



## SPECIFIC FEATURES OF SPECIALIST WITNESSES IN THE CRIMINAL PROCEDURE OF THE REPUBLIC OF UZBEKISTAN AND REQUIREMENTS IMPOSED ON THEM

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**Abstract.** This article analyzes the requirements imposed on specialist witnesses in the evidentiary process of criminal proceedings, the need for their impartiality, and their professional competence in fulfilling assigned tasks. It also examines and theoretically analyzes situations where specialist's lack specialized knowledge, demonstrating their professional incompetence, which creates obstacles to their participation in cases.

**Keywords:** specialist, requirement, interest, professional competence, professional incompetence, criminal procedure.

In the evidentiary process of criminal proceedings, we can see that several requirements are imposed on specialist's. These requirements are of great importance in ensuring that expert witnesses participating in criminal procedural relations are not interested parties and demonstrate professional competence in fulfilling their assigned tasks. Indeed, the lack of specialized knowledge in specialists engaged in cases demonstrates their professional incompetence and creates circumstances that hinder their participation in the case.

As society develops, there is a need for the improvement of laws. This inevitably affects criminal procedural laws as well. When analyzing criminal procedural law, we can see the necessity of regulating criminal procedural relations in the future by theoretically improving certain concepts indicated in the law and clarifying them.

Although various requirements are specified for specialist witnesses in the evidentiary process in criminal proceedings, it is first appropriate to clarify the issue of whether an specialist is professionally competent or incompetent.

The requirement that an expert witness should not be interested in the results of the case is specified in Article 76 and the first part of Article 78 of the Criminal Procedure Code of the Republic of Uzbekistan, which state that if there are grounds to consider the specialist personally, directly, or indirectly interested in the results of the criminal case, they cannot participate in the criminal process. In such cases, the specialist should be disqualified.

Impartiality regarding case outcomes is one of the main requirements for specialist witnesses. The participation of an specialist interested in the case outcome could lead to the evidence obtained with their participation being deemed inadmissible, in accordance with Article 95-1 of the Criminal Procedure Code.

According to the first part of Article 76 and the first part of Article 78 of the current Criminal Procedure Code, an specialists is not entitled to participate in criminal proceedings and should be disqualified if:

1) They are participating or have previously participated in the case as a victim, civil plaintiff, civil defendant, expert, interpreter, witness, defense counsel, legal representative of

the suspect, accused, defendant, or as a representative of the victim, civil plaintiff, or civil defendant;

2) They are a relative of any official responsible for conducting the case or a relative of any of the following participants in the case: victim, civil plaintiff, civil defendant, expert, interpreter, witness, defense counsel, legal representative of the suspect, accused, defendant, or representative of the victim, civil plaintiff, or civil defendant;

3) There are other circumstances that raise doubts about their objectivity and impartiality.

According to the second part of Article 76 and the first part of Article 78 of the current Criminal Procedure Code, if an specialist has previously participated in a case as an official of a pre-investigation body, investigator, prosecutor, or court secretary, they cannot further participate in the proceedings of that case.

A brief analysis of Articles 76 and 78 of the Criminal Procedure Code of the Republic of Uzbekistan reveals that an expert should not have any interest in the proceedings. According to the requirements of these legal provisions, an expert's interest in the outcome of a criminal case is a circumstance that excludes their participation in criminal proceedings.

In the following cases, an specialist must be deemed interested in the outcome of the criminal case, and their participation in criminal proceedings must not be allowed:

- 1) If they are a victim, civil plaintiff, civil defendant, or witness in the criminal case;
- 2) If they have participated in this criminal case in another capacity;
- 3) If they are a close relative or relative of any of the participants in the process;
- 4) If they are or have been dependent on the parties or their representatives by service or otherwise;
- 5) If their incompetence (lack of knowledge, lack of competence) is established;
- 6) If they are in friendly, comradely, or hostile relations with persons interested in the outcome of the criminal case.

The concept of "interest" (Arabic - benefit, income) refers to gaining advantages, benefits in material, moral, physical, and other aspects [1].

"Interest is a system of activities carried out by an individual, person, ethnic group, nation, people, state, and society for the purpose of gaining some benefit, advantage in material, moral, physical, and other aspects, based on the requirements of objective and subjective factors that have arisen in the existing reality" [2, p. 161–168].

According to the second part of Article 78 of the Criminal Procedure Code, the previous participation of an specialist in criminal proceedings as an specialist is not a basis for disqualification, and therefore for considering them interested in the outcome of this criminal case. Therefore, the repeated participation of an specialist in investigative and other procedural actions for various purposes does not lead to the evidence obtained during these procedural actions being deemed inadmissible.

The requirement that an specialist should not be subordinate to any of the participants in the case in terms of service or other aspects follows from the content of the first part of Article 78 of the Criminal Procedure Code. According to this requirement, an specialist should not be subordinate in service or other aspects to the judge, as well as people's assessors, prosecutors, investigators, inquiry officers, officials of pre-investigation bodies, court secretaries, and also to the victim, civil plaintiff, civil defendant, expert, specialist, interpreter, witness, defense counsel, legal representative of the suspect, accused, defendant, or



representative of the victim, civil plaintiff, or civil defendant in the case. Unfortunately, in investigative practice, it is observed that this requirement is not always adhered to.

The list of cases where an specialist should be disqualified is not limited to this basis. An specialist should also be disqualified on the grounds provided for in paragraphs 1-3 of the first part of Article 76, parts 1-3 of Article 78 of the Criminal Procedure Code, which can also be applied to other participants in criminal proceedings.

If an specialist provides evidence confirming their direct or indirect interest in the outcome of the case, they have the right to refuse to participate in the case (paragraphs 1-3 of the first part of Article 76, parts 1-3 of Article 78 of the Criminal Procedure Code). If there are grounds to consider the specialist personally, directly, or indirectly interested in the results of the criminal case, they may be disqualified.

The requirement of professional competence follows from the content of the second part of Article 78 of the Criminal Procedure Code. According to the second part of Article 78 of the Criminal Procedure Code, if an specialist's professional incompetence is established, they cannot participate in the criminal case. Therefore, professional competence is one of the main requirements imposed on specialist's by law. The content of this requirement is not disclosed in the law, and there are different approaches to defining it in criminal procedural literature. A number of authors attempt to reveal the content of the concepts of "professional competence" and "professional incompetence", emphasizing that professional incompetence is "the absence or lack of special knowledge and practical skills necessary to resolve issues related to the implementation of a particular investigative action" [3, p. 18].

One can agree with the above opinion about "professional incompetence". In our opinion, an specialist's possession of the necessary specialized knowledge, skills, practical experience, and the ability to apply them in practice for participation in a case reflects their "professional competence", while having specialized knowledge but being unable to apply it in practice indicates their "professional incompetence".

A.V. Konstantinov defines the concept of "professional competence" as "the specialist's possession of deep specialized knowledge, confirmed by the presence of appropriate education, professional and life experience" [4, p. 124].

In our opinion, we cannot fully agree with A.V. Konstantinov's views on the concept of "professional competence". This is because having appropriate education is not a necessary condition for a person with specialized knowledge; it is possible to understand that a subject can acquire specialized knowledge through life, practical, or professional experience.

A.G. Smorodina points out that the presence of specialized knowledge and skills in a certain field of science, technology, art, or practical activity is not the only thing that determines an specialist's professional competence; how well they have mastered the techniques and methods of applying this knowledge and skills is also important [5, p. 78-79].

In our opinion, A.G. Smorodina has described the concept of an specialist's professional competence in more detail. These views, in our opinion, are well-founded because it is necessary not only to possess knowledge and skills but also to be able to use them effectively; only then can an specialist be considered professionally competent.

Based on the above, we can say that "professional competence" means not only possession of specialized knowledge but also practical skills in applying it and the ability to use it effectively.



B.T. Bezlepkin states that “professional incompetence” in substance includes not only the absence of necessary specialized knowledge in a person engaged as a specialist but also the lack of skills to apply them in practice [6, p. 166].

In our opinion, it is appropriate to agree with B.T. Bezlepkin’s views on “professional incompetence”. Although this concept is briefly defined, it more fully illuminates this concept in terms of meaning.

E.B. Melnikova, in defining “professional incompetence” emphasizes “the person’s lack of specialized knowledge” [7, p. 8]. In our opinion, we cannot agree with E.B. Melnikova’s views on this matter. This is because a person’s “lack of specialized knowledge” indicates their professional incompetence, but a specialist’s “professional incompetence” reflects a broader meaning than “having specialized knowledge”. That is, it shows that the specialist lacks practical skills in applying the knowledge they have acquired and has not developed the ability to use this knowledge effectively.

*In our opinion, “professional incompetence” refers to a person who not only lacks specialized knowledge or practical skills in applying it but also lacks the ability to use it effectively.*

**CONCLUSION:** In summary, in criminal procedural relations, not only is it important for an specialist to have specialized knowledge, but their professional competence for participation in the case is also of great importance. An specialist’s professional incompetence creates difficulties and deficiencies in collecting, documenting, and examining evidence during the evidentiary process. The participation of an specialist in a case should not be limited to their possession of specialized knowledge. In particular, along with having specialized knowledge, the specialist’s possession of skills to apply this knowledge is one of the most essential conditions. Also, the interest of specialists engaged in a case in the results of the work leads to the illegal documentation of evidence in the future and hinders the objectivity of evidence or the comprehensive examination of the case.

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