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Sampling for forensic processing with the participation of specialist

Annotation. In this article, participation of the expert in sampling and main factors in defining the quality of samples for expert research are reflected. Stressed the importance of them in reliable conclusion of evidences in criminal cases. For the successful outcome in investigation process the concepts of all up to date abilities of forensic investigation, right use of special knowledge of experts, observance of procedural order in getting samples and fixation of all results of investigation acts in appropriate ways are satisfactory. When using the ways of participation of experts it's vital to be sure that expert possess two main qualities established by law: disinterestedness and professional integrity (ability to accomplish certain actions with special training and experience). The reliability of expert conclusion is subject to the quality of obtained samples as an evidence resource on criminal case and cooperation of investigator and expert leads to successful investigation.

Key words: expert, investigator, samples, expert research, investigative actions, special knowledge, exposure of the person, expert conclusion, experience, professional skills.

Meaningful crime prevention highly depends on the quality of pre-trial investigation and cannot be applied without the use of advanced scientific and technical achievements.

Investigator in his practical activity not only deals with different participants of the criminal process, scientific expert testimonies, but also uses a special knowledge that experts do possess.

Part 1 of the article 263 of the Code of Criminal Procedure of the Republic of Kazakhstan provides that: «The person, conducting the pre-trial investigation personally, and, if necessary, with the participation of a doctor, other specialist may obtain samples, if it does not involve the exposure of a person of the opposite sex, which samples are taken, and does not require special skills. In other cases, samples can be obtained on behalf of the person conducting the pre-trial investigation, by a doctor or a specialist».

In the practice of sampling for expert and forensic research, participation of such specialists as forensic scientists, medico legists and biologists, physicist-technician, cytologists and etc. is meaningful.

Participation of specialist in sampling is carried out, as a rule, in various established forms and relied upon features of samples, conditions of getting them, distinctiveness of sampling occasion in specific case. Dated back to 1964 E. B. Melnikova was the first who has drawn her attention to the given issue [i, 70-76].

In forensic literature there are technical, counseling, criminalistical and methodical ways of assistance [ii, 19].

Dulov A. V., by exploring issue about a role of specialists and theirs activity rates of sampling, underlined three forms of participation, the essence of which is leading to:

– sampling is carried out only by investigator, but specialist is helping him with advices and actions;

– specialist by order of investigator and in his attendance carries out all actions linked to sampling;

– specialist by order of investigator not only carries out all actions for sampling, but also consolidates them in proceeding [iii, 174–175].

Concerning this item, to keep under review specialist's participation as a unique form is pointless, for due to law, results of investigative procedure are disclosed in protocols only by investigator, and specialist is only providing assistance in detecting, collection of evidence and searching evidences.

In the first and second cases, the specialist provides assistance in the way of consultations, recommendations, performing part of the actions for obtaining samples or performs the whole

complex of actions independently as well. Except cases of mandatory involvement of a specialist, the question of his participation is decided by the investigator at his own discretion, depending on the specific circumstances of the criminal case.

In works of academic lawyers who is exploring given issue, thought – wave statements are proposed - participation of specialists in obtaining samples is desirable, useful and efficient [iv, 150; v, 73].

Ishenko P.P. on this subject writes: «Participation of specialists in the collection of samples and preparation of materials for the study significantly increases the effectiveness of the expertise, but sometimes without such participation arises impossibility of conducting and obtaining reliable conclusions» [vi,113].

The development of science and technology contributes to the development of new methods of forensic research that leads to an expansion of the range of investigated objects, emergence of new types of forensic examinations, as well as complicating methods of sampling.

It is not occasional when investigators have only a cotton-candy view of technology for obtaining certain types of samples (air sampling, fuel and lubricant materials, cyber information and etc.) or just overestimate their abilities and make little account of participation of specialists.

The invaluable role that traces of biological origin play in investigation of serious and particularly serious types of crimes is well known. In special literature there are some facts of detection and seizure of objects of biological origin (blood, hair, sperm and etc.) using inadmissible and outdated ways leading to the failure of further exploration and losing of vital evidential information [vii, 19].

Therefore, opinions that are encountered in practical activity concerning the easiness of some types of sampling is wrongful in our mind.

For instance, in the core of forensic DNA testing there is a search of particular area of the structure of DNA that is isolated from human cells. Taking into consideration, that DNA is highly susceptible to destructive action of enzymes and sensitive to environmental factors (temperature, humidity and etc.), there should be paid great attention in dealing with mentioned objects.

In the opinion of A.V. Dulov, cases of instructions to the specialist for obtaining samples take place with the possible danger of losing the evidentiary value of the samples due to inexperience of the investigator, with a small amount of necessary material, the absence of technical devices and tools from the investigator, importantly, in obtaining samples related to the vital activity of the human organism [viii, 175].

When considering usage of knowledge and skills that are not covered by the area of professional education of investigator, participation of specialists, in our opinion is always meaningful. Investigator himself cannot and should not a specialist in all areas of science and technology, that is explained by the objective causes: complexity of the developed methods in connection with the expansion of the range of forensic search, lack of time, because mastering these methods requires special preparation, means or tools being developed are not available to the investigator at once.

For the successful conduct of this investigative action, investigator should have an idea of the possibilities of modern forensic searches, use a special knowledge of experts in the right way, keep properly procedural arrangements of sampling and properly fix results of investigative action.

Incident arises in sampling procedure involving the exposure of a person of the opposite sex. This investigative action is conducted by instructions of investigator by a specialist (doctor) in the absence of an investigator. After executing complex of actions on sampling, the specialist fill in special document (report and expert opinion) which is given to investigator to inclusion in the criminal case. From our point of view, in such a situation investigator is allowed to draw up a protocol of sampling from the accounts of specialist (with a due marking in protocol).

When using above mentioned two forms of participation of specialists, it is important to make sure that the specialist has two main qualities stipulated by law: disinterestedness and

competence (the ability to perform certain actions, conditioned by special training and experience).

In conclusion, necessary to note that reliability of findings of the conclusion of a specialist and an expert as a source of evidence in a criminal case depends on quality of the sampling for expert conclusion.

Finally, proper interrelationship of crime investigator and specialist (expert) in the process of sampling substantially predetermine success of an investigation.

ТҮЙІН

Мақалада сарапшылық зерттеу үшін алынған үлгілердің сапасын анықтайтын, қылмыстық іс бойынша дәлелдемелер негізі ретінде сарапшының қорытындысында дұрыс нәтижелерді алудың өте маңыздылығының негізгі факторлары көрсетілген.

РЕЗЮМЕ

В статье рассмотрено участие специалиста при получении образцов для экспертного исследования. Отражены основные факторы, определяющие качество полученных образцов для экспертного исследования, что особенно важно в получении достоверных выводов в заключении эксперта как источника доказательств по уголовному делу.

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