

**THE LEGAL STATUS OF EXPERTS IN CRIMINAL PROCEEDINGS, COSTS INCURRED IN THEIR ATTENTION AND THE PROCEDURE FOR COMPENSATION***Bozorov Maksudali Makhmudovich**Teacher of the Department of Criminal Procedural Law, Tashkent State University of Law*

**Abstract.** The article analyzes the issues related to the participation of specialists in criminal proceedings, the procedural costs incurred in their involvement and the procedure for their compensation. Based on a comparative analysis of national and foreign legislation, the issues of financial support for the services of specialists, the use of state budget funds and the subsequent recovery of these costs from the convict were studied. Proposals were developed to improve the legislation to solve existing problems.

**Keywords:** procedural costs, specialist participation, use of specialized knowledge, transfer of costs to the state, burdening the convict with costs.

The extensive reforms implemented in the Republic of Uzbekistan in recent years are aimed at further improving the judicial system and ensuring human rights and freedoms. The new Constitution strengthens such important principles as the protection of human rights and the use of fair trial.

The participation of persons with special knowledge - specialists - in criminal proceedings is of great importance for establishing the truth, collecting and evaluating objective evidence.

According to Article 69 of the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC), a specialist is called to assist the inquiry officer, investigator, prosecutor and court in finding and strengthening evidence during the investigation and trial. A doctor, teacher and other persons with the necessary knowledge and qualifications may be called as a specialist.

At the request of the defense attorney, a specialist may be called to provide explanations by the inquiry officer, investigator, prosecutor and court.

A specialist may be summoned to use scientific and technical means (tape recorder, video recorder, film recording devices and other devices) during the investigation and trial.

Unlike an expert, a specialist does not issue a conclusion, but rather provides advisory assistance, explanations and assists in conducting investigative actions.

Article 70 of this Code sets out the rights and obligations of a specialist, according to which a specialist has the right to:

know the purpose for which he/she was summoned;

to refuse to participate in the proceedings if he/she does not have the relevant knowledge;

to familiarize himself/herself with the case materials on the procedural actions in which he/she is participating;

to express complaints and comments related to the procedural actions in which he/she is participating;

to ask questions to persons participating in the investigative actions and trial with the permission of the inquiry officer, investigator, prosecutor and court;

to file complaints against the actions of the inquiry officer, investigator, prosecutor and court.

At the same time, the Specialist must:

be present upon the summons of the inquiry officer, investigator, prosecutor, and court; participate in the investigation and court proceedings using scientific and technical means, special knowledge, and qualifications to find and consolidate evidence;

draw the attention of the inquiry officer, investigator, prosecutor, and court to circumstances that are important for establishing the truth in the case; provide explanations for the actions he or she is performing;

assist the inquiry officer, investigator, prosecutor, and court in identifying the causes of the crime, the conditions that allowed it to be committed, and in developing measures to eliminate them;

not disclose the materials of the inquiry officer, investigator, prosecutor, or court proceedings without the permission of the inquiry officer, investigator, or prosecutor, as well as information and details of the closed court hearing without the permission of the court;

observe order during the investigation and court proceedings of the case.

A specialist is involved in the following cases:

when conducting an inspection (assessment of the technical condition of buildings, checking documents);

during searches and seizures (use of special equipment);

when conducting experiments in the investigation (reconstruction of the incident);

in securing evidence (photographing, video recording);

in other investigative actions requiring special knowledge.

The inquiry officer, investigator or prosecutor shall issue a decision on the involvement of a specialist, and the court shall issue a ruling. The decision (ruling) shall indicate the identity of the specialist, the grounds for his involvement and the tasks to be performed.

According to Article 951 of this Code, electronic data obtained without the participation of a specialist during the conduct of investigative actions on seizure or examination may be recognized as inadmissible evidence.

From this it follows that if electronic data needs to be obtained during the conduct of investigative actions on seizure or examination, the participation of a specialist is necessarily required.

Specialists possess special knowledge in various fields of science, technology, art or craft, and assist in conducting investigative actions, identifying and evaluating evidence. Their participation directly affects the quality and speed of the investigation of a criminal case. At the same time, the issues of correctly calculating the procedural costs associated with the involvement of specialists, making appropriate payments for them and subsequently recovering these costs from the guilty parties cause a number of problems in practice.

A large part of the costs of detecting a crime falls on the costs associated with investigating a crime.

The participation of a specialist in the investigation and consideration of a case in criminal proceedings is widespread, and he plays an important role in the correct exercise of the rights of other participants in the process. Therefore, the work of a specialist should be adequately rewarded.

It should be noted that, in accordance with Article 75 of the Code of Criminal Procedure, the average monthly salary at the place of work of a victim or his representative, a person summoned as a witness, expert, specialist, translator or impartial witness is retained for all the time spent in connection with his summons to the inquiry officer, investigator, prosecutor and court. Persons who are not working are paid for the time they are unable to engage in their daily activities. In addition, all of the above-mentioned persons have the right to recover their expenses incurred in connection with the summons.

An expert, specialist and translator have the right to receive remuneration for the performance of their duties. This is excepted when these duties are performed as a service assignment.

For example, according to paragraph 12 of the Regulation on the procedure for calculating and paying amounts payable to victims, witnesses, experts, specialists, translators and eyewitnesses, approved by the Cabinet of Ministers of the Republic of Kazakhstan No. 570 dated October 28, 2023, remuneration for work performed by an expert, specialist, translator is paid in the amount established by the agreements concluded between the interested parties or by this Regulation.

In addition, paragraph 13 of the Regulation states that “An expert and specialist shall be paid a remuneration in the amount of 0.10 of the basic calculation rate per hour for work performed on the instructions of the responsible bodies (officials).”

The following expenses are also reimbursed to the specialist:

- expenses for travel to and from the place of procedural actions (transportation, business trip);

- accommodation expenses (hotel, apartment rental);

- daily expenses (food, household needs);

- maintenance of the average wage at the workplace (Article 319 of the Code of Criminal Procedure).

However, today there are certain problems and shortcomings in this area that need to be resolved in terms of expenses associated with the participation of forensic experts in court proceedings.

The main reasons for the incomplete functioning of this institution are as follows:

Firstly, Articles 75 and 318 of the Code of Criminal Procedure stipulate that forensic experts and specialists are not paid if they perform the assignment within the scope of their official duties.

Although Article 320 of the CPC provides for the subsequent recovery of procedural costs from convicted persons, the lack of clear requirements for the recovery of costs in this article leads to the fact that in most cases the procedural costs that should have been recovered remain uncollected from the state budget and state forensic examination institutions.

According to Article 319 of the CPC, employees of all organizations, including business entities, may also be witnesses, as well as victims, civil plaintiffs, civil defendants and their representatives, experts, specialists, translators, witnesses, and the public. The average salary of a person summoned as a prosecutor and public defender at their place of work is retained for the entire time related to their summons to the inquiry officer, investigator, prosecutor or court.

For your information, according to Article 176 of the Criminal Procedure Code of the Republic of Kazakhstan, such an obligation is imposed only on state bodies and organizations.

In this case, a number of problems arise due to the lack of clarity in the legislation regarding the concept of "performance of official duties in the course of official duties".

Secondly, in paragraph 14 of the Resolution of the President of the Republic of Uzbekistan No. PP-416 dated November 8, 2022 "On measures to further improve the system of personnel training in the field of architecture and construction", Tashkent University of Architecture and Construction and Samarkand State University of Architecture and Construction named after Mirzo Ulugbek are allowed to carry out activities to inspect the technical condition of buildings and structures and preserve real estate objects of tangible cultural heritage, in compliance with the requirements and conditions of the relevant license.

These universities have allocated additional staff at their own expense for structural units engaged in this activity, and these specialists can be involved as specialists and experts in criminal cases.

In addition, in practice, the authorized bodies mainly involve professors and teachers of higher educational institutions as experts, but they are not paid either.

In addition, in practice, the authorized bodies mainly involve professors and teachers of higher educational institutions as experts and specialists, and they are not paid either.

Two questions arise here: first, is the execution of orders of judicial and investigative bodies by these specialists part of their official duties and can they be paid for it?

In this case, it is also necessary to clarify that it is performed in the form of an official duty.

Thirdly, according to paragraph 12 of the Regulation on the procedure for calculating and paying amounts payable to victims, witnesses, experts, specialists, translators and eyewitnesses, approved by the Cabinet of Ministers No. 570 dated October 28, 2023, the fee for the work performed by an expert, specialist, translator is paid in the amount established by the agreements concluded between the interested parties or in this Regulation.

Paragraph 13 of the Regulation states that "Experts and specialists are paid a fee in the amount of 0.10 of the basic calculation rate per hour for work performed on the instructions of responsible bodies (officials)."

It follows that when a specialist in one field is involved for 2 hours, a fee of 0.20 of the basic calculation amount, i.e.

82,400 soums, is paid.

This, in turn, is disproportionate to the current income of the population and may in some cases cause objections from the specialists involved.

For this reason, and in order to create convenience for the judicial and investigative bodies in ensuring a fair trial, it will be necessary to reconsider these fee amounts.

Fourth, in accordance with the Regulation on the Procedure for Calculation and Payment of Funds to be Paid to Victims, Witnesses, Experts, Specialists, Translators and Eyewitnesses, approved by the Cabinet of Ministers of the Republic of Uzbekistan No.

570 dated October 28, 2023, electronic exchange of documents is not provided for when making payments.

This, in turn, may lead to payments remaining unpaid in some cases and unnecessary hassle in coming to submit an application to the authorized body.

Fifth, the Criminal Procedure Code does not specify clear mechanisms for the recovery of procedural costs.

Although Article 320 of this Code contains norms related to the subsequent recovery of procedural costs from convicted persons, due to the fact that this article does not clearly define the requirements for the recovery of costs, in most cases the procedural costs that should be recovered are not recovered from the state budget and state forensic institutions. The return of these funds can serve to further develop the industry and increase the salaries of forensic experts.

The analysis shows that the institute of costs incurred in the criminal process with the participation of experts and specialists is not sufficiently provided for in the criminal procedural legislation of the Republic of Uzbekistan. Although it has been formed to a certain extent, there are systemic problems in its application in practice. In particular, the lack of a clear definition of the types of procedural costs, the mechanisms for their calculation, collection and refund leads to the fact that a large part of the state budget funds remain unreimbursed.

An analysis of the experience of international and foreign countries shows that, even while ensuring human rights, including the right to defense and guarantees of access to a fair trial, the costs incurred for the services of an expert, specialist, defense lawyer and translator can be charged to the person found guilty. In this case, the use of mechanisms for full, partial or installment payment by the court, taking into account the financial situation of the convicted person, is a widespread practice.

In order to improve this institution in the Republic of Uzbekistan, it is advisable to introduce amendments and additions to Articles 318-320 of the Criminal Procedure Code, clarifying the types and composition of procedural costs, as well as determining the step-by-step mechanisms for their recovery. At the same time, it is necessary to provide a clear legal definition of the concept of involving experts, specialists and translators in the performance of their duties.

Also, existing problems in this area can be eliminated by digitizing the processes of calculating and collecting procedural costs, establishing transparent accounting through electronic information systems, and forming judicial practice based on a unified approach. The implementation of these proposals will serve to increase the efficiency of the activities of judicial and investigative bodies, rational use of state budget funds, and reliable protection of the rights and legitimate interests of participants in criminal proceedings.

Based on the above, in order to solve existing problems

and further develop the area, the following are proposed:

- ensuring full reimbursement of costs associated with the consideration of a case in criminal proceedings and revising their amount;
- developing draft regulatory legal acts regulating the relations related to the participation of convicted persons and their full or partial exemption from payment of procedural costs in criminal proceedings, as well as their inability to pay them;

- clarifying the conditions for the performance of work by experts, translators and specialists in the order of service assignment;
- digitalizing the processes of calculating and collecting procedural costs, ensuring the integration of existing information systems, establishing transparent accounting through electronic information systems, and forming judicial practice based on a unified approach.

**References.**

1. <https://lex.uz/docs/6445145>
2. <https://lex.uz/docs/111460>.
3. <https://lex.uz/docs/6647112>
4. <https://lex.uz/uz/docs/6277864>