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SERIES: *LAW*

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EXPERTICS (GENERAL THEORY OF EXPERTISE)[**]

This paper considers the main theoretical, regulatory, and practical problems of expertics. It describes a new scientific direction in the field of juridical sciences, specifically in the study of the legal and juridical attributes of expertise and expert activity. Expertics is defined to be a combination of science, practice, and scholarly study. The necessity of studying expertics pertains not only to lawyers, but also to lay individuals whose work concerns various institutions of expertise.

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Key words: expertics, expertise science, expertise study, the general theory of expertise, the general theory of judicial expertise, the legal institution of expertise.

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Introduction

The legal field has recently seen the development of so-called expert services and "independent expertise". Without the proper legal and scientific research of this development, "expert activity" may just lead to distorted interpretations of legal examination by both lawyers and state officials.

Theoretical background

If we proceed from the fact that one branch of legal sciences is called forensics, then the science of expertise can be called expertics. More importantly, this scientific branch is based on criminology.

The word "expertise" is defined not only as a scientific branch in the family of legal sciences, but also in the practice of law, and the discipline is associated with expert activities.

It is clear that the science of forensics is the science of forensic examination, according to "Science of forensic examination", a book by A. I. Winberg and N. T. Malakhovskaya. We also encounter the phrase expertise study in the literature.

The term "science of forensic examination", in our opinion, only shows a theoretical approach to forensic examination, while "expertise study" describes a sociological look at the application of expert polls.

Expertics, like the science of law, is intended to research the properties of expertise and expert activity as a legal phenomenon in society and in the state.

Although the legal science of judicial expert activity is now included in the list of specialties of scientific workers in section 12.00.12, the legal institution of expertise is used much more widely. It can therefore be assumed that, over time, expertics may be added to the list of qualifying sciences.

Expertics covers not only judicial examination, which has been investigated in detail in the General theory of judicial expertise, but it also covers expertise in the executive and legislative bodies of law enforcement.[1]

Some legal scholars suggest that legal expertise should apply not only to lawyers and, therefore, should not be limited to the scope of legal sciences. Again, this issue arose from a debate on the "border areas" of the science of criminal law and criminology (in an article by professor A. S. Alexandrov,[2] which can be found on the Internet, and an article by professor A.G. Filippov[3]). Professor A. S. Alexandrov believes that criminologists and experts are trying

to impose a scientific methodology on lawyers that is useless to them. He points out that the subject of research in legal sciences may not be the rule. It should be recalled that legal sciences should have the same characteristics that are inherent all of the branches of science. The classic fields of science, including the social sciences, have proved that the general focus of any field of science is the description and examination of the properties of the object under investigation, including their tendencies to change and the regularity of these changes.[4] Laws and legal phenomena appear before us jointly, not separately, in the scientific disciplines, so there is no reason to oppose a scientific specialty that considers both subjects. Instead scientists try to resolve the problem through consensus at the junction of the science's joint efforts.

Examples of the wide usage of achievements of science and technology by criminals are presented in legal practice. These achievements sometimes lead to negative man-made situations. Therefore, with the help of only procedural achievements, disclosure, investigation, and/or review of the criminal situation, it is simply scientific impossible to fight crime. Yet Mr. Gross has pointed out that with the development of criminology, the value of testimony decreases while the value of objective evidence increases.[5]

There is no doubt that in court proceedings and other types of legally significant interactions the value of expertise is increasing rapidly. However, expertise, with its objective nature, is not the only means of proof, but is also a means of increasing the competitiveness (verification of evidence) and the fairness of the trial. For example, genetic expertise in the USA allowed lawyers to prove the innocence of a man who spent nearly 20 years in prison for a crime he did not commit.[6]

Practice shows that in the Russian Ministry of Internal Affairs there are thousands of forensic experts who received one of two types of education: legal or special (expert services). Additionally, the Russian Ministry of Justice has thousands of government legal experts, who also may not perform services of judicial expertise without a special certification. Knowledge of procedural law is mandatory to receive this certificate. A similar phenomenon is observed in the Russian Ministry of Health, where forensic medical institutions employ thousands of forensic medics. And, finally, the figure of an expert in during a trial is independent. Thus, in the course of an investigation and legal proceedings, the role of an expert performing professional expertise services still possess the legal status of an expert (a certain expert-skills certificate and the right to independently perform examinations cannot be obtained without the knowledge of jurisprudence).

Beginning in 1979, A.I. Winberg and N. T. Malahovskaya[7] discussed the necessity of legislative regulation of judicial examination services. However, a new law addressed their idea only in 2001. Although the law is devoted to forensic examination and all state judicial-expert

activities, the text of this law and all procedural laws use the term “expertise”. Unfortunately, this law regulates only forensic examination and does not affect other classes of examinations, which actually led to statutory norm-setting by officials, some of whom took advantage of this opportunity to create a corruption scheme for expanding administrative rent with the help of the unresolved institute of expertise.[8]

Thus, we can assume that, thanks to the efforts of many legal scientists, a forensic examination and then a judicial expertise is applied during the criminal process according to the legal doctrine of Russia, which first began to develop the framework of criminology. Further forensic examination began to develop in all kinds of trials.

Recently, the institution of expertise began to be used not only in legal procedures and jurisprudence, but also in the process of evaluating the performance of the functions of executive and legislative power, i.e. in all kinds of legally significant interactions between authorities and private individuals. We now can speak about “independent expertise”, ecological, metrological, anti-corruption expertise, etc. Unfortunately, most of these examinations are only mentioned in the law, though some types of expertise have been regulated in separate laws.

The word “expertise” has become fashionable thanks to mass media, and legislators use it in many laws without proper justification and legal regulation of the legal instrument. The science of law fails to provide the required evidence-based results on the subject, and most legislators are not in a hurry to understand the intricacies of an institution as complex as expertise.

The lack of scientific knowledge is demonstrated in special laws, devoted to, for example, environmental or anti-corruption expertise. In particular, the law on anti-corruption expertise suffers the same limitations against which it is directed. This suggests that the legislators have a poor understanding of the institution of expertise and define it not on the basis of legal knowledge, but on the basis of trivial mass consciousness created by the media (Professor A. S. Alexandrov).

Thus, subjects of the right to a legally-significant process cannot do without the application of the legal institute of examination, and, therefore, both lawyers and scientists must develop expertics as a legal science on expertise and expert activity not only in criminal proceedings or other kinds of trials, but also in any legally significant interaction with the subjects of the law.

However, it is important that the special knowledge is used only in a legitimate (legal and/or procedural) form. Some lawyers believe that judicial review is only one medium of proof and does not recognize a general theory of forensic examination. However, the tool is very different from other procedural means in that for an official to use it properly, he or she should

have knowledge about the possibilities of expertise and a procedural knowledge regarding its use.

Many legal scientists (A.R. Shlyakhov, R.S. Belkin, Y.G. Korukhov, E. R. Rossinskaya, T. G. Averyanova and others) have made great contributions to the development of the theory of judicial examination. In particular, in his book “Criminalistics”, R.S. Belkin paid much attention to forensic expertise and showed its exceptional importance for the work of law enforcement bodies.

In her book “The Judicial Examination in the Criminal, Civil and Arbitration Proceedings”, E. R. Rossinskaya demonstrates in detail the features of applying the institute of forensic expertise in all kinds of trials, and has inspired modern possibilities of judicial examination.

Among the above-mentioned scientists are A.I. Winberg and N. T. Malahovskaya, who published the first book on the judicial expertise study. Under expertics we should understand not only the scientific direction of the science of law as expressed in legal doctrine, but also the pragmatic considerations of legal regulation and implementation of the institution of expertise. In this connection, the scientific works on expertics should reflect the questions connected not only with the study of the scientific publications on the institution and examination of normative legal acts that regulate and govern this examination, but also the legal practice of the application of the institution of expertise.

A feature of the contemporary legal institution of expertise in Russia is the absence of legal regulation in the executive and legislative branches of power. Therefore, two research directions of expertics, connected with studying the practice of applying expertise in the legislative and executive authorities, appear to be most relevant.

In the framework of expertics, like any science, it is important to examine questions of the genesis of the modern state’s legal institution of expertise and the perspectives of its development, as well as the genesis of the field of expertics. Naturally, questions regarding the role of expertics in the family of legal sciences should be studied. Also in the matrix of scientific problems of expertics, it is necessary to highlight issues of legal comparative analysis of the institution of expertise in Russia and foreign countries and to develop scientifically grounded recommendations for the harmonization of Russian legislation with international standards in the field of examination. It is necessary for the field to recognize the conclusions of experts at the international level. Here we should note that judicial expertise is referred to as judicial science abroad, stressing that the proceedings are used as achievements of science. It is important to note that these proceedings must be used skillfully, on the basis of science-based approaches.

Sometimes in scientific publications devoted to forensic examination, articles raise questions regarding the classification of judicial examination and then proceed to describe methodical aspects of special research.[9] Criticism of some scientists and lawyers arises when they believe that the issues of special studies lie outside the field of legal science.

In this respect we note that the institute of examination is based on the legal tools used by officials in all branches of government in accordance with the laws of Russia, and the experts (competent individuals acting in the legal role of an expert) use special legal research tools.

Therefore, lawyers and scientists need to distinguish between these two instruments. The category of instruments refers to the various types of funds, procedures and/or principles used by officials and experts. Within the category of procedure (regulation) we focus on the category of method means and/or approach.

Therefore, it is necessary for lawyers and scientists to distinguish between these two instruments, where the instrument is the category of means, procedures, and/or principles used by officials and experts. Under the category of the procedure (regulation) we include the category method, means, and/or approach. At the same time, the concept of procedures includes technological, tactical, and organizational aspects.

It seems that the expert deals only with the technology of special research of the object in accordance with the methodology of the special study. But, in fact, if the expertise objects are the features of a living person, there are some issues associated with both the legal tactical procedures and the special research tactics.

As with any legal (judicial procedure) action, the decision to begin an expertise service involves the appointment of an expert and the use of expert products (the result of the expertise), and requires regulations (order) of the examination application. In this case, the purpose of examination in 90% of cases is carried out in government expert structures, so there must be rules of order involved with carrying out the expertise for the heads and the personnel of these expert structures.

Considering that the execution of expertise service includes the implementation (realization) of special research conducted by an expert that is appointed by an official from the expert structure, the existence of approved, tested, and public methodology guiding the special research is needed.

Any action that is relevant in law is a legitimate operation, i.e., at least one planned and controlled action that is performed in accordance with at least one of the legitimate procedure (methods).

Due to this, the lack of legitimate regulation of expertise as a legal instrument, with the exception for judicial expertise, leads to the appearance of legal norms that determine the rights

and responsibilities of individuals, designate expertise and experts in legal acts, and determine the procedures (rules) for designating and conducting of expertise. And this, of course, contradicts Russia's Constitution and legal doctrine. At the same time, however, there is nothing in the law about the relevance of the document written by the expert and the responsibility of the expert for knowingly giving false opinions.

Approximately the same situation is observed in the normative regulation of the experts' activities themselves. Scientists and lawyers poorly investigated the legal properties of these special research methods. It is believed that the availability of scientifically grounded research methods is enough for its application in special research within the bounds of the expertise. However, in addition to sufficient properties, you must have the approbation, publicity and approval of the special research methodology. The lack of a special research methodology or the absence of one of the above-mentioned properties of this method can become a reason for doubts about the legality of the expert's conclusions. The lawyers and legal representatives of private individuals also know very little of the expertise of the legal institution and therefore they rarely verify the legal basis of the purpose and conduct of the examination. In addition, they rarely apply for a re-examination of the expertise service with the purpose of revealing the infringements of the legislation in the application of the expertise. Unfortunately, in the modern mass use of expertise, there are also numerous violations of legislation related to the use of the legal institution of expertise.

The next important scientific topic is the legal basis and legal requirements of the object of expertise, which may be items that potentially or actually have a legal status of physical evidence, seized probes (samples), or samples for comparative special research. Unfortunately, in practice this procedure is mainly guided by orders to seize (sampling, retrieving) objects for expertise, but there are practically no methods for such operations in the form of appropriately completed normative and technical documents.

The most important scientific topic is the comparative legal research of the institutions of expertise and legitimate specific research, as well as the legal basis and legal characteristics of legitimate special research in the executive and legislative authorities' activities. This topic is of exceptional practical significance, as this phenomenon (concept) is often called “expertise” by legislators.

In legal proceedings there is a legitimate term of “expert research”, which actually means special research carried out by the state forensic expert institution in the form of a paid service. In Russian legislation, expertise appears as a legitimate institution of special research and is the legal role of the special investigator.

The legal institution of expertise, regardless of the specifics of the authorities' activity, has general features in its legal nature. The general features of the legal institute of examination should be settled in one federal law. There should not be distinct laws dealing with different types of expertise, for example, environmental, anti-corruption, or forensics expertise.

On the other hand, the specifics of the legal institution of expertise in different activities of state bodies should be displayed in relevant sectorial legal acts. It is inadmissible to mention only the possibility of an expert examination appointment in law (for example, the legal act of valuation activity), as it leads to uncontrolled decision on the part of officials. The legal institute of examination is considered to be not only important and necessary, but also a complicated and science-intensive legal instrument that requires officials of the legislative, executive, and judicial authorities to have increased knowledge and special control.

Both experts and officials who have the right to appoint expert examinations must know not only the legal procedures, but also the special features of the legal institution of expertise. To this effect, officials of state bodies, having in their official orders (regulations) the right to appoint expert examination services, should be specially trained and certified. The modern development of the special institute of expert examination (expertise) moved the field far away from the legitimate institution of expertise and the practice of its application. Although the employees of state expertise structures continuously study new special features, and the knowledge of law is obligatory for them, the knowledge of officials of state bodies, including law-enforcement and judicial bodies, remains quite low in the field of the institution of expertise and its modern opportunities. In fact, the quality of this knowledge is at the same level as it was in the 20th century.

Expertics can be regarded not only as a scientific direction or the practice of applying the legal examination institution, but also as an educational discipline. For this reason, expertics should be included in the list of compulsory subjects as a training course not only for students of legal specializations, but also for management, economic, environmental, and political science fields, as well as for other specializations to which the legal institution of expertise can be applied.

A training course on expertics should consist of the following three parts: Firstly, the legal basis and legal regulation of the institution of expert examination; secondly, the practice of the legal institute of expertise in the activities of all three branches of state power; and, thirdly, expertics as a scientific field.

The appearance of judicial expertology and the general theory of forensic sciences initiated the beginning of the development of expertics. In accordance with the "Encyclopedia of Forensic Examination",[10] the general theory of the judicial examination is a fundamental part of

the science of forensics and is considered to be a system of worldviews and praxeological principles, evidence-based concepts, categorical notions, methods, connections, and relations that reflect shared traits for all types of judicial expertise with all of their particular minor differences.

Expertics as a theory should consist of the general theory of expertise, the theory of types of examination (including the general theory of judicial expertise, the theory of expertise in the activities of the legislature, and the theory of expertise in the activities of the executive branch of government), and the theory of expertise in various branches of legally significant processes.

This paper gives great consideration to the problems of expertise. In particular, the four books cited here deal with the theoretical and practical issues of both judicial and administrative expertise in the sphere of interactions between customs bodies of Russia and participants of foreign economic activity.[11] It is shown that in the Customs Code of Russia that there is an institute of special research in the sphere of customs control, which is considered to be a novelty in Russia's legislation. A monograph[12] studies not only the legislation and legal properties of the expertise as a public phenomenon, but also provides practical results and recommendations for the institute of expert examination, and on the whole examination of the consideration of the organizational and legal aspects. The tutorial considers the institution of expertise to be a system in particular related to the application of the institution of expertise and institutions of special knowledge of a specialist and special researcher.[13] The tutorial also pays significant attention to the institute of expert examination in the activities of the three branches of government.

Expertics can be regarded as a generalization of the best applications and practices of the expertise institution in the activities of lawyers and other individuals using the expertise in their work. Practicing lawyers are forced to form both legal and judicial practice of applying the institution of expertise in the absence of scientifically grounded recommendations of legal science in the field of examination that used general principles of legal doctrine.

Unfortunately, in the practice of applying the expertise institution, some officials breach the limits of their office and try to shift part of their duties to so-called “independent experts”, citing the need for special competence to adopt legally significant decisions. In practice it turns out that in the absence of a legal mechanism for the responsibility of an “independent expert” for the results of their “independent expertise”, the “independent review” does not depend solely on the law. At the same time, despite the fact that scientist-experts have been writing about this since the 1990s, lawmakers continue to multiply independent expertise and other similar types of expertise in legal acts, which speaks to the insufficient development of expertics and insufficient level of legal knowledge among legislators and individuals who monitor normative legal acts in the field of the expertise.

Conclusion

In conclusion, it should be noted that in fact expertics formed as a separate, independent institutional branch of legal science, practice, and educational discipline, in which legal relations, legal interaction or their legally significant products associated with the use of the legal institute of examination are considered to be the object of activity. In expertics as a science, the object of research is the legal and judicial properties of particular legal relations, legal interactions, or their legally significant products. In expertics, being a science in the capacity of research subjects, there are tendencies toward changing these properties and their behavior, with the purpose of developing scientifically grounded recommendations on the improvement of normative legal acts that regulate and govern the legal institution of expertise.

It should be noted that, as legal and judicial properties and objects of study are subjective by their nature, they require not only explanation, but also interpretation (assessment) from the point of view of the Constitution, legal doctrine, and/or legal traditions, as well as the necessity of changing any legitimate norms.

In addition, expertics form pragmatic recommendations for practicing lawyers and other interested persons with regard to the application of the legal institute of examination in consideration of complex conflicts and problems including legally relevant situations.

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