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LEGAL GROUNDS FOR INTERACTION BETWEEN AN EXPERT AND INVESTIGATIVE AUTHORITIES WHEN ORDERING AND CONDUCTING BALLISTIC EXAMINATIONS

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ABSTRACT

The article discusses the legal basis for the interaction of an expert with investigative authorities in the appointment and production of ballistic examinations aimed at the rapid detection and high-quality investigation of crimes committed with the use of firearms. A scientific analysis was carried out to study the opinion of criminologists regarding the algorithm for the interaction of expert units with investigative agencies in conducting ballistic examinations in order to obtain reliable evidentiary information for solving and investigating crimes.

KEYWORDS

Interaction, examination, expert, investigator, investigation, interaction tactics, expert units, criminal proceedings, forensics, forensic ballistics, firearms.

INTRODUCTION

Currently, in the world, an increasing number of crimes are committed with the use of firearms. Thus, every year, 200-300 thousand people [1] become victims of the use of firearms. Moreover, in 71 countries this is the highest figure over the past 20 years [2].

For a quick and high-quality investigation of this type of crime, experts are involved who are specialists in the field of ballistic examinations, who work closely with the investigative authorities. Thus, according to statistics, over the period 2018-2022 and the first half of

2023, the number of assigned ballistic examinations has almost doubled [3.]. This, in turn, indicates the relevance of the institution of interaction between an expert and investigative authorities when assigning and conducting ballistic examinations.

Forensic ballistic examination belongs to the category of examinations that require the expert to be attentive, thorough in conducting research and the validity of the conclusions made. Like any other,

forensic ballistic examination is carried out on the basis and in accordance with criminal procedural norms.

Currently, in connection with the development of science and technology, as well as the improvement and development of new methods of forensic ballistic examination, the role of material evidence of the use of firearms is increasingly increasing, and forensic experts, based on their special knowledge, are increasingly resolving issues more definitely and reliably, important for a successful investigation [4, p. 72].

The appointment and conduct of forensic ballistic examinations require special knowledge in the field of ballistics and qualified research using sophisticated equipment. It is generally accepted that in cases involving the use of firearms, forensic ballistic examination is necessary. The examination is appointed by the person investigating the crime, and its production is carried out by expert forensic units and, accordingly, appropriate interaction occurs between them [5, p. 74].

In the practice of forensic examination of weapons, cartridges and traces of their action, the updating of diagnostic forensic ballistic examination is intended to reflect the results of the development of forensic ballistic examination, the processes of improving its scientific and methodological foundations, organization and production technology, the need to formalize its methodological resource beyond the framework of what has become familiar scientific ideas more than half a century ago [6, p. 6].

To understand the essence of the criminal procedural and forensic aspects of the tactics of interaction between an expert and investigative authorities when assigning and conducting ballistic examinations, it is necessary to analyze the theoretical and legal

foundations of this activity, what forms and methods of interaction, tactics and algorithm of actions [7, p. 144]. Such an analysis allows us to take the best from the past, enriching it with the achievements of scientific and technological progress; answer most of the questions that need to be taken into account when developing existing theoretical problems, formulating proposals for improving current legislation, and corresponding recommendations for practitioners. The point is to trace the peculiarities of the tactics of interaction between an expert and the investigative authorities in the appointment and production of ballistic examinations in the detection and investigation of crimes committed with the use of firearms. It is necessary to find out to what extent the previously existing forms of such interaction, legislative norms on this, and their theoretical justification are acceptable.

When determining the significance of the interaction of an expert with the investigative authorities in the appointment and production of ballistic examinations, in our opinion, it is necessary to analyze the legal norms governing this type of interaction. Attention should be paid to two factors that directly affect the effectiveness of the interaction of the expert with the investigative authorities in the appointment and production of ballistic examinations. Regulation of interaction tactics in criminal procedural legislation is the first and main factor.

The second factor influencing the effectiveness of interaction between an expert and investigative authorities in the appointment and production of ballistic examinations is the legal regulation in the laws on forensic examination and on weapons. This means that the criminal procedural regulation of the interaction of an expert with the investigative authorities in the appointment and production of

ballistic examinations must have a legal basis enshrined in the specified norms.

It should be noted that at present a set of legal frameworks has been formed, expressed in the form of normative legal acts regulating the interaction of an expert with the investigative authorities in the appointment and production of ballistic examinations[8, p. 79-82].

Thus, it is the set of acts, including those of a departmental nature regulating the activities of interacting entities, that constitutes the legal basis for the interaction of an expert with investigative authorities in the appointment and production of ballistic examinations.

It seems that the current state and prospects for legal regulation of the interaction we are considering require an analysis of not only domestic legislative norms and by-laws, but also international acts related to the institution of forensic tactics of interaction between law enforcement agencies in solving and investigating crimes [9, p. 358].

When considering the mechanism of regulatory support for any type of legal activity, one cannot ignore the provisions of the Basic Law - the Constitution of the Republic of Uzbekistan, which is relevant to the subject of our study. The Constitution of the country is the legislative basis for the legal regulation of all spheres of government activity in general, and the law enforcement system in particular, which are the subjects of interaction we are studying.

Article 28 of the Constitution of the Republic of Uzbekistan (new edition) specifies the constitutional principles of the protection of human rights in criminal procedural legal relations. This article states: "A person accused of committing a crime is considered innocent until his guilt is proven through a public trial in the

manner prescribed by law and established by a court verdict that has entered into legal force. The accused is provided with all opportunities for his defense."

From the above we can conclude that the burden of proof lies with government agencies, which must strictly comply with them. This also applies to the appointment and conduct of a forensic ballistic examination, during which both the expert and the investigator interact and carry out a joint algorithm of actions of a tactical nature.

The listed regulations formed the basis for special norms of criminal procedure legislation and laws on forensic examination and weapons. This legislation and departmental regulations provided the legal basis for the interaction of the expert with the investigative authorities in the appointment and production of ballistic examinations [10, p. 65-67].

We should not forget that international legal acts also occupy a special place in the system of legal regulation of the interaction we are considering. As already indicated, the Constitution, the Code of Criminal Procedure and other laws on forensics and weapons give priority to generally recognized norms of international law.

Of considerable interest are the international regulations adopted by the Commonwealth of Independent States (CIS) to regulate issues of interaction between an expert and investigative authorities in the appointment and production of ballistic examinations. These include multilateral, bilateral acts and agreements on certain issues. In particular, the CIS member countries decided to cooperate in the main areas of combating serious and especially serious crimes in which weapons are used. It is very important that the parties also determined the forms of such interaction [11, p. 41].

The procedure and documentation for the interaction of the expert with the investigative authorities in the appointment and production of ballistic examinations have been determined, including for urgent situations when requests can be made orally with subsequent written confirmation.

In addition, the CIS countries have concluded conventions (Minsk and Chisinau) on legal assistance and legal relations in civil, family and criminal matters. Many norms of these legal acts stipulate the possibility of interaction between an expert and investigative authorities when assigning and conducting ballistic examinations in the CIS countries [12, p. 23]. The above analysis of international acts indicates a positive trend in matters of interaction between an expert and investigative authorities when assigning and conducting ballistic examinations in the territories of cooperation states.

In the legal regulation of the interaction of an expert with investigative bodies in the appointment and production of ballistic examinations, a significant role is also given to subordinate regulatory and departmental acts. Because these acts are more specific in setting interaction tasks. For example, in the Regulations of the Investigation Department, in accordance with the tasks assigned to them, the function of organizing the interaction of police department investigators with bodies involved with expert institutions, etc. is also defined.

It seems that departmental and interdepartmental regulations should specify the interaction of the expert with the investigative authorities when assigning and conducting ballistic examinations through standard departmental instructions. However, the absence of just such an Instruction causes problems and misunderstandings among interacting subjects related to the procedure, forms and other features of the

expert's interaction with the investigative authorities when assigning and conducting ballistic examinations.

Thus, the current regulations governing the interaction of an expert with investigative authorities in the appointment and production of ballistic examinations need to be revised in accordance with the current criminal procedure law.

It is worth noting that the legal regulation of the interaction of an expert with the investigative authorities in the appointment and production of ballistic examinations is determined by his goals. In some cases, such a goal may be to optimize the criminal procedural legislation of interaction between an expert and investigative authorities in the appointment and production of ballistic examinations. In others, the regulation of legislation on forensic examination or on weapons in the norms of which defines the forensic tactics of interaction between an expert and investigative authorities in the appointment and production of ballistic examinations [13, p. 81].

Summing up the regulatory and legal support for the interaction of an expert with investigative authorities in the appointment and production of ballistic examinations, it is necessary to note the relevance of the very algorithm of their joint activities. This, in turn, actualizes the interaction process itself, which has its own elements, both procedurally and tactically. Consequently, interaction tactics presuppose the need for a planned, systematic resolution in the established order of the interaction algorithm, which includes both criminal procedural and forensic aspects [14, p. 250]. From the above we can conclude that assumptions about making appropriate additions of an applied nature to forensic tactics should be reflected in the rules of law (mainly instructions and recommendations enshrined in departmental acts). This confirms the

existence of existing legal gaps in this area, and therefore substantiates the need to take effective measures aimed at changing the current situation in order to improve and optimize both the regulatory and practical components of the algorithm and interaction tactics expert with investigative authorities in the appointment and production of ballistic examinations.

Analysis of existing legal norms and forensic tactics; the legal basis for the interaction of an expert with investigative authorities in the appointment and production of ballistic examinations; they can be divided into two component parts. The first part is legislative acts: the Constitution of the Republic of Uzbekistan, Criminal, Criminal Procedure Codes of the Republic of Uzbekistan, Laws “On Forensic Expertise”, “On Weapons”, “On Courts”, “On the Prosecutor’s Office”, “On Internal Affairs Bodies”, decrees, Resolutions of the President of the Republic of Uzbekistan, Resolutions of the Cabinet of Ministers of the Republic of Uzbekistan, orders and instructions of the Minister of Internal Affairs, the Prosecutor General on the interaction of an expert with investigative authorities in the appointment and production of ballistic examinations, departmental and interdepartmental regulations.

And the second part is the by-laws that define the forensic tactics of interaction between the expert and the investigative authorities when assigning and conducting ballistic examinations; this is the second important component that determines the algorithm of actions of both the expert and the investigative authorities.

Naturally, specific legal grounds are required to implement an interaction mechanism. Thus, on the basis of the Resolution of the President of the Republic of Uzbekistan “On measures to radically improve the activities of internal affairs bodies in the field of

investigation of crimes” [15.] the “Regulations on the Investigation Department under the Ministry of Internal Affairs of the Republic of Uzbekistan” was approved. Based on the above regulatory legal acts, the “Instruction on the procedure for organizing inquiry and preliminary investigation in internal affairs bodies” was adopted, approved by order of the Ministry of Internal Affairs of the Republic of Uzbekistan No. 100 dated June 12, 2017. It outlines the main tasks and competencies, rights and responsibilities of the subjects of the investigation ATS, conditions for the correct and effective use provided for in Art. Art. 36, 391 of the Code of Criminal Procedure of the Republic of Uzbekistan the competencies of the investigator and the bodies carrying out the pre-investigation check.

According to I.F. Gerasimov, the interaction of all bodies and officials in the process of solving, investigating and preventing crimes should be understood as “such a relationship in their activities that ensures the correct combination of powers, methods and means inherent in each participant in the interaction” [16, p. 71].

This definition in general expresses the essence of interaction - the relationship, coordinated activities of various bodies and officials, however, in our opinion, it also does not reveal all its mandatory features.

Procedural interaction presupposes a certain element of subordination of the expert to the investigator, who is the official responsible for the investigation of the criminal case. But some authors, in particular D.E. Karimova expresses a different point of view. Thus, she believes that interaction is a joint, coordinated, continuous activity of an ATS investigator and employees of criminal investigation units who are not subordinate to each other, implying the organizing role of the investigator when each of its participants

performs the actions they have planned independently [17, p. 34]. However, in our opinion, the sign of non-subordination of the participants in the interaction is not entirely successful. Otherwise, one could speak only conditionally about the interaction of the investigator with other participants in the investigation, since from a procedural point of view there is no equal partnership: the status of the investigator determines his dominant and leadership role, personal responsibility for the decisions made and the results of the investigation as a whole. All activities of other participants in the investigation are subordinated to the tasks assigned to them by the investigator and are consistent with them. In this case, it is advisable to point only to the administrative independence of the subjects of interaction.

Taking into account the above, it seems possible to give the following, most complete concept of the interaction of an expert with the investigative authorities in the appointment and production of ballistic examinations. The interaction of an expert with the investigative authorities in the appointment and production of ballistic examinations is the activity of administratively independent entities, coordinated in terms of goals and objectives, organized on the basis of criminal procedural legislation, which is expressed in the most effective combination of their inherent methods and means.

CONCLUSION

In conclusion, we can conclude that the algorithm for the interaction of an expert with an interrogator, investigator and authorities carrying out pre-investigation checks allows one to successfully solve a wide range of identification and diagnostic problems related to the study of firearms, ammunition, and gunshot traces. In this case, modern advances in forensic science are used, which help optimize the

investigation algorithm. Improving the technology of interaction between an expert and officials carrying out pre-investigation checks, inquiries or preliminary investigations when assigning and conducting a forensic ballistic examination depends on the effectiveness and quality of detection and investigation of crimes.

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