



THE ROLE OF SPECIALIST OBLIGATIONS IN LEGAL STATUS DURING THE EVIDENTIARY PROCESS

Abduvahobov Sherzodbek Abduvahobovich

Senior Lecturer of the Department of Operational and Investigative Activities, Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, Doctor of Philosophy (PhD) in Legal Sciences.

E-mail: sherzodbekabduvahobov01@gmail.com

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ABSTRACT

This article analyzes the rights and obligations of specialists in criminal proceedings, opinions and considerations expressed by legal scholars regarding the concept of obligations in criminal proceedings, the role of specialists in collecting, recording, and evaluating evidence, differences between the legal status of specialists and experts, similarities in their obligations, the position of specialists in criminal procedural legislation, and their current status. Additionally, the article highlights the main obligations of specialists and their additional responsibilities in the evidentiary process.

Unlike previous Criminal Procedure Codes of the Republic of Uzbekistan, the “Criminal Procedure Code” adopted on September 22, 1994, and entered into force on April 1, 1995, for the first time reflected the rights and obligations of specialists (Article 70).

Compared to previously existing codes, the current Criminal Procedure Code (CPC) systematically establishes the rights and obligations of criminal procedure participants with a certain degree of completeness and clarity. For example, the CPC relatively fully defines the rights and obligations of witnesses (Article 66) and experts (Article 68) among the “other participants” in criminal proceedings. The extent to which the rights and obligations of other participants in criminal proceedings, including specialists, are defined can be determined through a systematic analysis of the relevant provisions of the CPC.

The evidentiary activity itself is the central element of criminal proceedings, and it is the main procedural factor determining the direction of activity for subjects in criminal proceedings [1, p.15]. The rights and obligations given to specialists in the evidentiary process and guaranteed by law ensure their safety in fulfilling their tasks in criminal proceedings.

Various scholars have expressed their opinions on evidentiary activity in criminal proceedings. In particular, M. Mukhitdinov suggests that evidentiary activity, as an absolute activity in criminal proceedings, can be concluded to be carried out actively by state bodies and passively by other participants involved in criminal cases [2, p.41].

It is possible to agree to some extent with the opinions expressed by M. Mukhitdinov.

According to A.R. Belkin, the right to identify and collect evidence is the foundation of criminal procedural law. Both the actions of subjects in criminal proceedings and the



procedural relationships that arise between them are carried out around and directed toward the collection and presentation, examination, and evaluation of evidence [3, p.24].

According to E.A. Dolya, as a result of simple procedural relationships related to evidence collection, new, multifaceted, and complex criminal procedural relationships emerge and develop in criminal procedural activity [4, p.54-55].

Agreeing with the opinions of A.R. Belkin and E.A. Dolya, we can see that specialists directly participate in processes related to the collection, examination, and recording of evidence in the evidentiary process.

It is provided that if a specialist avoids participating in the case during pre-investigation verification, inquiry, and preliminary investigation without the existence of the above-mentioned conditions, they may be subject to a fine of up to twenty-five times the basic calculation amount or compulsory community service for up to three hundred and sixty hours [5, p.148].

Before discussing the specialist's obligations in the evidentiary process, it is appropriate to analyze the opinions of certain legal scholars regarding the concept of obligation in criminal proceedings.

In particular, Professor Sh.A. Kulmatov has suggested that procedural obligations should be approached as an integral part of a person's legal status reflected in criminal procedural legislation [6, p.27]. Agreeing with Professor Sh.A. Kulmatov's opinions on this matter, it should be emphasized that obligations arising in criminal proceedings stem from the legal status of subjects participating in this process. This is because procedural obligations that may be applied to subjects in criminal proceedings can vary depending on their role.

Legal scholar U.A. Abdurahmanov believes that in criminal procedural relationships, the failure of process participants to fulfill their procedural obligations necessitates the application of appropriate measures of influence [7, p.23].

Legal scholar G.Z. Tulaganova has expressed the opinion that unfulfilled obligations in criminal proceedings must be enforced [8, p.192].

According to D.A. Lipinsky, any criminal procedural right is voluntarily exercised by the process participant to whom it belongs, while procedural obligations must be fulfilled by them. When process participants do not fulfill their procedural obligations on time or completely, certain measures of responsibility are applied to them [9, p.14-15].

In our opinion, the views expressed by U.A. Abdurahmanov, G.Z. Tulaganova, and D.A. Lipinsky are somewhat debatable. Not all cases of failure to fulfill responsibilities by participants in the evidentiary process in criminal proceedings provide for mandatory enforcement or liability. For instance, although obligations in criminal proceedings are indicated in a general sense, we can see that certain obligations have specific liabilities (such as appearing upon summons, not obstructing the execution of decisions by officials conducting the proceedings regarding medical examination, expertise, taking samples for expert examination, placement in a medical institution for expertise, and other procedural decisions, not refusing to hand over sought items at the request of the investigator, interrogator, or prosecutor), while others (such as the specialist's obligation to appear upon summons from the investigator, interrogator, prosecutor, and judge, and to collect, examine, evaluate, and record



evidence in the legally established manner during the evidentiary process) are either generally not specified or not defined.

Legal scholar Sh. Sharofutdinov, in his considerations, has stated that “responsibility is accountability for the consequences or results of an action or behavior” [10, p.13]. Agreeing with Sh. Sharofutdinov’s opinion, criminal procedural responsibility is directed at behavior specified in the evidentiary process, and such actions, in turn, give rise to procedural obligations. Therefore, liability arises for these individuals’ failure to fulfill their criminal procedural obligations.

In our opinion, an obligation in criminal proceedings is a system of rights that conscientiously encourages subjects participating in criminal proceedings to fulfill their obligations specified by law, imposes responsibility on process participants, and provides for liability in certain cases where these obligations are not fulfilled.

The second part of Article 70 of the CPC lists the following main obligations of a specialist:

- to appear upon summons from the investigator, interrogator, prosecutor, court;
- to participate in investigative actions and court proceedings to find and secure evidence using scientific-technical means, special knowledge, and skills;
- to draw the attention of the investigator, interrogator, prosecutor, and court to circumstances that are important for establishing the truth in the case;
- to provide explanations regarding the actions they are performing;
- to assist the investigator, interrogator, prosecutor, and court in identifying the causes of the crime, determining the conditions that allowed the crime to be committed, and developing measures to eliminate them;
- not to disclose materials of inquiry and preliminary investigation without the permission of the investigator, interrogator, prosecutor;
- to observe order during the investigation of the case and during court sessions.

Along with the main obligations of specialists in criminal proceedings, they have the following obligations related to evidence:

- not to ask leading questions (Part One of Article 102 of the CPC);
- to recuse themselves when there are grounds to do so (Part One of Article 76, Articles 78 and 80 of the CPC);
- not to disclose information concerning the private lives of suspects, accused persons, defendants, victims, and others identified during investigation and court proceedings (Part Four of Article 88 of the CPC);
- not to disclose information constituting state secrets or other secrets protected by law;
- persons conducting audits within their powers must: present their service ID as well as a special certificate authorizing the audit (Item 1, Part Three of Article 187-11 of the CPC);
- to hand over copies of the decision or ruling on the appointment of an audit and the order of the authorized body on conducting an audit to the official or representative of the entity being checked, obtaining their signature (Item 2, Part Three of Article 187-11 of the CPC);
- not to create obstacles to the activities of the entities being checked and not to allow the suspension of their activities (Item 3, Part Three of Article 187-11 of the CPC);
- to inform the official or representative of the entity being checked about the right of legal service representatives and/or involved lawyers to participate at any stage of the audit and



about other rights provided for in the legislation (Item 5, Part Three of Article 187-11 of the CPC);

- to fill out the audit registration book in cases and in the manner prescribed by law (Item 6, Part Three of Article 187-11 of the CPC).

It is appropriate to analyze the specialist's obligations in the evidentiary process in criminal proceedings. In particular, the obligation not to ask leading questions (Part One of Article 102 of the CPC) applies not only to investigators, interrogators, prosecutors, and persons conducting court proceedings but also to specialists. Accordingly, specialists are prohibited from asking questions that suggest the expected answer. Answers obtained in this way and other evidence collected are considered inadmissible evidence.

In accordance with Part One of Article 76, Articles 78 and 80 of the CPC, specialists have the obligation to recuse themselves or refuse to participate in criminal proceedings if they are a victim, civil plaintiff, civil defendant, expert, interpreter, witness, advocate, legal representative of the suspect, accused, defendant, or a relative of the victim, civil plaintiff, civil defendant, or any official responsible for conducting the case, or other persons; if there are other circumstances that raise doubts about their objectivity and impartiality; or if they are subordinate in service or otherwise to any of the persons participating in the case. Additionally, it is indicated that if a specialist's professional incompetence becomes apparent, a person who conducted an audit or other departmental check, the materials of which formed the basis for initiating the case, is not entitled to participate in the case as a specialist.

According to Part Four of Article 88 of the CPC, there is an obligation not to disclose information concerning the private lives of suspects, accused persons, defendants, victims, and others identified during investigation and court proceedings. Accordingly, specialists must not disclose any information about the participants in the process that becomes known to them. A written undertaking not to disclose this information should be obtained by the authorized person conducting the proceedings.

According to Article 89 of the CPC, specialists have an obligation not to disclose information constituting state secrets or other secrets protected by law. Accordingly, disclosure of any information that becomes known to them during the proceedings is subject to criminal liability in the manner prescribed by law.

According to Item 1, Part Three of Article 187-11 of the CPC, persons conducting audits are obligated to present their service ID and a special certificate authorizing the audit within their powers. Accordingly, a person conducting an audit must present their service ID and audit authorization in the prescribed manner. This allows the responsible employees of the institution being audited to have information about who is conducting the audit and about the person conducting the audit. This prevents illegal audits and audits by other persons.

According to Item 2, Part Three of Article 187-11 of the CPC, there is an obligation to hand over copies of the decision or ruling on the appointment of an audit and the order of the authorized body on conducting an audit to the official or representative of the entity being checked, obtaining their signature. By fulfilling this obligation, the specialist informs the official of the entity being checked about the commencement of the audit by presenting a copy of the decision and ruling on conducting the audit. Based on this, the head of the entity being checked



can involve an advocate to protect the interests of the institution they lead in the manner prescribed by law and take necessary actions to protect their interests.

According to the obligation specified in Item 3, Part Three of Article 187-11 of the CPC, specialists must not create obstacles to the activities of the entities being checked and must not allow the suspension of their activities. If an obstacle created by a specialist during the inspection leads to the suspension of activities, the head of the entity being checked has the right to claim damages from the specialist in the prescribed manner.

According to the obligation specified in Item 5, Part Three of Article 187-11 of the CPC, specialists must inform the official or representative of the entity being checked about the right of legal service representatives and/or involved lawyers to participate at any stage of the audit and about other rights provided for in the legislation. By fulfilling this obligation, the specialist ensures the rights of the entity being checked.

It should be noted that the list of specialist obligations enshrined in Article 70 of the CPC is not exhaustive. A systematic analysis of the norms of the CPC allows for the identification of the following obligations of specialists not specified in the second part of Article 70 of the CPC: the obligation to explain issues within their professional duties, including those related to their actions; the obligation to participate in investigative actions and court proceedings to find and secure evidence using scientific-technical means, special knowledge, and skills (Part One of Article 91 of the CPC); and obligations such as not to obstruct criminal proceedings and not to disturb order in court.

According to legal scholar G.A. Vorobyov, the rights and obligations of specialists are specified in law, on the one hand, depending on the type of investigative action, and on the other hand, taking into account the nature of the investigative action and the nature of the assistance provided by the specialist to the investigator [11, p.124]. G.A. Vorobyov's considerations in this regard can be agreed with. This is because the rights and obligations of specialists vary depending on the type and nature of the investigative action. That is, in certain types of investigative actions, specialists may not be able to use the rights and obligations given to them, based on their characteristics.

Analyzing the norms defining the legal status of criminal process participants in the CPC allows us to conclude that while some provisions of the law fully regulate the rights and obligations of a particular subject, others, on the contrary, reflect only a small part of their tasks. In particular, while the main rights and obligations of experts in the evidentiary process are reflected in Article 68 of the CPC, which defines their procedural status, not all the rights and obligations that establish the legal status of specialists are indicated in Article 70 of the CPC.

When clarifying the legal status of specialists and experts in the evidentiary process, it is necessary to analyze the commonalities and differences between their rights, obligations, and responsibilities.

Common aspects of their legal status include:

1) both experts and specialists are participants in criminal proceedings who have special knowledge and are involved in criminal proceedings to assist preliminary investigation bodies and the court (Articles 67, 69 of the CPC);

2) specialists have the right to refuse to participate in criminal proceedings if they do not have the relevant special knowledge (Part One of Article 70 of the CPC) for experts, the issue of



refusing to participate in criminal proceedings if they do not have the relevant special knowledge is not indicated (in Article 68 of the CPC);

3) both have the right to appeal against the actions (inaction) and decisions of the investigator, interrogator, prosecutor, and court (Part One of Article 68 and Part One of Article 70 of the CPC);

4) both experts and specialists are subject to equal obligations, which are as follows: to appear upon summons from the investigator, interrogator, or court; not to obstruct (interfere with) criminal proceedings; not to disclose preliminary investigation information that has become known to them as a result of their participation in the criminal case as an expert or specialist, if they have been warned about this in advance in accordance with Article 88 of the CPC (Part Two of Article 68 and Part Two of Article 70 of the CPC);

5) in cases provided for by the CPC, experts are obligated to provide testimony and conclusions (Article 68 of the CPC); specialists have an obligation to provide testimony in accordance with the requirements of the CPC regarding circumstances known to them, but there is no obligation to provide conclusions;

6) in accordance with Articles 76, 78 of the CPC, both experts and specialists must be recused if circumstances provided for in Article 80 of the CPC exist.

As analyzed above, the legal status of specialists and experts in criminal proceedings should be differentiated through the tasks and goals set by the rights and obligations recorded in the criminal procedure.

In the evidentiary process, the expert's task is to conduct forensic examination in criminal proceedings and provide conclusions and testimony.

Unlike experts, specialists are involved in the following evidentiary processes:

- 1) assisting in identifying, securing, and seizing items and documents;
- 2) assisting in the application of technical means for studying case materials;
- 3) questioning experts;
- 4) explaining matters within their professional competence to the parties and the court;
- 5) conducting documentary checks and audits, examining documents, items, corpses in accordance with Part One of Article 187-1 of the CPC;
- 6) providing protocols and testimony (Article 187-8 of the CPC).

Analyses show that the tasks of specialists in the evidentiary process are broader than those of experts and encompass a larger range of circumstances aimed at identifying facts relevant to the case.

Differences in the legal status of specialists and experts in criminal proceedings are also related to the time at which these participants have the right to testify [12, p.28]. According to Part Two of Article 68 of the CPC, an expert is questioned after obtaining a conclusion to provide explanations and clarifications to the conclusion, while for specialists, the time for obtaining their testimony is not specified in the law.

According to criminal procedural law, specialists are not warned about criminal liability for knowingly giving false conclusions, and this is not provided for in the law. In contrast, experts are warned about criminal liability for knowingly giving false conclusions.

Although the rights and obligations of specialists and experts are similar, they have different legal status in criminal proceedings. Their legal position is manifested through the



comparison of their rights and obligations. Thus, analyses show that specialists have more rights and obligations than experts.

According to Part Two of Article 70 of the CPC, specialists are criminally liable only for disclosing preliminary investigation information in accordance with Article 239 of the Criminal Code of the Republic of Uzbekistan.

According to Parts Four and Five of Article 88 of the CPC, if specialists participate in investigative actions, they are warned about possible liability under Articles 239 and 240 of the Criminal Code of the Republic of Uzbekistan.

In a survey conducted among investigators, interrogators, prosecutors, judges, and other employees working in this field within the framework of this research work, 91.34% of respondents answered *"should have such a right in exceptional cases"* to the question *"Can a specialist have the right to refuse to fulfill their obligations?"*, 6.32% answered *"no"*; to the question *"What problems occur related to the participation of specialists in criminal proceedings?"*, 81.05% answered *"problems related to payment for the participation of specialists"*; to the question *"What problems occur related to the determination of the procedural status of specialists in the CPC?"*, 88.81% answered *"rules regarding the opinion of specialists are not established"*; to the question *"If the procedural status of specialists needs to be improved, in which direction do you think this should be done?"*, 90.43% of respondents expressed the opinion that *"the obligations of specialists should be clearly defined"*. The results of the social survey also show that it is necessary to reconsider the obligations of specialists in the current criminal procedural legislation, as well as to grant certain powers in fulfilling the tasks set for specialists and to solve problems.

In particular, in investigative practice, although specialists are involved in cases in the evidentiary process according to criminal procedural legislation, we can see problems related to the undefined scope of specialists to be involved in cases, the refusal to participate by a person with the necessary knowledge when there are situations related to involving specialists in criminal proceedings, the formalization of evidence by specialists in the evidentiary process (*related to providing opinions or conclusions*), payment to specialists (*in cases where they do not agree with the norms specified in the Cabinet of Ministers*), as well as the unclear definition of specialists' obligations. Therefore, it is advisable to develop appropriate proposals aimed at improving criminal procedural legislation in this regard, in particular, to reflect in detail the legal status of specialists, their tasks, the mechanism for involving specialists in cases, and ensuring their participation.

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