation[110].

Procedural forms are defined as those directly enshrined in law (for example, L. G. Shapiro, E. A. Zaitseva), dependent on the normative-legal enshrinement (legal basis)[111] (A. V. Konstantinov) and/or having evidentiary value as a result of application (for example, A. M. Zinin). The group of procedural forms of participation of a specialist in criminal proceedings includes his/her involvement in procedural actions (Article 58 of the Criminal Procedure Code of the Russian Federation); obtaining an opinion (Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation) and testimony of a specialist (Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation); conducting documentary checks and audits at the request of the inquiry body, inquiry officer, investigator (Part 1 of Article 144 of the Criminal Procedure Code of the Russian Federation)[112]; participation of a specialist in investigative and other procedural actions

[105]Bishmanov B. M. Legal, organizational and scientific-methodological foundations of forensic activity in internal affairs agencies: diss. … Doctor of Law. Moscow, 2004. P. 13.
[106]Lazareva L. V. Conceptual foundations of using special knowledge in Russian criminal proceedings: dis. ... Doctor of Law. Vladimir, 2011. P. 128, 131.
[107]Shapiro L. G. Special knowledge in criminal proceedings and their use in the investigation of crimes in the sphere of economic activity: dis. ... Doctor of Law. Krasnodar, 2008. P. 27.
[108]Zaitseva E. A., Chipura D. P. Use of Special Economic Knowledge in Pre-Trial Proceedings in Criminal Cases: monograph. Volgograd: VA MVD of Russia, 2007. pp. 48–53; Zaitseva E. A. Concept of Development of the Institute of Forensic Expertise in the Context of Adversarial Criminal Proceedings: monograph. Moscow: Yurlitinform, 2010. p. 157.
[109]Zinin A. M. Participation of a specialist in procedural actions: textbook. M.: Prospect, 2011, Zinin A. M. Participation of a specialist in procedural actions. Identical forms are indicated in the work: Zinin A. M., Semikalenova A. I., Ivanova E. V. Participation of a specialist in procedural actions: textbook / edited by A. M. Zinin. M.: Prospect, 2016.
[110] At the same time, most authors do not allow for a "smooth" transition from a non-procedural form to a procedural one, believing that the form of participation of a specialist is either procedural or non-procedural.
[111] Konstantinov A. V. Procedural and organizational problems of specialist participation in criminal proceedings at the preliminary investigation stage: diss. … candidate of legal sciences. Moscow, 2006. P. 10.
[112]See: Shapiro L. G. Decree. op. P. 27.

(provision by a specialist of scientific, technical and advisory assistance to persons conducting criminal proceedings and to the defense); participation in criminal proceedings of witnesses with special knowledge[113]; involvement of a specialist in investigative and judicial actions (Articles 58, 168 of the Criminal Procedure Code of the Russian Federation); preparation by a specialist of written responses (conclusions) to questions posed by the parties (clause 3 of Article 80 of the Criminal Procedure Code of the Russian Federation), as well as interrogation of a specialist[114] (clause 4 of Article 80 of the Criminal Procedure Code of the Russian Federation) to explain his opinion expressed in writing conclusion, or to clarify circumstances requiring special knowledge[115].

Non-procedural forms are characterized by the absence of normative regulation in relation to them[116], despite the fact that the results of their application may subsequently become evidence and be used in proving[117].

Non-procedural (some authors also call them organizational) forms of specialist participation in legal proceedings are defined in science in various ways[118]. These include, for example, reference and consulting activities; providing consultations by specialists to lawyers; conducting audit and revision checks; contacting specialists, including researchers, teachers of law schools, former experts of law enforcement agencies to analyze the conclusions of examinations previously conducted on the case, to express

[113]Zaitseva E. A. Ibid.

[114]Interrogation of a specialist is one of the ways to obtain advice, as mentioned in Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation.

[115]Zinin A. M. Ibid.

[116]Or the law does not attach the same importance to the results of their use as to the results of the application of procedural forms in the absence of proper registration of the specialist's participation in legal proceedings (See: Dyakonova O. G. Forms of specialist participation in legal proceedings // Bulletin of the O. E. Kutafin University (MSAL). 2016. No. 8. P. 27).

[117]For example, the results of a specialist consultation can be presented in the form of a specialist's report and attached to the case materials.

[118]The diversity of the identified non-procedural forms of participation of a specialist in criminal proceedings, in our opinion, is explained by "… the absence of a legislatively defined procedure and form for obtaining evidence produced by a specialist (the expert's opinion and testimony)" (See: Criminal Procedure Law of the Russian Federation: textbook. 3rd revised and enlarged ed. / L. N. Bashkatov [et al.]; editors I. L. Petruhin, I. B. Mikhailovskaya. Moscow: Prospect, 2011. P. 180); insufficient regulation of guarantees of liability of a specialist in his procedural activities (See: Latypov V. S. Assistance by other participants in criminal proceedings provided for in Chapter 8 of the Criminal Procedure Code of the Russian Federation: monograph / V. S. Latypov. - Moscow: Yurlitinform, 2018. P. 187; Pashutina O. S. Current issues of legal regulation of participation of a specialist in criminal proceedings // Criminal proceedings. 2011. No. 1. P. 6); the lack of legislative consolidation of the procedure for interrogating a specialist, and uncertainty regarding the regulation of the procedural status of a specialist.

their opinions on the issue of qualification of the act[119]; non-traditional use of knowledge of knowledgeable persons[120]; engaging a specialist to assist operatives, investigators in obtaining information of an orientation nature necessary for the effective conduct of operational-search activities and the subsequent decision-making on the initiation of a criminal case, as well as for the investigator to make a decision on the conduct of certain investigative actions; engaging a specialist to assist in the use of technical and forensic means in conducting operational-search activities[121].

There is also a division of forms of participation of a specialist in criminal proceedings into basic (mandatory) and additional (auxiliary, alternative) - according to their significance for the consideration of a criminal case; direct and indirect - depending on the nature and content of the investigative action in which the person with special knowledge participates; classical and rare, depending on the practice of applying a specific form of participation[122]. In addition to the above, there are forms depending on the nature, industry affiliation of the specialist's knowledge (specialized knowledge from the field of medicine, psychiatry, psychology, linguistics, art, etc.).

At the same time, The form of participation of a specialist in criminal proceedings is understood as a system of rules of conduct, enshrined in the criminal procedural law, for his use of his special knowledge, and the exercise of rights and obligations during the investigation and consideration of criminal cases[123].

In this regard, the procedural status of a specialist is of significant importance, as a legal category, it represents a set of[124] rights, obligations and procedural guarantees that ensure these rights, provided by current legislation, based on the goals, objectives, functions and principles of the participant's involvement in criminal proceedings.

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[119]Despite the fact that the review of expert opinions contained in the case materials is not provided for by current legislation, and the resolution of legal issues is not within the competence of a person with special knowledge, this is probably why the author classifies such forms of participation as non-procedural (not provided for by law, but implemented in practice) (See: Zinin A. M. Participation of a specialist in procedural actions: textbook. Moscow: Prospect, 2011. P. 78) .

[120]Latypov attributes the activities of psychics to one of the non-traditional forms of using special knowledge. (See: Latypov V.S. Op. op. p. 187) .

[121] Zinin A. M., Semikalenova A. I., Ivanova E. V. Participation of a specialist in procedural actions: textbook / edited by A. M. Zinin. Moscow: Prospect, 2016. P. 48 .

[122] Konstantinov A. V. Procedural and organizational problems of specialist participation in criminal proceedings at the preliminary investigation stage: diss. … candidate of legal sciences. Moscow, 2006. Pp. 19 – 20.

[123]See, for example: Selina E. V. Application of special knowledge in Russian criminal proceedings: dis. ... Doctor of Law. Sci. Krasnodar , 2003. P. 21.

[124]Including as a participant in a separate evidentiary (procedural) action.

In the normative sense, the procedural status of participants in criminal proceedings is regulated by the provisions of Chapters 5 - 8 of the Criminal Procedure Code of the Russian Federation[125]. At the same time, in relation to a specialist, it still seems not entirely clear. The reasons for this ambiguity include, firstly, the relative "youth" of the specialist's status as a participant in criminal proceedings and, accordingly, in criminal procedural evidence; secondly, the duality of status (normative homonymy)[126]; thirdly, some "merger" with other participants in legal proceedings, such as, for example, a teacher, translator, doctor[127].

Procedural status is a complex concept that combines a number of components, including the legal tools of a specialist that determine the direction and nature of his activities; a set of relationships with other participants in criminal proceedings, determined by this tool, which can be determined through the components of procedural status, namely, through its content and its regulation in legislation.

The content of procedural status, that is, the rights, obligations, procedural guarantees and responsibility of a specialist, which is "traditionally recognized in procedural science as components of procedural status[128]", are revealed through the goals, objectives, functions and principles of participation of a specialist in criminal procedural proof.

The principles of participation of a specialist in criminal procedural proof include his competence and disinterest in the case[129]. Consequently, the procedural status of a

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[125] Criminal Procedure Code of the Russian Federation of 18.12.2001 No. 174-FZ (as amended and supplemented, entered into force on 29.06.2024) [Electronic resource] // https://www.consultant.ru/document/cons_doc_LAW_34481/ (date of access: 06/16/2024).

[126]Golovko L. V. Op. cit. P. 507.

[127]The issue of "merging" a specialist with other participants in the process is quite ambiguous and arises from time to time in legal literature. Thus, offering her own classification of forms of specialist participation in legal proceedings, O. G. Dyakonova, in addition to procedural and non-procedural forms, identifies a group of "Forms of specialist participation depending on the nature of special knowledge and the content of the action for which the specialist is involved", which includes the activities of an interpreter (sign language interpreter), a teacher, a psychologist and an informed witness, thereby "identifying" a teacher, a psychologist, and an interpreter with a specialist in the procedural sense (See: Dyakonova O. G. Forms of specialist participation in legal proceedings // Bulletin of O. E. Kutafin University (MSAL). 2016. No. 8. P. 28). However, M. S. Strogovich warned against attempts to completely identify a teacher and a specialist, pointing out that "these are completely different procedural figures, acting in different procedural forms and participating in different procedural actions" (See: Strogovich M. S. Course of Soviet Criminal Procedure. Vol. 2. Moscow, 1970. Pp. 477-478).

[128]Denisov A.E. Procedural status of a specialist in criminal proceedings [Electronic resource]: URL : http :// www . sovremennoepravo . ru (date accessed 01/27/2020).

[129] This refers to the absence of legal or other interest in the outcome of the case, with the exception of professional interest. "Professional interest" is the desire of a specialist to provide assistance to participants in criminal procedural activity who do

specialist is characterized by the presence of independence, competence, legal disinterest in the results of criminal procedural proof, which directly correlates with the absence of personal interest of the specialist in the outcome of the criminal case.

At the same time, the issues of specialist disinterest are debatable, since the independence of the specialist invited by the defense is often questioned, due to assumptions about possible abuses on the part of the specialist resulting from his "contractual" relations. That is, the very fact of engaging a specialist by the defense is considered as an opportunity for abuse, with which, supporting the position of S.A. Sheifer, we cannot agree, "due to a significant exaggeration of such probable opportunities[130]".

The competence of a specialist is also one of the constituent elements of his procedural status, however, the process of confirmation of his competence by a specialist has not been regulated by the legislator to date[131]. Of course, in practice, such a situation is resolved through the "inner conviction of the person" conducting the investigation or resolving the case, however, the legislator has not established any normatively established criteria or any guidelines.

A specialist, as a participant in criminal procedural evidence, has the following rights, which are also granted to other participants in criminal procedural evidence:

-refuse to participate in criminal proceedings (if certain conditions exist, for example, if he does not have the appropriate category and level of specialized knowledge (qualifications) necessary to resolve the issues posed to the specialist in a specific criminal case);

- ask questions to other participants in the investigative action;

- to become familiar with the protocol of the investigative action in which he participated, to make statements and comments subject to entry in the protocol;

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not have special knowledge, which, in essence, is a reflection of his or her purpose (See: Dyakonova O. G. Forms of Participation of a Specialist in Legal Proceedings // Bulletin of the O. E. Kutafin University (MSAL). 2016. No. 8. P. 16).

[130]Sheifer S. A. Ibid. P. 34.

[131]The legislation does not contain any criteria for assessing the suitability of a particular specialist to conduct an examination (give an opinion). In practice, this results in a declarative statement by the person with special knowledge about having the appropriate skills and the preparation of opinions that have no scientific basis (See: Kurovskaya L.N., Timoshenko A.A. Systemic problems of organizing non-governmental forensic expert activity // Legality. 2015. No. 9. pp. 55-59; Prikhodko I.A. Forensic examination and forensic activity: main problems and ways to solve them (based on judicial practice) / I.A. Prikhodko, A.V. Bondarenko, V.M. Stolyarenko. - M.: International Relations, 2023. p. 20).

- to file complaints against the actions (inaction) and decisions of the investigator, inquiry officer, prosecutor and court that limit his rights.

A specialist has no right to avoid appearing when summoned by an investigator, an inquirer, or in court, or to disclose preliminary investigation data. Despite the fact that the legislator points out the above-mentioned restrictions on the specialist's activities, the issue of determining his or her liability has been and remains one of the most unresolved issues of the specialist's institute. "Based on the norms of the Criminal Code of the Russian Federation, a specialist is liable for disclosing preliminary investigation data in accordance with Art. 310 of the Criminal Code of the Russian Federation and is liable for knowingly giving false testimony in accordance with Art. 307 of the Criminal Code of the Russian Federation. At the same time, Art. 307 of the Criminal Code of the Russian Federation speaks of the specialist's liability directly, and Art. 310 of the Criminal Code of the Russian Federation, through Art. 58 of the Criminal Procedure Code of the Russian Federation, which does not seem entirely logical, since Part 4 of Art. 58 of the Criminal Procedure Code of the Russian Federation indicates the specialist's liability only under Art. 310 of the Criminal Code of the Russian Federation, that is, for disclosing preliminary investigation data, and this rule applies only after warning the specialist about the inadmissibility of disclosing preliminary investigation data[132]". At the same time, the issue of liability for a specialist giving a knowingly false opinion is not enshrined at the legislative level, in connection with which the idea of "establishing requirements for certification of the fact of warning a specialist about liability" is widespread[133] in the norm of the law[134]. We believe that this issue can be resolved by means of another instrument: for example, the relevant provisions can be reflected in an agreement concluded between the defense attorney (defense party) and the specialist engaged by him[135], which includes the questions posed to the specialist for resolution and the materials necessary for this,

[132]Latypov V.S. Decree. op. P. 186.
[133]See: Latypov V. S. Ibid. works. P. 187; Pashutina O. S. Current issues of legal regulation of participation of a specialist in criminal proceedings // Criminal proceedings. 2011. No. 1. P. 6.
[134]It is worth noting that the specialist is subject to such procedural liability as summons and a fine, in the manner prescribed by Articles 117, 118 of the Criminal Procedure Code of the Russian Federation, similar to the procedural liability of an expert. And on the same grounds as an expert, a specialist may be challenged (Article 70 of the Criminal Procedure Code of the Russian Federation).
[135]More details about this can be found in the second chapter of this work.

and also contains the specialist's obligation to appear before the investigator (inquiry officer) or the court to participate in the application of the motion by the engaging party[136] to attach the specialist's conclusion, to sign a written undertaking on liability for giving a knowingly false conclusion, and also to confirm his readiness to present this evidence in the case materials.

Thus, the specialist has the rights and obligations of a participant in proving to the extent required by his/her activity in proving within the framework of a separate investigative action, limited, in turn, by the framework "set" by the inviting party. At the same time, it is necessary to clearly distinguish between the concepts of "set framework of proof" and "interest". These concepts are not equivalent: "set framework of proof" is not equal to "set result of proof". "Framework of proof" is determined by the inviting party by asking questions, the volume of information and materials provided for research and giving answers (formulating conclusions). While the result of proof (within the framework of a separate evidentiary action with the participation of a specialist) depends exclusively on the specialist himself/herself, the level of special knowledge that he/she possesses, his/her qualifications, experience in a specific field of knowledge, that is, it is directly subordinated to science.

A specialist in criminal proceedings and in criminal procedural proof participates indirectly, through the involvement of subjects of proof, using his/her special knowledge[137], since, according to Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation, a specialist is a person with special knowledge, involved in procedural actions in the manner established by the Criminal Procedure Code, to assist in the detection, securing and seizure of objects and documents, the use of technical means in the study of criminal case materials, to ask questions to the expert, and also to explain to the parties and the court issues within his/her professional competence.

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[136]See: Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35-39.

[137]Special knowledge can be used in criminal cases in a number of forms – examination, participation of a specialist in investigative actions, a teacher in interrogating minors, an interpreter in investigative actions, etc. (See: Arsenyev V.D., Zablotsky V.G. Use of Special Knowledge in Establishing the Factual Circumstances of a Criminal Case. Krasnoyarsk. 1986. P. 5).

At the same time, for example, A. V. Konstantinov identifies not only indirect, but also direct forms of participation of a specialist in an investigative action, making them dependent on the content and nature of the investigative action (event), as carried out by the specialist himself or by an involved specialist, noting that the latter, as a rule, follow the former, clarify and supplement them[138]. At the same time, even in those cases when a specialist acts independently (gives an opinion), his involvement in the process occurs on the initiative of other participants in the proceedings: through the investigator, inquiry officer, lawyer, court,, since, without their initiative, a specialist cannot appear in the process, in principle.

At the same time, a specialist assisting an investigator, an investigator and a court does not create or form independent evidence; his activity is limited exclusively to technical assistance in matters requiring the use of special knowledge or a certain amount of experience; accordingly, he is not a participant in the proof, despite the fact that such activity is one of the types of participation of a specialist in criminal proceedings.

The specialist giving the opinion and testimony, on the contrary, carries out independent evidentiary activity as a special subject of proof.

Firstly, he together with the investigator (or other subject), provides evidence directly provided for by law[139] (a conclusion and testimony), since the request for a conclusion in pre-trial proceedings can be made in accordance with Part 1 of Article 86 of the Criminal Procedure Code of the Russian Federation by the inquiry officer or investigator by sending a written request to the specialist, which includes an explanation to the specialist of his rights, duties and responsibilities, a list of questions posed for resolution and, in certain cases, the materials necessary for responses.

Secondly, he has procedural independence when providing them, since he is bound by the requirements of science[140], and not by the position of the inviting party, and

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[138] Probably, among the direct forms of participation, for example, the giving of an opinion is distinguished, since it is formed by the specialist independently, and among the indirect forms of participation is implied the interrogation of the specialist (his giving testimony), explaining the previously given opinion, by analogy with the opinion and testimony of an expert (See: Konstantinov A.V. Procedural and organizational problems of the participation of a specialist in criminal proceedings at the stage of preliminary investigation: diss. ... candidate of legal sciences. Moscow, 2006. P. 10).

[139] This was discussed in detail in the first paragraph of this Chapter.

[140] See: Vatutina O. Yu. Legal significance of participation of a specialist in criminal procedural proving // Legal science. Scientific and practical journal. 2025. - No. 2. - Pp. 225 - 228. At the same time, some authors do not recognize the activities of a specialist as scientific. For example, B. M. Bishmanov believes that "it is precisely in the scientific nature of the research

"within the framework of the investigation and consideration of a criminal case, [the specialist] provides information to the participants in the process, the reliability of which depends on the depth and completeness of his own special knowledge, training, convictions, professional skills and experience[141]".

Accordingly, within the framework of a separate evidentiary action, a specialist carries out proof in various forms, which, we believe, need to be defined and differentiated, in view of the uncertainty in this matter existing in science. The uncertainty is expressed, firstly, in the diversity of the formulated forms of participation of a specialist in criminal proceedings, sometimes not substantiated by anything (as was said above), and secondly, in the fact that the forms of participation of a specialist in criminal procedural proof have not previously been distinguished in science as such[142].

At the same time, the activity of a specialist participating in a separate evidentiary action to obtain and/or verify evidence is reflected in two procedural forms (a specialist's conclusion or testimony[143]), which cover different content (not always strictly distinguishable) and occurs:

- in the form of a conclusion: as a study; as a written assessment (review) of the results of the study; as a written explanation of issues from the field of specialized knowledge (statement of an opinion or judgment); as a written doctrinal legal interpretation[144] (presentation of reasons and arguments necessary to substantiate the legal positions of the parties at their request and resolve the case on the merits).

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conducted by an expert that there is a basis for distinguishing between the use of special knowledge by him (the expert) and the specialist. (See about this: Bishmanov B. M. Op. cit. P. 61).

[141]Grishina E. P., Abrasimov I. V. Specialist as a knowledgeable person and participant in the process of proof in criminal proceedings // Modern law. 2005. No. 8. P. 55.

[142]Scientific classification of forms of participation in proving of persons possessing special (scientific) knowledge can be made on any grounds (See: Arsenyev V.D., Zablotsky V.G. Op. cit. P. 5) According to the criterion of significance for the results of evidentiary activity, individual authors subdivide such forms into main and other (additional), according to normative consolidation: into procedural and non-procedural (See: Konstantinov A.V. Procedural and organizational problems of participation of a specialist in criminal proceedings at the stage of preliminary investigation: dis. ... candidate of legal sciences. Moscow, 2006. P. 10) .

[143]Despite the fact that the giving of testimony and the giving of an opinion by a specialist do not have a complete regulatory consolidation Grishina E.P. Op. cit. P. 207.

[144] A written doctrinal legal interpretation, which is called a legal opinion of a specialist, and which some authors classify as non-procedural forms of participation of a specialist in proving, is not evidence in the sense of Part 1 of Article 74 of the Criminal Procedure Code of the Russian Federation, but can be used as arguments and reasons of the party (which is discussed further in this Chapter).

- in the form of testimony: as an oral assessment (review) of research results; as an oral explanation of issues from the field of specialized knowledge (expression of opinion or judgment).

That is, the conclusion and testimony of a specialist, as a result of the use of special knowledge by participants in criminal proceedings who have a public-law interest in the outcome of the case, and by participants who have a personal interest in the outcome of the case recognized by law, or their representatives, may also be subdivided into the conclusion and/or testimony of a specialist given on the basis of a request from an authority or the conclusion and/or testimony of a specialist given at the request of participants (and their representatives) who are personally interested in the outcome of the case[145].

The expert's opinion, as such, is directly or indirectly present among the evidence used in all types of legal proceedings, but formally it is only available in criminal proceedings[146]. In accordance with Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation, the expert's opinion is "an opinion presented in writing on the issues posed to the expert by the parties".

The definition proposed by the legislator allowed many authors to perceive the expert's opinion exclusively as a written consultation of a person, without recognizing its "compiler" as a participant in evidentiary activity. For example, A. B. Solovyov believes that "the expert's opinion, in its content, is nothing more than a consultation set out on paper, containing an explanation of issues related to his special knowledge, and not conclusions on the case, which only an expert has the right to make on the basis of his research[147]", Yu. K. Orlov asserts that the expert resolves questions of a reference nature "... giving an opinion on issues that, although requiring special knowledge, can be answered without conducting research[148]", E. A. Zaitseva notes that "the expert's opinion

[145]Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35-39.
[146]Participation of a specialist in procedural actions: textbook / A. M. Zinin, A. I. Semikalenova, E. V. Ivanova; under the general editorship of A. M. Zinin. 2nd ed., revised and enlarged. Moscow: Prospect, 2016. P. 45. Despite the fact that with this type of evidence "in forensic investigative practice everything is ambiguous - the scientific world still cannot decide either on the procedure for drawing up this conclusion, or on its legal force (See: Latypov V. S. Op. cit. P. 190).
[147]Soloviev A. B. Problematic issues of proof arising in the process of investigating crimes when applying the Criminal Procedure Code of the Russian Federation. Moscow, 2008. P. 159.
[148]Orlov Yu. K. Problems of the theory of evidence in criminal proceedings. Moscow, 2009. P. 173.

should not take the form of inferential knowledge, which is characteristic of an expert's opinion[149]".

At the same time, these positions do not refute the fact that the expert's opinion is evidence directly provided for by the provisions of the criminal procedure legislation[150]. The expert's opinion is not exclusively a collection of reference data, cannot be identified with a short report[151], and its provision is a sought-after[152] form of participation of the expert in criminal procedure proof[153].

Giving testimony by a specialist is another form of his participation in criminal procedural proof. Testimony of a specialist - is an independent type of evidence, which does not have a mandatory accessory nature in relation to the expert's conclusion, since it can be obtained before, after or instead of such a conclusion[154]. Testimony is given by a specialist orally during his interrogation[155], both during the preliminary investigation and in court, is information about circumstances requiring special knowledge, as well as an explanation of the expert's opinion, in accordance with the requirements of Art. 53, 168 and 271 of the Criminal Procedure Code of the Russian Federation[156].

The testimony of a specialist is evidence formed within the framework of a criminal case through his interrogation, in order to obtain information about circumstances requiring special knowledge, or in order to clarify the conclusion of an expert or specialist (including his own[157]).

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[149]Zaitseva E. A. Application of special knowledge in criminal proceedings: a textbook. Volgograd: VA MVD of Russia, 2005. P. 54.

[150]The expert's opinion allows the court to identify circumstances "that otherwise might have been outside his field of vision, not fully understood by the parties, or might, for some reason, have been objectively reflected in the case materials (See: Smirnov A.V. Op. cit. P. 188).

[151]As S. B. Rossinsky rightly points out, a specialist's conclusion can be quite reasoned and often requires the specialist to present a detailed argumentation for his judgment (See: Rossinsky S. B. Criminal Procedure: A Course of Lectures. Moscow: Eksmo, 2007. P. 144).

[152]For example, 18% of the surveyed investigators and 33% of the surveyed lawyers noted the experience of using expert opinions in their practical work (for lawyers, including doctrinal (legal) opinions and opinions in the form of reviews) (Appendix No. 2, Question No. 1; Appendix No. 6, Question No. 1).

[153]More details about giving an opinion and giving testimony by a specialist can be found in Chapter 2 of this work.

[154]The provisions that the testimony of a specialist is not always connected with the conclusion and can exist autonomously are most optimally implemented in civil proceedings, within the framework of Article 188 of the Civil Procedure Code of the Russian Federation.

[155]Criminal procedure: textbook / A. V. Smirnov, K. B. Kalinovsky … P. 224.

[156]Criminal Procedure Code of the Russian Federation [Electronic resource]: from December 18, 2001 No. 174-FZ (as amended and supplemented, entered into force on May 29, 2024). Access from the reference legal system "ConsultantPlus" https://www.consultant.ru/document/cons_doc_LAW_34481/ (date of access 06/16/2024).

[157]See: Vatutina, O. Yu. Problematic issues of interrogation of a specialist in criminal proceedings / O. Yu. Vatutina // Humanitarian, socio-economic and social sciences. - 2019. - No. 4. - P. 90-92.

Testimony is given by a specialist during an interrogation to clarify the entire range of circumstances of a crime, the knowledge of which is possible using special knowledge[158], as well as in cases where questions requiring the use of special knowledge "arise for the first time, for example, about the correct formulation of questions when an expert examination is appointed by the court[159]".

In practice, questioning of a specialist (which is not an explanation of a previously given conclusion[160]) is carried out for:

- asking questions to the expert, formulating questions, taking into account the task that needs to be solved;

- determining the type of examination required[161];

- determining the suitability of objects for research;

- assistance in choosing a forensic institution;

- providing assistance in assessing the results of the examination[162], etc.

As a feature of this form of participation of a specialist in criminal procedural proof, some authors mention the "specialist's lack of awareness of the case materials", believing that during interrogation the specialist, "unlike an expert, is not previously familiar with the circumstances of the crime[163]". However, in our opinion, such a situation is more an exception than a rule. If a specialist is invited to explain and clarify any circumstances related to the discovery, recording and seizure of evidence during an investigative action in which he (the specialist) participated, he is obviously familiar with the circumstances of the crime. If the invitation is initiated by the defense, then the lawyer, who has the opportunity to make copies, make extracts from the materials of the criminal case, and ensure, in certain cases, the voluntary participation of the client (the suspect,

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[158]Stepanov V., Shapiro L. Testimony of a specialist in criminal proceedings // Criminal law. - M.: ANO "Legal programs", 2005, No. 4. - P. 82.

[159]Participation of a specialist in procedural actions: textbook / A. M. Zinin, A. I. Semikalenova, E. V. Ivanova; under the general editorship of A. M. Zinin. - 2nd ed. revised and enlarged. Moscow: Prospect, 2016. P. 53.

[160]However, even to this day the situation has not disappeared where the testimony of a specialist is used exclusively as an explanation of the specialist's conclusion, actually serving as an integral part of the conclusion, similar to the testimony of an expert, despite the fact that such an approach does not comply with the provisions of Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation.

[161]Since, practice shows that the investigator is not fully oriented in the classification of examinations... Sometimes the court also experiences difficulties of this kind, especially when it comes to appointing examinations for new objects and new types of crimes (See: Zinin A. M. Participation of a specialist in procedural actions... P. 206).

[162]This often does not require lengthy preliminary training, but rather just the appropriate level of competence.

[163]Stepanov V., Shapiro L. G. Decree. op. P. 82.

the accused, the person in respect of whom the report of the crime is being checked) in familiarizing the specialist with the circumstances of the case, is able to legally provide the specialist with information on the case necessary for his effective participation in the process. And even in the case where a specialist is invited to provide reference and advisory information, the parties and the court have the opportunity to familiarize the specialist with individual case materials during the interrogation, in order to obtain the most objective and applicable information.

Also, in the literature there are opinions that in the case of interrogation of a specialist (without a preliminary conclusion) it is impossible to clearly establish the level of his competence in relation to a specific case and, therefore, to determine the reliability of the evidence obtained with his help. However, these arguments do not agree with the fact that "the interrogation of a specialist, even invited by the defense, can only be carried out by the investigator, inquiry officer or court[164]", warning the specialist about responsibility, finding out the level of his qualifications and the area of his special knowledge, ensuring the implementation of procedural requirements for the specialist, as a participant in the evidentiary action.

Thus, during the preliminary investigation, the interrogation of a specialist, for the purpose of obtaining testimony, is carried out by the investigator or inquiry officer on his own initiative or at the request of participants who have a personal interest in the outcome of the case, which must be satisfied if the interrogation is required to clarify the conclusion of the specialist or expert[165].

And during the trial, the court, at the request of the parties or on its own initiative, is authorized to summon a specialist for questioning in order to obtain information about circumstances requiring special knowledge, or in order to clarify the opinion of an expert or specialist (including his own[166]).

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[164]Grishina E. P. Op. cit. P. 101.

[165]See: Vatutina, O. Yu. Problematic issues of interrogation of a specialist in criminal proceedings / O. Yu. Vatutina // Humanitarian, socio-economic and social sciences. - 2019. - No. 4. - P. 90-92.

[166]See: Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35-39.

Thus, the testimony of a specialist[167], taking into account its enshrinement in law and in view of the frequency of its use[168], is the second main form of his participation in criminal procedural proof.

As has already been said earlier, in science there is a "fragmentation" of the forms of participation of a specialist in criminal proceedings, in which, in separate (independent) forms of participation of a specialist, there are consultations of a specialist, reviews of an expert's opinion, legal opinions, participation of a specialist in the study of materials of a criminal case and many others, differently formulated by individual authors[169]. These forms, which have not received a sufficiently complete reflection in the procedural law, about which there is no clear idea[170], are classified as "other", "auxiliary", "additional", "non-procedural", "optional", "non-traditional"[171]. Having remained outside the procedural regulation for various reasons[172], they have received a variety of assessments in the scientific literature, which has led to cases of practical application.

For example, defense attorneys, among other things, use specialist consultations to clarify issues related to the defense attorney's provision of legal assistance to the client. However, this form differs from a specialist's conclusion (statement of opinion or judgment) in its non-procedural nature and, as a consequence, the absence of the status of evidence in a criminal case[173].

It would seem that in parallel with the expert's conclusion as evidence, a specialist consultation does not make sense, but this is a superficial assumption, since sometimes there is a need to obtain certain specific information from a specific area of knowledge

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[167]The second chapter of this work provides detailed information on the testimony of a specialist (the interrogation of a specialist).

[168]The use of such evidentiary (investigative) action as interrogation of a specialist in their practice was noted by 18% of investigators, 33% of prosecutors and 13% of lawyers (Appendix No. 2, Question No. 1; Appendix No. 4, Question No. 1; Appendix No. 6, Question No. 1).

[169]Dyakonova O. G. Forms of participation of a specialist in legal proceedings // Bulletin of the O. E. Kutafin University (MSAL). 2016. No. 8. P. 27

[170]See: Arsenyev V.D. Op. cit. P. 6.

[171]For example, V. S. Latypov refers to the so-called “extrasensory abilities” and “abilities of clairvoyants” as non-traditional forms of assistance using special knowledge in criminal proceedings in Russia. (See: V. S. Latypov. Op. cit. pp. 212–216.) Our study does not touch upon this aspect, implying by the term “non-traditional forms of using special knowledge” that are not directly provided for by current legislation, are non-formalized and less common.

[172]Savitskaya I. G. Forms of specialist participation in criminal proceedings: diss. … candidate of legal sciences. Vladimir, 2012. P. 63.

[173] In practice, there is often a confusion between a specialist’s opinion and a specialist’s consultation, in cases where the consultation is in written form.

and/or experience, information about practice in a certain field of activity, and not in evidence in its procedural sense. Consultation allows for saving time and procedural means in a situation where an answer obvious to a specialist will allow for the exclusion of a deliberately "unviable" line of defense and, on the contrary, for the defense to make tactically correct decisions based on objective data[174]. However, it should be noted that in this case, a specialist is not a participant in proving , and giving him a consultation is not a form of participation of a specialist in criminal procedural proving.

A specialist's review of an expert's (commission of experts') conclusion is often also considered an "auxiliary" non-procedural form. At the same time, a review, according to many authoritative authors[175], ensures a check of the quality and validity of the expert conclusions available in the case, eliminates their shortcomings, lack of scientific validity and completeness, incorrect application of expert methods, and also allows the defense to challenge the admissibility of the evidence available in the case. Challenging is achieved by identifying violations of the law when obtaining evidence, including when appointing and conducting an examination.

The "external" opinion of a person with special knowledge allows one to evaluate the conclusions of modern complex examinations, which is difficult for a lawyer to do independently due to objective reasons[176]. Moreover, there are a number of situations

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[174]Of course, the defense attorney's receipt of a specialist consultation does not exclude subsequent appeal to the same or another specialist to obtain an opinion and/or testimony. We only note that in some cases, the participation of a specialist in a criminal case at the defense attorney's initiative may be limited to such an "unconventional" form. For example, the defense attorney may contact a specialist for a preliminary discussion of the expert's opinion, regarding its methodological validity, with the purpose of making a subsequent decision on the need and possibility of filing a motion to appoint an additional or repeated examination, interrogation of the expert who conducted the examination, on issues that may be put to the expert during the interrogation, etc. In such cases, a preliminary consultation with a specialist is carried out before his/her involvement on a contractual basis in order to obtain a written opinion from him/her.

[175]Peer review is a generally accepted way of checking the reliability of the conclusions of any study, one of the most important, if not the only, way of reasonably challenging the conclusions of an expert (See: Kolokolov N. A. Lawyer in Criminal Proceedings: a textbook for university students studying in the specialty "Jurisprudence" / [N. A. Kolokolov et al.]; edited by N. A. Kolokolov. 2nd ed., revised and enlarged. Moscow: UNITY-DANA: Law and Right, 2010. P. 225; Limonov S. V., Suslov D. A. Peer review of forensic examinations as a mechanism for implementing human rights // Social and humanitarian knowledge. 2018. P. 130; Sedova T. A. Examination of computer information, its subject and place in the general system of forensic examination // Forensic seminar. Issue 3. St. Petersburg, 2000. P. 107, Prikhodko I. A. Forensic examination and forensic activity: main problems and ways to solve them (based on judicial practice) / I. A. Prikhodko, A. V. Bondarenko, V. M. Stolyarenko. - M.: International Relations, 2023. Pp. 59 - 60) .

[176] In practice, even in the simplest traditional examinations, a factual, meaningful assessment is carried out by law enforcement officers only in cases of extreme necessity (or a special mindset), which is precisely why, According to T. A. Sedova, the examination of special information is all the more permissible, since the opinion is increasingly expressed about the admissibility of conducting an examination of the assessment of legal, legal information (Cm.: Sedova T.A. Ibid.), and the opinion of the party regarding the unreliability of the expert opinion is unconvincing for the court, since the party itself, like the court, does not have the relevant special knowledge, unlike a person with special knowledge.

when an assessment of the expert's conclusion available in the case is required, for example, in order to appoint a repeated or additional examination. In all these situations, the subject of the specialist's research is the case materials (the results of the examinations available in the case), the study and assessment of which the specialist conducts "firstly, according to the criterion of compliance with the established procedure for conducting a forensic examination, and secondly , according to the criterion of the completeness and validity of the conclusions made by the expert[177]". "When conducting a review," a specialist makes his or her evaluative judgments regarding specific information and/or documents, based on his or her specialized knowledge, actually conducting research on the documents. But, since the legislator did not directly provide for the possibility of reviewing expert opinions[178], then in practice , the result of the expert's assessment activity is either the expert's opinion (in the form of a review)[179] or his testimony[180], that is, as was noted earlier, one of the main tasks of the expert's activity in criminal procedural proof is the assessment of the methods used by the expert, from the point of view of their relevance, scientific validity, testing, use of appropriate equipment, sufficiency of the material used, correctness, completeness and accuracy of the wording of the questions posed and the answers to them, the conformity of the conclusion available in the case materials with modern expert capabilities[181].

Such expert opinions are a review only in content, but even in this case, they can be rejected by the court. Thus, in the case against S. S. Lunkov, G. Yu. Garnovsky, A. V. Yugai, the petition of the defendants and lawyers to attach to the case materials the opinion of the expert of the "Agency of Independent Expertise" and to call this specialist for questioning was left by the presiding judge without satisfaction, since, in the opinion

[177]Limonov S. V., Suslov D. A. Review of forensic examinations as a mechanism for implementing human rights // Social and humanitarian knowledge. 2018. P. 130.

[178] Despite the fact that the version of the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 21, 2010 No. 28 "On forensic examination in criminal cases" was in effect for more than 10 years, which provided for the possibility of involving a specialist to assist in assessing an expert's opinion and interrogating an expert at the request of a party or at the initiative of the court (See: Danilova S. I. Features of the participation of a specialist in pre-trial criminal proceedings // URL: SPS "ConsultantPlus", 2013).

[179]Prikhodko I. A. Forensic examination and forensic activity: main problems and ways to solve them (based on judicial practice) / I. A. Prikhodko, A. V. Bondarenko, V. M. Stolyarenko. - M.: International Relations, 2023. P. 60.

[180]The evaluation of the expert's opinion and testimony, including "review" opinions and testimony, is covered in more detail in Chapter 2 of this work.

[181]See: Vatutina, O. Yu. Using Specialized Knowledge to Protect the Rights of the Victim in Criminal Proceedings / O. Yu. Vatutina // Advocate Practice. - 2020. - No. 6. - P. 35-39.

of the court, "the lawyers essentially raised the issue of revising the expert opinion (its review), recognized as admissible evidence, which, in the opinion of the presiding judge, is not permitted by the criminal procedure law[182]". The Supreme Court of the Russian Federation agreed with the position of the court of first instance regarding the inadmissibility of "review of the expert opinion" in this case.

The negative attitude towards reviews of expert opinions is caused not only by the lack of their normative consolidation, but also by doubts about the objectivity, impartiality and integrity of the specialist participating in their preparation. Thus, O. L. Stulin believes that "there are specialists who, for selfish reasons, refute the conclusions obtained by the expert[183]", noting the allegedly commissioned nature of the specialist's reviews. Yu. P. Garmaev points to the obvious, in his opinion, dependence of the specialist involved by the defense on this party[184], in view of the "reward" promised by the defense for "the necessary participation in the case[185]". At the same time, "no selfish motives can give the "specialist" arguments that refute conclusions based on scientific data[186]. The presence of a "contractual" relationship between the defense attorney and the specialist he engages does not indicate the latter's unconditional intent to give a knowingly false conclusion (review) and will not allow "shaking" the methodologically and scientifically sound conclusion of the expert.

Thus, despite the fact that, often, a specialist's review of an expert's conclusion is considered as an independent and/or "additional" form of specialist participation in criminal proceedings and in criminal procedural proof, we believe that it is not. In fact, a specialist, when reviewing an expert's conclusion, or, to be more precise, assessing it, acts in the main forms: giving an opinion and giving testimony. There is only a specificity in

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[182]Cassation ruling of the Supreme Court of the Russian Federation of December 28, 2011 in case No. 4-O11-146SP [Electronic resource]: Access from the reference legal system "ConsultantPlus" (date of access 12.06.2024).

[183]Stulin O. L. Tactical foundations for overcoming deliberate resistance to crime investigation: diss. … Cand. of Law. St. Petersburg, 2000. P. 73.

[184] It remains unclear why, in this case, the expert's review is perceived by the aforementioned authors as obviously unreliable, however, the unreliability of the expert's conclusion, carried out within the framework of the preliminary investigation, which equally applies to expert opinions carried out in accordance with Part 1 of Article 144 of the Criminal Procedure Code of the Russian Federation, is considered impossible .

[185]Garmaev Yu. P. Decree. op. P. 38.

[186]A. A. Eksarkhopulo noted that the "contractual dependence" of the specialist providing a review of the expert's opinion is given excessive importance, since, in the process of assessing the presented opinions, it becomes obvious that either the arguments of the review have no basis, or there are no such grounds for the conclusions formulated in the opinion of the expert who conducted the primary forensic examination (See: Eksarkhopulo A. A. Op. cit. P. 107).

the direction of the specialist's activity, which is determined by the need to assess the expert's conclusion from the point of view of its scientific validity and completeness, the correct application of expert methods, in order to assist the parties and the court in using special knowledge.

In fact, reviewing is an evaluative activity of a specialist (not legal), consisting of a critical analysis of other evidence obtained using specialized knowledge, from the point of view of their scientific and methodological validity, completeness, correct application of expert methods, ensuring the verification and re-verification of scientific opinions. Accordingly , a review, as an external assessment of evidence obtained using specialized knowledge, is necessary and useful, however, when its results are presented as a review or other document, it is rejected as a form not provided for by law and does not affect the process of proof[187].

As another form of specialist participation in criminal proceedings, the literature highlights the specialist's giving legal opinions[188]. However, since the law does not directly provide for such a form of specialist participation, in practice legal opinions are perceived as an intrusion into someone else's sphere[189]. The specialist's answers to legal questions are assessed as a substitution for the decisions of the investigator (inquiry officer) or even the court, as an assumption of the powers of the bodies called upon to resolve legal issues in criminal proceedings.

Incorrect perception of the essence of doctrinal (legal) opinions has given rise to a negative perception of this form of specialist participation in criminal proceedings. At the same time, the importance of legal opinions of persons possessing special knowledge

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[187] Judicial practice demonstrates two approaches regarding the admissibility of reviewing expert opinions: the first is that a review of an expert opinion is inadmissible evidence, the second is that such a review is another document and is subject to inclusion in the case materials (See: Prikhodko I. A. Forensic examination and forensic activity: main problems and ways to solve them (based on judicial practice) / I. A. Prikhodko, A. V. Bondarenko, V. M. Stolyarenko. - M.: International Relations, 2023. P. 60).

[188] In this regard, a significant layer of scientific research in the field of criminal procedure is devoted to the issues of whether legal knowledge belongs to special knowledge, or whether it [legal knowledge] is not recognized as such. Legal knowledge is not recognized as having the "status" of special knowledge, due to the fact that all professional participants in procedural activity have knowledge in the field of law and, accordingly, legal (legal) knowledge cannot be considered special for participants in the process in the sense of industry procedural legislation. Today, many authors recognize a negative position on this issue as stereotypical. A. A. Eksarhopulo even pointed out the revolutionary, in its own way, "opportunity for specialists to express their opinions on the issue of qualifying an act that has certain characteristics (See: Eksarhopulo A. A. Op. cit. P. 61).

[189] At the same time, such conclusions in no way challenge the prerogative of the person conducting the proceedings to make procedural and legal decisions.

for criminal procedural proof has been repeatedly noted in scientific literature[190]. Thus, E. R. Rossinskaya and E. I. Galyashina indicated that there is a need to legitimize the production of legal (or juridical) examinations in cases where research using special legal knowledge is required to establish the truth in a criminal case[191]. V. A. Lazareva acknowledges the possibility of obtaining "scientists' opinions" on complex issues of individual branches of law[192]. Yu. K. Orlov allows for the formulation of legal issues that go beyond the scope of ordinary legal training and are accessible only to a small number of narrow specialists[193].

At the same time, negative positions on this issue are quite authoritative and diverse[194]: the inadmissibility of legal opinions has been repeatedly pointed out by M.A. Cheltsov, A.A. Eisman, G.F. Gorsky, L.D. Kokorev, P.S. Elkind and others. Such an unambiguous negative reaction is partly explained by the positions of the highest courts. Initially, by Resolution of the Plenum of the Supreme Court of the USSR No. 1 of March 16, 1971 "On forensic examination in criminal cases", in accordance with paragraph 11, of which "the courts must not allow the expert to be asked legal questions as not within his competence (for example, whether there was theft or shortage, murder or suicide, etc.)[195]", and, subsequently, by Resolution of the Plenum of the Supreme Court of the Russian Federation No. 28 of December 21, 2010, paragraph 4 of which indicates that "the expert must not be asked legal questions related to the assessment of an act, the resolution of which falls within the exclusive competence of the body conducting the investigation, the prosecutor, the court (for example, whether there was murder or suicide), as not within his competence[196]".

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[190] The voiced points of view are directly related to the absence of mention by the legislator of the fact that legal knowledge is not specialized.

[191]Rossinskaya E. R., Galyashina E. I. Handbook of the judge: forensic examination. Moscow: Prospect, 2016. P. 14.

[192]Lazareva V. A. Proof in criminal proceedings: textbook for bachelor's and master's degrees. 5th ed., revised and enlarged. Moscow: Yurait Publishing House, 2016. P. 297.

[193]Orlov Yu. K. Modern problems of proof and use of special knowledge in criminal proceedings: scientific and practical manual. Moscow: Prospect, 2016. P. 105.

[194] Despite the fact that the first opinion on the legalization of "legal expertise" (which today can equally be attributed to the "legal opinion of a specialist" - author's note) was expressed by A. A. Eksarkhopulo back in 2001, The issue remains unresolved to this day, remaining controversial for more than twenty years.

[195]Resolution of the Plenum of the Supreme Court of the USSR of March 16, 1971 No. 1 "On forensic examination in criminal cases" [Electronic resource]: Access from the reference and legal system "ConsultantPlus".

[196]Resolution of the Plenum of the Supreme Court of the Russian Federation of December 21, 2010 No. 28 "On forensic examination in criminal cases" [Electronic resource]: Access from the reference and legal system "ConsultantPlus".

At the same time, the said provisions, when interpreted literally, do not allow the posing of any legal questions to persons with special knowledge, but only those related to the legal assessment of the act that [197]has become the subject of criminal procedural activity in this case[198]. Moreover, the legal opinion of a specialist is only the opinion of a person with special knowledge, which is not identical to the right to make legal and procedural decisions[199]; it is intended to support and substantiate the position of the party. A person with special knowledge does not make a "legal decision", but only expresses his opinion on how, from the point of view of legal science, a particular issue should be resolved given the initial data known to him[200].

Respectively, the presence of a conclusion from a specialist in a "narrow" area of law[201], for example, tax, customs, sports, banking, information, etc. (if the need for such arose during the investigation, consideration of a criminal case) will ensure that the final act on the case has the maximum level of validity[202].

At the same time, the legal opinion of a specialist (doctrinal legal interpretation) is not evidence in the literal sense. It is procedurally significant information and an argument of the party[203], but not an analogue (or a variant) of the expert opinion provided

[197] The fact that the currently effective Resolution No. 28 formulates the essence of "legal questions" that are not subject to being put to an expert in a different way, directly referring to questions "related to the assessment of the act" , unfortunately, has not significantly affected the views of the scientific community and law enforcement practice. The error (negativity - author's note) in the perception of legal opinions, as A. A. Eksarkhopulo points out, is that the question of "legal expertise", posed in connection with the impossibility for an expert to go beyond the limits of his professional competence, was replaced by the question of the expert's authority and the admissibility of exceeding it (See: Eksarkhopulo A. A. Op. cit. P. 67).

[198]Tarasov A. A., Sharipova A. R. "Legal opinions" of experts and specialists in Russian legal proceedings // Bulletin of the St. Petersburg State University. 2017. Vol. 8. Issue 4. P. 433.

[199] The participation in a criminal case of a specialist from a narrow field of law does not imply that he will resolve issues from the field of criminal law and criminal procedure (See: Eksarkhopulo A.A. Op. cit. P. 66.)

[200]Eksarkhopulo A. A. Op. cit. P. 67.

[201] In this case, we mean scientists or the most experienced practitioners.

[202] Of course, when giving a legal opinion, the risk of an expert or specialist moving from giving an opinion within a narrow area of law to a legal assessment of the actions of persons conducting proceedings on the case cannot be ruled out. In this regard, the following fact seems interesting: in judicial-investigative and expert practice there have been cases (reflected in scientific literature) based on the same provisions of the law, but leading to diametrically opposed results. Thus, A. A. Eksarkhopulo, in response to a request from an investigator conducting an investigation of a criminal case, not only considered it possible and acceptable to give an opinion on the state and prospects of the investigation of the criminal case, but also prepared one. While A. A. Tarasov defines such conclusions as answers to legal questions that fall within the professional competence of an investigator with a higher legal education, and therefore are not acceptable for preparation by a specialist (See: Eksarkhopulo A. A. Op. cit. pp. 142-143, 221-238; Tarasov A. A. Expert and specialist in criminal proceedings in Russia: monograph. 2nd ed., revised and enlarged. Moscow: Prospect, 2017. pp. 115-118).

[203]More often than not, the defense, since even in the absence of the obligation to prove the innocence of the defendant, the lawyer, in order to effectively implement his defense activities, chooses an active position on the case.

for by the provisions of Article 74 of the Criminal Procedure Code of the Russian Federation.

Moreover, when giving a legal opinion, a specialist does not conduct research in the usual sense of the word[204], but applies his specialized legal knowledge to a specific case[205], evaluates it, formulates arguments, provides argumentation to the inviting party and puts them into a form that corresponds to the process. A ban or restriction on the use of legal opinions in proving does not make sense, since, in other words, a legal opinion is only the opinion of a legal specialist, based on a system of arguments and reasons that have legal significance, and used in the process by one or another party and the court for legal argumentation of their position on the case. In essence, such an opinion should be considered as part of the legal argumentation provided by law to justify (and motivate) procedurally significant actions and decisions, as an appropriate reference to a legal doctrinal point of view.

Not the most popular, however, noted in the science and practice of criminal procedure, form of participation of a specialist in criminal proceedings is the study of materials of a criminal case with the participation of a specialist. Back in 2005, Professor A. A. Eksarkhopulo published a work on the use of special knowledge in the study of materials of a criminal case[206]. However, this issue remained outside legal regulation and did not become the object of close attention in the science of criminal procedure.

Of course, the law does not directly prohibit the use of a specialist's knowledge in the study of criminal case materials, but in the absence of appropriate regulatory framework, his/her activity is limited to learning the criminal case materials through the "mediation" of a defense attorney. In practice, this is implemented through the defense attorney's request for advice and/or an opinion from a specialist, with the latter providing copies of the criminal case materials recorded using technical means, upon completion of

[204]Tarasov A. A., Sharipova A. R. “Legal opinions” of experts and specialists in Russian legal proceedings // Bulletin of the St. Petersburg State University. 2017. Vol. 8. Issue. 4. P. 431.
[205]Participation of a specialist in procedural actions: textbook / edited by A. M. Zinin. 2nd revised and enlarged edition. Moscow: Prospect, 2016. P. 52.
[206]See: Eksarkhopulo A. A. Special knowledge and its application in the study of criminal case materials. - SPb: Publishing House of St. Petersburg State University, Publishing House of the Law Faculty of St. Petersburg State University, 2005. 208 p.

familiarization with the materials, or periodically (for multi-volume cases with a long period of familiarization)[207].

The participation of a specialist in the study of criminal case materials allows, within the framework of criminal procedural proof, to evaluate evidence collected using special knowledge, to evaluate the results of the activities of persons with special knowledge (experts, specialists) in a criminal case, to identify errors made in the evaluation of evidence obtained using special knowledge, or errors caused by the lack of proper evaluation of such evidence, that is, to carry out evaluation activities with the purpose of subsequently providing the attracting party with arguments and arguments to justify a position or exclude an "unviable" position in the case.

In this case, the result of the specialist's participation in the examination of the materials of the criminal case may be presented either in the form of a conclusion (procedural, subject to subsequent proper introduction into the process), or in the form of a consultation (non-procedural), on the basis of which the party builds a position on the case, without attaching the conclusion. It is also possible that the results of the examination of the materials of the criminal case, carried out with the participation of a specialist, will be introduced into the process through interrogation of the specialist, through the procedural form of participation in proving - giving testimony.

However, the lack of proper procedural regulation of the participation of a specialist in criminal proceedings and proof has led to the "emergence" of various "author's solutions[208]" and formulations regarding such participation, an unjustified fragmentation of the forms of participation of a specialist in legal proceedings and the

[207]The provisions of Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation can be considered as a legal basis for engaging a specialist in the examination of criminal case materials, but the actual approach that has developed leads to the fact that other participants in the criminal process, which includes a specialist, are faced with the examination of materials only in certain circumstances. For example, this is due to the involvement of a specialist to participate in a procedural action in accordance with Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation "to assist in the detection, securing and seizure of objects and documents, the use of technical means in the examination of criminal case materials, to ask questions to the expert...". Obviously, in this case, we are talking about the examination of case materials by a specialist not on the initiative of the defense attorney. That is, a specialist is engaged for the purpose of studying a separate document or a group of procedural documents on the instructions of an investigator, inquiry officer, or court (See: Criminal Procedure Code of the Russian Federation [Electronic resource]: Federal Law of December 18, 2001 No. 174-FZ (as amended and supplemented, entered into force on May 29, 2024). Access from the SPS - "ConsultantPlus" (date of access June 16, 2024).

[208]See, for example: Shaidullin F. T. Participation of a Specialist in Criminal Proceedings // Russian Investigator. 2012. No. 15. pp. 16–17; Borodkina T. N. Implementation of the Procedural Status of a Specialist at the Preliminary Investigation Stage // Prepared for SPS Consultant Plus, 2014; Konstantinov A. V. Op. cit. pp. 19–20, etc.

absence of formulated types and forms of participation of a specialist in criminal procedural proof.

Thus, the types of participation of a specialist in criminal procedural proof can be divided into the activities of a specialist in assisting the investigator, inquiry officer or court in obtaining evidence (auxiliary, technical assistance) and the activities of a specialist in obtaining and/or verifying evidence.

The activity of a specialist in obtaining and/or verifying evidence is carried out by giving an opinion and/or giving testimony and is implemented in two main procedural forms, covering different content: giving an opinion[209] and giving testimony.

Both the giving of an opinion and the giving of testimony by a specialist represent the result of the use of specialized knowledge by participants in criminal proceedings who have a public-law interest in the outcome of the case and by participants who have a personal interest in the outcome of the case recognized by law (or their representatives) and may be given on the basis of a demand of an authority or at the request of participants who are personally interested in the outcome of the case (and their representatives) on various issues affecting the area of specialized knowledge belonging to the specialist, including issues of determining the suitability of objects for examination, assistance in choosing a forensic institution, determining the type of examination required to be conducted, asking questions to the expert, providing assistance in assessing the results of the examination, etc.), on issues of assessing the methods used by the expert, from the point of view of their relevance, scientific validity, testing, use of appropriate equipment, sufficiency of the material used, correctness, completeness and accuracy of the wording of the questions posed and the answers to them, compliance of the opinion available in the case materials with modern expert capabilities .

The proposed classification of types and forms of participation of a specialist in criminal procedural proof demonstrates the novelty of this study, since such a

[209]The activity of a specialist in obtaining and/or verifying evidence, carried out at the initiative of the defense attorney, initially arises “outside the process” (See, for example: Golovko L. V. Op. cit. Pp. 503–504) and takes procedural forms after undergoing the procedural transformation provided for by law, or takes non-procedural forms permitted by law and judicial practice.

classification has not been proposed in the science of criminal procedure before[210]. We also believe that there are no grounds for a more detailed gradation, the allocation of specific and "author's" forms of participation of a specialist in criminal procedural proof, as is done in the scientific literature with respect to the forms of participation of a specialist in criminal proceedings[211], since they are actually included in the main forms mentioned above[212].

[210]With the exception of the work of V. D. Arsenyev, who pointed only to the very possibility of using specialized knowledge in criminal procedural proof in various forms (See: Arsenyev V. D., Zablotsky V. G. Op. cit. P. 5).

[211]See, for example: Dyakonova O. G. Forms of Participation of a Specialist in Legal Proceedings // Bulletin of the O. E. Kutafin Moscow State Law University (MSAL). 2016. No. 8. pp. 15–28; Shaidullin F. T. Participation of a Specialist in Criminal Proceedings // Russian Investigator. 2012. No. 15. pp. 16–17; Borodkina T. N. Implementation of the Procedural Status of a Specialist at the Preliminary Investigation Stage // Prepared for SPS Consultant Plus, 2014; Konstantinov A. V. Op. cit. pp. 19–20, etc.

[212]See: Vatutina, O. Yu. Forms of specialist participation in criminal procedural proof / O. Yu. Vatutina // Judicial power and criminal procedure. - 2024. - No. 1. - P. 71-76.

CHAPTER 2. GIVING AN OPINION AND TESTIMONY BY A SPECIALIST AS THE MAIN FORMS OF PARTICIPATION OF A SPECIALIST IN PROVIDING EVIDENCE IN CRIMINAL CASES

§ 1. The concept and content of the expert's opinion and testimony as evidence in criminal proceedings

The conclusion and testimony of a specialist are relatively new types of evidence for the science of criminal procedure. Based on the classical approach to the classification of evidence[213], they are defined as personal[214] or mixed[215], since, in the process of their formation, the specialist carries out mental (personal) perception and processing of specific events and information, with the subsequent registration of their transmission in linguistic (written or oral) form[216].

Questions of the essence of the conclusion and testimony of a specialist as evidence, their concept and content in criminal procedural science are resolved in the prism of comparison with the conclusion (and testimony) of an expert, as other evidence obtained using specialized knowledge[217].

In this case, for the expert's conclusion, special importance is attached to compliance with its procedural form, which is achieved by the correctness of the procedural actions that preceded the creation of the conclusion, including compliance with:

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[213]See about the classification of evidence: Kurylev S. V. Fundamentals of the Theory of Proof in Soviet Justice. Minsk, BSU Publishing House, 1969, pp. 173-200.

[214]The classification of an expert's opinion (which, we believe, can equally be classified as a specialist's opinion) as personal evidence was substantiated by A. A. Eisman (See: Eisman A. A. Specialist's opinion. Structure and scientific justification. Moscow, 1967. P. 129).

[215]In Soviet criminal procedure science, the authors of one of the classic works on the theory of evidence recognized the division of evidence into "personal" (coming from individuals) and material (See: Theory of Evidence in Soviet Criminal Procedure. Part Osobennaya / ed. N. V. Zhogin. Moscow: Legal Literature, 1967. P. 5). According to S. V. Kurylev, personal evidence (classification by source) is characterized by the fact that its source is a person who has the ability to testify, that is, to correctly perceive, retain in memory, mentally and intellectually process and reproduce what has been perceived; is of a subjective nature, leaving a certain imprint on the content of the evidence, however, he classifies the expert's conclusion as mixed evidence, since the source of the facts established by the expert is, on the one hand, a knowledgeable person, and on the other, things (See: Kurylev S. V. Fundamentals of the Theory of Proof in Soviet Justice. Minsk, BSU Publishing House, 1969, pp. 173-200).

[216]The specialist actually acts as an intermediary in the cognitive activity of the subjects of proof.

[217]A number of authors cite the lack of opportunity for the specialist to conduct research as a key criterion for distinguishing between the evidentiary activities of an expert and a specialist, noting that his activities are of an explanatory and consultative nature, and not research (See: Logvinets E. A. Expert's opinion (problems of use in proof) // Forensic expert. 2008. No. 1. P. 34).

- the procedural order of formation of initial information for conducting an examination;

- the procedural order of appointment and conduct of examination;

- procedural rules governing the status of persons participating in the appointment and conduct of examinations[218].

Thus, the procedure and methods for obtaining an expert's opinion, its form, as well as the procedure for warning the expert about criminal liability for giving a knowingly false opinion are defined for the expert[219]'s opinion, while similar requirements are not legally established for the specialist's opinion[220].

Moreover, there are other differences between the expert's opinion and the specialist's opinion, which were discussed in the first chapter of this work, in which the comparison is not in favor of the specialist's evidentiary activity. One of the reasons for the skeptical attitude towards evidence produced by a specialist, in addition to improper regulatory framework, are the comments to the original version of the current criminal procedure code, which contained an explanatory position that the opinion of a specialist, reflected in the certificate submitted by him, is not evidence, but can serve as a basis for the defense attorney's petition to appoint a forensic examination[221]. Such a denial of the evidentiary value of the results of the specialist's activity was actively accepted by the scientific community.

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[218]Kudryavtseva A. V., Semenov V. A. Forensic examination in domestic criminal proceedings: monograph. Moscow: Yurlitinform, 2021. Pp. 180–182.

[219]At the same time, there is no single concept of an expert opinion in the scientific literature, however, one of the common approaches is to understand an expert opinion as inferential knowledge, the result of the expert's activities (See more about this: Eisman A. A. Expert opinion. Structure and scientific justification. Moscow, 1973; Orlov Yu. K. Ibid.; Petrukhin I. L. Expert opinion // Theory of evidence in Soviet criminal proceedings. 2nd ed., corrected and supplemented / editorial board: N. V. Zhogin (responsible editor) et al. Moscow, 1973. P. 700), while a clear distinction is made between the inferential knowledge of the expert (contained in the opinion) and the result of its assessment by the subjects of proof, which are only the basis for making procedural decisions and/or arguing a position on the case (See: Orlov Yu. K. Expert opinion as a source of inferential knowledge in judicial proof (criminal procedure, forensic and logical-gnoseological problems): dis. ... Doctor of Law. Moscow, 1985. Pp. 14 – 16).

[220]See: Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22 - 26 (In practice, the results of the specialist's activities are drawn up arbitrarily, with a focus on the form provided for the expert's opinion, which makes it difficult to assess the admissibility of the specialist's opinion, which is discussed further in this Chapter).

[221]Commentary on the Code of Criminal Procedure of the Russian Federation / co-authors, edited by V. V. Mozyakov. Moscow: Examen. 2002. Page 167. At the same time, it is necessary to stipulate that the said commentary was given before the official granting of the expert's opinion and testimony the status of evidence (before the 2003 amendments).

Moreover, the definition of a specialist opinion given by the legislator in Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation, along with the absence in the law of requirements for its procedural form (with the exception of mandatory written form, similar to an expert opinion) and a clearly formulated procedure for obtaining it[222], allowed in science and practice to perceive a specialist opinion exclusively as a written consultation of a person with special knowledge or a set of reference data[223].

For example, A. B. Solovyov believes that the expert's opinion, in its content, is nothing more than a consultation set out on paper, containing an explanation of issues related to his special knowledge, and not conclusions on the case, which only an expert has the right to make on the basis of the research he has conducted[224]. Yu. K. Orlov asserts that a specialist gives an opinion on issues that, although requiring special knowledge, can be answered without conducting research (questions of a reference nature)[225], and E. A. Zaitseva notes that a specialist's opinion should not take the form of inferential knowledge[226], which is characteristic of an expert's opinion[227].

In this regard, various opinions have arisen in the literature regarding the necessity and methods of regulating the form, structure and content of the expert's report, often contradictory. For example, that the structure of the expert's report should differ from the structure of the expert's report, which is determined by Art. 204 of the Criminal Procedure Code of the Russian Federation, that the expert's report should not have a research section[228] or, on the contrary, that the specialist's substantiating explanations should be

[222]Semenov E. A. Legal status and legal regulation of specialist participation in criminal proceedings: theoretical, procedural and organizational aspects: monograph / E. A. Semenov, V. F. Vasyukov, A. G. Volevodz; edited by A. G. Volevodz; Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation, Department of Criminal Law, Criminal Procedure and Forensic Science. Moscow: MGIMO - University, 2020. P. 157.

[223]Which is not acceptable, since, as S. B. Rossinsky rightly points out, one should not equate a specialist's conclusion with a short report. It can be quite reasoned and often requires the specialist to present a detailed argumentation for his judgment (See: Rossinsky S. B. Op. cit. P. 144).

[224]Soloviev A. B. Problematic issues of proof arising in the process of investigating crimes when applying the Criminal Procedure Code of the Russian Federation. Moscow, 2008. P. 159.

[225]Orlov Yu. K. Problems of the theory of evidence in criminal proceedings. Moscow, 2009. P. 173.

[226]This directly distinguishes between a specialist’s conclusion and an expert’s conclusion, which is understood as inferential knowledge.

[227]Zaitseva E. A. Application of special knowledge in criminal proceedings: a textbook. Volgograd: VA MVD of Russia, 2005. P. 54.

[228]Orlova V. F. Problems of application of updated legislation in the field of forensic examination // Current problems of theory and practice of forensic examination. Reports and communications at the international conference "East - West: partnership in forensic examination". Nizhny Novgorod. September 6 - 10, 2004. Moscow - Nizhny Novgorod, 2004. P. 8.

set out in the description of the stages of studying the object of study, that the expert's report should contain a research section, since one of the signs of admissibility and reliability of evidence is the verifiability of the information reported in the report[229].

And author's versions of the form of a specialist's opinion[230] are very actively proposed[231], which are to a certain extent close to the opinions that arise in a purely "practical" way, by applying an analogy with an expert's opinion[232]. At the same time, the appearance and content of the specialist's opinion used in a specific case is a matter of choice or the result of the experience and competence of the specialist giving the opinion. However, in practice, adherence by persons who have sought help from a specialist and by the specialists themselves when giving an opinion, the form of the expert opinion or personal experience does not always correspond to the position of the law enforcement officer: such opinions are denied evidentiary value[233].

Thus, we believe that a specialist's opinion is a written opinion on issues posed to the specialist by the parties or the court, given on the basis of special knowledge, including the results of the research.

The expert's report must have a form regulated by law and consist of three parts (similar to the corresponding parts of the expert's report[234]):

- an introductory part containing information about when, where, by whom (last name, first name and patronymic (if any), education, specialty, academic degree, academic title, position held) and on what basis the expert's opinion was given, who was

[229]Kudryavtseva A. V. Levels of problem solving as a basis for delimiting the competence of an expert and a specialist // 50 years of the Department of Criminal Procedure of the Ural State Law Academy (SUI). Materials of the international scientific and practical conference. Ekaterinburg, 2005. Part 1. P. 488.

[230]See, for example: Snetkov V. A. Expert's opinion as a special criminal-procedural form of application of specialized knowledge // Forensic readings dedicated to the 100th anniversary of the birth of prof. B. I. Shevchenko. Theses. Moscow, 2004. P. 198; Bykov V. M., Sitnikova T. Yu. Expert's opinion and features of its assessment // Bulletin of forensic science. Issue 1 (9). Moscow: Spark, 2004. P. 22.

[231]For example, E. E. Kurziner suggests the following types of expert opinions: "expanded", not requiring clarification or additions and which may require questioning the expert, for example, in the presence of unexplained terms, technical quantities and scientific provisions used (See: Kurziner E. E. On the issue of the participation of an expert in criminal proceedings // Bulletin of SUSU. No. 28. 2007. P. 57).

[232]S. B. Rossinsky notes that the expert's report should be prepared according to the rules that are consistent with the rules for preparing an expert's report (See: Rossinsky S. B. Preparing an expert's report on a criminal case: practical recommendations // Criminal Procedure. 2017. 12. pp. 18–21).

[233]They are considered inadmissible and unreliable evidence (See: Appendix No. 7).

[234]See: Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22-26.

present when the opinion was given, what materials, information, documents the expert used - in order to determine the admissibility and reliability of this opinion;

- the main part, containing the substantiated opinions of the specialist on the issues raised[235] and demonstrating the process of applying the specialist's special knowledge to a specific case of studying the circumstances of the case, object, subject, document[236], allowing to identify circumstances that otherwise might be out of sight, not fully understood, or be objectively reflected in the case materials[237];

- conclusions (the operative part), containing reasoned, qualified, specific and understandable for other persons answers to the questions posed to the specialist, formulated in the form of conclusions.

The testimony of a specialist, as a form of using special knowledge and a type of evidence, also does not have a complete normative consolidation[238].

Testimony is given by the specialist orally during his interrogation[239]. That is, the specialist can be interrogated on issues requiring special knowledge both during the preliminary investigation and in court. Testimony of the specialist, in accordance with the provisions of Art. 74 of the Criminal Procedure Code of the Russian Federation, is an independent type of evidence, and, unlike the testimony of an expert, does not have a mandatory accessory nature in relation to the conclusion of the specialist, and can be obtained before, after, or instead of such a conclusion[240].

The independence of this form of using special knowledge is confirmed by the provisions of Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation, according to which, the testimony of a specialist is information provided by him during interrogation about circumstances requiring special knowledge, as well as an

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[235]The issue is debatable, since there is no consensus in the scientific literature on whether the expert's judgments set out in his report are the result of an inspection of the objects presented to him or the result of a study of these objects, whether the expert has the right to give an opinion based, like an expert, on the research conducted (See, for example: Antonov O. Yu. Problems of using special knowledge in criminal proceedings and ways to solve them // Actual problems of Russian law. - 2017. - No. 6. - Pp. 149 - 157; Khmeleva A. V. Problematic issues of applying the rules on the appointment and conduct of forensic examinations and special studies // Russian investigator. - 2015. - No. 6. - Pp. 31 - 34, etc.).

[236]Zinin A. M. Participation of a specialist in procedural actions ... P. 52.

[237]Smirnov A. V. Op. cit. P. 188.

[238]Grishina E. P. Op. cit. P. 207.

[239]Criminal procedure: textbook / A. V. Smirnov, K. B. Kalinovsky … P. 224.

[240]See: Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22-26.

explanation of his opinion in accordance with the requirements of Articles 53, 168 and 271 of the Criminal Procedure Code of the Russian Federation[241]. A specialist who has not previously participated in the case and who has not given an opinion may be interrogated in cases where issues requiring the use of special knowledge arise for the first time, for example, about the correct formulation of questions when appointing an expert examination by the court[242], that is, the testimony of a specialist is not directly related to the opinion and can exist autonomously[243], as independent evidence. The interrogation of a specialist can be carried out without drawing up a conclusion, to clarify the entire range of circumstances of the crime, the knowledge of which is possible with the use of special knowledge[244].

Some authors, as a significant feature of the testimony of a specialist, as a form of using special knowledge, mention the "specialist's lack of awareness of the case materials", since, often, during interrogation, the specialist, unlike the expert, is not previously familiar with the circumstances of the crime[245]. However, in our opinion, such a situation is the exception rather than the rule. If the specialist is invited to explain and clarify any circumstances related to the discovery, recording and seizure of evidence during the investigative action in which he (the specialist) participated, he is obviously familiar with the circumstances of the crime. If the invitation is initiated by the defense, then the lawyer, who has the opportunity to make copies, make extracts from the materials of the criminal case, and ensure, in certain cases, the voluntary participation of the client (the suspect, the accused, the person in respect of whom the report of the crime is being checked) in familiarizing the specialist with the circumstances of the case, is able to legally provide the specialist with information on the case necessary for his effective participation in the process. And even in the case where a specialist is invited to provide reference and advisory information, the parties and the court have the opportunity to

[241]Criminal Procedure Code of the Russian Federation [Electronic resource]: from December 18, 2001 No. 174-FZ (as amended on April 22, 2024) (as amended and supplemented, entered into force on May 29, 2024). Access from the reference and legal system "ConsultantPlus" (date of access June 12, 2024).
[242]Participation of a specialist in procedural actions: textbook / A. M. Zinin, A. I. Semikalenova, E. V. Ivanova; under the general editorship of A. M. Zinin. - 2nd ed. revised and enlarged. Moscow: Prospect, 2016. P. 53.
[243]Similar provisions in the procedural sense are implemented in the most optimal way in civil proceedings, within the framework of Article 188 of the Civil Procedure Code of the Russian Federation.
[244]Stepanov V., Shapiro L. Decree. op. P. 82.
[245]Stepanov V., Shapiro L. G. Ibid.

familiarize the specialist with individual case materials during the interrogation, in order to obtain the most objective and applicable information.

Thus, a specialist is able to provide invaluable assistance in establishing the circumstances of a crime by giving oral testimony; however, the situation has not yet become obsolete when a specialist's testimony is used exclusively as an explanation of the specialist's conclusion, actually acting as an integral part of the conclusion, similar to the testimony of an expert[246].

At the same time, we believe that the testimony of a specialist is an independent type of evidence that is formed by interrogating a specialist in cases[247] where the investigator, inquiry officer, court or other participants in criminal proceedings authorized to collect evidence need to obtain information (data) on issues related to the use of special knowledge, as well as to clarify the conclusion previously given by the same specialist. The interrogation can be carried out both at the stage of preliminary investigation and in court. In this case, both during the preliminary investigation and at the stage of trial, the interrogation of a specialist, for the purpose of obtaining testimony, is carried out by the inquiry officer, investigator or court on their own initiative or at the request of the participants who have a personal interest in the outcome of the case.

Thus, despite the fact that the expert's opinion and the expert's testimony are independent types of evidence, law enforcement officers do not always give them a proper assessment, which contradicts the provisions of current legislation and the doctrine of criminal procedure.

At the same time, none of the evidence can replace the other, each of them has an independent meaning and, at the same time, must be assessed in totality, moreover, for each piece of evidence, the criminal procedure law establishes its own rules for collection (receipt), verification and assessment, taking into account its legal nature[248].

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[246]Which contradicts Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation.

[247]The need to obtain information about circumstances that require special knowledge to understand them, as a basis for interrogation, seems to be quite successful (See: Stepanov V., Shapiro L. G. Op. cit. P. 82).

[248]Kudryavtseva A. V., Semenov V. A. Forensic examination... P. 184.

§ 2. Obtaining a specialist's opinion and testimony

The Russian criminal procedure is characterized by the separation of the procedures for collecting evidence, checking it and evaluating it, in which the collection of evidence remains formalized, that is, subject to the theory of formal evidence, and the evaluation of evidence is as free as possible, that is, subject to the theory of free evaluation of evidence based on inner conviction[249].

The collection of evidence[250] is a system-forming element of the process of proof, carried out in ways strictly prescribed by law:

- by means of investigative and other procedural actions carried out by the inquirer, investigator and court (Part 1 of Article 86 of the Criminal Procedure Code of the Russian Federation);

- by requesting evidence from the person conducting the proceedings;

- by attaching as evidence, by decision of the person conducting the proceedings, materials submitted on the basis of petitions from individuals participating in the criminal proceedings (individuals acting in their own interests, for example, the accused, the victim, etc.) and individuals providing legal assistance to the latter[251] (individuals acting in the interests entrusted to them, for example, the defense attorney, the representative of the victim, etc.[252]).

Despite the fact that the main method of collecting evidence for Russian criminal proceedings is the conduct of investigative actions, one cannot exclude the importance of such a method as filing motions to include evidence in the case materials. Based on investigative and judicial practice, such motions are most often received from the defense

[249]Golovko L. V. Op. cit. P. 427.
[250]In science, there are positions in which, instead of collecting evidence, they speak of its discovery and procedural consolidation, which is disputed by authoritative authors, since the procedural consolidation (formalization) of evidence is an integral element of its collection (and verification). The collection of evidence, including its discovery, seizure or presentation, as well as procedural consolidation, is a single element of proof (See: Arsenyev V.D., Zablotsky V.G. Op. cit. P. 47).
[251]Thus, paragraph 1 of part 3 of Article 86 of the Criminal Procedure Code of the Russian Federation grants the defense attorney the right to collect evidence by obtaining objects, documents and other information, but the evidence collected by the defense attorney is introduced into the process by filing a motion for inclusion and after such motions are satisfied by the person conducting the criminal proceedings.
[252]See: Golovko L. V. Op. cit. P. 465.

attorney[253], since the defense attorney has the right, in accordance with Part 3 of Article 86 of the Criminal Procedure Code of the Russian Federation, to receive objects, documents and other information, question persons with their consent, request certificates, characteristics, and other documents from government bodies, local government bodies, public associations and organizations (with the obligation imposed on them by law to submit the requested documents or their copies). Filing such motions is entirely within the framework of the law, which understands the collection of evidence as the activities of the inquiry officer, investigator, prosecutor and court, carried out through investigative and other procedural actions (Part 1 of Article 86 of the Criminal Procedure Code of the Russian Federation). That is, the defense attorney does not collect evidence, but receives information that may become evidence if it is included in the case by those conducting the proceedings.

Such information that requires a decision on inclusion often includes a specialist's opinion presented by the defense.

Thus, 96% of those surveyed lawyers noted that they have a practice of filing motions to include a specialist's opinion. However, since the recognition of an object presented by the defense attorney (for example, a specialist's opinion) as evidence, its introduction into the case (inclusion in the system of already collected evidence) is the exclusive prerogative of the investigating body and the court[254], only 8% of the surveyed lawyers indicated that the filed motions were satisfied during the preliminary investigation and 33 % at the trial stage[255], 11% of which were previously denied during the preliminary investigation.

Moreover, there is a practice of refusing to satisfy requests to involve specialists in general, although according to the law this cannot be done (Part 2.1 of Article 58 of the Criminal Procedure Code of the Russian Federation). It is no coincidence that 32% of

[253]For example, L. V. Lazareva notes that the opinion of a specialist invited by the defense attorney takes on special significance (See: Lazareva L. V. On the issue of using specialized knowledge in criminal cases in the court of second instance // Man: crime and punishment. 2015. No. 3. P. 66). V. I. Zazhitsky believes that the opinion of a specialist, claiming evidentiary value, can be obtained and used in proving (See: Zazhitsky V. I. Expert's opinion and testimony in the system of evidence law // Russian Justice. 2007. No. 9. P. 57). E. V. Kronov points out that the very possibility of obtaining an expert's opinion (conclusion) provides defense attorneys with a real chance to compete with expert examinations appointed by the prosecution. (See: Kronov E.V. Expert's opinion on the activities of a defense attorney // Advocate. 2009. No. 11. P. 71).
[254]Sheifer S. A. Evidence and proof in criminal cases: problems of theory and legal regulation. Tolyatti, 1998. P. 45 – 46.
[255] See: Appendix No. 6, p. 205 .

the surveyed prosecutors and 61% of the surveyed investigators[258] noted that they consider it acceptable to involve a specialist By initiative sides protection, at proper justification such a petition.

As for the expert's opinion, according to the meaning of Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation, it is evidence formed by the defense attorney outside of the criminal process. This conclusion is presented precisely as evidence and it is possible to refuse to include such a conclusion only if there are grounds for disqualifying the specialist (as well as to refuse to involve the specialist in another form).

That is why the practice of not satisfying the requests made by the defense to involve a specialist, including in the form of him providing an opinion, with link on the lack of grounds or the absence of a procedure established by law is unlawful[256].

Thus, in the case against Pavel Vladimirovich Samar[257], convicted under Part 2 of Article 159, subparagraph "c" of Part 3 of Article 226, Article 167, subparagraph "c" of Part 4 of Article 162, subparagraphs "a", "c", "d", "z", "k", Part 2 of Article 105 of the Criminal Code of the Russian Federation, the appellate court pointed out the groundlessness and unreliability of the opinion of specialist T., presented by the defense, on the grounds that, in the opinion of the court, it was obtained non-procedurally, the specialist was not warned of criminal liability for giving a knowingly false opinion, the conclusions of his opinion are not aimed at communicating information that requires special knowledge, but at discrediting the conclusions of the experts available in the case, and the customer of this study is an interested party, the mother of the convicted person. Additionally, the court noted that the objectivity of specialist T. was excluded, since he did not take direct part in the autopsy of Kh. and in the studies conducted in connection with this circumstance[258].

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[256]Galinskaya A.E. Use of special knowledge in legal proceedings by the parties and their representatives: diss. … candidate of legal sciences. Moscow, 2017. Pp. 68-72.

[257]Appellate ruling of the Supreme Court of the Russian Federation dated November 6, 2019 in case No. 127-APU19-10 [Electronic resource]: Access from the reference legal system "ConsultantPlus" (date of access 06/12/2024).

[258]This specific example is also interesting because the Judicial Collegium indicates “the focus on discrediting the experts’ conclusions” as a criterion for the groundlessness and unreliability of a specialist’s conclusion, while in the science of criminal procedure this tactic is recognized as an acceptable method of proving the groundlessness of a suspicion or accusation against a defendant (See: Kolokolov N.A. Op. cit. P. 202).

Similar positions regarding the “interest of the research customer”, the lack of warning the specialist about the responsibility for giving a knowingly false conclusion, the non-compliance of the conclusion with the procedural form[259], obtaining the conclusion by non-procedural means (outside the process) are contained in a significant number of court case materials and court decisions[260] and are associated with the lack of regulatory regulation of the procedure for obtaining the conclusion and testimony of a specialist.

Indeed, the law is extremely poorly stated in terms of the procedure for obtaining a specialist’s opinion and testimony:

- calling a specialist and the procedure for his participation in investigative and other procedural actions, court hearings are determined by Articles 168 of the Criminal Procedure Code of the Russian Federation (in accordance with which the investigator has the right to involve a specialist in an investigative action, before the start of which he verifies his competence, clarifies the specialist's attitude to the suspect, accused and victim, explains to the specialist his rights and responsibilities) and 270 of the Criminal Procedure Code of the Russian Federation (in accordance with which the presiding judge explains to the specialist his rights and responsibilities, about which the specialist gives a signature, which is attached to the minutes of the court hearing) ;

- the defense attorney, in accordance with the provisions of paragraph 3 of Part 1 of Article 53 of the Criminal Procedure Code of the Russian Federation, has the right to involve a specialist, in accordance with the provisions of the Criminal Procedure Code, while, in accordance with Part 2.1 of Article 58 of the Criminal Procedure Code of the Russian Federation, the defense cannot be denied satisfaction of a motion to involve a specialist in the criminal proceedings to clarify issues within his professional competence, and in accordance with Part 2.2 of Article 159 of the Criminal Procedure Code of the Russian Federation, the inclusion of expert opinions in the materials of the criminal case

[259]Which is not provided for at the legislative level.
[260] Appendix No. 7.

cannot be denied if such opinion confirms circumstances that are significant for the criminal case[261];

- in accordance with paragraph 4 of part 3 of article 6 of the Law “On Advocacy and the Bar in the Russian Federation[262]”, a lawyer has the right to engage specialists on a contractual basis to clarify issues related to the provision of legal assistance .

In implementing the above-mentioned norms in practice, persons conducting criminal proceedings attach to the case materials and use in the process of proof the expert's opinion obtained in accordance with Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation[263].

Thus, having made a decision on the need to obtain a specialist's opinion, the persons conducting the criminal case make a corresponding procedural decision and attach the expert's opinion. The very fact of the need for a specialist's opinion, in this case, guarantees the attachment of the opinion to the case materials, since the decision on both is made by one person (the person conducting the criminal case).

Regarding the receipt of a specialist's opinion by the defense attorney, the legislator also does not provide for any restrictions, but it is quite obvious that in this procedure the defense attorney is bound by the powers of the person conducting the criminal case: if the decision on the need to seek help from a specialist is made by the defense attorney himself, then the decision on whether it will be included in the case materials or assessed as admissible evidence is made by other persons.

Yes, the defense attorney has the right to file motions to include a specialist’s opinion in the case materials or to call a specialist for questioning, and yes, their satisfaction cannot be denied[264], but it is impossible to guarantee the absence of a

[261]Criminal Procedure Code of the Russian Federation [Electronic resource]: Federal Law of December 18, 2001 No. 174-FZ (as amended and supplemented, effective from 29.05.2024). Access from the reference and legal system "ConsultantPlus" (date of access 12.06.2024).

[262]Federal Law of 31.05.2002 No. 63-FZ (as amended on 22.04.2024) "On Advocacy and the Bar in the Russian Federation" - SPS "ConsultantPlus" - access date 05.05.2024.

[263]Resolution of the Plenum of the Supreme Court of the Russian Federation [Electronic resource]: from 21.12.2010 No. 28 "On forensic examination in criminal cases". Access from the reference-legal system "ConsultantPlus" (date of access 12.06.2024).

[264]But it may also be refused if the circumstances that can be established with the help of the attached conclusion and the testimony given are not relevant to the case (See: Ruling of the Constitutional Court of the Russian Federation of June 17, 2013 No. 1003-O On the refusal to accept for consideration the complaint of citizen Nikolai Vasilyevich Sinichkin regarding the violation of his constitutional rights by the provisions of Articles 24, 46, 47, 53, 58, 86, 125, 164, 168 and 270 of the

formalized approach to the assessment of both the motion to include and the specialist's opinion and testimony itself [265].

One of the factors that allows, in practice, persons conducting criminal proceedings to apply a formal approach to the inclusion and evaluation of expert opinions and testimony is the lack of regulation of the procedure for warning an expert about liability for giving knowingly false opinions and testimony[266].

Thus, in the case where the expert opinion is obtained by the person conducting the criminal case, fewer problems arise, since the procedure for warning about liability for giving a knowingly false opinion, testimony by the inquirer, investigator and the court is permitted both by law (Articles 168, 270 of the Criminal Procedure Code of the Russian Federation, albeit in the opinion of some authors, not in full[267]), and by practice[268] (to a greater extent), then there is no indication of the presence of any attorney's powers to explain to the expert his rights, duties and warn him of liability in the criminal procedure law.

Such limitations and ambiguity[269] of the normative regulation leads to the fact that the evidentiary value of the expert's opinion received by the defense attorney is

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Criminal Procedure Code of the Russian Federation // URL : http :// https://www.garant.ru/products/ipo/prime/doc/70314050/ (date of access 06.05.2024).

[265]On the verification and evaluation of the expert's conclusion and testimony in the following paragraphs of this chapter.

[266]Defenders have procedural problems when inviting a specialist to participate in a criminal case, and the reason for this is in the content of the norms of the Criminal Procedure Code of the Russian Federation (See: Koblev R.P. Expert's opinion as evidence of defense: difficulties for lawyers // Criminal procedure. 2017. No. 6).

[267]Thus, O. S. Pashutina proposed to establish in the criminal procedure law a provision according to which, in the event of the need to obtain a specialist's opinion, the investigator, inquiry officer or court must issue a written decision on this, which will contain a certificate of the fact of warning the specialist about criminal liability for giving a knowingly false opinion (Pashutina O. S. Current issues of legal regulation of the participation of a specialist in criminal proceedings // Criminal proceedings. 2011. No. 1. P. 5).

[268]When involving a specialist in a case, 88% of the surveyed investigators and 29% of the surveyed prosecutors warn the specialist about the liability for giving knowingly false conclusions and/or testimony in accordance with Article 307 of the Criminal Code of the Russian Federation and, accordingly, 51% of the surveyed investigators and 53% of the surveyed prosecutors believe that this issue does not require additional regulatory regulation, since it is permitted by practice and it is possible to apply an analogy with the rules for warning about criminal liability for giving knowingly false conclusions and testimony of an expert (Appendix No. 2, Questions No. 6, 7; Appendix No. 4, Questions No. 5, 6).

[269]Currently, the title and disposition of Article 307 of the Criminal Code of the Russian Federation contradict each other: the title of the article includes both the testimony and conclusion of both an expert and a specialist (as persons with special knowledge), but based on the disposition, a specialist is liable only for knowingly false testimony. (See: Tarasov A. A., Sharipova A. R. Criminal procedural aspect of differentiating the criminal liability of an expert and a specialist for giving knowingly false testimony and conclusions // Legal paradigm. 2017. Vol. 16. No. 3. P. 23., Kudryavtseva A. V., Morozova Yu. A. Procedural status of a specialist: general and special // Differentiation of criminal proceedings as a guarantee of ensuring the rights of participants in criminal proceedings: collection of scientific articles. - Chelyabinsk: Tsitsero, 2015. P. 33).

significantly reduced: the law enforcement officer ignores this evidence[270], citing the fact that when giving the opinion, the expert was not warned about criminal liability under Article 307 of the Criminal Code of the Russian Federation. In this regard, opinions were expressed in the literature about the need for a direct indication in the law of the defense attorney's obligation to warn the expert about liability for giving a knowingly false opinion, as well as to provide for the form and procedure for such a warning.

At the same time, for example, S. B. Rossinsky believes that when deciding this issue, it is necessary to take into account that public criminal procedural relations, which presuppose the mandatory participation of a state representative, a priori cannot arise between two private individuals (for example, between a specialist and a lawyer) and the partial transfer of public powers from the exclusive jurisdiction of the state to the jurisdiction of a lawyer will lead to a distortion of the very essence of public criminal procedural relations[271].

Representatives of the legal community also note the need to supplement the current legislation (Article 307 of the Criminal Code of the Russian Federation) with a rule on warning a specialist about criminal liability for giving a knowingly false opinion, but also, like S. B. Rossinsky, they believe that a person who has authority should warn a specialist about criminal liability: an inquirer, investigator and court in whose proceedings the criminal case is. They consider imposing such duties on a lawyer (defender) to be unacceptable since, in their opinion, this contradicts the essence of the institution of advocacy[272].

While agreeing with the validity of the above arguments, it is worth noting that the proposals available in the literature do not contain a clear mechanism for the procedure for warning a specialist invited by the defense attorney about criminal liability.

There are proposals to issue a corresponding written decision by the investigator, inquiry officer or court, which will contain a certification of the fact of warning the

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[270] Appendix No. 7.

[271] Rossinsky S.B. Preparing a specialist's opinion on a criminal case: practical recommendations / S.B. Rossinsky // Criminal Procedure. 2017. No. 12 (156). P. 72 - 79.

[272]Bushmanov I., Savitsky A., Expert opinion vs. Specialist opinion // Advocate newspaper [electronic resource]: https://www.advgazeta.ru/diskussii/zaklyuchenie-eksperta-vs-zaklyuchenie-spetsialista/ (date of access 06/16/2024)

specialist about criminal liability for giving a knowingly false conclusion[273]. At the same time, it remains unclear how an investigator, inquirer or court can warn a specialist involved as a defense attorney outside the trial against criminal liability. To whom (which specialist specifically) and in what order should such a decision be addressed?

In this regard, the following method of eliminating uncertainty appears:

Based on the provisions of Article 6 of the Law "On Advocacy and the Bar in the Russian Federation", an advocate has the right to engage specialists on a contractual basis by concluding an agreement (contract). There are no requirements for the form and content of such agreements (contracts) in the criminal procedure law and are regulated by the provisions provided for by the civil law of the Russian Federation, which imply freedom of contract[274]. Accordingly, the terms of this agreement (contract) by the parties may include a provision on the existence in the current legislation of the Russian Federation of criminal liability for giving a knowingly false conclusion[275] and testimony by a specialist, disclosure of this provision (explanation) from the point of view of the rules of law and a provision on the liability of a specialist for giving a knowingly false conclusion[276]. This is not a "warning of criminal liability" in the procedural sense: the advocate does not assume public powers, does not carry out actions that contradict the essence of the bar. In this way, only the professional informing of the specialist is carried out about the possible risks and consequences for him caused by non-compliance with the requirements of criminal and criminal procedure legislation. Moreover, the agreement with the specialist must include the questions posed for the specialist's resolution and the materials necessary for this, and also contain a provision on the specialist's obligation to appear before the investigator (inquiry officer) or the court to participate in the filing of a petition by the inviting party to attach the specialist's conclusion, to sign a pledge of

[273]See, for example: Pashutina O. S. Op. cit. P. 5; Balakshin V. S. Responsibility of a specialist in criminal proceedings // Problems of legal liability: history and modernity: articles based on the results of the All-Russian scientific-practical conference / edited by G. N. Chebotarev. Tyumen, 2004. Part 1. Pp. 170–173.

[274]Civil Code of the Russian Federation (Part One)" dated November 30, 1994 No. 51-FZ (as amended on March 11, 2024) SPS - "ConsultantPlus" // URL :// http :// https://www.consultant.ru/document/cons_doc_LAW_5142/ad08909251f4d26ebc935648e4e708a31e160348/ (date of access 05/06/2024).

[275]Naturally, when eliminating ambiguity and inconsistency in the norms of the Criminal Procedure Code of the Russian Federation and the Criminal Code of the Russian Federation, since, as has been repeatedly noted, there is a gap in terms of legal technique: inconsistency between the title and the text of Article 307 of the Criminal Code of the Russian Federation.

[276]More details about this can be found in the third chapter of this work.

responsibility for giving a knowingly false conclusion, and also to confirm his readiness to submit this evidence to the case materials[277]. The conclusion, together with the petition for its attachment to the case, must be submitted to the inquirer, investigator or the court. If the petition is granted, it is the inquirer, investigator or judge, as the authorities conducting the criminal case, who are obliged to explain to the specialist his rights, duties and responsibilities[278].

We believe that such an approach is capable of meeting the "basic" needs of the defense that arise when receiving an expert opinion[279]: a warning of criminal liability by an authorized person, confirmation of the expert's disinterest[280], identification of his level of competence[281] and establishment of his independence, including financial disinterest[282].

The process of giving testimony by a specialist is also not regulated by the current criminal procedure code: the procedure for interrogating[283] a specialist has no regulatory

[277]See: Vatutina, O. Yu. Procedural status of a specialist and its legal regulation in modern Russian criminal procedural legislation / O. Yu. Vatutina // Russian judge. - 2020. - No. 11. - P. 22-26.

[278]We also believe that it is possible, in cases where a criminal case has been initiated and proceedings on the case are underway, for the defense attorney to make a preliminary (before receiving a specialist's opinion) request to the person conducting the criminal case (inquiry officer, investigator, court) to involve a specific specialist in the case to provide an opinion. The said request may be motivated by the provision of information on the possibility of providing an opinion on the issues raised by the defense attorney, by a specific specialist (institution), indicating the time frame and cost, as well as indicating information on the qualifications of the specialist (specialists) who may be involved to provide an opinion. The supporting information may be drawn up in the form of a letter of guarantee from a specialist or expert organization to which the defense attorney has applied in advance. (Similar provisions are implemented in civil and arbitration proceedings applicable to petitions for the appointment of an expert examination at the initiative of the parties). If the defense attorney's petition is granted, the person conducting the criminal proceedings has the opportunity to issue a corresponding ruling indicating that the specialist involved will be warned of criminal liability for giving a knowingly false opinion (See: Prikhodko I.A. Op. cit. P. 637).

[279]Since the expert's opinion, obtained at the initiative of the defense attorney, arises outside the scope of procedural activity and has no regulatory framework.

[280]The issue of the interest of a specialist in giving an opinion or testimony was examined in detail in the first chapter of this work. At the same time, for example, A. E. Denisov believes (as well as in terms of establishing the level of competence of a specialist), taking into account the possibility of involving a specialist as a defense attorney, that responsibility for clarifying the issues of disinterest in the outcome of a criminal case of the involved specialist should lie with the party that involves him (See: Denisov A. E. Op. cit. P. 80).

[281]Only if he has the appropriate competence and lacks any interest, can a specialist be allowed to participate in a case (Part 2 of Article 168 of the Criminal Procedure Code of the Russian Federation), and the special knowledge he possesses can be used in the manner prescribed by current legislation to establish the circumstances of the case.

[282]There are opinions in the literature that the exclusion of the financial interest of a specialist can be achieved by introducing into the criminal procedure code provisions on the reasonableness of the amount of payment for the services of a specialist engaged to provide an opinion by the defense, without allowing "his unreasonably high fee" (See: Bryanskaya E.V., Rukavishnikov P.P. Admissibility of the opinion and testimony of a specialist in the process of proving in a criminal case // Academic Law Journal. 2019. No. 2 (76). Pp. 35 - 41; Bryanskaya E.V. The strength of evidence and tactics of argumentation in the process of proving in a criminal case: monograph. - Moscow: Prospect, 2023. - Pp. 248 - 249).

[283]See, for example: Lazareva V. A. Kashin G. M. Expert's opinion - a new type of evidence // Legal analytical journal. Samara: Samara University Publishing House, 2004. No. 4 (12). P. 6; Orlov Yu. K. Problems of the theory of evidence in criminal proceedings. Moscow: Jurist, 2009. P. 174.

framework. Testimony by a specialist is given when it becomes necessary to obtain information about circumstances that require special knowledge to understand them[284].

And if the need to obtain information on specific issues from the investigator, inquiry officer, prosecutor and court, as well as the defense attorney's motion are defined as the reason for interrogating a specialist, the law does not contain any specifics on how the specialist is involved in the process. The provisions on this are fragmentary and inconsistent with each other. Thus, it remains unclear how and where the specialist appeared in the process, to whom the court explains his rights, in accordance with Article 270 of the Criminal Procedure Code of the Russian Federation. The norm of Article 251 of the Criminal Procedure Code of the Russian Federation states that a specialist summoned to court participates in criminal proceedings, however, it does not answer the question of what should precede such a summons, what became the reason and reason for summoning the specialist[285].

Are also not enshrined in law . In the literature, it is often suggested to interrogate a specialist according to the rules provided for interrogating a witness[286], which is the subject of criticism[287], since, with this approach, it is not uncommon the law enforcement officer allows constructions that not only do not comply with the law, but also contradict common sense. Thus, a specialist can be interrogated according to the rules of interrogation of a witness, while his rights and responsibilities are explained to him in accordance with Art. 56 of the Criminal Procedure Code of the Russian Federation, the specialist is warned about criminal liability in accordance with Art. Art. 307 and 308 of the Criminal Code of the Russian Federation, with an additional explanation of the rights and responsibilities in accordance with Art. 58 of the Criminal Procedure Code of the

[284]Stepanov V., Shapiro L. G. Decree. op. P. 82.
[285]Prikhodko I.A. Decree. op. P. 635.
[286]See, for example: Lazareva V. A. Kashin G. M. Expert's opinion - a new type of evidence // Legal analytical journal. Samara: Samara University Publishing House, 2004. No. 4 (12). P. 6; See: Sheifer M. M. Social and legal status of a witness and problems of its implementation in criminal proceedings in Russia: diss. ... Cand. of Law. Samara, 2005.
[287]Thus, A. Ya. Vyshinsky noted the inadmissibility of identifying knowledgeable persons and witnesses, since the former could be replaced, while the latter could not (See: Vyshinsky A. Ya. Theory of judicial evidence in Soviet law. Moscow, 1950. P. 276); V. S. Latypov points out the incorrectness and groundlessness of such an approach, since the procedure for interrogating a specific participant in the process presupposes a certain procedure for warning him of liability (See: Latypov V. S. Op. cit. P. 189).

Russian Federation, and a warning about liability in accordance with Art. 310 of the Criminal Code of the Russian Federation.

The inconsistency of the norms of the criminal and criminal procedure codes on the procedure and rules for warning a specialist about liability for giving a knowingly false conclusion, the lack of understanding of the law enforcement officer about the proper procedure for their application, leads to the discrediting of this evidence. The testimony of a specialist as independent evidence is rarely used. Obtaining testimony from a specialist is carried out mainly to clarify the conclusion previously given by this specialist, by analogy with the testimony of an expert[288], but even in these cases, the law enforcement officer "looks for" ways to "exclude" the testimony of a specialist from the process of proof[289].

For example, the Moscow Regional Court, in the case against S. A. Kroshkin, accused under Article 105, Part 2, Clause "z", Article 162, Part 3, Clause "v", Article 119 of the Criminal Code of the Russian Federation, denied the lawyer's request to interrogate medical specialist F., citing the fact that this specialist was not involved in conducting forensic medical examinations in the case[290].

In the case of E. F. Varypaev, accused under Articles 30, Part 1, 33, Part 3, 105, Part 2, Clause "z" of the Criminal Code of the Russian Federation, the court refused to allow the lawyer to include the expert's report and to interrogate the expert, whose presence had been ensured[291], due to the fact that when drawing up the report, the expert

[288]Despite the fact that such a point of view does not correspond to the provisions of Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation, often the testimony of a specialist is used precisely to clarify a previously given conclusion (See: Appendix No. 7) .

[289]The need to satisfy the defense attorney's motions to involve a specialist is determined by the person conducting the criminal proceedings, taking into account his vision of the picture of the crime, his knowledge and experience (See: Bozhchenko A.P., Nikitin I.M. Problems and difficulties associated with the implementation of the defense's right to the assistance of a specialist in criminal proceedings (message I) // Medical Law. 2021. No. 1. pp. 15-20).

[290]Despite the fact that such a requirement for interrogation of a specialist is not provided for by law (See: Cassation ruling of the Supreme Court of the Russian Federation of January 27, 2005 in case No. 4-005-171SP [Electronic resource]: Access from the reference and legal system “ConsultantPlus”).

[291]Despite the fact that the court does not have the right to refuse to satisfy a motion to interrogate at a court hearing a person as an expert who appeared in court at the initiative of the parties (Part 4 of Article 271 of the Criminal Procedure Code of the Russian Federation) (See: Resolution of the Plenum of the Supreme Court of the Russian Federation [Electronic resource]: dated 19.12.2017 No. 51 "On the practice of applying legislation when considering criminal cases in the court of first instance (general procedure for legal proceedings)". Access from the reference legal system "ConsultantPlus" - (date of access 12.06.2024).

was not warned about criminal liability for giving a knowingly false report[292], the expert was not provided with the case materials (the expert did not get acquainted with them directly), in connection with which, in the opinion of the court, the requirements of the law were not met[293].

In the case against A. G. Razzarenov, accused of committing crimes under Part 1 of Article 112, paragraph "z" of Part 2 of Article 105 of the Criminal Code of the Russian Federation, the defense attorney was also denied the right to interrogate a specialist whose presence had been ensured, with reference to the fact that such interrogation is aimed at re-evaluating the conclusions of forensic medical examinations, at indicating the unreliability of the experts' findings, which is not provided for by the criminal procedure law[294].

Thus, the interrogation of a specialist, even if he appears at a court hearing, is not guaranteed and most often takes place if one of two conditions is met: the specialist either took part in the investigative action or presented a report (but only if this report was included in the case as evidence)[295].

In this regard, the proposals to introduce a chapter on "Specialist's Conclusion and Interrogation" or an article on "Specialist's Interrogation[296]" into the Criminal Procedure Code seem interesting[297]. However, the wording proposed by the authors does not fully resolve the existing problems associated with obtaining specialist testimony.

The proposed draft regulations either say nothing about the possibility of initiating the interrogation of a specialist by a defense attorney and do not allow the assistance of a

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[292]This argument is inconsistent with the provision that the interrogation of a specialist, even one invited by the defense, can only be carried out by an investigator, inquiry officer or court, warning the specialist of liability and ensuring the implementation of procedural requirements (See: Grishina E.P. Op. cit. P. 101). Accordingly, in the case in question, the court not only failed to recognize the evidentiary significance of the expert's conclusion and testimony, but also effectively refrained from performing its procedural function.

[293]Cassation ruling of the Supreme Court of the Russian Federation of May 21, 2007 in case No. 9-O07-31 [Electronic resource]: Access from the reference-legal system "ConsultantPlus". At the same time, the current legislation, to date, does not regulate the procedure and obligation of the lawyer to warn the specialist invited on his initiative, about the liability for giving a knowingly false opinion, does not provide for the procedure for providing case materials to such a specialist for examination.

[294]Appellate ruling of the Supreme Court of the Russian Federation dated September 19, 2019 in case No. 49-APU19-17sp [Electronic resource]: Access from the reference legal system "ConsultantPlus" (date of access 06/16/2024).

[295]Prikhodko I.A. Decree. op. P. 639.

[296]Latypov V.S. Decree. op. P. 189.

[297]Tatyana L. G., Kuznetsov E. I. Interrogation of a specialist in criminal proceedings // Bulletin of SUSU. Series "Law". 2006. No. 13. P. 177 - 178.

specialist in assessing other evidence obtained using special knowledge and contained in the case materials, or do not provide for procedures for engaging a specialist to give testimony and warning a specialist of liability for giving knowingly false testimony.

In addition to the above, in terms of obtaining testimony from a specialist, there is another serious problem that has not yet been resolved either in science or in practice: we are talking about the possibility and procedure for calling a specialist by the court to give testimony. The provisions of the current legislation provide for the right of various participants in criminal proceedings to contact a specialist. However, similar provisions regarding the court are not directly enshrined in the law. In accordance with Part 3 of Article 15 of the Criminal Procedure Code of the Russian Federation, the court is not a criminal prosecution body, does not act on the side of the prosecution or the side of the defense, but creates the necessary conditions for the parties to exercise their procedural obligations and the rights granted to them[298].

However, the court is not passive in the process, since it can and must carry out a number of procedural actions on its own initiative[299]. In the decisions of the Constitutional Court of the Russian Federation, it is repeatedly emphasized that the adversarial nature of the process, regulated by the Constitution of the Russian Federation, does not exclude the right of the court to request and examine evidence on its own initiative to verify the arguments presented by the parties[300].

In this situation, it remains to be determined whether calling a specialist falls under the category of procedural actions that the court has the right to carry out on its

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[298]Criminal Procedure Code of the Russian Federation of December 18, 2001 No. 174-FZ (as amended and supplemented, entered into force on April 22, 2024) [Electronic resource]: Access from the reference and legal system "ConsultantPlus".

[299]Such procedural actions include: summoning and questioning an expert who gave an opinion during the preliminary investigation, to clarify or supplement the opinion given by him; appointing a forensic examination; appointing a repeat or additional examination in the presence of contradictions between the expert opinions that cannot be resolved in court proceedings by questioning the experts; the opportunity to ask questions of the defendant, victim, witness after his questioning by the parties; reading out the testimony of the victim and witness in the event of failure to appear at the court hearing in cases provided for in Part 2 of Article 281 of the Criminal Procedure Code of the Russian Federation (See: Karabanova T.N. The role of the court in proving in criminal proceedings of the Russian Federation // Bulletin of RUDN, series. Legal sciences. 2007. No. 1. P. 54).

[300]Ruling of the Constitutional Court of the Russian Federation of November 20, 2003 No. 451-O "On Refusal to Accept for Consideration the Complaints of Citizen Sergei Vadimovich Vekker Regarding the Violation of His Constitutional Rights by the Provisions of Articles 86, 87, 235, 253, 283 and 307 of the Criminal Procedure Code of the Russian Federation"; Ruling of the Constitutional Court of the Russian Federation of June 18, 2004 No. 204-O "On Refusal to Accept for Consideration the Complaints of Citizen Tsogt Natsagdorzhevich Budaev Regarding the Violation of His Constitutional Rights by Part Two of Article 283 of the Criminal Procedure Code of the Russian Federation" [Electronic resource]: Access from the reference and legal system "ConsultantPlus".

own initiative to ask him questions in the field of specialized knowledge. By literally interpreting the provisions of the criminal procedure legislation, one can see that the questions are put to the specialist by the "parties", while the court is called in the law "a participant in criminal proceedings", which is "not equivalent to the concept of "parties in criminal proceedings[301]". Assessing the need and method of regulating this issue, it can be noted that civil proceedings in a similar situation provide for a norm directly indicating the possibility of calling a specialist by the court: "***the court*** (italics added) involves a specialist, including when appointing an expert examination to obtain appropriate advice[302]".

In criminal proceedings, the possibility of a specialist assisting the court when appointing an examination is not disputed, since, in accordance with Art. 58 of the Criminal Procedure Code of the Russian Federation, a specialist is involved, among other things, in asking questions to the expert, and the specialist may, at the request of the court, express his/her opinion regarding the forensic institution to which it is advisable to entrust the examination and the candidate proposed by one of the parties, if the examination is proposed to be entrusted to a specific expert known to him/ her[303]. However, the law does not contain an answer to when, in[304] what way and from where (institution, organization, educational institution, etc.) the court involves a specialist[305]. And if the answer to the first two questions can be given from the standpoint of science or practice, then obtaining an answer to the third of the questions posed is very difficult. At present, there are no registers of specialists, their classification or delineation by forms and/or types of activity,

[301]Zazhitsky V. I. Conclusion and testimony of a specialist in the system of evidence law // Russian Justice. 2007. No. 9. P. 57.

[302]Civil Procedure Code of the Russian Federation [Electronic resource]: Federal Law of November 14, 2002 No. 138-FZ (as amended on December 2, 2019) (as amended and supplemented, entered into force on March 30, 2020). Access from the reference and legal system "ConsultantPlus".

[303]Zinin A.M., Semikalenova A.I., Ivanova E.V. Decree. op. P. 206.

[304]The moment of the need to call a specialist on the initiative of the court, it is possible to determine the need for the court to take all measures in its power to eliminate contradictions in the evidence base, since, according to E. V. Ryabtseva, only in this case (with the complete elimination of contradictions) can we talk about the court's assessment of evidence based not only on the law, but also on conscience (See: Ryabtseva E. V. Judicial activity in adversarial criminal proceedings. Voronezh: Istok Publishing House, 2005. P. 121).

[305]Latypov V. L. speaks about the possibility of assistance to the investigation and the court by a knowledgeable person of a foreign state - a foreign specialist, noting as a justification for such participation both the need to clarify issues of an international nature, and cases of committing criminal acts on the territory of a foreign state where the legislation of Russia is in force (embassies, consulates), during the performance of urgent investigative actions, when delay and waiting for a specialist from Russia is equivalent to the loss of valuable elements of the evidence base. (See: Latypov V. S. Op. cit. pp. 231-236).

therefore, the choice of a specialist, even if the area of his/her intended activity is clear, will not be obvious.

The practice currently follows the path of court involvement of only those specialists who are "available" in the structure of state forensic institutions and can be participants in investigative actions, or employees (members) of the most "famous" non-state expert institutions. In this, in our opinion, there is a significant and unjustified "narrowing" of the "register of candidates" of specialists who can be invited on the initiative of the court[306]. However, the formation of a special kind of centers for giving opinions on the basis of large universities with highly qualified specialists in various fields of science, technology and art is also not excluded. A successful example of such a center is the Center for Expertise of the St. Petersburg State University[307].

It is not clear whether this issue requires separate regulation. Perhaps, due to the actual "rarity" of its occurrence, it is advisable to limit ourselves to the established judicial practice. However, we believe that when involving a specialist in a criminal process at the initiative of the court (requesting a specialist's opinion by the court), in terms of the candidacy of the specialist involved, it is necessary to take into account the opinion of the parties.

At the same time, the norms of the criminal procedure code governing the procedure for obtaining testimony from a specialist (interrogation of a specialist)[308] and the expert's opinion must be set out in a wording[309] that ensures the verifiability of the evidence obtained from the specialist and its proper assessment.

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[306]In this regard, the proposal to amend Federal Law No. 73 "On State Forensic Activity in the Russian Federation" is quite interesting, suggesting a "separation" of forensic examination, i.e., that which is appointed by a court or judge, and examination appointed by the body or person conducting the investigation of a criminal case (See: Prikhodko I. A., Bondarenko A. V., Stolyarenko V. M. Forensic examination … p. 62)

[307]https://spbu.ru/ekspertnyy-universitet/centr-ekspertiz.

[308] Since the participation of a specialist in collecting evidence in criminal cases, which has great practical relevance (See, for example: Lazareva L. V. Participation of a specialist in the formation of evidence in criminal cases // Collection of articles based on the materials of the International scientific and practical conference dedicated to the 95th anniversary of the birth of Tsili Moiseyevna Kaz. Saratov, 2020. P. 80).

[309]More about this in the third chapter of this work.

§ 3. Verification of the expert's conclusion and testimony

Verification of evidence is one of the stages of the process of proof, formally preceding the stage of evaluation[310].

At the stage of preliminary investigation, verification of information constituting the content of evidence begins at the moment of its receipt. Information is sifted through the prism of the subject of proof and information that has no connection with any of its elements is cut off at this stage and is not included in the case materials[311]. At the trial stages, verification of evidence consists of the court comparing it with other evidence available in the criminal case, as well as by establishing its sources and obtaining other evidence that confirms or refutes the evidence being verified[312].

Verification of evidence, being a mandatory element of criminal procedural proof, must be carried out by all subjects of proof and each piece of evidence, no matter from what source it was obtained, is subject to verification both at the stage in which it was obtained and at subsequent stages of criminal proceedings[313].

In order to pass the verification stage, the expert's conclusion and testimony must be relevant to the case and meet two basic conditions: the competence of the expert who provided the relevant evidence and his disinterest in the case.

The relevance of evidence[314] is its suitability for establishing facts that are the subject of proof, the connection between the content of the evidence and the

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[310]It is difficult to make a categorical conclusion about the independence of the stages of the proof process, they are all intertwined in the process of practical activity. In the course of checking evidence, means and methods are used aimed at both collecting evidence and evaluating it; checking, although formally following receipt and preceding evaluation, is in fact carried out in conjunction with both stages. (See: Bryanskaya E.V. The Power of Evidence ... P. 145; Rudin A.V., Berzin O.A. Evidence in Criminal Proceedings: Issues of the Relationship between Their Checking and Evaluation // Bulletin of the Krasnodar University of the Ministry of Internal Affairs of Russia. 2017. No. 1 (35). P. 56).

[311]Lazareva V. A., Nikolaeva K. N. Delimitation of the competence of preliminary investigation bodies, the prosecutor and the court in verifying evidence // Legal Bulletin of Samara University. 2019. Vol. 5. No. 1. P. 27.

[312]Voskobitova L. A. Features of procedural cognition: continuation of the discussion // Laws of Russia: experience, analysis, practice. 2016. No. 4. P. 20.

[313] Each of the subjects of proof, in accordance with Article 87 of the Criminal Procedure Code of the Russian Federation, is obliged to check the evidence (each of them and their entirety), as well as the compliance of their conclusions with them due to the need to establish the factual basis for law enforcement (See, for example: Aliyev T. T., Gromov N. A., Makarov L. V. Criminal Procedure Proof. Moscow, 2002. P. 18; Larinkov A. A. Issues of Evidence Verification at the Stage of Trial: Theoretical and Practical Aspects // Criminalist. 2013. No. 1 (12). P. 31.

[314] It should be noted that the relevance of evidence as such is hardly commented on in the guiding explanations of the Supreme Court of the Russian Federation. And this is despite the fact that the criterion of relevance is very difficult to define in the law and apply in the course of collecting, presenting, checking and evaluating evidence. (See: Aleksandrov A.S., Frolov S.A. Relevance of criminal procedural evidence: Monograph. - Nizhny Novgorod: Nizhny Novgorod Law Academy, 2011. - 176 p.)

circumstances subject to proof, which makes it possible to use this or that evidence to establish the said circumstances[315].

The relevance of evidence added at the stage of preliminary investigation was established by the person conducting the criminal case, but only the court has the final right to assess which of the evidence presented by the parties relates to the subject of proof and meets the criterion of relevance.

The court examines and evaluates evidence as a whole and may well establish the irrelevance of a single piece of evidence in the case and deny its evidentiary value. However, it is sometimes difficult to understand what criteria the judge is guided by when determining the relevance of a fact or question to the merits of the case under consideration[316].

Thus, difficulties arise when checking evidence in court, despite the fact that the most favorable conditions for checking arise at the stage of the trial[317]. One of the common mistakes is overestimating or underestimating the importance of certain types of evidence, when they are taken on faith or rejected practically without checking, although by their nature they require particularly careful checking[318].

Even stranger is the position of the courts (reflected in the verdict) regarding the irrelevance of evidence obtained with the participation of an expert, which was included by the court itself at the stage of the trial.

Of course, the expert's opinion is attached (as well as testimony is given) at the request of the party[319] in its interests and will, but the decision on the filed petition is

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[315]Criminal Procedure: Textbook for Bachelor's Degrees of Law Universities / Edited by O. I. Andreeva, A. D. Nazarov, N. G. Stoyko, A. G. Tuzov. Rostov n / D: Phoenix, 2015. P. 122.

[316] Aleksandrov A. S., Frolov S. A. Relevance of criminal procedural evidence: Monograph. – Nizhny Novgorod: Nizhny Novgorod Law Academy, 2011. – 176 p.

[317]Namely: implementation of such verification in court, with the fullest application of the principles of criminal procedure and, above all, the adversarial nature and equality of the parties; the presence at the disposal of the court and the parties of a set of evidence collected, verified and assessed at the stage of the preliminary investigation, and, as a consequence, their possession of a complete picture of the crime committed, established during the investigation; the possibility of virtually simultaneous participation in the verification of evidence by all participants in the trial, which allows the court to take into account the factors that the parties are guided by when verifying evidence (See: Dolya E.A. Verification of evidence // Scientific and practical commentary on the Criminal Procedure Code of the Russian Federation / edited by V.M. Lebedev. Moscow, 2002. pp. 209-210).

[318]In investigative and judicial practice, there are still cases of an uncritical approach to expert opinions and the data contained in them, cases where expert opinions are given unreasonable preference (See: Theory of Evidence in Soviet Criminal Procedure. Ed. by N. V. Zhogin, Moscow, 1967. P. 223).

[319] The defense attorney (as noted earlier in this paper) has the right to make various motions: on the court excluding evidence (Article 235 of the Criminal Procedure Code of the Russian Federation); on calling and questioning new witnesses, experts,

made by the court, which is obliged by the criminal procedure law to consider each filed petition (Part 2 of Article 271 of the Criminal Procedure Code of the Russian Federation).

When considering a petition, the court must "sift the presented evidence through the prism of the subject of proof and cut it off at the stage of inclusion[320]" if it is irrelevant. This issue is at the discretion of the court, and the criterion is of an evaluative nature, allowing evidence to be included if it is relevant to the criminal case or to refuse to include it if it is not relevant and does not relate to the subject of proof. If the petition to include a specialist's report or to interrogate a specialist is denied, then the person who prepared the report will not appear in the proceedings either as a specialist or in any other capacity, the evidence provided by him will not appear in the case[321] and will not require evaluation.

At the same time, in cases where the courts include a specialist's opinion submitted by the defense attorney and/or involve a specialist to testify at the request of the defense, guided by the provisions of Part 2.1 of Article 58 of the Criminal Procedure Code of the Russian Federation, according to which the defense cannot be denied a motion to involve a specialist in the trial for the purpose of clarifying issues within his professional competence[322], the verdict may not assess this evidence, or it may be noted that such evidence cannot be used as the basis for the verdict, since it is irrelevant to the case[323]. Thus, in this part, law enforcement officers , in fact, mix up the procedures for verifying and assessing evidence.

Also, as part of the inspection, the competence of the specialist must be established, since, in accordance with the provisions of Article 71 of the Criminal Procedure Code of the Russian Federation, the incompetence of a specialist is the basis for his/her challenge and the impossibility of using the evidence provided by him/her in proving. The procedure for determining the level of competence or lack thereof is not regulated by law and is an evaluative criterion.

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and specialists; on excluding evidence obtained in violation of the requirements of the criminal procedure law (Article 271 of the Criminal Procedure Code of the Russian Federation); on appointing new, additional, and repeat examinations (Article 283 of the Criminal Procedure Code of the Russian Federation), etc.

[320]Lazareva V. A., Nikolaeva K. N. Distinction... P. 27.

[321]Prikhodko I. A., Bondarenko A. V., Stolyarenko V. M. Forensic examination ... P. 636.

[322]Resolution of the Plenum of the Supreme Court of the Russian Federation [Electronic resource]: dated 19.12.2017 No. 51 "On the practice of applying legislation when considering criminal cases in the court of first instance (general procedure for legal proceedings)". Access from the reference legal system "ConsultantPlus" (date of access 16.06.2024).

[323]Appendix No. 7.

In practice, this can be done on the basis of the specialist's identity card, information about his professional specialization and qualifications, and academic title. The general provisions of the specialist's competence are formulated in Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation: this is the knowledge and training that are necessary and sufficient to perform the functions of a specialist. At the same time, it should be taken into account that competence is determined by the educational level, special expert training, length of service in expert work, experience in solving similar expert problems, and the individual abilities[324] of a particular specialist.

Accordingly, when checking the competence of a specialist, the factor of his qualifications (professional training) is taken into account, which is not difficult for a non-specialist to assess, in which three levels are distinguished:

- basic (general) - having higher professional education;

- secondary (qualified) - higher professional education (academic degree) and work experience in the specialty of up to 5 years;

- higher (highly qualified) - having a higher professional education (academic degree), work experience in the specialty of over 5 years and experience of participating in criminal proceedings as a specialist or expert[325].

However, determining the level of professional training is not a solution to the issue of the specialist's competence. The level of competence of a specialist participating in an investigative action, in accordance with Part 2 of Article 168 of the Criminal Procedure Code of the Russian Federation, is subject to clarification by the investigator conducting it. In a similar situation in a court proceeding, the competence of a specialist is subject to clarification by the court based on the documents submitted by the specialist confirming his level of education, work experience, specialization and other information that may indicate the level of his competence.

However, the participants in the process who are responsible for establishing and verifying the level of competence of a specialist are often unable to do so adequately, due

[324]Rossinskaya E. R. Forensic examination in civil, arbitration, administrative and criminal proceedings: monograph. 4th ed., revised and enlarged. Moscow: Norma, INFRA-M 2018.
[325]Stepanov V., Shapiro L. G. Decree. op. P. 83.

to the fact that such verification itself requires the inspector to have specialized knowledge.

Moreover, specialists called on the initiative of the defense are required to provide multiple confirmations of their competence, despite the fact that in practice, a situation may arise where a specialist called in by the defense is a person who actually holds the position of an expert in a state forensic institution[326]. Whereas specialists on the part of the prosecution, regardless of whether they are employees of state forensic institutions, are not required to provide any confirmation of competence[327].

Judges do not always want to recognize employees of non-governmental expert institutions and private experts as specialists, due to the difficulty of establishing their level of competence, which entails a refusal to attach a conclusion, to call a specialist to give evidence at the stage of resolving a petition. At the same time, this does not mean that all such decisions are not based on anything.

Disinterest (direct and/or indirect) is another key element established by identifying the presence of a desire or opportunity to obtain, by participating in the case, some benefit personally for oneself or others, the presence of family, friendly or, conversely, tense relations with the persons participating in the case[328].

In practice, the lack of disinterest of the specialist who gave the opinion or testified is often associated with the very fact of the involvement of the specialist by the defense. For example , the opinions of specialists are ignored because they were obtained, in the opinion of the court, without observing the requirements of the Criminal Procedure Code of the Russian Federation, were prepared on a commercial basis at the request of lawyers[329]; were paid for by the defendant (accused), and the conclusions of the

[326]Such situations are possible when giving opinions on medical issues, issues of psychology, psychiatry, etc.). Despite the fact that such a situation is not widespread, it may well take place in reality, since an expert is essentially a specialist with a more clearly defined range of functions (See: Denisov A.E. Specialist as a participant in criminal proceedings: diss. ... Cand. of Law. Moscow, 2009. P. 75).

[327]Rossinskaya E. R. Forensic examination in civil, arbitration, administrative and criminal proceedings: monograph. 4th ed., revised and enlarged. Moscow: Norma: INFRA-M, 2018.

[328]Zinin A. M. Participation of a specialist in procedural actions ... P. 26.

[329] The verdict of the Bagrationovsky Court of the Kaliningrad Region dated June 21, 2018 in case No. 1-31/2018 - https://sudact.ru/regular/doc/fzVF3GVmHjUR/?regular-txt=&regular-case_doc=1-31%2F2018&regular-lawchunkinfo=&regular-date_from=21.06.2018&regular-date_to=21.06.2018&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718198924255 (date of access 12.06.2024).

specialists were made on the instructions (order) of the defense[330]; The study was conducted on the initiative of a person interested in the outcome of the case, show a more loyal approach[331].

At the same time, the lack of interest of the specialist in the outcome of the case is revealed based on the rule regulating his/her challenge[332]. Indeed, individual grounds for challenging the specialist include the discovery of his/her incompetence and/or the presence of official or other dependence, for example, departmental or material, in the present and/or past. Also, a circumstance calling into question the impartiality, objectivity and fairness of the specialist is his/her previous interrogation in the same case (participation in the case) as a witness[333]. However, in practice, seeing the material dependence of the specialist on the defense attorney or the defendant who involves him/her, the persons conducting the criminal proceedings do not challenge the specialist, but evaluate the conclusion and/or testimony given by him/her as inadmissible (and sometimes even unreliable), with reference to his/her involvement by an interested party[334].

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[330] Verdict of the Volgograd Regional Court of August 5, 2019 in case No. 2-1/2019 – https://sudact.ru/regular/doc/5Jw5gbCZQTVw/?regular-txt=&regular-case_doc=2-1%2F2019&regular-lawchunkinfo=&regular-date_from=05.08.2019&regular-date_to=05.08.2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718623641285 (date of access 12.06.2024); Verdict of the Leninsky District Court of Kostroma dated February 21, 2020 in case No. 1-1/2020 - https://sudact.ru/regular/doc/N4vAgQzD6YZZ/?regular-txt=&regular-case_doc=1-1%2F2020&regular-lawchunkinfo=&regular-date_from=21.02.2020&regular-date_to=21.02.2020&regular-workflow_stage=&regular-area=1036&regular-court=&regular-judge=&_=1718623786829 (date of access 12.06.2024).

[331]Verdict of the Zadonsky District Court of the Lipetsk Region dated December 23, 2019 in case No. 1-42/2019 - https://sudact.ru/regular/doc/SRbmipzs2hlN/?regular-txt=&regular-case_doc=1-42%2F2019&regular-lawchunkinfo=&regular-date_from=23.12.2019&regular-date_to=23.12.2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718199170798 (date of access 12.06.2024).

[332]The rules on challenges make it possible to ensure the interests of justice in cases where the interest of a person participating in a case may influence its outcome (See: Zaitseva E.A. Procedural status of specialists ... pp. 77-86). At the same time, the law makes a reservation that the previous participation of a given person in the proceedings as an expert is not grounds for his or her challenge (See: Golovko L.V. Op. cit. p. 380). Also, the court has no right to refuse to satisfy a motion to interrogate a person who was previously involved in the investigation or trial of the case as an expert and who appeared in the court hearing at the initiative of any of the parties (See: Resolution of the Plenum of the Supreme Court of the Russian Federation [Electronic resource]: dated 19.12.2017 No. 51 "On the practice of applying legislation when considering criminal cases in the court of first instance (general procedure for legal proceedings)". Access from the reference legal system "ConsultantPlus" - date of access 12.06.2024).

[333]Resolution of the Constitutional Court of the Russian Federation of 11.07.2024 No. 37-P "On the case of verifying the constitutionality of Article 71 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of citizen E.V. Emelyanov" https://www.consultant.ru/document/cons_doc_LAW_480577/ (date of access 19.07.2024).

[334]See, for example: Verdict of the Oktyabrsky District Court of Belgorod dated May 29, 2019 in case No. 1-150/2019 - https://sudact.ru/regular/doc/qcLM6ysrlQWR/?regular-txt=&regular-case_doc=1-150%2F2019&regular-lawchunkinfo=&regular-date_from=29.05.2019&regular-date_to=29.05.2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718199282398; Verdict of the Babushkinsky District Court of Moscow dated July 27, 2018 in case No. 1-245/18 – https://mos-gorsud.ru/rs/babushkinskij/ (date of access 12.06.2024).

It remains unclear what prevents the law enforcement officer from using the tool of challenge in this case[335], which is directly provided for by law. We believe that material dependence on the interested party (provided for as a basis for challenge) is not equal to contractual dependence[336].

Accordingly, the fact of concluding an agreement between a specialist and a defense attorney and the fact of payment under the agreement do not indicate the presence of interest on[337] the part of the specialist, but merely record the defense attorney's appeal to a specific person with special knowledge, with a specific level of competence and under certain conditions.

In this regard, we believe it is necessary to make the following addition to Part 2 of Article 71 of the Criminal Procedure Code of the Russian Federation: "Previous participation of a person in criminal proceedings as an expert, as well as the existence of contractual relationships between the expert and other participants in the proceedings aimed at obtaining the expert's opinion and/or testimony, shall not be grounds for his/her challenge".

Thus, if the data provided by the specialist and the evidence being verified are related to the subject of proof in a criminal case, and the specialist who provided this evidence is not incompetent and/or dependent, then such evidence must be included, verified and assessed in conjunction with other evidence in the case.

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[335]Provided for by the provisions of Article 71 of the Criminal Procedure Code of the Russian Federation.

[336]Despite the fact that some authors believe that the terms of the agreement between the lawyer and the specialist on remuneration reveal elements of dependence, which can serve as grounds for challenge (See, for example: Bryanskaya E.V. The strength of evidence ... p. 248). As has already been noted earlier in this work, the engaged specialist acts only within the framework of a separate evidentiary action, where he has an exclusively scientific interest, which cannot be shaken by contractual dependence, since, when giving conclusions or testimony, the specialist is bound by the requirements of science, but not by the final result of the case. In this regard, there are opinions in the literature about the need to remove the conduct of examinations at the stage of preliminary investigation from "controlled" institutions, when state forensic institutions are subordinate to the same executive authorities as investigative bodies, inquiry bodies, for example, in the Ministry of Internal Affairs, the Federal Customs Service, the Federal Security Service of Russia, which negatively affects the independence of the expert and the expert institution, and the presence of expert units in the system of law enforcement agencies calls into question the evidentiary value of the conclusions of the forensic expert, set out in the expert opinion. At the same time, the official dependence of experts, as an argument for the inadmissibility of expert opinions, is rejected by the courts as untenable (See: Rossinskaya E.R. Forensic examination in civil ... 2018, Kalinovsky K.B., Konin V.V. On the issue of the independence of a forensic expert // Forensic expert. 2020. No. 1. Pp. 15-18; Prikhodko I.A., Bondarenko A.V., Stolyarenko V.M. Forensic examination ... Pp. 62-63).

[337] If a person with special knowledge does not have the intent to commit a crime (give a knowingly false conclusion or testimony).

§ 4. Evaluation of the expert's opinion and testimony

Any evidence is subject not only to verification, but also to assessment on general grounds, from the point of view of admissibility, relevance, reliability and sufficiency in their totality. In the sphere of proof, problems of collection and verification evidence obtained using specialized knowledge is not the only one. Being an autonomous element of proof, legally significant assessment of evidence remains the link between establishing the factual circumstances of the case by collecting evidence and key criminal procedural decisions[338].

Evaluation of evidence, as an element of proving, allows making reasoned procedural decisions on the case, since it is a mental activity of the subjects of proof to determine the strength and significance of each piece of evidence[339]. Proving is characterized by the distinction between the evaluation of individual pieces of evidence and their totality. This approach allows identifying good evidence at an intermediate stage, and subsequently making a final evaluation of their totality before making the corresponding criminal procedural decision. A proper assessment requires for its implementation the establishment of an appropriate legal criterion, which in Russian criminal proceedings, after the rejection of the theory of formal evidence, is exclusively the internal conviction of the person making the criminal procedural decision, based on the totality of the evidence examined, the law and conscience.

The expert's conclusion and testimony, as well as other types of evidence, are assessed by examining their properties, to which criminal procedural science refers relevance, admissibility, reliability and, in aggregate, sufficiency[340]. The assessment of evidence obtained using specialized knowledge is particularly complex, due to the

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[338]In modern evidence law, in the context of the fairness of judicial proceedings, the principle of loyalty of evidence (*loyaute´ de) is also distinguished. preve*), the most characteristic of the French doctrine, which assumes "openness" of the actions of the preliminary investigation bodies (speaking on their own behalf, notifying persons against whom criminal prosecution is being carried out about the fact of its implementation, about the meaning and purposes of the measures taken, that is, collecting evidence while observing human rights and respect for justice (See: Golovko L.V. Op. cit. P. 455, P. 469).

[339]Arsenyev V. D., Zablotsky V. G. Use of Special Knowledge in Establishing the Factual Circumstances of a Criminal Case. Krasnoyarsk: Krasnoyarsk University Publishing House, 1986. P. 46.

[340]As an additionally assessed property, some authors in the science of criminal procedure highlight such a property as the "strength (significance)" of evidence, which implies its evidentiary value, weight, logical persuasiveness as an argument (See: Orlov Yu.K. Modern problems of proof and the use of special knowledge in criminal proceedings: a scientific and educational manual. Moscow: Prospect, 2016. pp. 61–62).

specificity caused by the fact that the evidence is formed by a person who has specialized knowledge in the relevant area, and only a person who has the same knowledge can accept or reject it with arguments[341]. However, in the process of investigation and consideration of a criminal case, such a "relationship" is rarely observed, since neither the accused (suspect), nor the defense attorney, nor the investigator (inquiry officer), nor the prosecutor, nor the court, in the overwhelming majority, are considered persons with special knowledge[342], as a result of which, in the process of evaluation activities in relation to the object of evaluation (evidence), a certain "modification" occurs when it is transferred from the persons who "formed" the evidence to the persons conducting the proceedings on the case, to other participants in the proceedings and to the court.

Thus, the transformation of the perception of evidence, which complicates the assessment process, is inevitable. The expert's conclusion, as a type of evidence, despite the idea of it as something self-sufficient, objective and speaking "for itself", is in fact "an integral part of legal, social and technological practices" that form various interpretations of evidence during the preliminary investigation and in the judicial stages[343].

The additional complexity of the assessment activity in relation to the conclusion and testimony of a specialist is explained by the presence of a paradoxical moment in the use of special knowledge in legal proceedings, which consists in the fact that a person possessing such knowledge is hired to research (study) the materials (information) provided to him by a person who does not possess special knowledge (scientific or technical), but is empowered to evaluate the results of such a conclusion[344], without replacing knowledgeable persons and without intruding into the sphere of their competence[345].

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[341]Tarasov A. A. Expert and specialist in criminal proceedings in Russia: monograph. 2nd ed., revised and enlarged. Moscow: Prospect, 2017. P. 104.
[342]Tarasov A. A. Ibid.
[343]See: Maslovskaya E. V. Sociological analysis of the interaction of lawyers and forensic experts: theoretical and methodological approaches // Bulletin of RUDN. Series: SOCIOLOGY. 2008. No. 3. P. 408 - 409.
[344]For example, "the research part of expert opinions is a 'thing in itself', which cannot be either confirmed or refuted by criminal procedural means" (See, for example: Maslovskaya E.V. Op. cit. P. 405, Tarasov A.A. Op. cit. P. 102).
[345]Arsenyev V.D., Zablotsky V.G. Op. cit. P. 56.

This reveals the peculiarities of the assessment activity in relation to the conclusion and testimony of a specialist, caused by the lack of special knowledge of the persons assessing it.

Also, since even today there are no normatively established requirements for the form and content of a specialist's report, or for the procedure for interrogating him, the persons evaluating the said evidence do not even have formal criteria for recognizing a specialist's report as admissible, relevant and reliable evidence.

Accordingly, the fundamental characteristic of the expert's conclusion and testimony is the relevance to the investigation at the pre-trial or trial stages, and the need to formulate responses in such a way that their essence is understandable to all participants in the criminal proceedings[346].

The complexity of special knowledge forms the peculiarity and labor intensity of the assessment activity in relation to it, since, in this case, the legal field and the field of non-legal science are intertwined. The specialist presents a scientific solution to the questions posed to him, but in fact, participates in resolving legal issues (without resolving them in essence). Accordingly, consent to prepare a conclusion is a serious operation for a potential specialist, which, however, is not perceived as such by other participants in the process.

On the contrary, ordering the preparation of a conclusion by a specialist places it within a framework that is intuitively perceived by other participants in the process as "an expectation of predetermined results," which explains the biased attitude towards the conclusions of a specialist[347] presented by the defense and the reduction of their evidentiary value.

conclusion and testimony are often not recognized as having evidentiary value, despite the fact that the legislator does not make any reservations or establish any restrictions regarding this evidence. They are included in the number of criminal

[346]Since "from the standpoint of the organizational approach, legal proceedings are the result of collective efforts or interaction of actors representing different organizational units, and a specialist, transforming his special knowledge into evidence, within the framework of a separate evidentiary action participates in determining the guilt or lack thereof of a specific person (See: Maslovskaya E.V. Op. cit. P. 410).

[347]Unfortunately, "not all experts (specialists) and not always demonstrate such a level of professional consciousness that allows them to defend their knowledge of the subject and their own competence (See: Maslovskaya E.V. Op. cit. P. 410).

procedural evidence without any privileges or exceptions. Accordingly, the assessment must be carried out according to general rules, without applying criteria not established at the legislative level.

However, in practice, the status objectivity (impartiality) of an investigator or judge[348] is assumed by default, as well as the presence of sufficient knowledge to ask questions to a person with special knowledge, correctly determine the subject of the examination and even assess the scientific validity of the conclusion of a person with special knowledge[349]. In a similar situation for a lawyer, it is necessary to use an additional opinion of a person with special knowledge, which, as it were, "strengthens" the position of the lawyer, since the opinion of an experienced person seems more qualified to the subjects of proof [350], especially if documents confirming the competence of the specialist (copies of a diploma, certificates and certificates of advanced training) are attached to it[351].

But even despite such confirmations, the expert's conclusion is contrasted with the expert's conclusion, with a clear "preponderance" of evidentiary value in favor of the latter. For example, I. I. Trapeznikova believes that the expert's conclusion is not a source of evidence due to its substantive specificity and the information contained in it should be considered as reference information[352], while Z. V. Makarova and T. P. Ishmaeva call the expert's conclusion "second-class evidence[353]. "

This view is connected, among other things, with the widespread opinion that a specialist should not conduct research in principle, since this contradicts the path of

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[348]Despite the fact that impartiality is not associated with the internal properties of the individual, but with the professional field of which the investigator or judge is a part (See: Maslovskaya E.V. Op. cit. P. 412).

[349]Klassen N.A. Decree. op. P. 52.

[350]See: Kudryavtseva A. V., Popov V. S. Op. cit. P. 42. For example, E. A. Dolya notes that the judgments contained in the expert's opinion contribute to the correct understanding by the parties and the court of the facts and circumstances that are significant for the criminal case, the clarification of which in this new evidence requires special knowledge (See: Criminal Procedure: textbook / edited by V. P. Bozhev. Moscow, 2004. P. 200). N. A. Klassen points out that consultations with a specialist are necessary for the defense to file motions related to the participation of a specialist in investigative actions, with the appointment of an expert examination (See: Klassen N. A. Op. cit. P. 52).

[351]Lvova E. Yu. Interaction of a specialist and a defense attorney within the framework of criminal proceedings // Defense options within the framework of the new Criminal Procedure Code of Russia: materials of the scientific and practical conference of lawyers. Moscow, 2004. P. 49.

[352]Trapeznikova I. I. Special knowledge in criminal procedure of Russia (concept, features, structure): dis. … candidate of legal sciences. Chelyabinsk, 2004. P. 6.

[353]Makarova Z. V., Ishmaeva T. P. Evidentiary value of expert opinion in criminal cases // Materials of the International scientific and practical conference "Theory and practice of forensic examination in modern conditions". Moscow, 2007. P. 50.

historical development of the Russian (Soviet) institute of knowledgeable persons and "blurs" the line between an expert and a specialist[354].

While disagreeing with the above point of view, on the contrary, we believe that a specialist actively identifies the information sought[355], actually examines the materials and information provided to him, and makes logical conclusions using special knowledge. In this regard, Ya. V. Komissarova points out the need to amend the Criminal Procedure Code, directly granting the specialist the right to conduct research[356]. In her opinion, changes of this kind will be able to resolve the issue of verifying the scientific validity of an expert's conclusion, for the solution of which, often, a specialist is involved[357].

Special attention should be paid to the proposal by Ya. V. Komissarova on the need for a specialist to conduct research in cases where it is necessary to clarify issues from the field of science, technology, art or craft, where the implementation of higher professional education programs in Russia is not provided, as well as in the case of demand for knowledge from a field that has not previously been covered by the production of examinations[358], since, in situations where we are talking about an examination for which experts have not yet been trained[359], a specialist who has the right to conduct research is an obvious way to solve the problem. Agreeing with this proposal, we believe that an independent direct indication in the law that a specialist *has the right* (italics added) to conduct research will exclude "manipulation" on the part of persons authorized to evaluate evidence in a criminal case.

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[354]Zaitseva E. A. Application of Specialized Knowledge through the Prism of the Federal Law of March 4, 2013 No. 23-FZ // Legislation and Economics. 2013. No. 6 (350). P. 32. Moreover, there is an opinion that the conclusion of a specialist in relation to the expert's conclusion plays a supporting role, allegedly due to the fact that the judgments of a specialist cannot be of the same categorical and absolute nature as the conclusions of an expert.

[355]Sheifer S. A. Investigative actions: system and procedural form. M. 2011. P. 136.

[356]See: Komissarova Ya. V. On the Issue of the Grounds for Distinction between the Procedural Status of an Expert and a Specialist as Participants in Criminal Proceedings // Bulletin of the O. E. Kutafin Moscow State Law University (MSAL). 2017. No. 5. P. 140; Kirillova N. P. Procedural Functions of Professional Participants in Adversarial Trials of Criminal Cases in the Court of First Instance: dis. ... Doctor of Law. St. Petersburg, 2008).

[357] The proposal put forward by Ya. V. Komissarova can be considered revolutionary, since most proceduralists do not allow the possibility of conducting research by a specialist. In our opinion, this is explained by the fact that often, in such cases, the possibility of forming a specialist's conclusion on the initiative of the defense is not taken into account. It remains unclear whether the proposed change will resolve this conflict, since the issue of distinguishing between the concepts of "research - judgment" lies rather in the practical plane than in the legal one.

[358]Komissarova Ya. V. Op. cit. P. 140.

[359]Zaitseva E. A. The concept of development of the institute of forensic examination in the context of adversarial criminal proceedings: diss. … Doctor of Law. Moscow, 2008. P. 348-349.

Since participants in criminal proceedings have a very incomplete understanding of the modern possibilities for obtaining evidentiary information, thanks to which a specialist is able to point out errors in the collection (detection, recording, seizure) of objects that may subsequently become material evidence[360], judges, in most cases, prefer to reject motions to involve specialists in the process.

When an expert does take part in the proceedings, his testimony and conclusion, as some judges admit, are assessed by them as auxiliary, incomplete, semi-evidence, which has no evidentiary value in itself[361]. For example, in the criminal case against D. V. Granev[362], the expert's conclusion, like his testimony, was examined during the trial, but was not taken into account as evidence that has independent evidentiary value. The appellate ruling of the Supreme Court of the Russian Federation dated September 3, 2019 in the case against Ali Abdul-Mutalipovich Gekhaev, convicted under Part 1 of Article 205[1] of the Criminal Code of the Russian Federation, indicated that the experts' conclusions and testimony were not recognized by the court of first instance as admissible on good grounds, since they were given by the experts not only outside their competence established by Part 1 of Article 58 of the Code of Criminal Procedure of the Russian Federation, but also contradict the circumstances of the case[363], while information on how competence and going beyond its limits were determined in the judicial act is not provided[364].

Thus, in court decisions, information about the involvement of a specialist by the defense is often indicated formally, without influencing the final decision on the case. And the exclusion of the expert's opinion presented by the defense from the evidence in

[360]Rossinskaya E. R. Use of specialized knowledge in advocacy (in criminal and civil cases, cases of administrative offenses) // Professional activity of a lawyer as an object of forensic research. Ekaterinburg, 2002. P. 111.
[361]Leskovets M.A. Delimitation of the competence of an expert and a specialist by the level of solving expert problems // Bulletin of SUSU. 2007. No. 18. P. 56-57.
[362]Cassation ruling of the Supreme Court of the Russian Federation dated January 22, 2013 in case No. 9-012-65 [Electronic resource]: Access from the reference legal system "ConsultantPlus".
[363]Appellate ruling of the Supreme Court of the Russian Federation dated September 3, 2019 in case No. 205-APU19-27 [Electronic resource]: Access from the reference legal system "ConsultantPlus".
[364]In this case, we can see the implementation of the “classical approach” to the conclusion and testimony of a specialist as evidence, which demonstrates the denial of their evidentiary value according to the criteria that are actually applied by the courts, without being enshrined in law.

the case is justified by the fact that the order and payment for the specialist's work in such cases is made by the interested party[365].

At the same time, the expert's conclusion and testimony are subject to evaluation according to the general rules of criminal procedure, which stipulate the need for the investigator and the court to evaluate any evidence in full in order to establish the validity, admissibility, reliability, and significance of the evidence for the case. Of course, the evaluation must take into account the specifics of each piece of evidence, but the initial provisions of the evaluation and its goals are the same for any evidence[366].

In the case of a specialist's conclusion and testimony, the specificity is manifested, first of all, in the absence of normative regulation of the requirements imposed on the form of the specialist's conclusion and the procedure for giving testimony by the specialist. The law enforcement officer, in fact, has no reference point for assessment, which leads to a diminution of the evidentiary value of the evidence given by the specialist[367].

The provision of a specialist's opinion, in accordance with Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation, requires that it be presented in written form, similar to an expert's opinion, however, no additional requirements are specified in the law regarding it[368]. The absence of a clear form of the expert's opinion and testimony blurs the very concept of evidence.

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[365] The results of judicial practice on this issue were presented by the author in a report at the International Scientific Conference "Modern Legal Monitoring: Results and Prospects" (St. Petersburg, June 22-23, 2022) . Also, the issues of "financial dependence" of a specialist on the initiator of the preparation of the opinion were repeatedly cited in his works by Yu. P. Garmaev (See: Garmaev Yu. P. Op. cit. pp. 37-39).

[366] Theory of evidence in the Soviet … P. 224.

[367] This is discussed in detail in Chapter 1 of this work.

[368] The scientific literature contains various recommendations on this issue, at the same time, they cannot be considered unambiguous. For example, V. F. Orlova emphasizes that "the structure of the expert's report should differ from the structure of the expert's report, which is determined by Art. 204 of the Criminal Procedure Code of the Russian Federation, and the expert's report should not contain a research section" (See: Orlova V. F. Problems of Application of Updated Legislation in the Field of Forensic Expertise // Current Problems of Theory and Practice of Forensic Expertise. Reports and Communications at the International Conference "East - West: Partnership in Forensic Expertise". Nizhny Novgorod. September 6 - 10, 2004. Moscow - Nizhny Novgorod, 2004. P. 8); A. V. Kudryavtseva, on the contrary, points out that “the conclusion must contain a research section, since one of the signs of admissibility and reliability of evidence must be the verifiability of the information provided in the conclusion” (See: Kudryavtseva A. V. Levels of problem solving as a basis for distinguishing between the competence of an expert and a specialist // 50 years of the criminal procedure department of the Ural State Law Academy (SUI). Materials of the international scientific and practical conference. Yekaterinburg, 2005. Part 1. P. 488); A. M. Zinin is of a similar opinion, pointing out that “the conclusion of a specialist is an act of research as a process of applying his specialized knowledge to a specific case of studying an object, subject, document, circumstances of the case, etc.” (See: Zinin A. M. Participation of a specialist in procedural actions ... P. 52).

In this regard, the opinion is expressed in science that the norms of the criminal procedure code should reflect the mandatory components of the expert's opinion, since the absence of such may lead to the recognition of this evidence as inadmissible in accordance with Part 2 of Article 88 of the Criminal Procedure Code of the Russian Federation[369]. And the enshrinement in the law of the form of the expert's opinion[370] will ensure the possibility of assessing its admissibility, relevance, and reliability[371].

The evidentiary value of a specialist's opinion must be determined by its validity, completeness, persuasiveness, i.e. objective qualities[372]. In all cases, a specialist's opinion and testimony must be assessed in conjunction with other evidence, but without unjustified preference for any of it. At the same time, in practice there are cases when a specialist's opinion is assessed not in conjunction with other evidence, but in comparison with other evidence. Thus, the court rejects the testimony of specialists and their opinions (denies them credibility) and recognizes the expert opinion contained in the case materials as credible, since, in the court's opinion, they were compiled by a highly qualified expert[373]. Or it refuses to recognize the expert's opinions as evidence and to evaluate them as such in a criminal case, since it believes that the specified studies do not meet the requirements of the Criminal Procedure Code of the Russian Federation for evidence and were not conducted within the framework of the criminal case under consideration[374].

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[369]Semenov E. A. Legal status and legal regulation of specialist participation in criminal proceedings: theoretical, procedural and organizational aspects: monograph / E. A. Semenov, V. F. Vasyukov, A. G. Volevodz; edited by A. G. Volevodz; Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation, Department of Criminal Law, Criminal Procedure and Forensic Science. Moscow: MGIMO - University, 2020. P. 176.

[370]See: Vatutina, O. Yu. Forms of specialist participation in criminal procedural proof / O. Yu. Vatutina // Judicial power and criminal procedure. - 2024. - No. 1. - P. 71-76.

[371]See, for example: Eremin S. N. Expert opinion as a new type of evidence in criminal proceedings: diss. … candidate of legal sciences. Moscow, 2005. P. 92.

[372] For example, for an expert's conclusion, this requirement is manifested in the analysis of the conclusion without "discounting" on authority (See: Theory of evidence in the Soviet… P. 225).

[373]Verdict of the Leninsky City Court of Novosibirsk dated October 3, 2017 in case No. 1-478/2017 - https://sudact.ru/regular/doc/e3MSV7cKXv5O/?regular-txt=&regular-case_doc=1-478%2F2017&regular-lawchunkinfo=&regular-date_from=03.10.2017&regular-date_to=03.10.2017&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718198211628 (date of access 12.06.2024).

[374]See, for example: Verdict of the Aksay District Court of the Rostov Region dated 11.12.2017 in case No. 1-104/2017 - https://sudact.ru/regular/doc/kcl3wF12eoHx/?regular-txt=&regular-case_doc=1-104%2F2017&regular-lawchunkinfo=&regular-date_from=11.12.2017&regular-date_to=11.12.2017&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718198413074; Sentence of the Nizhny Novgorod Garrison Military Court of March 27, 2019 in case No. 1-111/2018 - https://sudact.ru/regular/doc/IWEs8HUVVDZl/?regular-txt=&regular-case_doc=1-111%2F2018&regular-lawchunkinfo=&regular-date_from=03/27/2019&regular-date_to=03/27/2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718198471824; Verdict of the Kstovsky City Court of the Nizhny Novgorod Region dated July 3, 2020 in case No. 1-502/2019 - https://sudact.ru/regular/doc/YY4DXSsWtNHQ/?regular-txt=&regular-case_doc=1-502%2F2019&regular-

That is, in fact, the courts recognize the expert's opinion and testimony as inadmissible evidence in the case without directly indicating this .

Reliability is the most complex component of the assessment. It is not easy to assess the reliability and validity of the conclusions obtained as a result of a study based on specialized knowledge that the subject of the assessment does not possess[375]. And in the absence of any regulatory requirements for the evidence provided by the specialist, law enforcement officers limit themselves to assessing the validity of the conclusions of the opinion and the consistency (non-contradiction) of the expert's opinion and testimony with the evidence available in the case (including other opinions) . But, unfortunately, such an assessment is not given in favor of the expert's opinion and testimony. The courts believe that the evidence provided by the specialist does not have sufficient argumentation[376], the conclusions of the opinions are based on assumptions, and the opinions themselves are inconsistent with the case materials, contradict the evidence of the defendant's guilt available in the case materials, and therefore the reliability of such evidence raises doubts[377].

Of course, in modern criminal proceedings, the assessment of evidence is a mental process of the judge, the result of his conviction, and the assessment of evidence, having

lawchunkinfo=&regular-date_from=07/03/2020&regular-date_to=07/03/2020&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718197811686 (date of access June 12, 2024).

[375]Orlov Yu. K. Modern problems of proof and use ... P. 175.

[376]However, the lack of sufficient argumentation can be eliminated by questioning a specialist.

[377]See, for example: Verdict of the Shchuchansky District Court of the Kurgan Region dated 06/05/2021 in case No. 1-102/2020 - https://sudact.ru/regular/doc/RYTwVCeIkQWp/?regular-txt=&regular-case_doc=1-102%2F2020&regular-lawchunkinfo=&regular-date_from=&regular-date_to=&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718197642596; Verdict of the Kstovsky City Court of the Nizhny Novgorod Region dated July 3, 2020 in case No. 1-502/2019 - https://sudact.ru/regular/doc/YY4DXSsWtNHQ/?regular-txt=&regular-case_doc=1-502%2F2019&regular-lawchunkinfo=&regular-date_from=07/03/2020&regular-date_to=07/03/2020&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718197811686; Verdict of the Leninsky District Court of Cheboksary dated March 13, 2019 in case No. 1-15/2019 - https://sudact.ru/regular/doc/2TEMoYoVrwgQ/?page=2&regular-court=&regular-date_from=13.03.2019&regular-case_doc=1-15%2F2019&regular-lawchunkinfo=&regular-workflow_stage=&regular-date_to=13.03.2019&regular-area=&regular-txt=&_=1718197904561&regular-judge=; Sentence of the Uvarovsky District Court of the Tambov Region dated May 29, 2019 in case No. 1-46/2019 - https://sudact.ru/regular/doc/9jbHvGz2Bu6V/?regular-txt=&regular-case_doc=1-46%2F2019&regular-lawchunkinfo=&regular-date_from=05/29/2019&regular-date_to=05/29/2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718197961450; The verdict of the Artemovsky City Court of the Sverdlovsk Region dated May 22, 2019 in case No. 1-272/2018 - https://sudact.ru/regular/doc/N7imDBs6i8ZC/?regular-txt=&regular-case_doc=1-272%2F2018&regular-lawchunkinfo=&regular-date_from=05/22/2019&regular-date_to=05/22/2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718198034537 (date of access June 12, 2024).

become a mental activity, requires the participation of critical thought[378]. It is the conclusion and testimony of a specialist that allows "strengthening" that very critical thought, since the court itself does not have the necessary special knowledge. At the same time , in practice, the conclusion of a specialist is not perceived as independent evidence. And, since the possibility of activity on assessment for a specialist is not recognized[379], his conclusions and testimony (especially of a reviewing nature) are assessed as inadmissible .

Despite the fact that the concept of a “scientific judge” has long been rejected[380], its “reverse” implementation is currently observed, when not only increased requirements are applied to the conclusion and testimony of a specialist, but also requirements that are not provided for by law at all, in violation of the provisions on the assessment and verification of any evidence on a general basis, according to the same rules as any other evidence.

[378]Personal trust or authority, as independent factors of the law of evidence, according to I. Ya. Foinitsky, are increasingly losing their significance (See: Foinitsky I. Ya., Course in Criminal Procedure, St. Petersburg, 1899, Vol. II , p. 230).
[379]Verdict of the Babushkinsky District Court of Moscow dated July 27, 2018 in case No. 1-245/18.
[380]Orlov Yu. K. Modern problems of proof and use ... P. 168.

CHAPTER 3. FEATURES AND PROBLEMS OF USING THE OPINION AND TESTIMONY OF A SPECIALIST INVITED BY THE DEFENSE

§ 1. Features of obtaining the opinion and testimony of a specialist invited by the defense

The fact that the defense attorney is the subject of proof is not denied today. The defense attorney is endowed with certain rights in the area of proof, primarily the right to collect and present evidence[381]. The right of the defense to collect and present evidence corresponds to the obligation of the bodies and officials conducting criminal proceedings to consider each petition filed in connection with the examination of evidence[382].

At the same time, the defense attorney's activity in proving has its own characteristics that distinguish it from the specifics of similar activities of other professional participants in the process. Such characteristics include the ethical side of the defense attorney's activity (subordination to a set of mandatory ethical rules), the defense attorney's professional legal knowledge (special legal knowledge) [383], the absence of an obligation to prove the defendant's innocence, due to the principle of the presumption of innocence and the presence of a private interest in the outcome of the case[384].

At the same time, despite the absence of a declared duty to prove innocence, the powers of the defense attorney do not exclude, but on the contrary, presuppose his active

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[381]However, L. V. Golovko notes that "Part 3 of Article 86 of the Criminal Procedure Code of the Russian Federation contains an inaccuracy: the defense attorney does not collect evidence, but, along with other participants in the process, petitions for the inclusion in the case of the materials he has received, which become evidence after the relevant decision is made by the person conducting the proceedings. In other words, he participates in proving in the manner established by Part 2 of Article 86 of the Criminal Procedure Code of the Russian Federation" (See: Golovko L. V. Op. Works. Pp. 465-466). It should also be noted that the scientific community is not unanimous in recognizing the defense attorney as the subject of proof, responsible for its progress and results.

[382]Ruling of the Constitutional Court of the Russian Federation on the complaint of P.E. Pyatnichuk dated December 21, 2004 No. 467-O [Electronic resource]: Access from the reference and legal system "ConsultantPlus".

[383]Kolokolov N.A. Op. cit. P. 198.

[384]The presence of a personal (private) interest on the part of the defense allows us to classify its participants as a special group of subjects of proof, consisting of persons defending the interests of other persons, representing someone’s personal interest and not only having the right, but also obliged to take part in the proof (See: Nasonova, I.A., Sidorova, E.I. On subjects of proof in criminal proceedings in Russia / I.A. Nasonova, E.I. Sidorova // Bulletin of the Voronezh Institute of the Ministry of Internal Affairs of Russia. - 2021. - No. 2. - P. 237; Kokorev, L.D., Kuznetsov N.P. Criminal proceedings: evidence and proof: monograph / L.D. Kokorev, N.P. Kuznetsov. - Voronezh: Publishing House of Voronezh University, 1995. P. 230; Vatutina O.Yu. Specialist as a participant in a separate evidentiary actions // Collection of results of the III International scientific and practical conference Kazan criminal procedure and forensic readings . Kazan. 2024).

role in defending the interests of the client[385]. After all, the lawyer's lack of activity, along with the absence of the burden of proving innocence, may entail unfavorable consequences for the defendant. At the stage of preliminary investigation, the defense attorney may be denied satisfaction of any unfounded motion. It is impossible to refuse only a motion to involve a specialist in the case (by virtue of a direct indication in the law - Part 2.1 of Article 58 of the Criminal Procedure Code of the Russian Federation), as well as a motion to conduct a confrontation in order to challenge the testimony of victims and witnesses (by virtue of the prohibition established by law on the disclosure of such testimony in the event of a refusal to satisfy the defendant's stated motion - Part 2.1 of Article 281 of the Criminal Procedure Code of the Russian Federation). At the same time, the lack of equality of opportunity between the parties at the stage of preliminary investigation is natural and explains the reason for the maximum activity of the defense attorney in proving at the trial stages (in comparison with pre-trial stages). The activity of the defense attorney is manifested, among other things, in activities aimed[386]at challenging the evidence underlying the accusation; finding and providing, during the preliminary investigation or trial, information refuting the accusation, circumstances mitigating the guilt of the defendant[387].

In fulfilling his/her duty to actively participate in proving, the defense attorney has the right to involve a person who is not a subject of proof in the strictly procedural sense (a person conducting the proceedings on the case or a party), but who is capable of assisting in proving - a specialist.

By engaging a specialist, the defense attorney receives conclusions and testimony from him, as from a participant in a separate evidentiary action[388].

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[385]The defense attorney, in view of the obligation to carry out defense activities in the form of proving, taking an active part in the examination of evidence, in its assessment, actively using in the interests of the accused, the victim all the methods and means provided by law for a comprehensive, complete and objective clarification of the circumstances of the case (See: Kokorev, L.D., Kuznetsov N.P. Criminal Procedure: Evidence and Proving ... P. 232; Advocacy / under the general editorship of Cand. Sci. (Law) V.N. Burobin. - 2nd ed., revised and supplemented - M .: "IKF" EKMOS ", 2003. P. 377).

[386]At the same time, the activity of the defense attorney is limited by his lack of authority. It is generally recognized that the effective collection of evidence is almost inevitably associated with the restriction of the constitutional rights of the individual and must remain the prerogative of the official (public) authorities. Golovko L. V. Op. cit. P. 466.

[387]Kolokolov N.A. Op. cit. P. 202.

[388]Even before recognizing the status of evidence for the conclusion and testimony of a specialist, and the status of an independent participant in criminal proceedings for the specialist, V. D. Arsenyev and V. G. Zablotsky noted that the specialist acts as a subject of proof, participating in all three elements of it - the collection, examination and evaluation of evidence. (See: V. D. Arsenyev, V. G. Zablotsky, op. cit., p. 71).

Received And represented by the defense conclusion specialist (Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation) may be directed to express his opinion on issues put to him that fall within his professional competence (Part 2.1 of Article 58 of the Criminal Procedure Code of the Russian Federation), including those related to identification of possible incompleteness produced expertise, the groundlessness or inconsistency of expert opinions conclusions, as well as the discrepancy between the methods used, the professional competence of the expert and the strict criteria of scientific validity[398] .

In this case, the defense attorney independently[389] selects a person with special knowledge (assessing his competence), poses questions to him (formulates the task of the investigation), and determines the presence or absence of grounds for his challenge.

In essence, when giving an opinion, the specialist enters into legal relations of proof with the defender, who, with the aim of obtaining a certain scientific evidence, provides information, data and, in some cases, objects for research, establishes its limits (raises questions). Within the framework of these relations, the specialist is guided by the requirements of science, his experience and professional competencies, and the defender is guided by the requirements of the law (guided on order appointments and conducting trials examinations), their personal experience and professional competencies, including for the search for a specialist[390] capable of giving an opinion and/or testimony, since there is currently no single government body, division, institution, or register of specialists (experts) in the Russian Federation[391].

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[389]See, for example: Golovko L. V. Op. cit. P. 505; Zaitseva E. A. Implementation of Adversarial Principles in the Application of Specialized Knowledge in Criminal Proceedings: Monograph. Volgograd: VA MVD of Russia, 2006. Pp. 127, 132; Lazareva V. A. Proof in Criminal Procedure: A Textbook-Practical Guide. Moscow, 2009. P. 165; Vatutina, O. Yu. “Adversarial Expertise” in Russian Criminal Procedure / O. Yu. Vatutina // Law and Power. 2021. No. 2. Pp. 26–29; Ivanov V. V. Use of an Expert Opinion by a Defense Attorney in Proving // Bulletin of the Samara Humanitarian Academy. Series “Law”. 2007. No. 1. P. 128.

[390]Websites and organizations on the Internet that unite experts and expert organizations on a private, voluntary basis in SRO systems, registries of institutions, etc.

[391]The literature repeatedly suggests changing the departmental subordination of expert institutions, for example, by creating a special body (the Forensic Expertise Committee) under the Government of the Russian Federation, transferring all forensic institutions of law enforcement agencies to its subordination (See: Kudryavtseva A.V. On the System of State Expert Institutions // Bulletin of the South Ural State University. Series "Law". Issue 2. 2002. No. 4 (13). Pp. 73-78; Bykov V. Legal Status of an Expert and the Head of an Expert Institution // Criminal Procedure. 2008. No. 2. Pp. 51-54). It is worth noting the experience of the Republic of Belarus, where the State Committee of Forensic Examinations of the Republic of Belarus (https://sudexpert.gov.by) was established , which does not investigate criminal cases and to which a significant part of state forensic organizations have been transferred (See: Prikhodko I.A., Bondarenko A.V., Stolyarenko V.M. Forensic examination ... P. 68). More details later in this chapter.

The issue of obtaining expert testimony (interrogation) by the defense attorney deserves special attention. The absence of a normative consolidation of the procedure for engaging an expert by the defense attorney, if not deprives, then significantly limits the defense in its procedural possibilities. In this regard, the question arises as to the procedural order in which the expert's interrogation should be conducted, since such a type of evidence as expert testimony is provided for by law, but not a word is said about how his interrogation is conducted[392].

Despite the fact that the procedure for engaging a specialist for interrogation is not regulated, it is obvious that their testimony is given independently of the conclusion. The testimony of a specialist may be considered as an independent means of proof along with the specialist's conclusion or serve as a means of explaining or clarifying it (Part 4 of Article 80 of the Criminal Procedure Code of the Russian Federation)[393].

At the same time, there is a point of view according to which, if the expert's opinion is received on the initiative of the defense, i.e., comes from a non-power subject, then its introduction into the system of evidence is possible only through interrogation of the person who gave it by power participants in criminal proceedings[394]. It is assumed that, in this way, it is possible to ensure both greater reliability of the expert opinions received by the defense and maximum "trust"[395] in them[396].

Without disputing the rationale for the stated thesis, we believe that its normative regulation is unnecessary, in view of the established and well-established judicial

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[392]Yu. K. Orlov calls this problem a "legislative gaffe". The Supreme Court attempted to resolve it by indicating the need to interrogate a specialist "according to the rules for interrogating a witness", however, today this provision has been excluded from the relevant Resolution of the Plenum of the Supreme Court of the Russian Federation and the situation is resolved exclusively by law enforcement, which is not well-established and uniform. The rule provided for in the previous version of the RF Supreme Court Resolution No. 28 is still applied, regarding which Yu. K. Orlov emphasizes: interrogation should be carried out not as a witness, but only according to the rules for interrogating him, thereby indicating the unresolved nature of the procedural situation (See: Orlov Yu. K. Op. cit. P. 113).

[393]See: Zinin A. M. Op. cit. P. 53; Stepanov V., Shapiro L. G. Testimony of a specialist in criminal proceedings // Criminal procedure. 2005. No. 4. P. 82; For example, A. A. Tarasov sees the “autonomy” of a specialist as a “shortcoming” of the legislator, and considers it necessary to introduce into legislation an imperative rule on the mandatory interrogation of a specialist who has given an opinion, by analogy with an expert (See: Tarasov A. A. Op. cit. P. 108).

[394]Kudryavtseva A. V., Morozova Yu. A. Procedural status of an expert and a specialist: general and specific // Differentiation of criminal proceedings as a guarantee of ensuring the rights of participants in criminal proceedings: a collection of scientific articles. Chelyabinsk: Cicero, 2015. P. 31-32.

[395]As “explainable reasons for mistrust” of the “conclusions” presented by the participants in the process, A. A. Tarasov points to “the widespread fact in practice that many specialists irresponsibly write in their conclusions what is wanted of them, without risking being caught in professional incompetence or dishonesty (See: Tarasov A. A. Op. cit. P. 109).

[396] The reliability of a specialist’s conclusion can only be assessed based on the results of his interrogation with a warning about criminal liability for knowingly giving false testimony (See: Tarasov A.A. Op. cit. P. 109).

practice, according to which the interrogation of a specialist, whose conclusion is presented in the materials of a criminal case, can be carried out at the request of the participants in the process and is carried out in most cases[397].

But, just as in the case of a specialist's opinion, in practice, both the parties and the court have no understanding of why this particular specialist is being brought in to participate in the case, what the defense attorney was guided by (due to the lack of regulations) when bringing him in, whether the defense attorney familiarized the specialist with the case materials and in what form, and how all these circumstances can (and can they, at all) affect the quality of the testimony given by the specialist and the possibility of its full use in evidence.

Thus, by engaging a specialist to give testimony, the defense attorney (as well as the prosecutor and the court), while carrying out the proof, tries to ensure a critical analysis of the expert's conclusion (or his testimony) contained in the case materials by another knowledgeable person, introducing into the process of proof in a criminal case the opinion of another professional regarding the same questions that were put to the experts , realizing the possibility of checking and rechecking the relevant professional opinions[398].

§ 2. Reasons for the emergence and conditions for resolving problems of using the opinion and testimony of a specialist invited by the defense in Russian criminal proceedings

For a long time, the subject of close attention was the question of whether there are really grounds to assert that the conclusion and testimony of a specialist represent an independent type of evidence[399], answering which, they came to the conclusion that a new

[397]In their practice, 84% of the surveyed investigators (Appendix No. 2, p. 191), 66% of the surveyed prosecutors (Appendix No. 4, p. 198), and 86% of the surveyed lawyers (Appendix No. 6, p. 207) resort to interrogating a specialist.

[398]Tarasov A. A. Anti-corruption aspect of some theoretical problems of modern criminal procedure in Russia // Legal problems of strengthening Russian statehood: Collection of articles / edited by M. K. Sviridov. Part 29. Tomsk University Publishing House. 2005. P. 12.

[399]Zazhitsky V. I. Conclusion and testimony of a specialist in the system of evidence law // Russian Justice. 2007. No. 9. P. 57

independent type of evidence has not appeared in the domestic law of evidence[400], and the use of the conclusion and testimony of a specialist as a means of proof in criminal proceedings is capable of leading law enforcement officers into the realm of assumptions incompatible with the concept of evidence[401]. Some authors went further and assumed that proving through the use of the conclusion and testimony of a specialist can lead to investigative and judicial errors[402], and the very fact of their use in proving was defined as a substitution of evidence in a criminal case and the introduction of disharmony into the law of evidence[403].

At the same time, granting the specialist invited by the defense the status of a participant in criminal proceedings, and his conclusion and testimony the status of evidence[404], made it possible to speak about the manifestation of the convergence of[405] the continental and Anglo-American types of criminal proceedings within the framework of a separate institution of criminal proceedings[406], about the implementation in Russian criminal proceedings of an "alternative examination of the Anglo-American (Anglo-Saxon) type[407]".

The Anglo-American model of expertise has the properties of the Anglo-American type of criminal procedure based on the principles of adversarial proceedings, which in a simplified form is reduced to a dispute between two procedurally equal parties before an impartial court. Such a dispute between the parties may consist of both a dispute between experts and a dispute between the scientific opinions they present, which is why,

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[400]Bezlepkin B. T. Criminal Procedure of Russia. Textbook. Moscow, 2004. Page 205.
[401]Bezlepkin B.T. Decree. op. P. 207.
[402]Khitrova O. V. Expert's conclusion and testimony - new evidence in criminal proceedings // Materials of the international scientific and practical conference "Criminal Procedure Code of the Russian Federation: a year of law enforcement and teaching". Moscow, 2003. P. 153.
[403]Zazhitsky V. I. Op. cit. P. 58.
[404]Which did not give rise to a unanimity of opinion regarding the procedural nature and purpose of the expert's opinion (See: Tetyuev S. V. Expert's opinion: problems of use in criminal procedural proof // Investigator. 2010. No. 6. pp. 29–30).
[405] Convergence is a kind of cultural interaction accompanied by the transfer and adaptation of legal models from other countries.
[406] As a circumstance confirming the existence of the Russian model of forensic examination, as a result of the convergence of the continental and Anglo-American models of examination, is the form of interrogation of a specialist, which in Russian criminal proceedings is carried out according to the rules of interrogation of a witness (by analogy with the Anglo-American process, which provides for an expert witness .
[407]Assistance to the parties in the Anglo-American process is carried out in the form of the participation of an expert witness in criminal proceedings and the execution of the work carried out by him, the conclusion of the expert witness, which is consistent with the participation of a specialist, the preparation and/or presentation of his conclusion, which is characteristic of modern Russian criminal proceedings (See: Golovko L.V. Op. cit. P. 506).

in relation to the Anglo-American model of forensic expertise, the term "adversarial expertise" is often used along with the term "Anglo-American expertise[408]".

Despite the fact that in most continental legal orders (such as France and Germany), borrowed institutions of criminal procedural law do not take root, in Russian criminal proceedings, which are initially different from related continental legal orders[409], borrowings occur differently, are "integrated" into the process in a different way and lead to different results[410].

For example, the defense in the Russian process has both the right to present its own specialist and/or his opinion in the case, and retains the opportunity to participate in the appointment and conduct of an examination initiated by the person conducting the proceedings[411]. Thanks to borrowings, the institute of special knowledge in the Russian criminal process is developing in a special way , which assumes a specific system of interrelation and interdependence between the prosecution and defense in proving[412]. Thus, the "expert on the defense side", inherent in the Anglo-American process, is designated as a specialist[413], but differs from an expert formally. There is no material difference between an expert and a specialist, since both are specialists in the broad sense, whose actual role (implementation of specific functional duties in the process) is expressed in providing assistance to the parties.

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[408]Samuticheva E. Yu. Expert opinion and its assessment in criminal proceedings (comparative legal study): diss. … can. jurid. sciences. Moscow, 2015. P. 55.

[409]In accordance with the Constitution of the Russian Federation, criminal proceedings in Russia, as a process of a "democratic federal legal state", belong to the adversarial type , however , in reality, the process is mixed.

[410]Russian criminal procedure does not need new direct legal borrowings, but there is an objective need to use the experience of implementing general criminal procedural strategies (See: Criminal procedural strategies (general models) combine models of criminal proceedings according to target and functional characteristics (See: Stoyko N. G. Op. cit. P. 250).

[411]That is, a defense attorney in Russian criminal proceedings today has the opportunity to use various procedural tools that allow him to level out the shortcomings of the borrowed Anglo-American type of expertise, implementing a specific model of forensic examination. Preserving the specifics of the continental legal system in Russian criminal proceedings is reasonable, since all types of criminal proceedings are relatively flexible and therefore they can be improved without resorting to radical changes (See: Redmayne M. Opt . cit . P. 201) .

[412]In the currently accepted, by the Institute of Specialized Knowledge of the Russian Criminal Procedure, adversarial principles, do not classify the Russian model of forensic examination as an Anglo-American type, on the contrary, given its specificity, it can be noted that in theoretical terms, today it is much closer to the ideal "adversarial" model of forensic examination than the Anglo-American model (automatically classified by belonging to the type of process) (See: Vatutina, O. Yu. "Adversarial examination" in Russian criminal proceedings / O. Yu. Vatutina // Law and power. 2021. No. 2. Pp. 26 - 29).

[413]Despite the fact that "one of the distinctive features of the Anglo-American legal system is the absence of a specialist among the participants in criminal proceedings and the legislator even indirectly does not mention this participant (See: Latypov V.S. Op. cit. P. 59).

At the same time, the continental type of process rejects the adaptation of the Anglo-American model of forensic examination as alien, including because the "standard" Anglo-American adversarial system in practice demonstrates "poor adaptation" of the Anglo-American approach to the use of specialized knowledge in criminal proceedings, in principle[414]. Even in an adversarial process, the parties de facto are in an unequal position when appointing and conducting an expert examination: the defense receives objects for examination in a modified form (after the prosecution); the defense does not have guaranteed financial assistance from the state; the defense is limited in time to find (attract) its own expert[415]. Moreover, in practice, a theoretically independent and objective expert, obliged to provide assistance to the court and jury, in fact, aims to support the position of the party on whose initiative he is involved in the process. Inequality also depends on the financial capacity of the party engaging the expert and cultivates the position that a more "effective" expert is more expensive. As a consequence, the activities of the parties in proving have an opposite vector of direction in relation to each other and work exclusively to defend the presented position, and the adversarial nature of the forensic examination (the discrepancy between the expert testimony) is formed not in connection with the complexity and controversial nature of the issue, but in connection with the activity (sometimes dishonesty) of the experts defending the position of interest, the party they represent, due to a special disposition towards it [the party][416]. Thus, the Anglo-American adversarial nature[417], elevated to the status of a standard, in reality does not meet this high standard.

Only the possibility of each of the parties to really compete in providing and examining evidence obtained using specialized knowledge will ensure verification of the scientific validity and verifiability of the conclusions obtained on the basis of scientific

[414]Damaska MR Evidence law drift. New Haven & London. 1997. P . 147.
[415]Samuticheva E. Yu. Decree. op. P. 57.
[416]For example, the classics of Anglo-American criminal procedure, Albert Osborn and Henry Wigmore, understood the "special disposition" of an expert as the payment (or promise of payment) of a reward and a preliminary consultation with the party (the party's lawyer) (See: Osborn A., The problem of proof . 1922. P . 329 - 319).
[417]"Adversarial expertise" is rather a general theoretical concept, a kind of universal theoretical model that has not found its reflection at the doctrinal level. In legal science, the concept of "adversarial expertise" was understood in different ways: it received some support in Russian pre-revolutionary legal literature and was negatively assessed by individual Soviet proceduralists (See: Vinberg A.I. Basic principles of Soviet forensic examination. Moscow: Gosyurizdat, 1949. P. 71 and others).

knowledge, because the judge, like other participants in the process, is not always capable of critically perceiving expert data and resisting the "magic" of evidence-based science. To avoid this, the judge [and the legislator] should only create equal conditions for the competitive discussion of expert opinion in the process, allowing for alternative approaches and the possibility of refuting any, even scientific, instrument of knowledge , and not resolve scientific disputes[418], since only reliance on the same level of scientific justification, by turning to another expert or specialist, will allow the expert's opinion, already available in the case materials, to be properly considered.

However, recognition of the right of a specialist [defense expert] to "form (provide) evidence[419]" did not exclude assumptions about his interest, challenging which the specialist must confirm his impartiality, objectivity, and competence[420]. The right and opportunity for the defense to nominate an expert (specialist) on their side and present the results of his activities as evidence, regulated by the legislator, are not unconditional[421]. The expert's conclusion, as well as the results of the interrogation (testimony) of the specialist, are often not recognized as having evidentiary value[422]. The

[418]Branovitsky K. L., Rentz I. G., Reshetnikova I. V. Can an expert be trusted or a few words about quality guarantees of forensic examination (comparative legal analysis) // SPS "Consultant Plus".

[419]Criminal Procedure. Textbook for students of law schools and faculties / edited by K. F. Gutsenko. Moscow: "Zertsalo", 2005. Pp. 241 - 242.

[420]Aleksandrov A. A., Bestaev A. O. Op. cit. P. 90.

[421] This is justified by the inquisitorial specificity of the Russian criminal process, in which the sphere of examination of evidence does not belong entirely to the parties, as in the English and American, or to the court, as in the German and French [processes], it is realized through the independence of the parties, equal in their procedural capabilities in the examination of evidence, in which the court, of course, bears responsibility for the result, but the role of the court is not purely arbitration or organizational and administrative (See: Stoyko N. G. Criminal Procedure of Western States and Russia: A Comparative Theoretical and Legal Study of the Anglo-American and Romano-Germanic Legal Systems. Monograph. SPb.: Publishing House of St. Petersburg State University, Publishing House of the Law Faculty of St. Petersburg State University, 2006. P. 225).

[422]At the same time, one cannot ignore the fact that expert opinions presented in the criminal case materials are often treated with skepticism, and quite reasonably so. Sometimes, the parties present expert opinions that do not stand up to any criticism at all. Such opinions may not contain references to scientific methods and scientific literature that the expert was guided by when preparing the opinion, may contain arbitrary and scientifically unsubstantiated approaches to solving the issues posed to the expert, and may be obviously “custom-made”. That is, the opportunity granted to the defense attorney (suspect, accused) by the criminal procedure legislation is not always realized in good faith. For example, in the criminal case materials on the charge of K. committing a crime under Part 1 of Article 143 of the Criminal Code of the Russian Federation, the defense attorney presented an expert opinion that refuted the forensic expert’s opinion on the severity of the harm caused to the victim’s health, contained in the criminal case materials. In his report, the expert, relying solely on a photocopy of the forensic expert's report (without the necessary study of the criminal case materials (copies of the criminal case materials (As indicated in the text of the expert's report: "for a comprehensive assessment of the severity of the harm caused to the health of the victim by the blunt combined trauma identified in him, it is advisable to consider the severity of each of the groups of injuries that make it up"), despite the fact that the defense had the opportunity to present such materials), without referring to any scientific methods, arbitrarily, at his own discretion, divided the injuries received by the victim as a result of the accident and assessed them each in isolation, and not in combination, without taking into account the one-time nature of the formation of injuries. As a result, the expert came to the conclusion that the health of the victim was caused harm of moderate severity, which, given the outcomes of the injury for the victim in the form of permanent loss of working capacity in the

opportunity granted to the defense to involve a specialist in the process of proof, which provides the defense with additional opportunities[423], is far from being realized in practice. Of course, the activity of the defense in proving is not completely ignored, but the "contrast" of evidence obtained using special knowledge by persons conducting proceedings on the case with evidence obtained on the initiative of the defense is obvious[424].

As a consequence, there is a skeptical attitude towards all forms of participation of a specialist invited by the defense in proving[425].

For example, the problem of the admissibility of reviewing expert opinions by a specialist is determined by several factors, including, firstly, the absence of a mention in procedural legislation of the very possibility of such a review[426], and secondly, the origin of such a review from the defense, despite the fact that reviewing expert opinions seems to be a fairly adequate way of combating, within the legal framework, the bad faith of subjects of proof and experts with insufficient qualifications[427]. Incidentally, it is important to note that the same (if not greater) significance is attached to conducting a review at the initiative of the prosecution and the court in combating the bad faith of the defense attorney and the insufficiently qualified specialist he or she engages.

A review can help the court avoid blindly relying on the expert's (and specialist's) opinion, which may be characterized by a one-sided approach or insufficiently deep analysis of the presented materials. A review allows for a deeper understanding of

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amount of 30% and the duration of incapacity (more than 400 (four hundred) days), which the expert did not take into account, seems highly contradictory and unfounded (See: Vatutina O. Yu. "Adversarial Expertise" in Russian Criminal Procedure // Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University: conference materials 2020-2021; collection of articles / co. of authors; edited by N. P. Kirillova, S. P. Kushnirenko, N. G. Stoyko (editors), V. Yu. Nizamov (editors) Moscow: RUSAINS, 2021. P. 61 ; Selina E. Adversarial nature in the application of special knowledge in criminal cases // Russian Justice. 2003. No. 3. P. 49). However, “custom-made examinations” are also widespread, the conclusions of which directly depend on the wishes of the person ordering the research (See: Kuznetsov P.S., Makushkin I.O. The problem of adversarial nature of forensic experts // Theory and practice of forensic examination in modern conditions. Materials of the international scientific and practical conference. Moscow, February 14-15, 2007. Moscow: Prospect Publishing House, 2007. P. 144).

[423]Semenov E. A. Expert opinion as a source of evidence // Current issues of advocacy practice. 2010. No. 2. P. 16.

[424]Appendix No. 8.

[425]The forms of specialist participation in proving are discussed in detail in the first chapter of this work.

[426]Although there are no regulations preventing this.

[427]Zhizhina M. V. Review of expert opinions in the practice of considering arbitration cases // Bulletin of arbitration practice. 2014. No. 4. P. 51 – 58.

complex special issues[428], allows for establishing the reliability, correctness, validity and completeness of the conclusions, compliance with the established procedure for appointing an expert examination, the correctness and effectiveness of the methods used, the completeness of the study, and the validity of the expert's conclusions.

The review may be carried out on the basis of a request from a lawyer or an order from other persons, its results are formalized in a specialist's opinion, which may subsequently be attached to the materials of the relevant case and used by the party in proving[429].

However, the presented sides of the defense of the review, even if they are drawn up as an opinion, are rejected by the courts for various reasons[430]: due to the lack of normative regulation of the review as evidence, the absence in the legislation of the possibility of challenging an expert opinion by a review[431], the absence of information about the warning of the specialist who prepared such an opinion about criminal liability for giving a knowingly false opinion (review), in connection with the assessment of the review as the private opinion of persons not involved in the case as experts, in connection with the inadmissibility of a critical assessment of the expert's opinion by a specialist, since such an assessment, in accordance with Art. 58 of the Criminal Procedure Code of the Russian Federation, is not among the actions performed by a specialist[432], etc.

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[428]Bonner A. T., Fursov D. A. History of the development of domestic civil procedural thought // Arbitration and civil procedure. 2012. No. 3 – 6.

[429]Despite the fact that initially, the review arises in a non-procedural form (See, for example: Rossinsky S. B. On the practice of conducting examinations in a non-governmental forensic institution // Expert-criminalist. 2010. No. 4. pp. 30-33; Rossinskaya E. R., Galyashina E. I. Handbook of the judge: forensic examination. Moscow: Prospect, 2011).

[430]Despite the fact that reviews of expert opinions show positive potential in legal proceedings, as they involve an objective analysis of the opinion submitted for review, in which the reviewer mentally models the course of the expert examination (See: Aminev F. G. Forensic activity in the Russian Federation: modern problems and ways to solve them: diss. Doc. of Law. Rostov-on-Don, 2016. P. 28).

[431]At the same time, reviewing expert opinions for the purposes of internal control is provided for by a number of departmental acts (See, for example: Instructions for organizing the production of forensic examinations in forensic departments of the internal affairs bodies of the Russian Federation, approved by Order of the Ministry of Internal Affairs of Russia dated 29.06.2005 No. 511 (registered with the Ministry of Justice of Russia on 23.08.2005 No. 6931); Regulations on the main expert qualification commission of the Central Forensic Customs Administration, approved by Order of the Federal Customs Service of the Russian Federation dated 05.08.2010 No. 1457 (registered with the Ministry of Justice of the Russian Federation on 19.11.2010 No. 18995); Regulations on the procedure for conducting certification of employees and workers of forensic institutions and expert departments of the Federal Fire Service for the right to independently conduct forensic examinations, approved by Order EMERCOM of the Russian Federation dated 09.06.2006 No. 351 (registered in the Ministry of Justice of the Russian Federation on 15.09.2006 No. 8278) - https://base.garant.ru/12149308/ (date of access 12.06.2024).

[432] Appellate ruling of the Kaluga Regional Court dated August 13, 2019 in case No. 22-1040/2019 - https://sudact.ru/regular/doc/hiUO0LjSiydb/?regular-txt=&regular-case_doc=22-1040%2F2019&regular-lawchunkinfo=&regular-date_from=13.08.2019&regular-date_to=13.08.2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718195309464 (date accessed 12.06.2024).

At the same time, the specialist engaged to provide a review does not evaluate the expert's opinion as evidence in the case, which is the prerogative of the court, but analyzes the expert's opinion from the point of view of scientific methodological validity, compliance with the recommendations developed by the general theory of forensic examination, and compliance with the requirements of the legislation regulating forensic activity[433].

However, the law enforcement agency does not recognize the possibility of review, and conclusions containing an assessment of expert opinions available in the case materials are considered inadmissible . For example, The verdict of the Leninsky District Court of Barnaul contains the following wording: "... a conclusion drawn up by a specialist, presented to the court as evidence of the groundlessness of the conclusions made by the expert in his conclusion, is inadmissible evidence since it was obtained in violation of the requirements of Articles 80 and 58 of the Criminal Procedure Code of the Russian Federation. Based on the provisions of Article 58 and Part 3 of Article 80 of the Criminal Procedure Code of the Russian Federation, a specialist may be involved in judicial proceedings to assist the parties and the court in examining objects and documents, using technical means, asking questions to the expert, and also explaining issues within his professional competence. Meanwhile, as follows from the content of the presented conclusion, the subject of the specialist's research was the revision of the conclusion of the forensic autotechnical examination available in the case materials. As can be seen from the content of the conclusion, it contains the specialist's judgments regarding the incorrectness and groundlessness of the expert's conclusions set out in the conclusion. That is, the specialist assessed the expert's conclusion from the point of view of the reliability of the conclusions set out in them. Taking into account the provisions of Articles 17, 87, 88 of the Criminal Procedure Code of the Russian Federation that the verification and evaluation of evidence falls within the exclusive competence of the court, the opinion of a person who has any special knowledge, but is not a participant in criminal proceedings on the part of the prosecution or defense, on issues of the relevance,

[433]Rossinskaya E. R., Galyashina E. I. Handbook of the judge: forensic examination. Moscow: Prospect, 2011.

admissibility and reliability of evidence in a criminal case, cannot, in accordance with the requirements of Article 58 of the Criminal Procedure Code of the Russian Federation, be regarded as an explanation of a specialist on issues within his professional competence; the presentation of such an opinion to the court is not within the competence of a specialist[434]".

The reasons for this are related to a misunderstanding (true or imaginary) of the essence of the review. As a negative quality, excluding evidentiary value, the conclusion in the form of a review is "imputed" that it casts doubt on the expert's findings contained in the case materials. At the same time, the meaning of preparing a review is precisely this: to cast doubt on the existing conclusion with the purpose of its critical assessment. Accordingly, the arguments of the courts that the reviewer (the specialist who gave the conclusion in the form of a review) did not conduct an examination, did not study the case materials, his candidacy was not discussed, he was not warned about criminal liability, etc. are not convincing, because a specialist is not an expert, the specialist has a different task - to assess the validity of the conclusions of his colleague[435], to "shake" (if possible) the faith of the persons conducting the proceedings in the " infallibility " of the expert's conclusion.

With regard to legal opinions of a specialist, a uniform but not positive situation has also developed. Despite the fact that today there are no grounds for limiting the right of a party to seek advice (opinion) from a specialist on legal issues and law enforcement[436], the question of the admissibility of a "legal examination", "opinion of a specialist on legal issues", "resolution of individual legal issues", raised in connection with the impossibility for an expert to go beyond the limits of his professional competence, as well as in connection with the non-relevance of legal, legal knowledge to special knowledge, turned out (as in the case of reviews) to be replaced by the question

[434]Verdict of the Leninsky District Court of Barnaul dated July 14, 2020 in case No. 1-251/2020 - https://sudact.ru/regular/doc/uBdCeEMFq2W4/?regular-txt=&regular-case_doc=1-251%2F2020&regular-lawchunkinfo=&regular-date_from=14.07.2020&regular-date_to=14.07.2020&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718195193917 (date of access June 12, 2024).

[435]Prikhodko I. A., Bondarenko A. V., Stolyarenko V. M. Forensic examination ... P. 298.

[436]Moreover, the same arguments in favor of the legalization of legal expertise are repeated in science (See: Zotov D.V. Legal expertise in criminal proceedings: from legalization to procedural regulation. Voronezh: Publishing house of VSU, 2015. P. 22).

of the powers of a person possessing special knowledge and the admissibility of exceeding them[437].

A specialist in the process of giving legal opinions[438], applying highly specialized legal knowledge to a specific case[439], actually carries out an "evaluative" study with immersion in the specifics of[440] the legal situation, inaccessible to the average lawyer, who is not capable of being competent in all matters of all known branches and sub-branches of law[441].

Thus, the expert's opinion resolving legal issues is only the opinion of a person similar to the position of the party that it proposes and defends in the process[442], sometimes equally or in conjunction with the position of a person with special knowledge. The defense attorney (as well as other participants in the process) is not deprived of the right to evaluate any evidence in the case and in this evaluation may refer, among other things, to legal knowledge that he has himself or that he received from another person who has such knowledge. The defense attorney has the right to attach the opinion or announce its content as part of his legal position, as a reference to a legal doctrinal point of view[443].

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[437]Eksarkhopulo A.A. Ibid.

[438] Does not conduct research in the usual sense of the word (See: Tarasov A.A., Sharipova A.R. “Legal opinions” of experts and specialists in Russian legal proceedings // Bulletin of the St. Petersburg State University. 2017. Vol. 8. Issue 4. P. 431).

[439]Participation of a specialist in procedural actions: textbook / edited by A. M. Zinin. 2nd revised and enlarged edition. Moscow: Prospect, 2016. P. 52.

[440]Since, in the context of dynamically developing legislation, even an experienced investigator, inquiry officer, judge does not always have the opportunity to systematically monitor changes in all its branches (See: Zharikov Yu. S., Shamarov V. M. Legal examinations in the mechanism of criminal-legal regulation // Bulletin of the Catherine Institute. 2008. No. 4. P. 12; Tskhovrebova I. A. Legal examination: for or against? // Works of the Academy of Management of the Ministry of Internal Affairs of Russia. 2009. No. 2. - URL: http://jurnal.amvd.ru/indviewst.php?stt= 261&SID.

[441]Who is objectively incapable of being competent in all matters of all known branches and sub-branches of law. The requirement to be competent in all matters of law would mean putting the persons conducting the proceedings in a very difficult, if not hopeless, situation, when "they are obliged to know the law", but they cannot actually master this knowledge to the extent necessary to make qualified and responsible decisions (See: Eksarhopulo A. A. Special knowledge and its application in the study of materials... P. 68).

[442]This is not about evidence, since the conclusions of such specialists (legal experts) do not concern and should not concern the factual circumstances of the case. Here we are not talking about establishing the factual circumstances of the case, but about an attempt to present one's legal position, which does not allow us to classify such conclusions as conclusions of a specialist in a strictly evidentiary sense (See: Golovko L. V. Op. cit. pp. 507-508).

[443] Since qualified knowledge from highly specialized areas of law, expressed in advice or consultations, becomes invaluable in a certain procedural situation (See: Vatutina, O. Yu. Use of legal expertise by a defense attorney in proving / O. Yu. Vatutina // Problems of protecting rights: history and modernity: XV International scientific and practical conference, St. Petersburg, October 29, 2020. St. Petersburg: Leningrad State University named after A.S. Pushkin, 2021. Pp. 320–322).

The right of any participant in criminal proceedings to propose their decisions on a specific case is not identical to the right to make legal decisions on it[444]. Accordingly, using a legal opinion, the defense attorney does not prejudge the decision on the case, but provides a detailed argumentation of their legal position, uses the relevant opinion to expand their capabilities in proving.

And when deciding on the admissibility of a specialist's opinion and/or testimony, only such factors as the proper subject of giving an opinion and/or testimony (a person with special knowledge, who meets the requirements for qualification, specialization, competence and has no grounds for challenge), the availability of the form of evidence (opinion and/or testimony) provided for by law and the availability of a request for an opinion from the person conducting the criminal proceedings or an agreement concluded by the specialist with a participant (his representative) personally interested in the outcome of the case, containing the specialist's obligation to appear before the investigator (inquiry officer) or the court, to participate in the statement of a petition by the inviting party to include the specialist's opinion, to sign a written undertaking on liability for giving a knowingly false opinion and to confirm his readiness to submit this evidence in the case materials, shall be taken into account[445].

In science, as noted earlier, there is also such a form of participation of a specialist in proving (the form of involving a specialist by a defense attorney) as the examination of criminal case materials[446] with the participation of a specialist. The Criminal Procedure Law provides for the possibility of involving a specialist to assist in the "use of technical means in the examination of criminal case materials" (Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation). However, the law does not explain how a defense attorney can and should do this. There are different opinions on this matter, both that the defense attorney, in the cases provided for in Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation, has the right to file a motion to involve a

[444]Eksarkhopulo A. A. Op. cit. P. 66.
[445]See: Vatutina, O. Yu. Forms of specialist participation in criminal procedural proof / O. Yu. Vatutina // Judicial power and criminal procedure. - 2024. - No. 1. - P. 71-76.
[446]According to A. A. Eksarkhopulo, the materials of a criminal case include not only all the documents stitched and numbered in the case, but also material evidence, photographs, audio -, video recordings, film footage and other appendices to the protocols of investigative actions (See: Eksarkhopulo A. A. Materials of a criminal case as an object of application of special knowledge // Bulletin of criminalistics. 2004. Issue 4 (12). P. 16).

specialist to participate in procedural actions[447], and that the defense attorney is not obliged to file any motions, by virtue of paragraph 3 of Part 1 of Article 53 of the Criminal Procedure Code of the Russian Federation, which indicates that the defense attorney has the right to involve a specialist in accordance with Article 58 of the Criminal Procedure Code of the Russian Federation, and the verb "to involve" in this case has a clearly expressed imperative form and does not allow any other interpretation[448].

In practice, the involvement of a specialist by a defense attorney to familiarize themselves with the case materials is carried out for the purpose of subsequent consultation, conclusion and/or testimony, but is of a limited nature. The limitation is due to the fact that the specialist does not have direct access to the case materials and learns about them through the mediation of the defense attorney . Since there is no prohibition in the law on direct access to the case materials of a specialist involved by a defense attorney, some authors believe that such a specialist can examine any materials of a criminal case executed on paper media[449] without restrictions[450]. However, there is no information on how this procedure should be implemented in practice and whether materials executed on electronic media can be examined.

Today, access to case materials of a specialist engaged by a defense attorney is limited to procedural documents and materials received by the defense attorney. The participation of a specialist in familiarization with the materials of a criminal case along with the defense attorney is not carried out, since the procedure is not provided for. Such an approach "impoverishes" the specialist's capabilities to participate in proving, gives the law enforcement officer a reason to ignore the specialist's conclusion, to recognize it as inadmissible, unreliable with reference to the fact that the specialist did not examine

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[447]Soloviev A. B., Tokareva M. E. Problems of improving the general provisions of the criminal procedure legislation of Russia. Moscow, 2010. P. 134.

[448]Budnikov V. L. Participation of a specialist in the study of criminal case materials // Issues of Russian and international law. 2011. No. 2. P. 53.

[449] The examination of criminal case materials is, in essence, a broad range of procedural actions, including the inspection of documents, as well as appendices to them, including items called material evidence. However, the inspection itself is not always able to fully form the corresponding idea in the subject of proof. In many cases, it becomes necessary to make calculations, compare individual features and properties of various items included in the category of material evidence. The investigator and the defense attorney sometimes cannot do without technical means, as well as the necessary special skills and abilities to use them (See: Budnikov V. L. Participation of a specialist in the examination of criminal case materials // Issues of Russian and International Law. 2011. No. 2. P. 53).

[450]Budnikov V. L. Participation of a specialist ... P. 56.

all the materials of the case[451]; the study was conducted in a non-governmental commercial enterprise at the request of a lawyer who did not provide all the materials of the criminal case to the specialist[452]; the specialist's conclusions are not based on the materials of the criminal case[453].

Thus, the position of the law enforcement officer in relation to the reviews of the expert opinion, legal opinions and participation of the specialist in the study of the case materials presented by the defense attorney, in fact, boils down to their non-acceptance, associated with a biased attitude towards the defense attorney's activity within the framework of the "alternative examination[454]".

It can be stated that the adaptation of the Anglo-American model of forensic examination did not work, since the continental type of process rejects it as alien. All the instruments, directly or indirectly aimed at implementing the rights of the defender to involve a specialist in proving have not been properly secured in law and in practice. The securing at the normative level of the right of a specialist (expert of the defense) to "form (give) evidence" did not eliminate the positions on his deliberate interest, insufficient competence and dependence, the absence of which the specialist is obliged to additionally (and sometimes unsuccessfully) confirm. Accordingly, proper legalization of the procedures for the specialist to give evidence is required, since without it they are inoperative[455].

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[451] Verdict of the Mikhailovsky District Court of the Ryazan Region dated December 27, 2017 in case No. 1-116/2017 – https://sudact.ru/regular/doc/wYclk1e4GEoP/?regular-txt=&regular-case_doc=1-116%2F2017&regular-lawchunkinfo=&regular-date_from=27.12.2017&regular-date_to=27.12.2017&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718194229299 (date of access 12.06.2024)

[452] Verdict of the Oktyabrsky District Court of Belgorod dated May 29, 2019 in case No. 1-150/2019 - https://sudact.ru/regular/doc/qcLM6ysrlQWR/?regular-txt=&regular-case_doc=1-150%2F2019&regular-lawchunkinfo=&regular-date_from=05/29/2019&regular-date_to=05/29/2019&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718194555388 (date of access 06/12/2024)

[453]Sentence of the Kstovsky City Court of the Nizhny Novgorod Region dated July 3, 2020 in case No. 1-502/2019 https://sudact.ru/regular/doc/YY4DXSsWtNHQ/?regular-txt=&regular-case_doc=1-502%2F2019&regular-lawchunkinfo=&regular-date_from=07/03/2020&regular-date_to=07/03/2020&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1718194371636 (date of access June 12, 2024).

[454]Appendix No. 7.

[455]The procedural mechanism for realizing the capabilities of a specialist is of decisive importance, since in procedural activity it is not so much the legal idea that is important as the order, the procedure for its practical application (See: Davletov A. Specialist in criminal proceedings: new opportunities and problems // Russian Justice. 2003. No. 9).

§ 3. Methods for resolving problems related to the use of the opinion and testimony of a specialist invited by the defense

The implementation of the Anglo-American type of "alternative expertise" into Russian criminal proceedings, according to the legislator[456], was aimed at expanding the defense's ability to prove, and providing, at the legislative level, participants in the process who are deprived of authority (for example, the defense or the victim) with the opportunity to independently involve persons with special knowledge in the case.

The main goal of such a decision was to reduce the monopoly of the investigative authority on obtaining special knowledge on the case, legalizing the situation when special (expert) knowledge is presented by both parties and serves as a means of proof, both on the part of the prosecution and the defense[457].

However, the form of implementation did not allow to avoid problems in law enforcement and the correct interpretation of the Federal Law of July 4, 2003 No. 92-FZ encountered difficulties. Even today, twenty years later, practice demonstrates, in general, a negative attitude to evidence provided by a specialist invited by the defense[458]. Thus, 59% of the surveyed prosecutors, citing various grounds, believe that it is unacceptable to involve a specialist at the request of the defense. Perhaps, this is how the scientific position on the inadmissibility of directly competing (displacing) types of evidence[459] and the inadmissibility of providing the defense with an unjustified advantage is manifested[460], denying the fact that a dispute between specialists (a competition of

[456]There has been a desire on numerous occasions to find a compromise between the continental and Anglo-Saxon models of expertise, a manifestation of which was the Russian Federal Law of July 4, 2003, No. 92-FZ (See: Golovko L. V. Op. cit. pp. 504-505).
[457]Aleksandrov A. A., Bestaev A. O. Op. cit. P. 90.
[458]Appendix No. 4, p. 198.
[459]This refers to the position of E. A. Zaitseva on the "erosion" of the institution of expertise in connection with the emergence of the institution of a specialist, which certainly has a right to exist, but in fact "leaves out of the equation" the possibility of the defense participating in the proof.
[460]Garmaev Yu. P. Decree. op. pp. 38-37.

scientific opinions[461]) is a very effective means not only for establishing factual circumstances[462], but also for assessing evidence (by judges, jurors)[463].

Despite the general intention of the legislator, not only in practice, but also in science, there are opinions that deny the possibility for the defense to independently appoint an examination[464]. It is noted that such a right granted to the defense will lead to a systemic diminution of the continental principles of the Russian criminal process[465], and the implementation of the Anglo-American approach in the continental (Russian) criminal process will not only fail to strengthen the position of the defense, but, on the contrary, will lead to the loss of significant rights within the framework of the institute of examination[466].

Given such an ambiguous attitude towards the participation of a specialist in proving, the exclusion of the second paragraph of point 19 and points 20-23 from the RF PPVS dated 21.12.2010 No. 28 "On forensic examination in criminal cases", which directly concerned the issues of the involvement and participation of a specialist in criminal proceedings, raises serious questions. The adopted amendments not only do not resolve the discussion, but, on the contrary, give rise to new problems, essentially recording a "rollback" in law enforcement (or "adapting" to the established judicial practice)[467].

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[461]Since the participation of a specialist on the part of the defense is the actual implementation of an “adversarial forensic examination” [but not an adversarial type of criminal process] in Russian criminal proceedings (See, for example: Vatutina O. Yu. Specialist as an expert on the part of the defense: evolution of the institution / O. Yu. Vatutina // Scientific School of Criminal Procedure and Forensic Science of the St. Petersburg State University “Criminal Procedure Code of the Russian Federation: 20 Years Later”: Proceedings of the XIV International Scientific and Practical Conference, St. Petersburg, June 24-25, 2022 / Editors-in-Chief: N. G. Stoyko, V. Yu. Nizamova. - Moscow: Rusains Limited Liability Company, 2022. Pp. 267-273).

[462]Thus, P. S. Porokhovshchikov noted: "If there is an expert on the opponent's side in the process and the expert opinion is important, the speaker must put forward an expert no less knowledgeable and decisive on his side. Not to do this is unforgivable frivolity. As long as there is only one expert, he is not vulnerable, even if he is talking nonsense" (See: Sergeich P. The Art of Speech in Court. Moscow: Gosyurizdat, 1960. Page 210.)

[463]Aleksandrov A. A., Bestaev A. O. Op. cit. P. 91.

[464]See: Samuticheva E. Yu. Decree. op . P. 10.

[465]Samuticheva E. Yu.: Decree. op. P. 11.

[466]According to E. Yu. Samuticheva, this may be expressed in the loss by the defense of the right to ask questions to the expert when the prosecution appoints an expert examination, and the right to be present during its production (See: Samuticheva E. Yu. Ibid.).

[467]Such law enforcement "swings" indicate that attempts at settlement are not obvious in nature and are not subject to a single strategy (See: Resolution of the Plenum of the Supreme Court of the Russian Federation of June 29, 2021 No. 22 "On Amendments to Certain Resolutions of the Plenum of the Supreme Court of the Russian Federation on Criminal Cases", accessed from the SPS reference and legal system - Consultant Plus https://www.consultant.ru/document/cons_doc_LAW_388946/#dst100041 (date of access June 12, 2024).

is quite obvious, in connection with which, opinions are expressed on the need to reduce the asymmetry of the rights of the parties, when using special knowledge. As a solution, among other things, it is proposed to include in the Criminal Procedure Code of the Russian Federation new independent types of evidence - the conclusion of an examination conducted on the initiative of the defense attorney and the conclusion of a specialist attached to the case by the lawyer[468] and / or to allocate in the legislation a separate figure of a specialist invited by the defense.

It is assumed that the implementation of these proposals will ensure the effectiveness of the defense attorney's activities in proving evidence and will eliminate situations where the conclusions and testimony of a specialist engaged by the prosecution are actually equated to expert testimony, and the conclusions and testimony of a specialist engaged by the defense attorney are assessed as data from an interested party, in the absence of sufficient competence, or as unreliable[469].

We believe that practice is moving in this direction, since the expert's conclusion still remains a certain mystery for the domestic theory of evidence[470].

At the same time, the positions repeatedly expressed in the literature on the need to regulate the procedural status of a specialist, determine the forms of his participation in proving, regulate the requirements imposed on the form of a specialist's opinion[471], regulate the procedure for interrogating a specialist, the procedure for warning a specialist about criminal liability for giving knowingly false opinions and/or testimony, legalize

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[468] With reference to similar experience of Kazakhstan, Georgia, and a number of European countries (See: Bushmanov I., Savitsky A. Expert opinion on guard of the defense. Advocate newspaper. [Electronic resource]: URL // https :// www . advgazeta . ru / diskussii / zaklyuchenie - eksperta - vs - zaklyuchenie - spetsialista / (date of access 05/19/2024)

[469] Evidence given by a specialist is differentiated in the process of verification and evaluation depending on the initiator of involvement, despite the fact that the differences exist only in the initiator of involvement in the process and in the procedure. The process of giving evidence by a specialist is one - it is outside the process and is bound by the requirements of science. The activity of any person possessing special knowledge is not subject to procedural institutionalization and always remains behind the scenes of procedural regulation, since it is subject to purely scientific logic and has a purely creative nature (See: Golovko L.V. Op. cit. pp. 503-504, Appendix No. 7).

[470] See, for example: Golovko L. V. Op. cit. P. 503; Ovsyannikov I. Discussions on the Expert's Conclusion Are 10 Years Old // Legality. 2015. Pp. 48-51; Sotnikov K. I. Conflict between the Position of a Forensic Expert and a Defense Expert as an Expression of the Adversarial Principle in Criminal Proceedings // Forensic Science and Forensic Examination: Past, Present, and Looking to the Future. Proceedings of the Annual International Scientific and Practical Conference. St. Petersburg. 2017. P. 300.

[471] For example, L. V. Lazareva believes that the different requirements for the form of the two types of evidence [obtained using specialized knowledge] were not presented by the legislator by chance and the expert's opinion form is not applicable to the expert's conclusion, but she also does not consider the absence of any regulation at all to be correct, and notes that this type of evidence requires significant regulatory and practical revision for full use in proving (See: Lazareva L. V. Op. cit. P. 147).

reviews (opinions in the form of reviews) of expert and specialist opinions, resolve the problem of the admissibility of legal opinions and the specialist's access to case materials when giving an opinion, are justified and require implementation, including by making appropriate changes to the current legislation.

There is a widespread point of view on the need to introduce a different terminological interpretation of the modern figure of a specialist, as a "knowledgeable person", believing it to be a way to eliminate the normative homonymy that has arisen[472]. We do not consider this proposal to be sufficiently substantiated, since, firstly, "the concepts of "knowledgeable person" and "specialist" are not identical[473]", since the concept of "knowledgeable persons" covers all persons who possess special knowledge and apply it[474], and secondly, the implementation of such a proposal, having eliminated one normative homonymy that currently exists in Russian criminal proceedings, will give rise to another, repeating, in essence, the fate of the term "specialist".

Also, researchers in the field of criminal procedure have repeatedly expressed opinions on the need to create a single register of experts[475] (persons with special knowledge) or a permanent commission under the Federal Chamber of Lawyers of the Russian Federation on issues of conducting forensic examinations appointed at the initiative of the defense attorney, with the right to exercise the functions of accreditation of selected private expert institutions, experts and specialists who, at the initiative of the attorney, may be appointed by the investigator, the investigator and the court to conduct an examination or receive reviews of expert opinions on the case[476].

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[472]Golovko L. V. Op. cit. P. 507.

[473]Grishina E. P., Abrasimov I. V. Specialist as a knowledgeable person and participant in the process of proof in criminal proceedings // Modern law. 2005. No. 8. P. 50-53.

[474]Denisov A. E. Specialist as a participant in criminal proceedings: diss. … candidate of legal sciences. Moscow, 2009. P. 72.

[475]The State Committee of Forensic Examinations operates in the Republic of Belarus. Moreover, the State Committee of Forensic Examinations of the Republic of Belarus has developed a Register of Methodological Materials in the Sphere of Forensic Expertise Activities, which lists the names of 506 methodological materials with the year of development of each of them, the date of updating and other identifying information that ensures transparency and understanding of the relevance and validity of the methods used by the expert or specialist when giving opinions (See: Prikhodko I. A., Bondarenko A. V., Stolyarenko V. M. Forensic examination ... P. 40; URL : https :// sudexpert . gov . by /. pdf)

[476] It is proposed to include authoritative scientists, lawyers, representatives of the Supreme Court and the Ministry of Justice of the Russian Federation in the commission. And for the initial selection of candidates, it is proposed to organize similar commissions in the bar associations of the constituent entities of the Russian Federation, where independent expert institutions, private experts and specialists wishing to be accredited with the FPA could apply with applications for subsequent submission of their candidacies to the commission at the FPA (See: Bushmanov I., Savitsky A. Expert opinion

Such decisions can ensure the quality and objectivity of research carried out using specialized knowledge, ensure careful selection of professionals in this field, provide the interests of participants in the process with appropriate guarantees, and protect them from "unscrupulous" experts[477].

We believe that the experience of the Republic of Belarus in establishing the State Committee of Forensic Examinations is interesting and can be adopted with the necessary adaptation.

In terms of formulating the required changes, we believe that there is a need to pay attention to the Model Criminal Procedure Code for the CIS Member States [478](hereinafter referred to as the MCPC), which replaced the previously existing Fundamentals of Criminal Procedure of the USSR and Union Republics.

The following provisions of the MCPC seem interesting:

- in accordance with Part 1 of Article 118 of the MCPC, "A specialist may be appointed from among persons proposed by a participant in the process." There is a similar provision in paragraph 3 of Part 1 of Article 198 of the RF Criminal Procedure Code, however, it only concerns experts; there is no specification regarding the specialist. At the same time, such clarification correlates with the proposal on the need for a preliminary (before receiving a specialist's opinion) appeal by the defense attorney to the person conducting the criminal proceedings with a petition to involve a specific specialist (specialists), and establishes the need to take into account the opinion of the parties regarding the candidacy of the specialist to be involved;

- in accordance with paragraph 1 of part 6 of Article 118 of the MCPC, a specialist has the right, with the permission of the body conducting the criminal proceedings, the person performing the investigative or other procedural action, to familiarize himself with

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on guard of the defense. Advocate newspaper. [Electronic resource]: URL // https :// www . advgazeta . ru / diskussii / zaklyuchenie - eksperta - vs - zaklyuchenie - spetsialista / (date accessed 05/19/2024).

[477]Since, for example, it is difficult for powerless participants in the process, such as the defense and the victim, to obtain up-to-date information about specialists in a specific field of knowledge (See: Vladimirov L. E. Op. cit. pp. 273–274; Ivanova E. V. On the optimization of the use of expert special knowledge in criminal proceedings // Lex Russica (Russian law). 2009. No. 5. P. 1141 – 1156; Prikhodko I. A., Bondarenko A. V., Stolyarenko V. M. Forensic examination … P. 40).

[478]Model Criminal Procedure Code for the CIS Member States. Adopted at the seventh plenary session Interparliamentary Assembly member states Commonwealth of Independent States (Resolution No. 7-6 of February 17, 1996). [Electronic resource]: URL :// https :// docs . cntd . ru / document /901914840) (date of access 17.05.2024)

the case materials and ask questions to those present, for the better performance of his duties. Thus, it is noted that the specialist's familiarization with the case materials is aimed at ensuring the proper performance of his obligations by the specialist;

- in accordance with paragraph 6, part 6, article 118 of the MCPC, a specialist has the right to receive remuneration for work performed in the amount determined by the relevant party, if he performed the work by agreement with this party (part 3, paragraph 1, article 210 of the MCPC). That is, the right to receive remuneration from the attracting party is not evidence of the specialist's interest, but on the contrary, is his right, ensuring the effectiveness of his activities.

The questioning of a specialist (giving testimony by a specialist) for the purpose of assessing the expert's conclusion contained in the case materials is not provided for by law. Previously, the RF Supreme Court Resolution No. 28 of 21.12.2010 contained provisions on the admissibility and procedure for questioning a specialist invited by the parties or the court to assess the reliability of the expert's conclusion. The Supreme Court believed that this form of specialist participation, due to its immediacy, would help the court and the parties in properly assessing the expert's conclusion and questioning him .

Currently, the Supreme Court excluded this provision from its ruling and left the issue unregulated, which gave the law enforcement agency grounds to not allow the interrogation of a specialist on the specified grounds. At the same time, the interrogation of a specialist for the purpose of challenging the results of the examination available in the case materials does not eliminate the shortcomings of the expert's (commission of experts') conclusion, does not "replace" it, but is the opinion of another knowledgeable person on the issues under study, performs exclusively the role prescribed to him by law: ensures the establishment of the presence or absence of circumstances that are significant for the criminal case. Accordingly, it is necessary not only to regulate the procedure for interrogating a specialist, but also to directly indicate in the law that the interrogation of a specialist for the purpose of assessing the results of the examination available in the case materials is permissible.

Thus, when assessing ways to solve problems related to the participation of a specialist in proving, it is relevant and necessary to introduce the following changes to the current legislation:

- introduce[479] into the Criminal Procedure Code an article entitled “Expert Opinion” containing requirements for the form of such an opinion and the procedure for engaging a specialist to provide an opinion, as well as an article entitled “Interrogation of a Specialist” containing requirements for the procedure for a specialist to provide testimony.

- supplement paragraph 2 of Article 58 of the Code of Criminal Procedure of the Russian Federation with the following provision: “A specialist may be appointed from among persons proposed by a participant in the process”.

- supplement paragraph 3 of part 3 of Article 58 of the Criminal Procedure Code of the Russian Federation with the following provision: “ with the permission of the body conducting criminal proceedings, the person conducting the investigative or other procedural action, the specialist has the right to familiarize himself with the case materials related to the subject of the specialist’s opinion, the specialist’s testimony, and to ensure the proper fulfillment by the specialist of his obligations” .

- supplement paragraph 4 of Article 80 of the Criminal Procedure Code of the Russian Federation with the following provision: “... including for the purpose of assessing expert opinions contained in the materials of the criminal case”.

- supplement Article 58 of the Criminal Procedure Code of the Russian Federation with paragraph 5 of the following content: "A specialist does not have the right to give knowingly false conclusions and testimony. For giving a knowingly false conclusion or knowingly false testimony, a specialist shall be liable in accordance with Article 307 of the Criminal Code of the Russian Federation" (with simultaneous introduction of corresponding amendments to the criminal law).

[479]The need for normative consolidation of requirements for the form of a specialist’s report was expressed by 50% of surveyed lawyers, 51% of surveyed prosecutors, and 47% of surveyed investigators (See: Appendix No. 6, p. 207; Appendix No. 4, p. 200; Appendix No. 2, p. 194).

- supplement Article 58 of the Criminal Procedure Code of the Russian Federation with paragraph 6 of the following content: “A specialist has the right to receive remuneration for work performed in the amount determined by the relevant party, if he performed the work by agreement with this party”.

- amend paragraph 4, part 3, article 6 of the Law "On Advocacy and the Bar in the Russian Federation" to read as follows: "engage specialists on a contractual basis to clarify issues related to the provision of legal assistance, with the right to explain to the specialists involved the norms of criminal and criminal procedure legislation on liability for giving knowingly false opinions and testimony".

CONCLUSION

This dissertation work was a comprehensive creative study of the problems of using the conclusion and/or testimony of an expert in proving in criminal cases. An expert as a participant in a separate evidentiary (investigative) action, having the function of giving an opinion and testimony of evidence, was quite rarely the subject of an independent scientific study, and never in the dissertation volume.

Currently, the participation of an expert in criminal procedural proving is carried out on the basis of a rather meager regulatory toolkit, which does not allow excluding investigative and judicial errors. The results of this scientific study, including its empirical base, showed that the imperfection of the normative regulation and regulation of issues related to the types and forms of participation of an expert in proving, the procedure for using the specialist's special knowledge by the defense attorney, the lack of clear criteria for the admissibility of the conclusion and testimony of evidence given by an expert, and other unresolved issues give rise to scientific discussions and give rise to law enforcement problems.

Within the framework of this work, a specialist was examined as a participant in a separate evidentiary (investigative) action, involved by the defense, the types and forms of his participation in criminal procedural proof, the specifics of collecting, checking and evaluating the conclusion and testimony of a specialist as evidence were investigated, the features of collecting the conclusion and/or testimony of a specialist by the defense attorney and the problems arising in connection with this were investigated.

The main scientific results obtained during the research are reflected in scientific publications, including peer-reviewed scientific publications from the list approved by the Ministry of Education and Science of the Russian Federation, in accordance with them:

- it has been established that a specialist, within the framework of proving in a criminal case, acts as a participant in a separate evidentiary action, is involved by

participants in the criminal process who have a public-law interest in the outcome of the case, and by participants who have a personal interest in the outcome of the case recognized by law, or their representatives. The involved specialist independently produces evidentiary information, putting it in the form of a conclusion and/or testimony, without having his own interest in the results of proving in a criminal case. The conclusion and testimony of a specialist are provided for by law as evidence (clause 3.1, part 2, article 74 of the Criminal Procedure Code of the Russian Federation) and represent the result of the use of special knowledge and are divided into a specialist conclusion given on the basis of a request from an authority and a specialist conclusion given at the request of participants (and their representatives) personally interested in the outcome of the case;

- it has been determined that the purpose of involving a specialist in criminal proceedings is for the specialist to provide an opinion on issues within the scope of his professional knowledge, including regarding or in relation to an expert opinion or a specialist opinion contained in the case materials;

- criteria for distinguishing a specialist’s judgment (given in the form of a conclusion or testimony) from an expert study have been identified;

- the procedure and methods of requesting and/or presenting a specialist's opinion in pre-trial proceedings and at the stage of trial are defined and delineated, in order to resolve issues, the answers to which require special knowledge and the use of materials presented by the inviting party is permissible . Including, by sending a written request to a specialist by an inquirer, investigator, court (at the request of the parties or at the initiative of the court), including an explanation to the specialist of his rights, duties and responsibilities, a list of questions posed for resolution and, in certain cases, materials necessary for answers;

- it has been determined that the presentation of an expert opinion by participants (and their representatives) personally interested in the outcome of the case, both in pre-trial proceedings and at the trial stage, is carried out in accordance with Part 2, 3 of Article 86 of the Criminal Procedure Code of the Russian Federation on the basis of an agreement with the expert, which includes the questions posed to the expert for resolution and the materials necessary for this, and also contains the obligation of the expert to appear before

the investigator (inquiry officer) or the court to participate in the application of a petition by the inviting party for the inclusion of the expert opinion, to sign a written undertaking on liability for giving a knowingly false opinion, and also to confirm his/her readiness to present this evidence in the case materials;

- requirements for the form of a specialist's opinion subject to regulatory regulation, the author's concept of specialist testimony, as well as the methods and procedure for obtaining it at the stage of preliminary investigation and during trial are formulated;

- as well as requirements for the admissibility of the expert's opinion and/or testimony, including the proper subject for giving the opinion and/or testimony; the form of evidence provided by law; the existence of a request for a report from the person conducting the criminal proceedings or an agreement concluded by the expert with a participant (his representative) personally interested in the outcome of the case, containing the obligation of the expert to appear before the investigator (inquiry officer) or the court, to participate in the application of the petition by the inviting party for the inclusion of the expert's opinion, to sign a written undertaking on liability for giving a knowingly false opinion and to confirm his readiness to submit this evidence in the case materials.

Based on the results of the study, the following conclusions can be drawn:

1. A specialist, within the framework of proving in a criminal case, acts as a participant in a separate evidentiary action, is involved by participants in the criminal process who have a public-law interest in the outcome of the case, and by participants who have a personal interest in the outcome of the case recognized by law, or their representatives. The involved specialist independently produces evidentiary information, putting it in the form of a conclusion and/or testimony, without having his own interest in the results of proving in a criminal case. The conclusion and testimony of a specialist are provided for by law as evidence (clause 3.1, part 2, article 74 of the Criminal Procedure Code of the Russian Federation) and represent the result of the use of special knowledge and are divided into a specialist conclusion given on the basis of a request

from an authority and a specialist conclusion given at the request of participants (and their representatives) personally interested in the outcome of the case.

2. The objective of involving a specialist in criminal proceedings is for the specialist to give an opinion on or in relation to an expert opinion or a specialist opinion available in the case materials. The objective is to evaluate the methods used by the expert from the point of view of their relevance, scientific validity, testing, use of appropriate equipment, sufficiency of the material used, correctness, completeness and accuracy of the formulations of the questions posed and the answers to them, compliance of the opinion available in the case materials with modern expert capabilities.

3. The expert's opinion (given in the form of a conclusion or testimony) differs from an expert examination according to the following criteria:

3.1. Basis of activity of a person with special knowledge:

- for an expert, this is a decision on the appointment of an examination by an authority, or by an authority with the participation of a party;
- for a specialist this is a request from the party.

3.2. Different volumes of material studied:

- the expert has the right to study any materials related to the subject of the examination, has the right to demand the provision of additional materials if he believes that they are necessary for conducting the examination and providing a reasoned conclusion on it;
- the specialist is limited by the materials presented by the inviting party.

3.3. Possibilities of using the toolkit:

- an expert, as a rule, uses instrumental laboratory methods and equipment;
- a specialist, as a rule, does not use instruments.

3.4. The procedure for engaging a person to provide an opinion:

- the expert is engaged by the authority conducting the criminal case;
- a specialist may be engaged by persons who have a private (own or represented) interest in the outcome of the case, including the accused (suspect), defense attorneys, victims, civil defendants, civil plaintiffs and/or their representatives, that is, any persons interested in the outcome of the case.

3.5. Asking questions to a person with specialized knowledge:

- the expert answers both the questions of the engaging authority and the questions posed by the authority, taking into account the opinions or positions of the parties;

- the specialist answers questions only from the engaging party.

3.6. Form of the conclusion (final document):

- the form of the expert's report has a clearly regulated structure, determined by law, and includes the expert's signature warning him of liability for giving a knowingly false report;

- the form of the specialist’s opinion is not regulated by law and has not been regulated to date;

3.7. Procedure for obtaining a conclusion:

- the procedure for conducting an examination is regulated at the legislative level;

- the procedure for giving an opinion is not regulated by law and requires formulation and introduction at the legislative level.

4. An expert opinion may be obtained by requesting, by persons conducting the proceedings on the case or by participants in the criminal process interested in the outcome of the case, a written opinion on the questions posed, the answers to which require special knowledge and the use of materials presented by the inviting party is permissible, but the use of special instruments, including laboratory instruments, is not required.

5. Requesting a conclusion in pre-trial proceedings is carried out in accordance with Part 1 of Article 86 of the Criminal Procedure Code of the Russian Federation by an inquiry officer or investigator by sending a written request to the specialist, which includes an explanation of the specialist's rights, duties and responsibilities, a list of questions posed for resolution and, in certain cases, the materials necessary for responses. The received conclusion is subject to attachment to the criminal case. If the resolution of the questions posed requires instrumental or laboratory research, the inquiry officer or investigator must appoint a forensic examination.

6. Requesting an opinion during the trial may occur at the request of the parties or at the initiative of the court and occurs by sending a written request to the specialist, including an explanation of the specialist's rights, duties and responsibilities, a list of questions

posed for resolution and, in certain cases, materials necessary for answers that do not require instrumental or laboratory testing. The received opinion is subject to attachment to the criminal case. If the resolution of the questions posed requires instrumental or laboratory testing, the court must appoint a forensic examination.

7. Submission of an expert opinion by participants (and their representatives) personally interested in the outcome of the case, both in pre-trial proceedings and at the trial stage, is carried out in accordance with Part 2, 3 of Article 86 of the Code of Criminal Procedure of the Russian Federation on the basis of an agreement with the expert, which includes the questions posed to the expert for resolution and the materials necessary for this, and also containing the specialist's obligation to appear before the investigator (inquiry officer) or the court to participate in the filing of a petition by the inviting party to include the expert opinion, to sign a written undertaking on liability for giving a knowingly false opinion, and to confirm their readiness to submit this evidence in the case materials. The opinion, together with a petition to include it in the case, is sent to the inquirer, investigator or submitted to the court. If the petition is granted, the inquirer, investigator or judge is obliged to explain to the expert his rights, duties and responsibilities.

8. The expert’s opinion must have a form regulated by law and consist of three parts (similar to the corresponding parts of the expert’s opinion):

- an introductory part containing information about when, where, by whom (last name, first name and patronymic (if any), education, specialty, academic degree, academic title, position held) and on what basis the specialist’s opinion was given, who was present when the opinion was given, what materials, information, and documents the specialist used;
- the main part, containing the specialist’s reasoned opinions on the questions posed and demonstrating the process of applying the specialist’s specialized knowledge to a specific case of studying the circumstances of a case, object, subject, or document;
- conclusions (the operative part), containing reasoned, qualified, specific and understandable for other persons answers to the questions posed to the specialist, formulated in the form of conclusions.

9.The testimony of a specialist is evidence formed within the framework of a criminal case through his interrogation, in order to obtain information about circumstances requiring special knowledge, or in order to clarify the conclusion of an expert or specialist (including his own).

10. During the preliminary investigation, interrogation shall be carried out by the inquiry officer or investigator on his own initiative or at the request of the participants who have a personal interest in the outcome of the case, subject to satisfaction, if the interrogation is required to clarify the conclusion of a specialist or expert. During the trial, the court, at the request of the parties or on its own initiative, is authorized to summon a specialist for interrogation in order to obtain information about circumstances requiring special knowledge, or in order to clarify the conclusion of an expert or specialist (including his own).

11. When deciding on the admissibility of a specialist's conclusion and/or testimony, the following must be taken into account:

- the proper subject for giving an opinion and/or testimony (a person who has special knowledge, meets the requirements for qualifications, specialization, competence and has no grounds for challenge);
- the form of evidence provided by law (conclusion and/or testimony);
- the presence of a request for a conclusion from a person conducting criminal proceedings or an agreement concluded by a specialist with a participant (his representative) personally interested in the outcome of the case, containing the specialist's obligation to appear before the investigator (inquiry officer) or the court, to participate in the application of a petition by the inviting party to include the specialist's conclusion, to sign a written undertaking of liability for giving a knowingly false conclusion and to confirm his readiness to present this evidence in the case materials.

The proposals and conclusions are aimed at increasing the efficiency of using the expert's opinion and testimony, including that involved by the defense, in proving in criminal cases, increasing the frequency and quality of using the expert's opinion and testimony in criminal proceedings, increasing the role of specialized knowledge in

proving in criminal cases and the importance of the defense attorney's participation in proving.

The results of the conducted research confirmed the relevance of the chosen topic. The results of this study are of interest to the science of criminal procedure, can be used to improve criminal procedure legislation , as well as in the field of education in the direction of "Jurisprudence". Thus, in this work, the author has resolved the tasks set, substantiated its scientific novelty, revealed theoretical and practical significance, the main goals of scientific research have been achieved.

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APPLICATION No. 1

QUESTIONNAIRE
to question investigators on the topic:
"Using the expert's opinion and testimony in proving criminal cases"

Dear colleague, we ask you to take part in a survey conducted as part of a dissertation research for the degree of candidate of legal sciences. We ask you to give (mark) the answer option that you consider to be the most correct, or express your own opinion, indicating your professional experience: _____ years.

1. What forms of using specialized knowledge do you use (have you used) in your professional activities?
   I have no practical experience in using specialized knowledge;
   expert opinion (commission of experts);
   expert opinion;
   interrogation of an expert;
   interrogation of a specialist;
   specialist consultation to pose questions to an expert(s);
   your answer: _____.

2. If you involved a specialist in the case, then for what purpose?
   to ask questions to the expert when appointing a forensic examination;
   to assist in the detection, securing and seizure of objects and documents;
   to obtain advisory information;
   satisfying the defense's motion to include an expert's report;
   for interrogation, satisfying the motion of the defense;
   to assist (assist) in conducting the interrogation of an expert;
   your answer: _____.

3. Do you think it is permissible to involve a specialist (attach a specialist's opinion) at the request of the defense?
   no such requests were received from the defense;
   I consider it unacceptable;
   I consider it acceptable, with due justification;
   I consider it unacceptable if the case materials already contain the opinion of another person with special knowledge (expert opinion);
   I believe that it is not permissible to include a specialist's report prepared at the request of the defense, since the specialist, when preparing it, was not warned of criminal liability for giving a knowingly false report;
   I believe that the inclusion of a specialist's report prepared at the request of the defense is not permissible, since the form of such a report does not comply with the requirements of current legislation (it is not regulated);
   your answer: _____ .

4. Have you used such evidentiary action as interrogation of a specialist in your practice?
   I don't have such experience;
   to pose questions to an expert when appointing a forensic examination;
   used to clarify a conclusion previously given by a specialist;
   your answer: _____.

5. If you used a specialist interrogation, what rules were applied?
   the specialist was interrogated according to the rules of interrogation of a witness;
   the specialist was interrogated according to the rules for interrogating an expert;
   your answer: _____.

6. Did you warn the specialist involved in the case about the responsibility for giving a knowingly false conclusion or false testimony?
   yes, for giving a knowingly false opinion in accordance with Article 307 of the Criminal Code of the Russian Federation;
   yes, for giving knowingly false testimony in accordance with Article 307 of the Criminal Code of the Russian Federation;
   yes, for giving knowingly false opinions and testimony in accordance with Article 307 of the Criminal Code of the Russian Federation;
   no, since this is not directly provided for by the criminal procedure legislation of the Russian Federation;
   your answer: _____ .

7. In your opinion, is there a need for a regulatory framework for warning a specialist about liability for giving knowingly false opinions and testimony?
   no, I think this issue has been resolved;
   Yes, it is necessary to make appropriate changes to the legislation;
   I believe that it is sufficient to use an analogy with a warning about the criminal liability of an expert;
   your answer: _____.

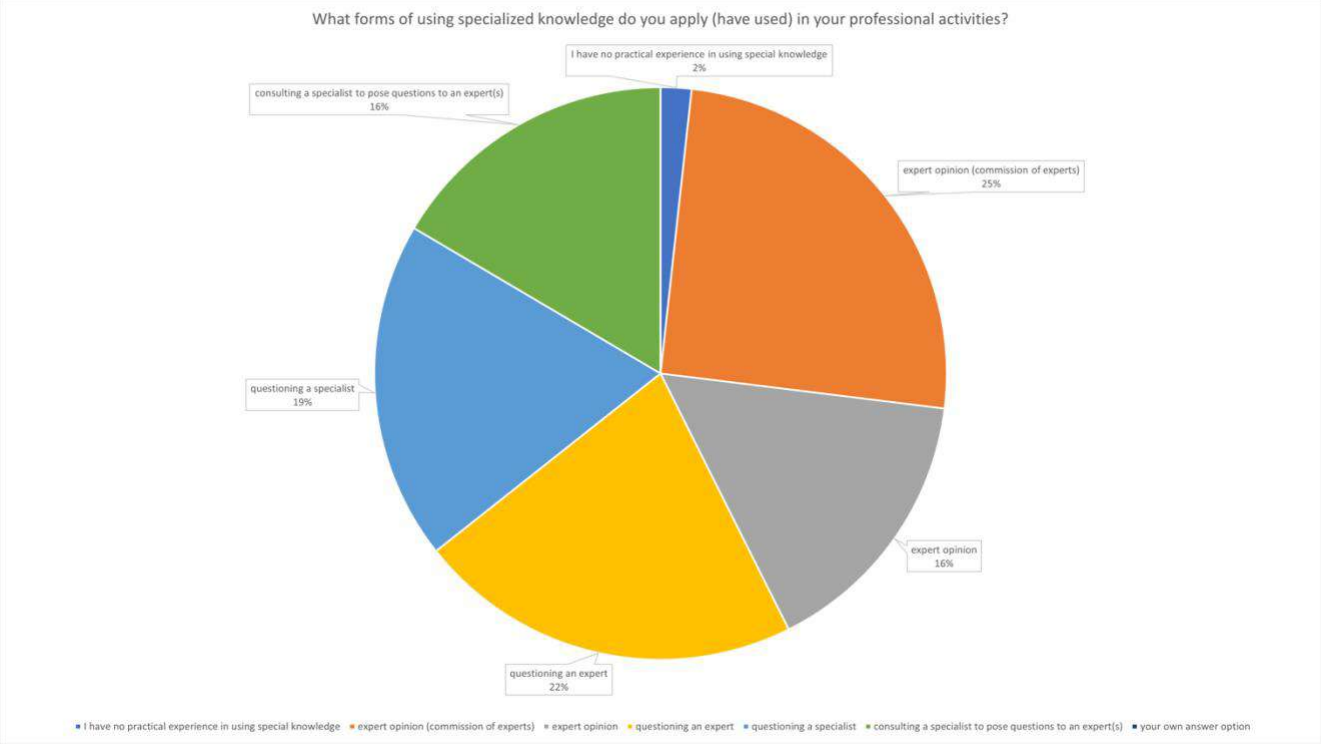
8. In your opinion, is there a need for regulatory consolidation of requirements for the form of a specialist's report?
   no, I believe this issue is resolved in practice;
   I believe it is necessary to make appropriate changes to the Criminal Procedure Code of the Russian Federation;
   I believe that it is sufficient to use an analogy with the form of an expert's report;
   your answer: _____.

9. How, in your opinion, should a conflict between conflicting conclusions of an expert and a specialist on the same issues be resolved:
   the current legislation contains comprehensive instruments: the person conducting the criminal proceedings evaluates all the evidence in the case, based on their totality and his inner conviction;
   in such cases, mandatory questioning of the persons who prepared the reports (expert and specialist) is necessary;
   in such cases, it is necessary to appoint a repeat examination;
   in such cases, on controversial (competing) issues, it is necessary to question a specialist who has not previously participated in the consideration of the case;
   Your answer option: _____.

Thank you for your participation!

APPLICATION No. 2

Question No. 1



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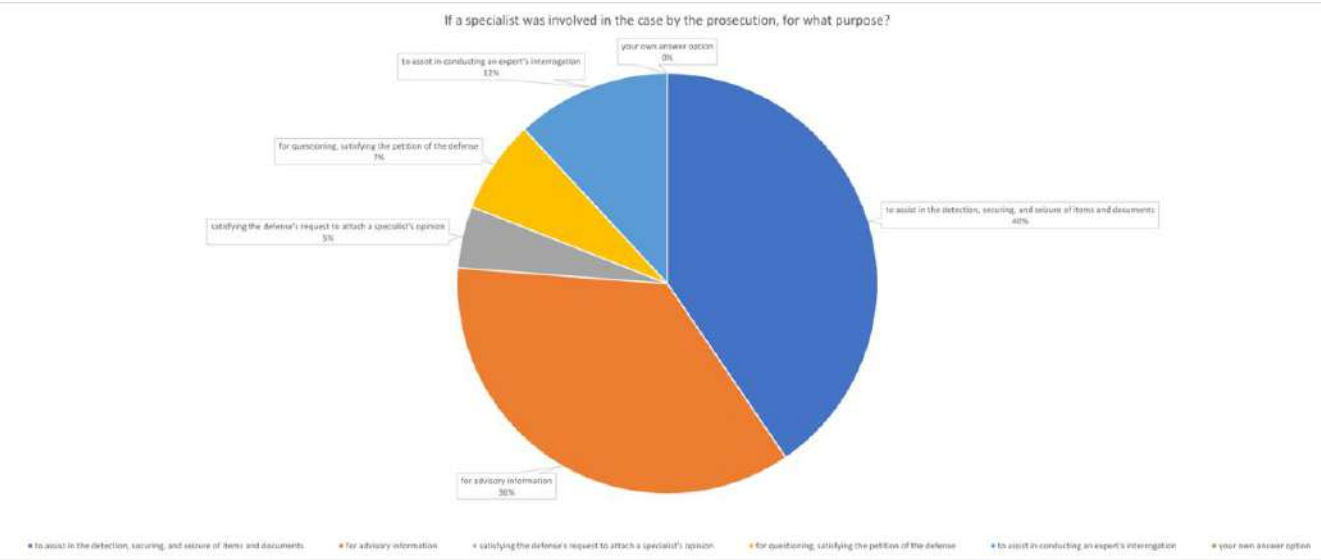

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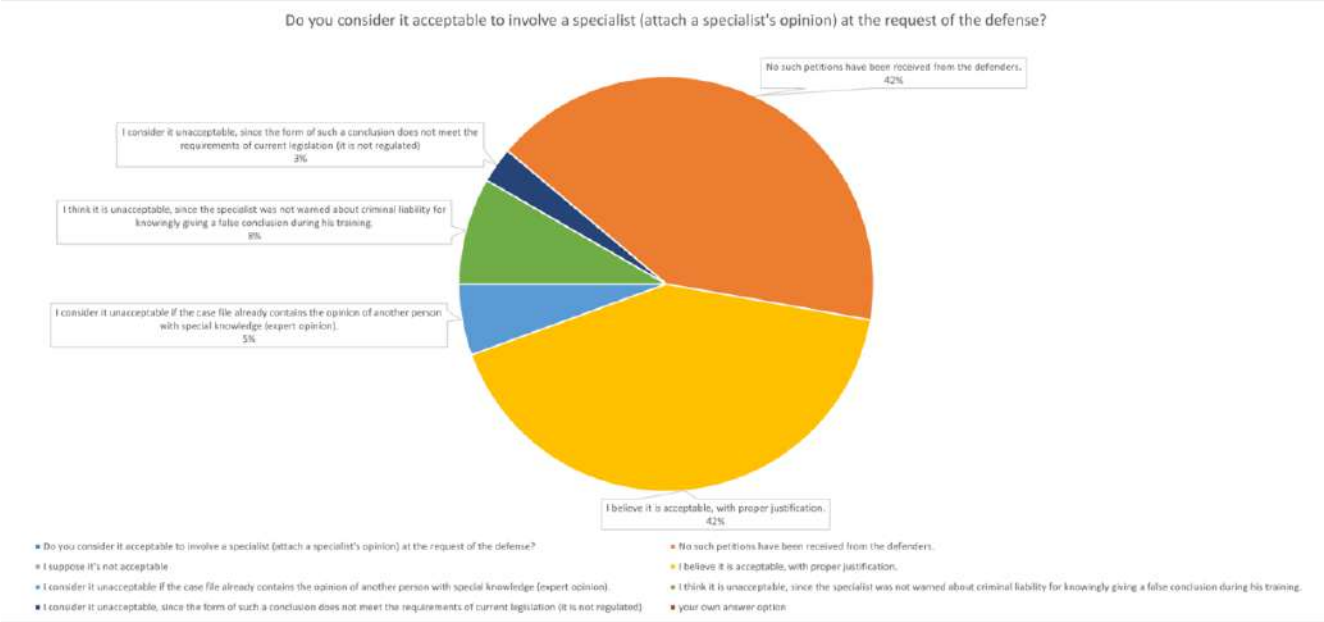

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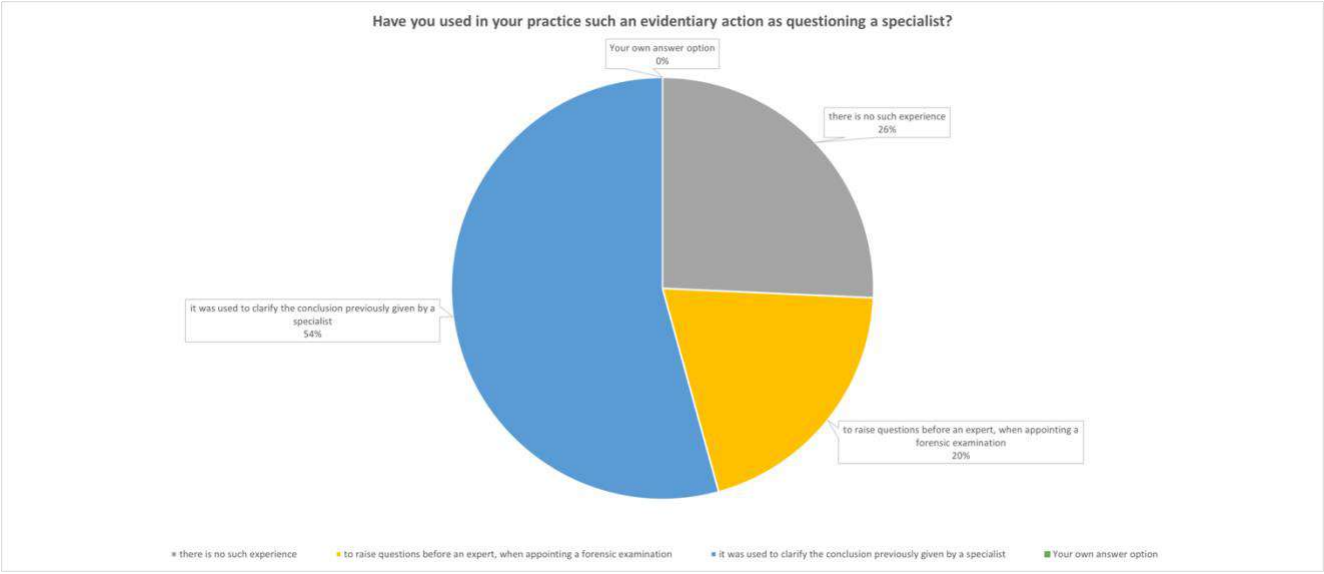

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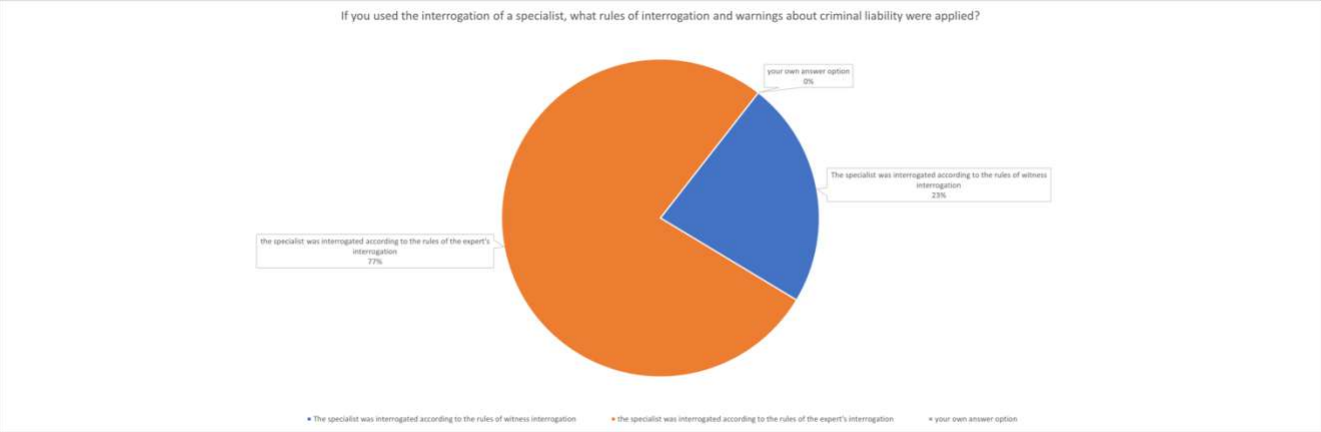

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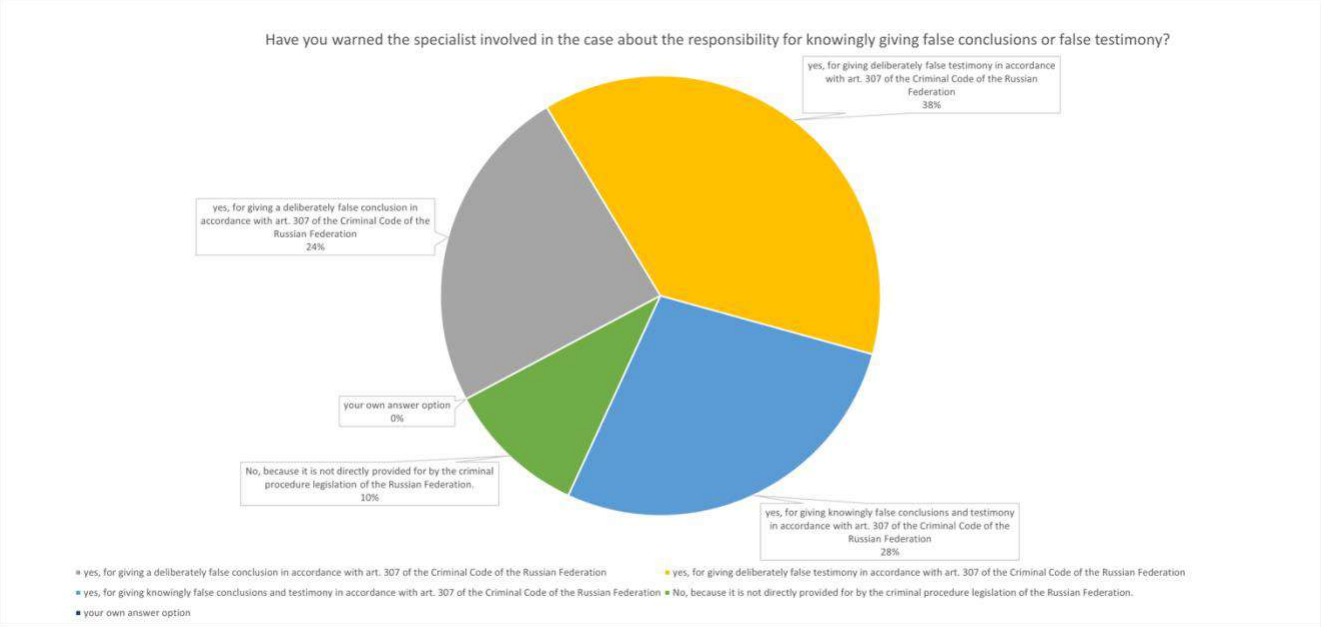

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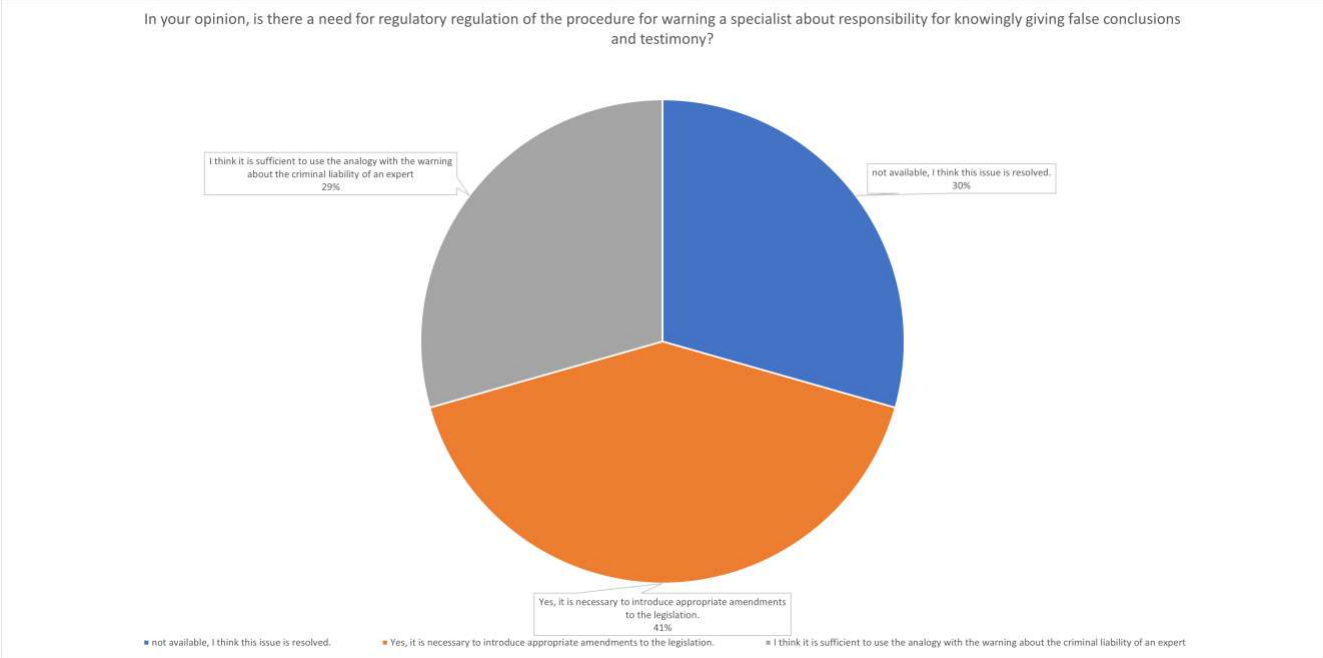

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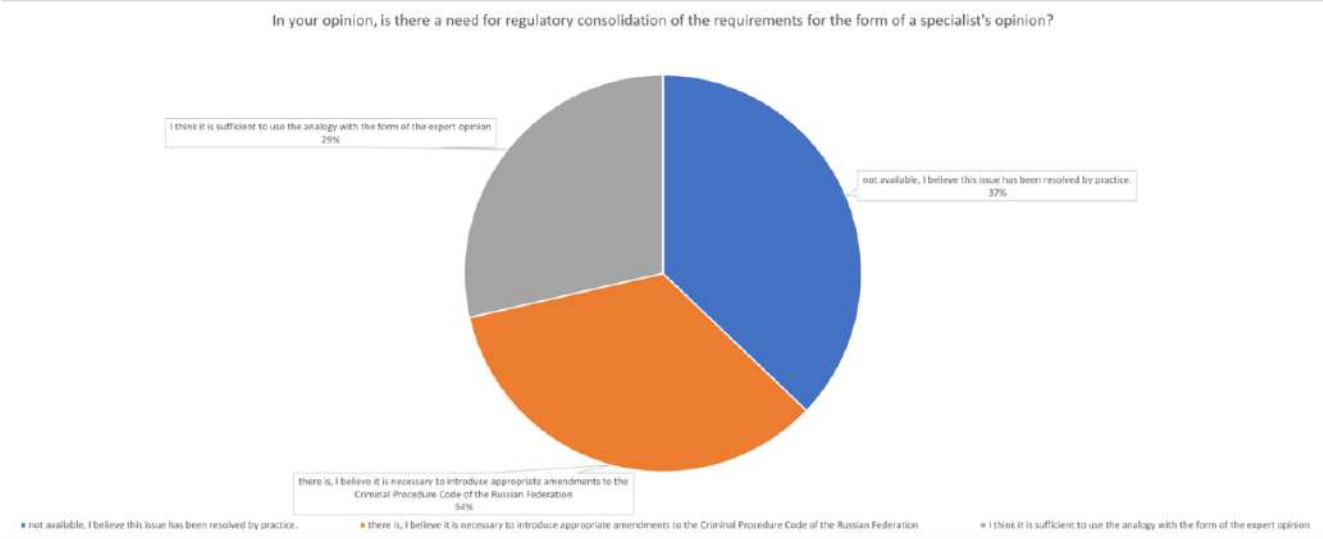
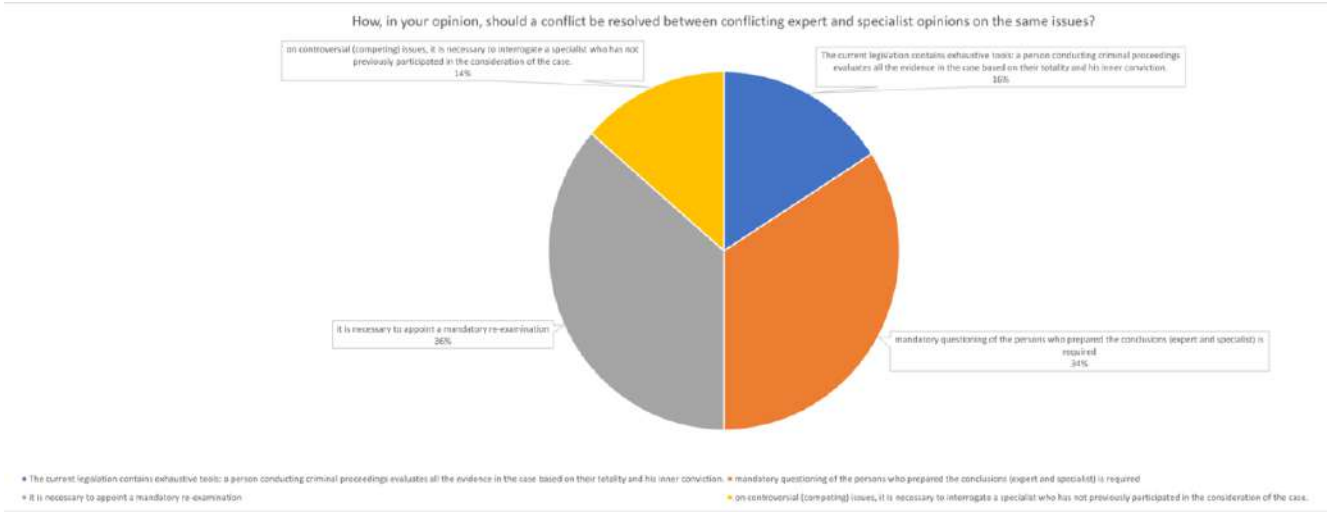


Question No. 9



APPLICATION No. 3

QUESTIONNAIRE
to question prosecutors on the topic:
"Using the expert's opinion and testimony in proving criminal cases"

Dear colleague, we ask you to take part in a survey conducted as part of a dissertation research for the degree of candidate of legal sciences. We ask you to give (mark) the answer option that you consider to be the most correct, or express your own opinion, indicating your professional experience: _____ years.

1. What forms of using specialized knowledge do you use (have you used) in your professional activities?
   I have no practical experience in using specialized knowledge;
   expert opinion (commission of experts);
   expert opinion;
   interrogation of an expert;
   interrogation of a specialist;
   specialist consultation to pose questions to an expert(s);
   your answer: _____.

2. If a specialist was brought in to participate in the case by the prosecution, then for what purpose?
   to ask questions to the expert when appointing a forensic examination;
   to assist in the detection, securing and seizure of objects and documents;
   to obtain advisory information;
   satisfying the defense's motion to include an expert's report;
   for interrogation, satisfying the motion of the defense;
   to assist (assist) in conducting the interrogation of an expert;
   your answer: _____.

3. Do you think it is permissible to involve a specialist (attach a specialist's opinion) at the request of the defense?
   no such requests were received from the defense;
   I consider it unacceptable;
   I consider it acceptable, with due justification;
   I consider it unacceptable if the case materials already contain the opinion of another person with special knowledge (expert opinion);
   I consider it unacceptable, since the specialist, during his preparation, was not warned about criminal liability for giving a knowingly false conclusion;
   I consider it unacceptable, since the form of such a conclusion does not comply with the requirements of current legislation (it is not regulated);
   your answer: _____ .

4. Have you used such evidentiary action as interrogation of a specialist in your practice?
   I don't have such experience;
   to pose questions to an expert when appointing a forensic examination;
   used to clarify a conclusion previously given by a specialist;
   your answer: _____.

5. If you used a specialist interrogation, what interrogation rules and warnings about criminal liability were applied?
   the specialist was interrogated according to the rules of interrogation of a witness;
   the specialist was interrogated according to the rules for interrogating an expert;
   the specialist was warned for giving a knowingly false conclusion and/or testimony in accordance with Article 307 of the Criminal Code of the Russian Federation;
   the specialist was not warned about criminal liability for giving a knowingly false opinion, since this is not directly provided for by the criminal procedure legislation of the Russian Federation;
   your answer: _____.

6. In your opinion, is there a need for a regulatory framework for warning a specialist about liability for giving knowingly false opinions and testimony?
   no, I think this issue has been resolved;
   Yes, it is necessary to make appropriate changes to the legislation;
   I believe that it is sufficient to use an analogy with a warning about the criminal liability of an expert;
   your answer: _____.

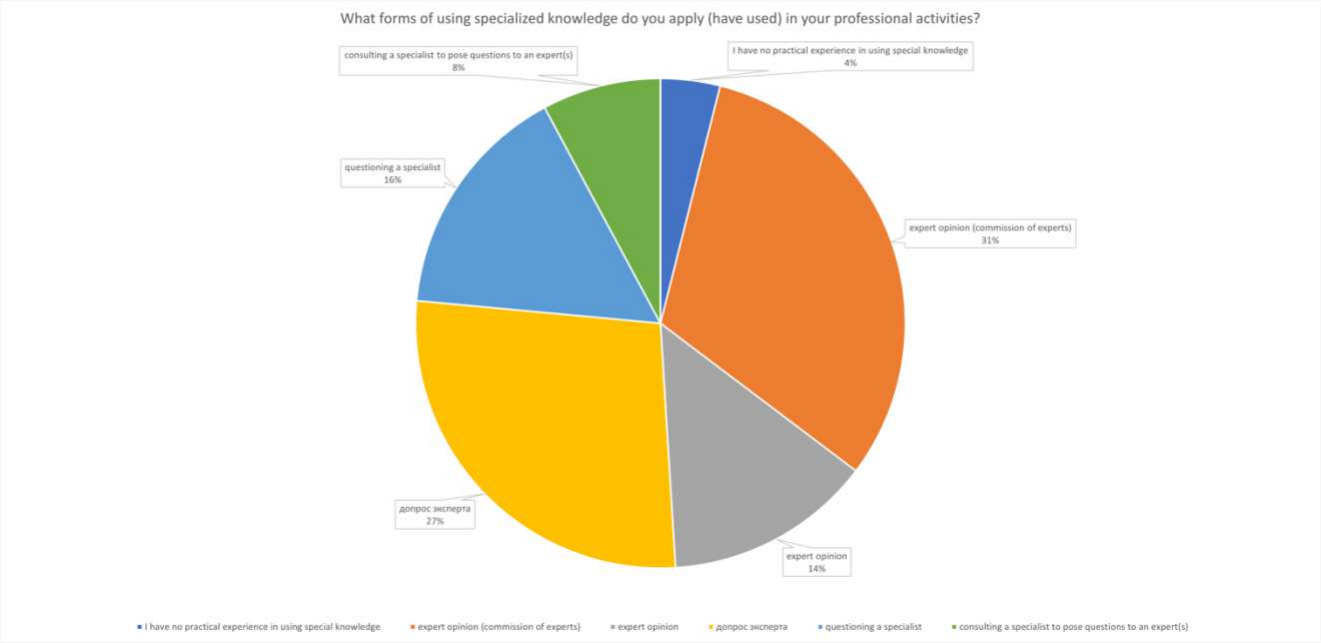
7. In your opinion, is there a need for regulatory consolidation of requirements for the form of a specialist's report?
   no, I believe this issue is resolved in practice;
   I believe it is necessary to make appropriate changes to the Criminal Procedure Code of the Russian Federation;
   I believe that it is sufficient to use an analogy with the form of an expert's report;
   your answer option: _____.

8. How, in your opinion, should a conflict between conflicting conclusions of an expert and a specialist on the same issues be resolved:
   the current legislation contains comprehensive instruments: the person conducting the criminal proceedings evaluates all the evidence in the case, based on their totality and his inner conviction;
   in such cases, mandatory questioning of the persons who prepared the reports (expert and specialist) is necessary;
   a mandatory appointment of a repeat examination is necessary;
   on controversial (competing) issues, it is necessary to question a specialist who has not previously participated in the consideration of the case;
   Your answer option: _____.

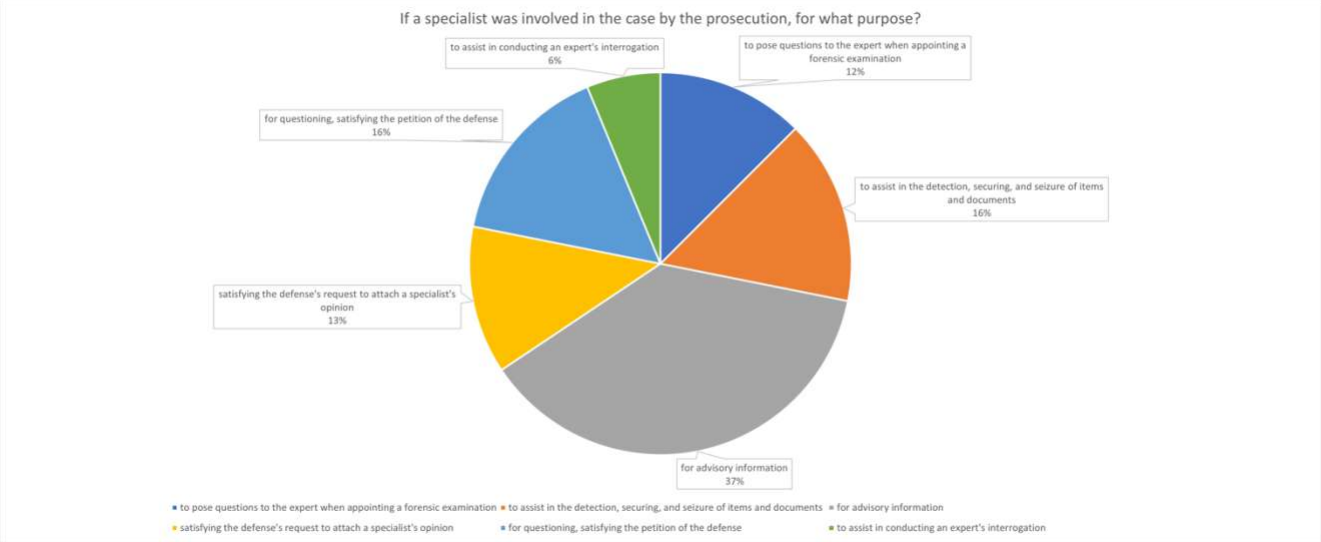
Thank you for your participation!

APPLICATION No. 4

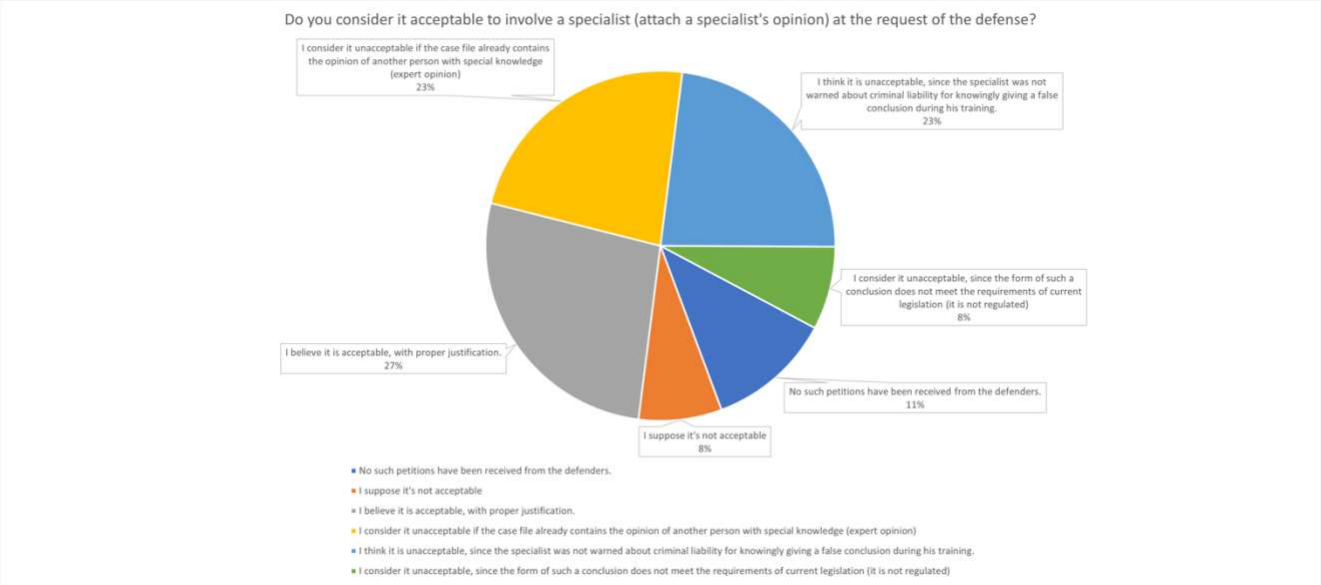
Question No. 1



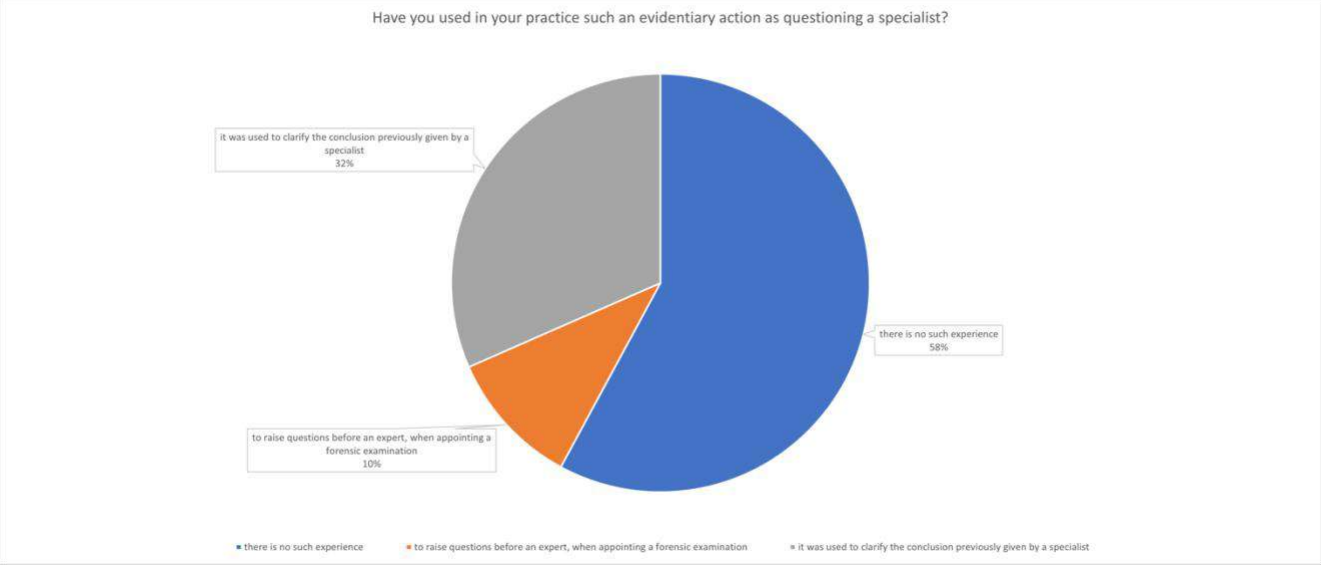
Question No. 2



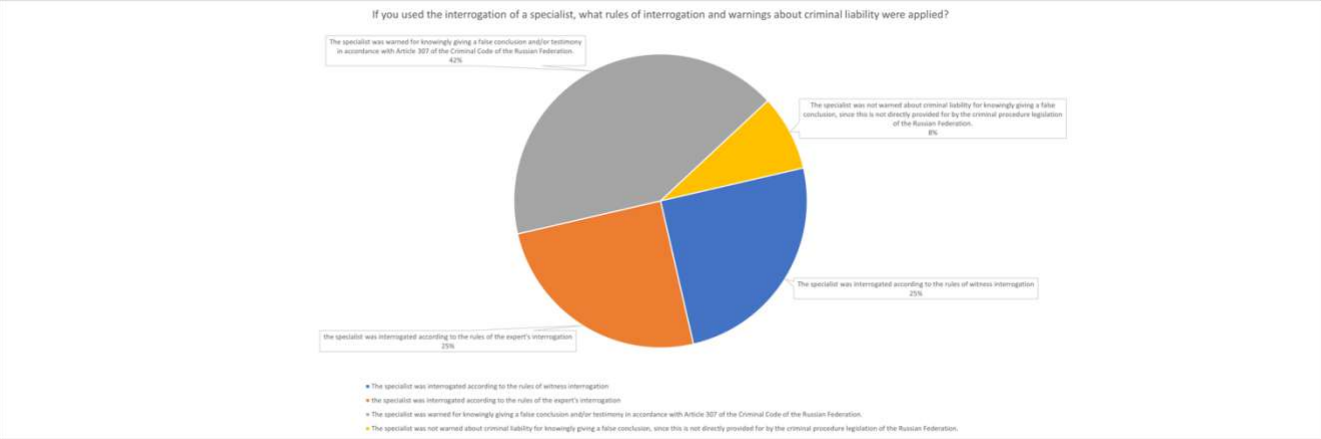
Question No. 3



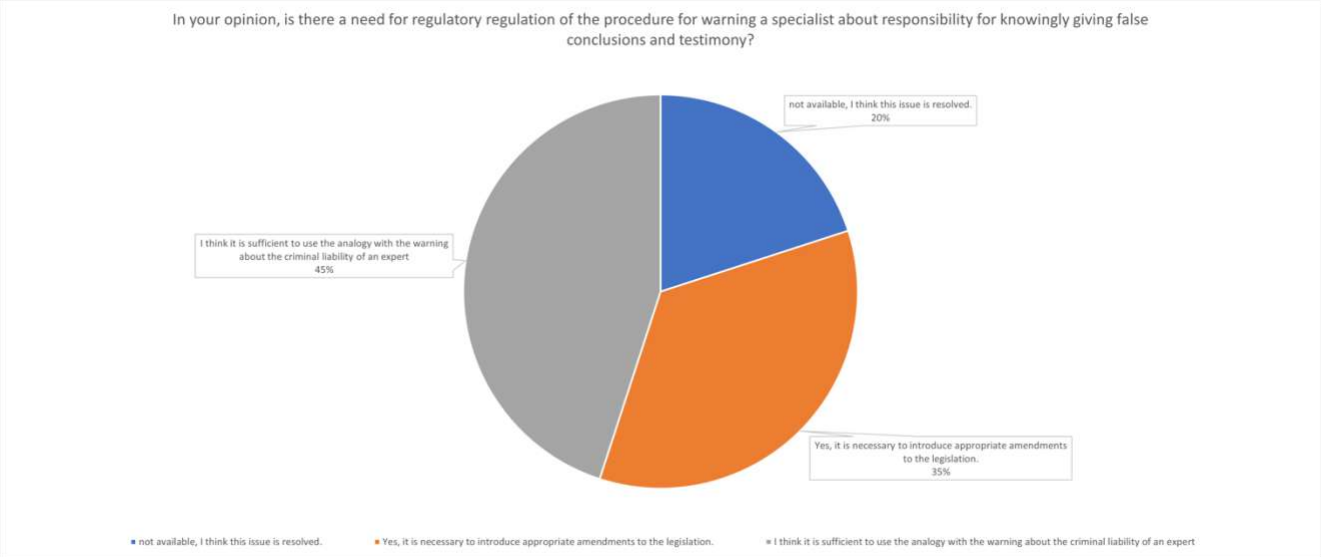
Question No. 4



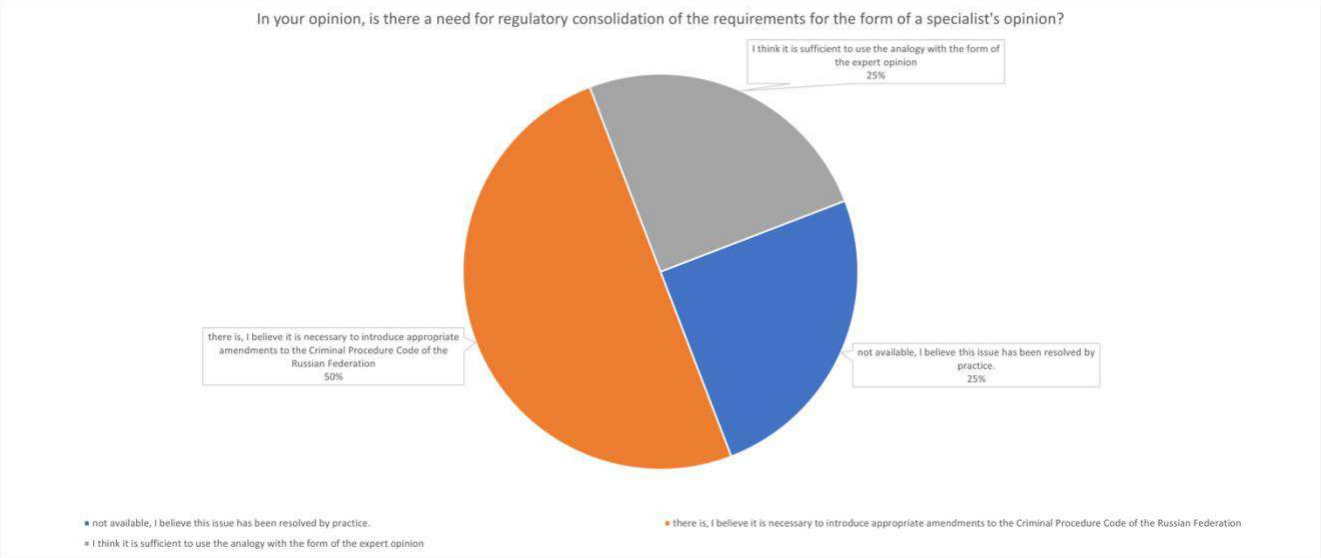
Question No. 5



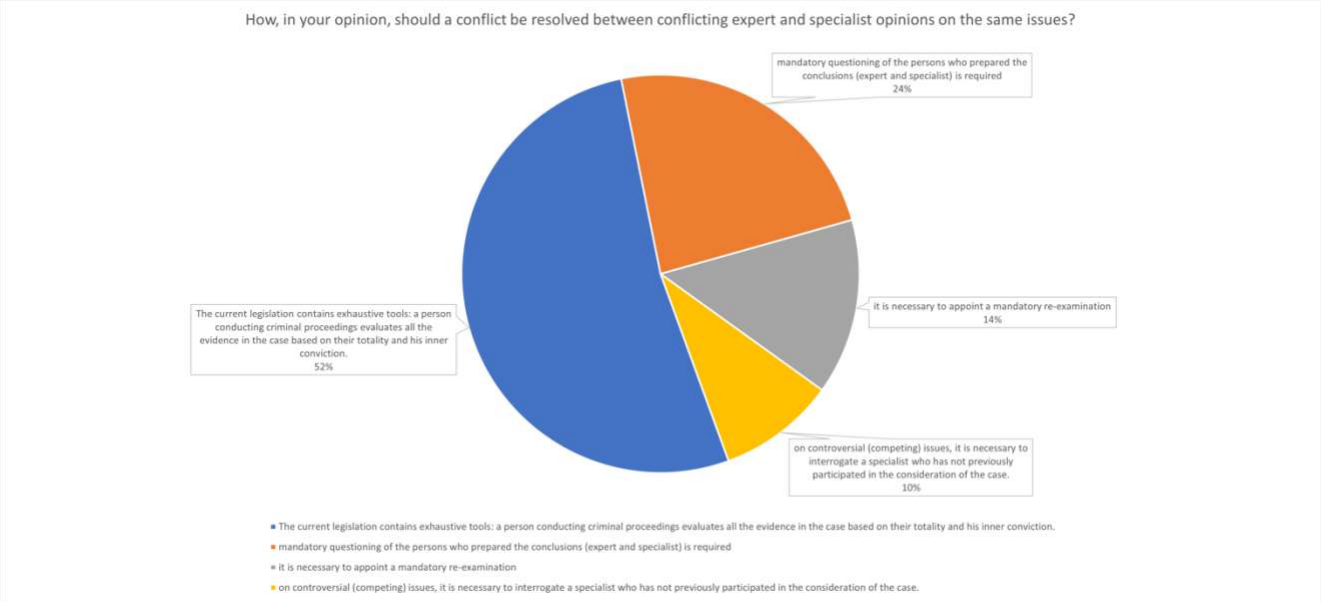
Question No. 6



Question No. 7



Question No. 8



APPLICATION No. 5

QUESTIONNAIRE
to survey lawyers on the topic:
"Using the expert's opinion and testimony in proving criminal cases"

Dear colleague! We kindly ask you to take part in a survey conducted as part of a dissertation research for the degree of candidate of legal sciences. We kindly ask you to give (mark) the answer option (one or more) that you consider correct, or to express your own opinion. Please answer the following questions, indicating your experience as a lawyer: _____ years.

1. What forms of using specialized knowledge in criminal proceedings do you use (have you used) in your practical activities:
   I have no practical experience in using specialized knowledge;
   expert opinion (commission of experts);
   expert opinion;
   interrogation of an expert;
   interrogation of a specialist;
   specialist consultation to pose questions to an expert(s);
   participation of a specialist in the examination of criminal case materials;
   preparation of a legal opinion;
   preparation of a review of the expert's (commission of experts') opinion;
   your answer: _____.

2. When providing defense in criminal cases, have you ever involved a specialist in the case on your own initiative (the initiative of the defendant)?
   no, because there was no such need;
   no, because I don't consider proof with the participation of a specialist to be effective;
   no, because the defendant did not have consent to receive this type of evidence;
   to ask questions to an expert when appointing a forensic examination of a case;
   to evaluate the expert's (commission of experts') opinion contained in the case materials;
   for the purpose of presenting an alternative conclusion (opinion) of a person with special knowledge to the case materials;
   to interrogate a specialist in a court hearing for the purpose of clarifying (confirming) a previously given conclusion;
   to assist (assist) in conducting the interrogation of an expert summoned to a court hearing;
   in order to substantiate a petition for the appointment of a repeat or additional examination of the case;
   your answer: _____.

3. What cases of satisfaction or refusal to satisfy a petition to include a specialist's opinion in the case materials can you indicate in your practice:
   I have not filed any such petitions;
   was refused during the preliminary investigation, since the investigator, as a procedurally independent person, did not see the need for inclusion;
   was denied in court;
   was satisfied during the preliminary investigation;
   was satisfied in court;

the expert's opinion was attached as another document, in accordance with Article 84 of the Criminal Procedure Code of the Russian Federation;
was refused during the preliminary investigation, due to the presence in the case materials of a different conclusion from a person with special knowledge;
was refused during the preliminary investigation, while the same conclusion was included at the trial stage;
was refused due to the fact that when preparing the report, the specialist was not warned about criminal liability for giving a knowingly false report;
was refused due to the fact that the form of the attached conclusion does not comply with the requirements of the current legislation;
was refused on the grounds that the conclusion was not directly based on the case materials;
your answer: _____.

4. In those cases where the expert opinion presented by you was included in the case materials, was it mentioned and assessed in the verdict?
no, it was not mentioned in the verdict;
was cited and assessed as inadmissible evidence;
mentioned, critically assessed, as prepared at the request of the interested party;
was mentioned, assessed critically, since the specialist, during its preparation, was not warned about criminal liability for giving a knowingly false conclusion;
was mentioned and assessed critically because it contradicted (did not correspond to) the conclusions of the expert opinion contained in the case materials;
was used as one of the pieces of evidence in the case;
was used as one of the pieces of evidence in the case, while the case did not contain any other conclusion from a person with special knowledge;
was mentioned as a basis for appointing and conducting a repeat or additional examination of the case;
your answer: _____.

5. In your opinion, is there a need for regulatory consolidation of requirements for the form of a specialist’s report?
no, I believe this issue is resolved in practice;
I believe it is necessary to make appropriate changes to the Criminal Procedure Code of the Russian Federation;
I believe that it is sufficient to use an analogy with the form of an expert opinion;
your answer: _____.

6. In your opinion, is there a need for a regulatory framework for warning a specialist about liability for giving knowingly false opinions and testimony?
no, I think this issue has been resolved;
I believe it is necessary to make appropriate changes to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation;
I believe that it is sufficient to use an analogy with a warning about the criminal liability of an expert;
your answer: _____.

7. How, in your opinion, should a conflict between conflicting conclusions of an expert and a specialist on the same issues contained in the case materials be resolved:
the current legislation contains comprehensive instruments;
in such cases, mandatory questioning in court of the persons who prepared the reports (expert and specialist) is necessary;
in such cases, a mandatory re-examination is required;

in such cases, on controversial (competing) issues, it is necessary to question a specialist who has not previously participated in the consideration of the case;
Your answer option: _____.

8. Have you initiated such evidentiary action as questioning a specialist?
I don't have such experience;
to communicate to the court and the parties the opinion of a person with special knowledge;
to clarify the previously given conclusion;
to challenge an expert opinion contained in the case materials;
to substantiate a petition for the appointment of a repeat or additional examination;
your answer: _____.

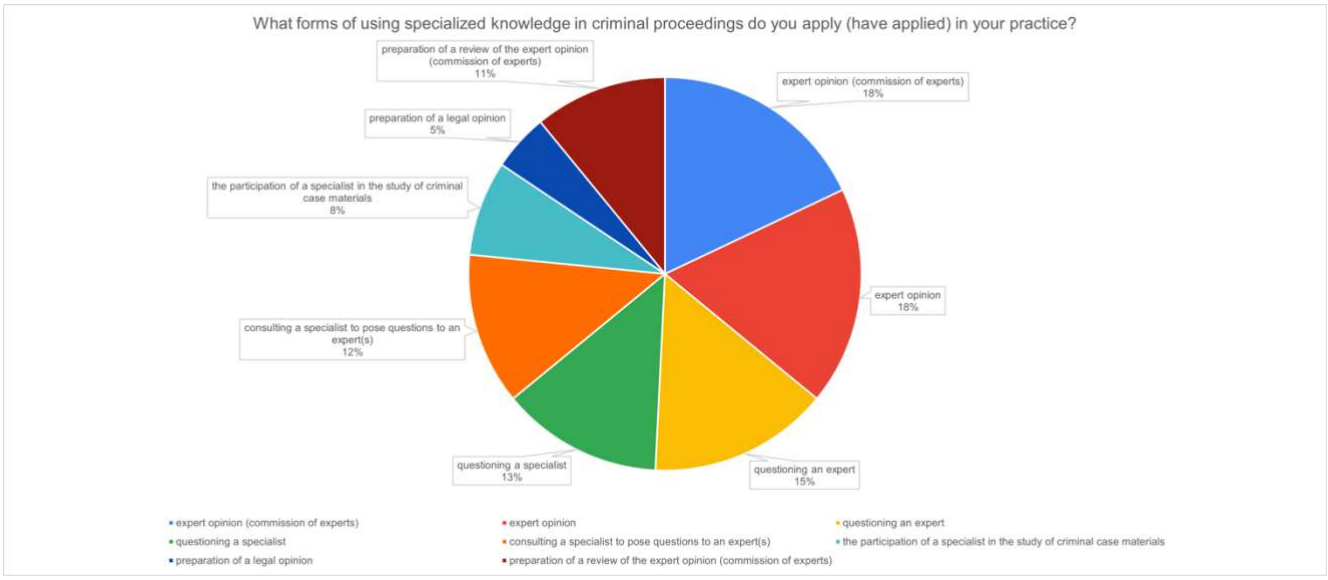
9. In your opinion, is there a need for procedural consolidation of the rules for such an investigative action as interrogation of a specialist?
I don't think there is any need;
no, I believe it is acceptable to interrogate a specialist according to the rules for interrogating a witness;
Yes, I believe that there needs to be clear regulation of the procedure for interrogating a specialist;
your answer: _____.

10. What, in your opinion, are the problems of specialist participation in proof that require regulatory regulation in the doctrine and practice of domestic criminal proceedings?
there are no problems, the existing regulations are sufficient, no changes are required;
the absence of a regulatory distinction between a specialist providing assistance to an investigator, inquiry officer, or court and a specialist giving an opinion;
lack of regulatory consolidation (distinction) of the procedural status of a specialist invited by the defense;
lack of access by the specialist invited by the defense to the materials of the criminal case;
biased attitude towards an expert's opinion prepared at the request of the defense, as having been prepared at the initiative of an interested party;
unjustified (unmotivated) refusal to include a specialist's report in the case materials;
lack of regulatory framework for obtaining legal opinions from a specialist;
lack of regulatory framework for obtaining expert reviews of expert opinions;
your answer: _____.

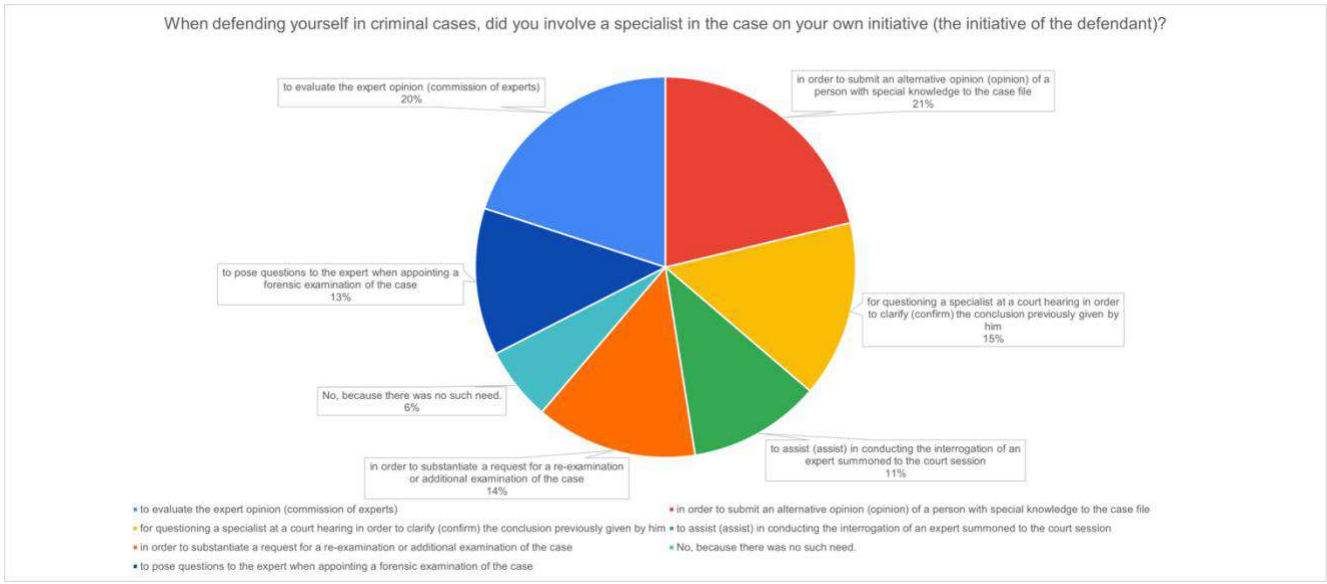
Thank you for your participation!

APPLICATION No. 6

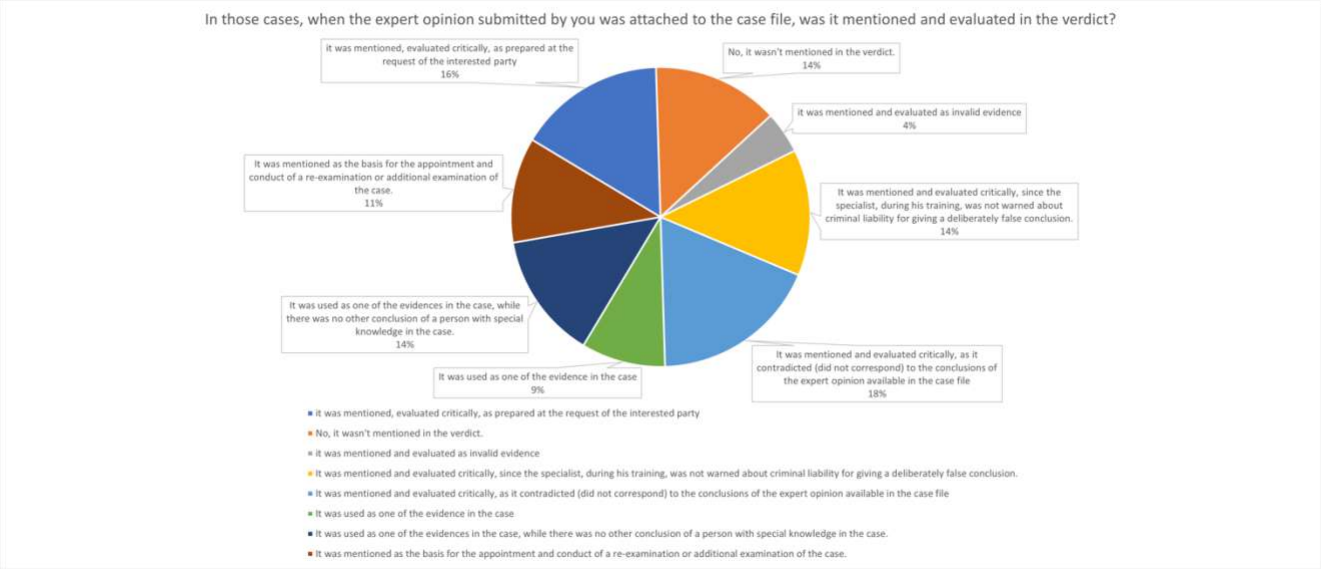
Question No. 1



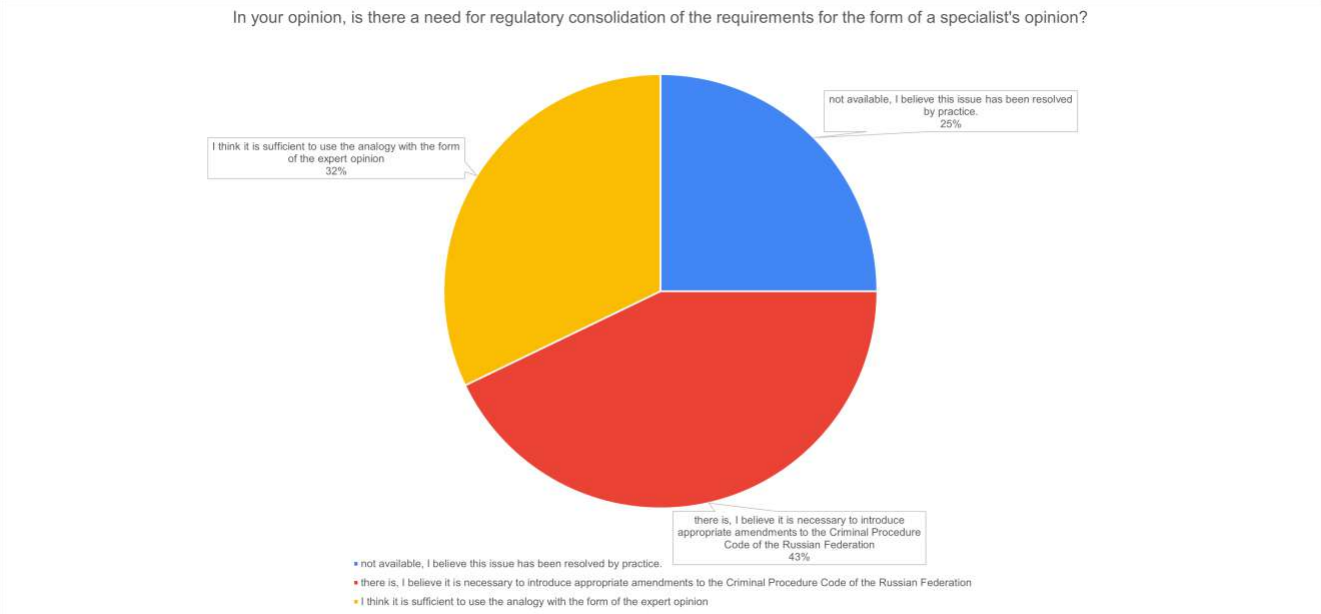
Question No. 2



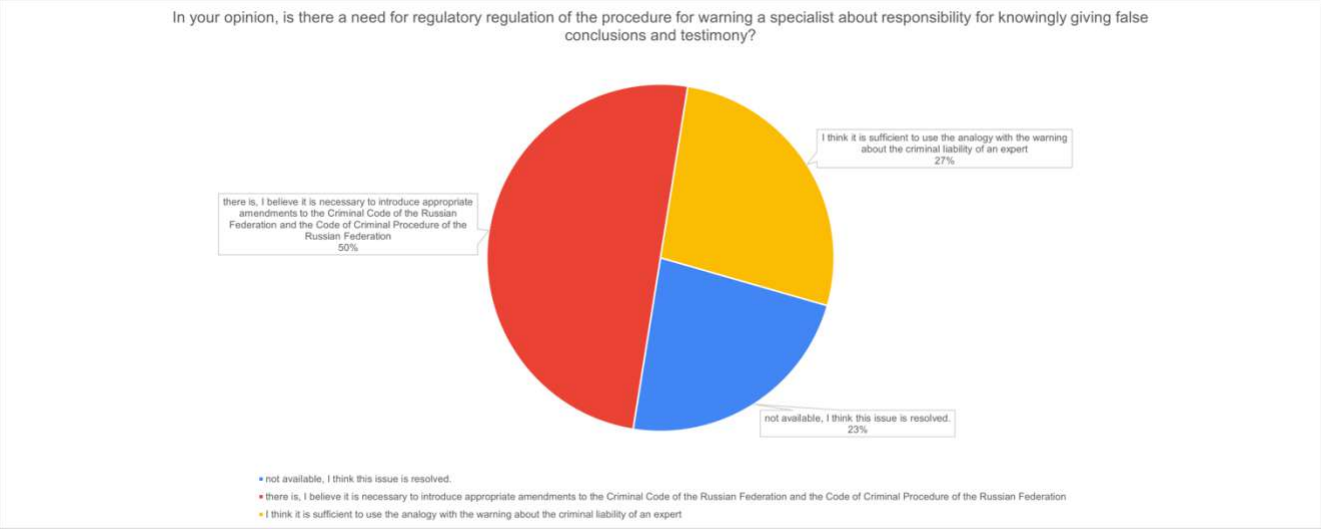
Question No. 3



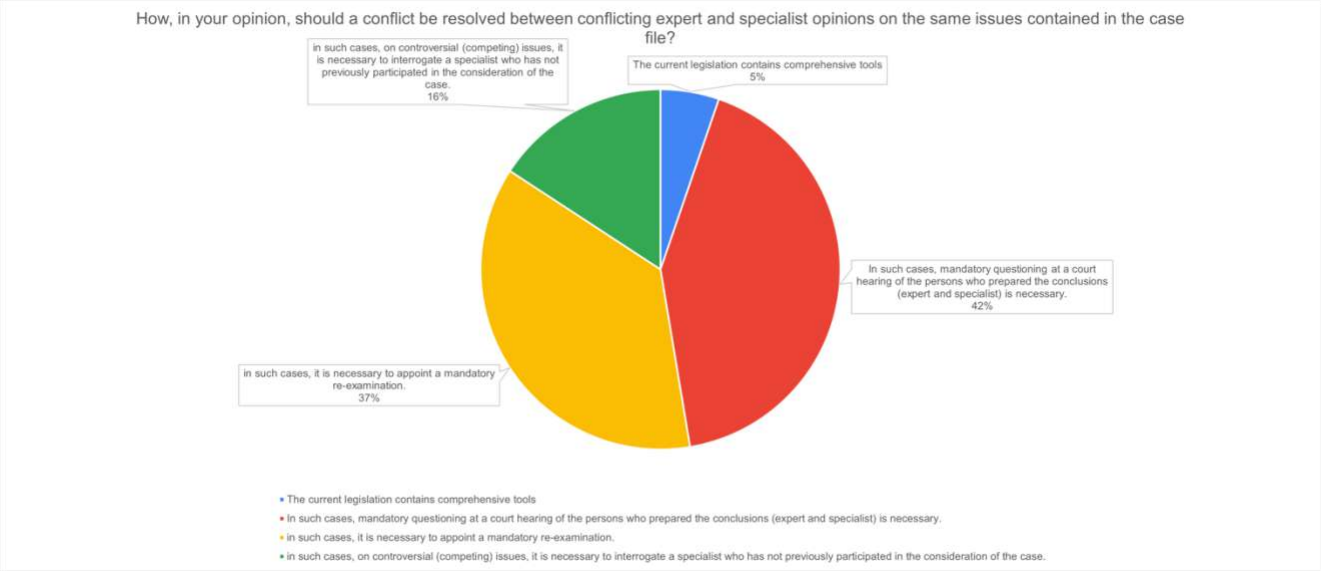
Question No. 4



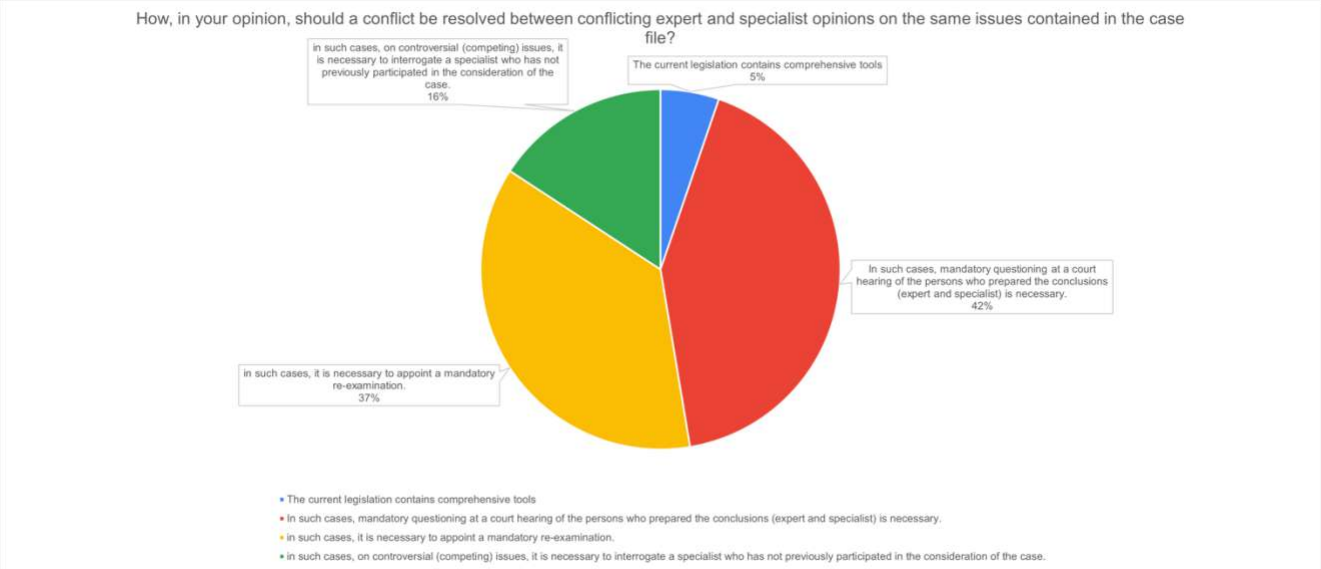
Question No. 5



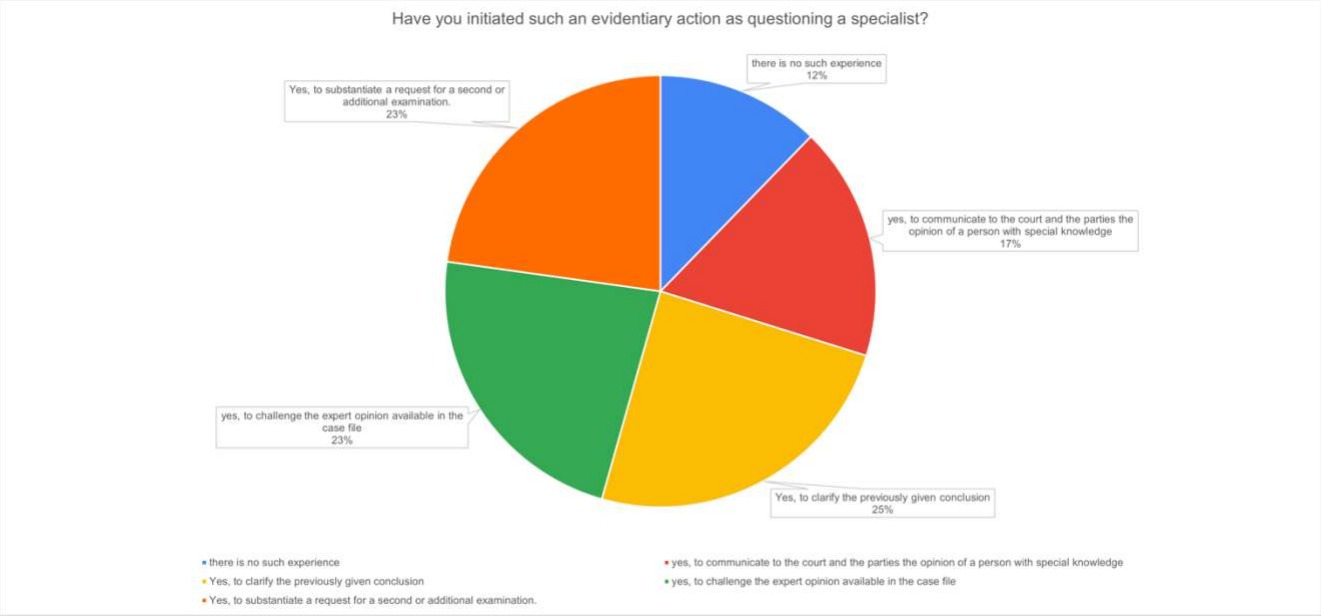
Question No. 6



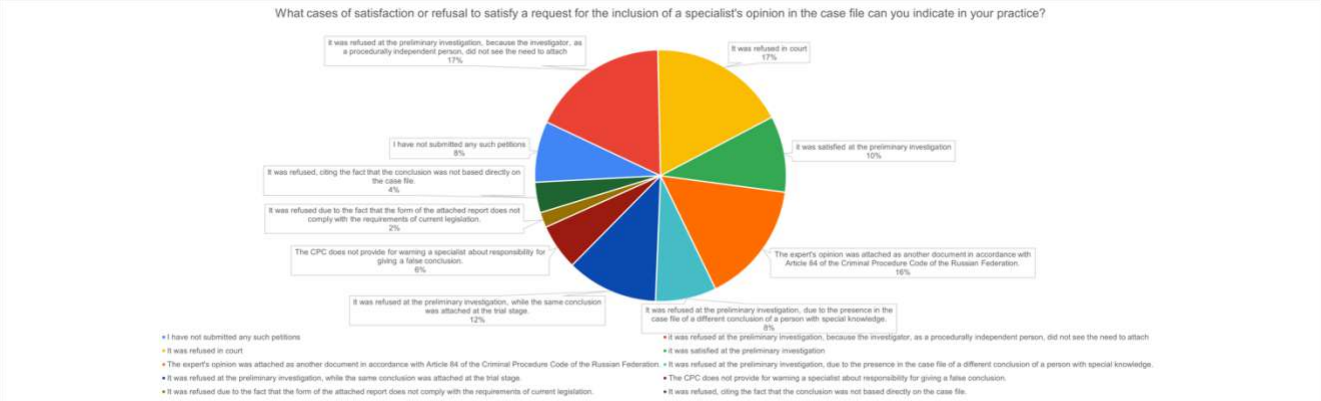
Question No. 7



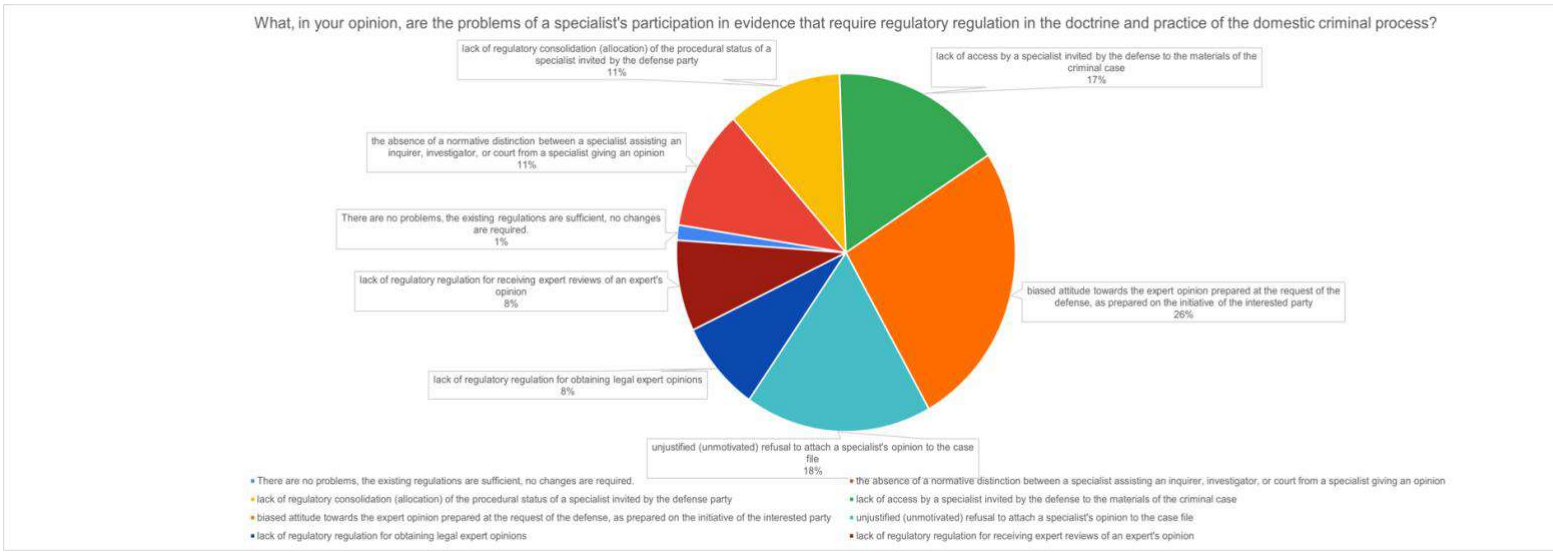
Question No. 8



Question No. 9



Question No. 10



APPLICATION No. 7

Results of the generalization of published and unpublished judicial practice in criminal cases considered in the constituent entities of the Russian Federation (St. Petersburg, Leningrad region, Article 264 of the Criminal Code of the Russian Federation) from May 2017 to December 2024

No.	Indicator	2017 - 2024	Denied accession	Received in violation	Received without violations	Assistance to the investigator/court
	Cases reviewed with participation of specialist(s) *	82	3	37	12	31
1	- giving an opinion	58	3	36	11	7
2	- giving evidence	20	0	8	10	3
3	- inspection, certificate	31	-	-	-	21
*an additional 60 cases where the expert who gave the conclusion on the case was identified as the specialist (a total of 142 cases)						

No.	The reasons for which the conclusion and/or testimony of a specialist are recognized as having been obtained in violation of the requirements of the criminal procedure law or are assessed by the court as having been obtained without violations	Quantity with violations	Quantity without violated
1.	Not based on case materials, properly certified case materials, properly provided case materials, case materials in full	18	
2.	The specialist was not warned about criminal liability for giving a knowingly false opinion	13	
3.	The conclusion is of the nature of a review (audit), the conclusion is a review, which is not provided for by law	3	
4.	Evaluation of the expert's report is not within the specialist's competence	3	
5.	The specialist went beyond his competence	1	
6.	The court did not cite any violations of the Criminal Procedure Code of the Russian Federation committed when obtaining the conclusion (formal indication)	1	
7.	The case contains expert opinions on the same issues/the expert opinion does not have the same evidentiary force as the expert opinion	7	
8.	Not relevant	0	
9.	Taken into account, but do not call into question the guilt/do not refute the findings of the court (investigation)		12
10.	The testimony/conclusion is the lay opinion of a specialist and is of a speculative nature.	3	

11.	Unacceptable, since the subject of study is the expert opinion	1	
12.	Not based on research, speculative in nature	3	
13.	The conclusion is drawn up on the individual order of the defense/based on the version of the defendant (defense) (the alleged interest of the specialist)	2	
14.	The conclusion was not received within the framework of criminal proceedings (outside the process)/does not comply with the procedural form	3	
15.	The involvement of a specialist is the exclusive competence of the investigative bodies and the court; the defense attorney outside of the trial is not empowered to involve a specialist to give any opinions.	1	
16	The specialist is not an expert of an expert institution licensed to conduct research	1	
	TOTAL	60	12

Cases under Article 264 of the Criminal Code of the Russian Federation, considered with the participation of a specialist*

No	**Form of participation of a specialist in criminal proceedings**		**Refusal of admission**	**Attached, but it was recognized that the evidence was obtained in violation of the Criminal Procedure Code of the Russian Federation**	**Included, assessed**	**Assistance to the investigator/court**	**Details of the court order**
	Giving a conclusion	**Giving evidence**	**base**				
1.	+	+		1			1-81/2023 from 13.07.23
2.	+	+		1			1-17/2021 from 03/26/21
3.	+	+			9		1-20/2021 from 03/15/21
4.	+			10 subjective opinion			1-27/2019 from 10.06.19
5.	+			10 probabilistic nature, 3, 4,1,2			1-66/2017 from 06.10.17
6.						+inspection	1-85/24 from 11.07.24
7.						+inspection	1-35/2023 from 06/09/23

8.						+inspection	1-67/2017 from 09.26.17
9.	+				9		22-1763/2024 from 21.08.24
10.	+			1, 2			22-1820/2023 from 12.10.23
11.	+			1, 2			22-2314/2021 from 10/28/21
12.	+			3, 4			22-2026/2021 from 09.23.21
13.	+			1, 2, 14			22-1795/2021 from 11.08.21
14.	+			14, 3, 4, 15			22-1842/2021 from 04.08.21
15.	+		+to the victims				22-768/2021 from 07.29.21 canceled
16.	+			1			22-648/2021 from 04/28/21
17.	+			1, 12			22-824/2020 from 09/16/20
18.	+			1, 2			22-2304/2019 from 27.11.19
19.	+	+		1, 2 unfounded			22-611/2019 from 24.04.19
20.	+			Cannot replace expertise			22-406/2019 from 20.03.19
21.	+	+			9		22-196/2019 from 13.03.19
22.	+			10, 13			22-1468/2018 from 22.08.18
23.	+			2, 13, 14			22-593/2018 from 03/14/18
24.	+	+		1			22-2925/2017 from 24.01.18
25.	+			12			22-2847/2017 from 21.12.17
26.	+			16			22-1539/2017 from 07.07.17
27.		+			9		22-1672/2023 from 06.09.23
28.						+inspection	22-1003/2020 from 24.07.20
29.						+inspection	22-491/2018 from 21.03.18
30.	+			1, 2			1-88/2024 (22-6374/2024 FROM 08/16/2024)
31.	+			1, 3			1-565/2024 (22-593/2024 from 05702.2024)
32.	+		+				1-15/2023 (22-26/2024 from 01/18/2024)

33.	+			2, 3, 5			1-20/23 (22-5533/23 from 08.11.23)
34.	+					+	1-66/2023 from 02.10.2023
35.	+			1			1-4/2023 (22-4884/2023 from 08/02/2023)
36.	+					+	1-65/2023 (22-4853/2023 from 07/20/2023)
37.		+				+	1-603/2023 from 19.07.2023
38.	+			11			1-41/2020 (22-1457/2021 from 09/02/2020)
39.	+	+			9		1-16/2021 (22-3476/2021 from 06/07/2021)
40.	+			2 (no information on methods)			1-16/2021 from 03/15/2021
41.	+					+	22K-124/20202 DATED 11/24/2020
42.	+					+ inspection	1-21/2020 from 02.09.2020
43.	+					+	1-280/2019 (22-4192/2020 from 08/03/2020)
44.	+			6			1-74/2019 (22-2274/2020 from 07/21/2020)
45.	+			1, 2			1-60/2019 (22-13/2020 from 05/05/2020)
46.		+		7 (contradicts expert opinions)		+	1-16/2020 (22-1871/2020 from 06/03/2020)
47.	+			1			1-4/2020 (22-20/2020 from 03/24/2020)
48.	+			7			1-102/2019 (22-7225/2019 from 10/22/2019)
49.	+					+	1-139/2019 from 08/29/2019
50.	+	+		7 (contradicts the materials of the criminal case)			1-102/2019 from 14.06.2019
51.	+			7			1-54/2019 (22-3024/2019 from 06/10/2019)
52.	+	+			9		1-63/2018 (22-9421/2018 from 12/18/2018)
53.	+				9		1-6/2018 (22-6443/2018 from 09/26/2018)
54.	+	+		1, 2			1-7/2018 (22-5791/2018 from 09/25/2018)
55.	+			1, 2			22-6106/2018 from 20.08.2018
56.	+			1, 7, 10 (private opinion)			1-223/2018 from 12.07.2018
57.	+	+			9		1-33/2018 (22-4614/2018 from 07/03/2018)

58.	+			2			1-2/18 (22-4490/2018 from 06/25/2018)
59.	+	+				+ (victim)	1-82/2018 about 18.06.2018
60.	+	+			9 (contradicts the material facts of the case)		1-18/2018 from 06/07/218
61.	+		+				1-394/2018 (22-3957/2018 from 05/16/2018)
62.	+	+		1, 12, 7			1-236/2017 (22-2831/2018 from 05/14/2018)
63.	+	+			9		22-8934/2017 from 28.11.2017
64.		+			9		1-380/2023 (22-109/2024 from 01/24/2024)
65.	+					+ inspection	1-128/2024 from 18.01.2024
66.						+ inspection	1-81/2024 from 17.01.2024
67.						+ inspection	1-433/2023 from 04.12.2023
68.						+ inspection	1-73/2023 (22-6833/2023 from 10/18/2023)
69.						+ inspection	1-232/2023 from 03.07.2023
70.	+		+			+	1-12/2021 (22-5532/2021 from 10/11/2021)
71.						+ inspection	1-53/2021 from 30.03.2021
72.						+ inspection	1-372/2021 from 19.03.2021
73.						+ inspection	1-1721/2021 (22-1734/2021 from 03/17/2021)
74.	+	+			9		1-44/2020 (22-5895/2020 from 11/26/2020)
75.						+ inspection	1-283/2020 from 26.11.2020
76.						+ inspection	1-30/2020 from 10.11.2020
77.						+ inspection	1-48/2020 from 03.11.2020
78.						+ inspection	1-135/2020 from 23.07.2020
79.						+ inspection	1-361/2019 from 30.08.2019
80.	+					+ inspection	1-122/2018 (22-5731/2018 from 08/08/2018)
81.						+ inspection	1-285/2018 from 05/29/2018

82.		+				+	22-5896/20217 from 09.10.2017
*in 60 of the 142 cases studied, experts who conducted research as part of the preparation of a forensic examination at the initiative of persons conducting criminal proceedings and/or providing assistance to the investigator and/or the court without assessing the significance of such activities for the results of the case are defined as specialists							

Results generalizations published and unpublished judicial practices By criminal cases considered in the subject Saint Petersburg since January 2020 By December 2024

No.	Indicator	2020 - 2024	Denied accession	Received in violation	Received without violations	Assistance to the investigator/court
	Cases reviewed with participation of specialist(s) *	92	2	18	13	59
1	- giving an opinion	43	2	15	9	17
2	- giving evidence	27	0	4	9	10
3	- inspection, certificate	65	-	-	-	39
*additional 148 cases where the expert who gave the conclusion on the case was identified as the specialist (total 240 cases)						

No.	Motives, by which conclusion and / or indications specialist are recognized received, with violation requirements criminal procedure law or are being evaluated by court	Quantity	Quantity
1.	Not founded on materials affairs, proper way certified materials affairs, proper way provided materials cases, materials things are in full swing volume	8	
2.	2. The specialist does not was warned about criminal responsibility for dacha deliberately false conclusions	7	
3.	3.The conclusion is character reviews (revisions), conclusion is review that Not provided legislation	4	
4.	4. Evaluation of the conclusion expert in competence specialist Not enters	1	
5.	5. The specialist came out for limits competencies	1	
6.	6. Violations of the Criminal Procedure Code of the Russian Federation committed at receiving conclusions, by the court Not are given (formal indication)	2	
7.	7.In the case there are expertise By themes same questions / conclusion specialist Not has that same evidentiary by force, as well as by conclusion expert	5	
8.	8.Irrelevant	1	
9.	9.Accepted in attention, but Not they put guilt under doubt / not refute conclusions courts (investigations)		8

10.	Indications / conclusion are philistine opinion specialist and wear character assumptions	2	
11.	It's unacceptable, so How item study - conclusion experts	2	
12.	Not founded on research, is presumptive character	3	
13.	Conclusion compiled By individual to order sides protection / based on versions defendant (defense) (presumed interest specialist)	2	
14.	Conclusion received not within the framework production By criminal case (for beyond process)/ not corresponds procedural form	-	
15.	Attraction specialist exceptional competence organs investigation and trial , defense attorney outside judicial proceedings powers By attraction specialist For dachas any conclusions Not endowed	-	
16	Specialist Not is expert expert institutions that have license on carrying out research	-	
	TOTAL	38	8

Solutions for period, region Saint Petersburg, without samples By article of the Criminal Code of the Russian Federation*

No	Form of participation of a specialist in criminal proceedings		Refusal of admission	Attached, but it was recognized that the evidence was obtained in violation of the Criminal Procedure Code of the Russian Federation	Include, assessed	Assistance to the investigator/court	Details of the court order
	Giving a conclusion	Giving evidence	base				
1.	+	+		11			1-7/2023 (22-6109/2021 from 09.22.21 art. 216
2.	+			7			1-41/2020 (22-1457 from 02.09.21) art.264
3.	+	+			+ is the basis of the definition .		1-43/2021 (22-2760/2021 of 06/09/21) Art. 264
4.	+	+			9		1-16/2021 (22-3476/2021 from 06/07/21) Art. 264
5.	+				9		1-28/2021 (22-3316/2021 from 02.06.21) Art. 157
6.						+inspection	1-13/2021 from 03/22/21 art. 199.2

7.	+					+	1-28/2021 from 18.03.2021 art. 158
8.	+			12			1-16/2021 from 03/15/2021 art. 264
9.	+					+	1-164/2021 from 03/09/2021 art. 138.1
10.	+					+	1-27/2021 from 03.03.2021 art.116.1
11.		+			9		1-80/2020 (22-5401/2021 from 10/27/2021) Art. 177, 315
12.	+		+	1, 2, 12, 13			1-12/2021 (22-5532/2021 from 11.10.2021) Art. 264
13.						+ inspection	1-42/2021 from 08/23/2021 art. 167
14.						+ inspection	1-225/2021 from 14.07.2021 art. 228
15.	+					+	1-267/2020 from 09.12.2020 art. 222.1, 228
16.	+					+	22K-124/2020 dated 11/24/2020 Art. 125 of the Code of Criminal Procedure
17.	+					+	1-181/2020 from 11/16/2020 from t. 111
18.						+ reference	1-247/2020 from 16.11.2020 art. 228.1
19.	+	+			9		1-13/2020 from 09.11.20202 art. 290
20.	+					+	1-11/2020 from 15.10.20220 art. 111, 119
21.	+					+	1-88/2020 from 02.10.2020 art. 222.1
22.						+ inspection	1-21/2020 from 02.09.2020 art. 264
23.						+ reference	2-26/20202 from 30.07.2020 art. 229.1, 228.1
24.	+			1			1-74/2019 from 21.07.2020 art. 264
25.	+			1, 2, 13 (invalid)			1-60/2019 (22-13/2020 from 05.06.2020) Art. 264
26.	+			1, 3			1-4/2020 (22-20/2020 from 24.03.2020) Art. 264
27.	+	+		3 (aimed at challenging the forensic examinations)			1-30/2019 (22-14/2020 from 05.03.2020) Art. 201
28.	+	+		1, 7, 11			1-295/2019 (22-986/2020 from 02/25/2020) Art. 318
29.	+			2, 7			1-05/2020 from 25.02.2020 art. 159
30.	+			10 (far-fetched)			1-15/2019 (22-8/2020 from 20.02.2020) Art. 216
31.						+ reference	1-113/2020 from 10.02.2020 art. 228.1, 1586 325

32.	+			2, 3, 4			1-20/2023 from 08.11.2023
33.						+ inspection	1-242/2023 from 07.11.2023
34.						+ reference	1-690/2023 from 08.08.2923
35.						+ inspection	1-99/2023 from 23.10.2023
36.	+	+		5			1-25/2023 (22-6109/2023 from 09/18/23)
37.						+ inspection	2-22/2023 from 21.12.2023
38.	+				+ rating given		1-66/2023 (22-5758/2023 from 02.10.23)
39.						+ inspection	1-353/2023 from 12.09.2023
40.						+ inspection in court	1-17/2023 from 24.08.2023
41.	+			1, 2, 6, 7			1-4/2023 (22-4884/2023 from 02.08.23) Art.264
42.	+			1, 2, 7			1-88/2024 (22-6374/2024 from 16.08.2024) Art. 264.1
43.						+ inspection	1-13/2024 from 22.07.24 Art. 162, 158
44.	+	+			+		22-260/2024 from 20.02.24 Art. 318
45.	+			1, 3			1-565/2023 (22-593/2024 from 05.02.2024) Art. 264
46.						+ inspection	1-128/2024 from 18.01.2024 art. 264
47.	+					+ inspection	1-17/2024 from 16/01/2024 Art. 111
48.						+inspection	1-38/2024 from 15.01.2024 Art. 158
49.						+inspection	1-130/2023 from 12.12.2023 Art. 291
48.	+			8			1-192/2023 from 10.11.23 art. 327
49.						+	1-367/2023 from 10/26/23 Art. 228.1
50.						+inspection	1-73/2023 from 18.10.23 art. 264
51.	+					+	1-646/2023 from 12.10.23 Art. 159
52.	+					+	1-98/2023 from 03.11.23 Art. 111
53.		+			9		1-309/2023 from 02.10.2023 Art. 105
54.	+					+	1-50/2023 from 09/28/23 from 09/28/23 art. 293
55.	+		1, 2				1-275/2024 from 03.07.2024
56.						+inspection	1-107/2023 from 09.25.23 Art. 111
57.	+					+	1-364/2023 from 19.09.23 art.30, art.105
58.	+					+	2-33/2023 from 15.08.2023 Art. 228.1
59.	+					+	1-58/2023 from 25.07.2023 art. 109
60.	+				9		1-65/2023 (22-4853/2023 from 20.07.23) Art. 264

61.		+				+	1-603/2023 from 19.07.2023 art. 158
62.						+inspection	1-283/2023 from 10.07.2023 art. 162
63.	+					+	1-874/2023 from 07.07.23 art. 272
64.		+				+	1-662/2023 from 06.07.2023 art. 228
65.						+reference	1-68/2024 from 24.01.2024 art. 228
66.	+	+			7		1-15/2023 (22-26/2024 from 18.01.24) Art. 264
67.						+inspection	1-81/2024 from 17.01.24 art. 264
68.	+				Noted, representative of the victim .		1-156/2023 (22-6832/2023 from 18.12.23) Art. 167
69.						+ inspection	1-433/2023 from 04.12.23 art. 264
70.						+inspection	1-521/2023 from 20.11.23 Art. 159
71.		+		10			1-145/2023 (22-5217/2023 from 10/25/23) Art. 238
72.						+inspection	1-273/2023 from 10/24/23
73.						+inspection	1-237/2023 from 11.09.2023 Art. 158
74.						+inspection	1-40/2023 from 04.09.23 art.159
75.						+inspection	1-153/2023 from 30.08.23 art. 228.1
76.						+reference	1-198/2024 from 12.07.24 Art. 228
77.						+reference	1-444/2023 from 26.01.24 art. 228
76.		+			9		1-380/2023 from 24.01.24 art. 264
77.						+reference	1-704/2023 from 15.01.24 Art. 291
78.						+reference	1-1185/2023 from 06.12.23 Art. 228.1
79.		+				+	2-31/2023 from 11/28/23 Art. 127,119,317
80.						+reference	1-1001/2023 Art. 228.1
81.						+inspection	1-434/2023 from 11/14/23 art. 222, 223, 222.1
82.						+inspection	1-44/2023 from 10/30/23 art. 228
83.						+inspection	1-779/2023 dated 10/30/23 Art. 111
84.						+inspection	1-336/2023 from 23.10.23 Art. 159
85.		+			9	+inspection	1-4/2023 from 09/27/23 art.285
86.						+inspection	1-1254/2023 from 09.26.23 Art. 228
87.						+inspection	1-358/2023 from 09.20.2023 Art. 228
88.						+inspection	1-302/2023 from 18.09.23 Art. 228
89.						+inspection	1-213/2023 from 12.09.23 Art. 162
90.						+reference	1-341/2023 from 11.09.23 Art. 228
91.						+inspection	1-153/2023 from 07/27/23 Art. 158
92.						+inspection	1-72/2023 from 13.07.23 Art. 264

*in 60 of the 142 cases studied, experts who conducted research as part of the preparation of a forensic examination at the initiative of persons conducting criminal proceedings and/or providing assistance to the investigator and/or the court without assessing the significance of such activities for the results of the case are defined as specialists