

**The issues resolved with forensic psychological expertise  
and their situational conditionality**

**Abstract:** The ground to assign the forensic psychological expertise (FPE) does not appear at once. It appears during investigation of criminal cases – receiving of the results various investigative actions. Therefore, the expert examinations should be assigned many times. If to draw into account that assignment and production of an expertise takes 10 days in average (which evidently reduced), then all terms of investigation would be spent only one investigative action.

Consequently, it appears an issue on situations, in which an assignment of the FPE is mandatory and should not be given at discretion of an investigator. Based on a content of the above dilemma, the FPE should be assigned under necessity and possibility of the problems resolution only through special psychological knowledge, but not with other ways.

To do it, should be defined appropriate situations, when the principles of sufficiency and relevancy of the evidences come into the force.

Assignment of the FPE in criminal proceedings should be stipulated with specific conditions, which desirably to fix in the law. This will exclude subjectivism and perfunctoriness in course of establishing the truth on a case.

It seems that seriousness of a crime, special subjects (minors and others), problems of sanity, kinds of a guilty, justifiable defence, extreme necessity, psycho-physiological characteristics of a person are the similar conditions of this.

**Keywords:** forensic psychological expertise; situation; tasks of criminal proceedings; conditions; grounds.

Criminal legal and criminal procedural matters have determined in the law.

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According to article 2 of Criminal Code of Azerbaijan Republic, the Code's tasks are ensuring peace and security of a man, protection the rights and freedoms of man and citizen, property, economical activity, social order and social security, environment, constitutional order of the state from criminal encroachments, and also prevention of the crimes.

To carry out these tasks the law stipulates the grounds and principles of criminal responsibility, determines what danger offences for personality, society and the state are recognized by crimes and establishes kinds, frame and term of punishments and other measures of criminal legal nature for commission of these crimes [10, p. 3-4].

According to article 8 of the Criminal Procedure Code of Azerbaijan Republic, the following are considered to be the tasks of criminal proceedings: protection of personality, society and the state from criminal encroachments; defence of personality from cases of abuse of office powers in connection with actual or presupposed commission of crime; fast disclosure of crimes, comprehensive, complete and objective clarification all circumstances, associated with criminal prosecution; administration of justice in order to punish of guilty persons and to rehabilitate of innocents [11, p. 12].

General directness of criminal legal and criminal procedural matters is determined with part 7 of article 125 of the Constitution of Azerbaijan Republic, which says that court proceedings should be provide establishing of the truth [7, p. 43].

In spite of obvious repetitions, the listed matters of criminal proceedings might be considered the general tasks of pre-trial production and its stages, though, in our point of view, the issues about administration of justice, establishment of a guilt and rehabilitation of innocents are not related to them as they are touching only court proceedings. Thus, it turns that protection from unfounded accusations are not in the tasks of pre-trial production, and consequently its pre-trial stage. There defence of the rights and interests of process' participants, application of appropriate legal

procedures to them, prevention of crimes, strengthening the rule of law, formation respect to the law etc. are not also included in the tasks.

According to part 2 of article 1 of CPC of Georgia, the following are the tasks of criminal process (court proceedings): establishing of actual circumstances of crime and other illegal deed and a person committed of it; providing of right application of the law; prevention of innocents' crimination; correction of investigative and judicial errors; protection of the rights and freedoms of citizens, suspected, accused persons, victims, and also all other participants of criminal process; establishing of respect to the law, ideas of humanism and justice in society [13, p. 1].

Part 1 of article 7 of CPC of Republic of Belarus says that the following are the tasks of criminal protection: defence of a personality, his/her rights and freedoms, interests of society and state through prompt and complete investigation of crimes, socially dangerous offences of insane persons, disclosure and bringing of accused persons to criminal responsibility; providing right application of the law in order those who committed crime would be subjected to justice punishment and none innocent was brought to criminal responsibility and convicted. According to part 2 of this article, established in the CPC an order of production on material and criminal case should provide legality and law and order, prevention of crimes, defence from unfounded accusation or conviction, illegal restriction of the rights and freedoms of man and citizen, and in case of accusation or conviction of innocent – prompt and complete rehabilitation of him/her, indemnification of physical, property and moral loss, restoration violated labour, pension, housing and other rights [12, p. 43].

CPC of RF (art. 6) is related an assignment of criminal proceedings to its principles and included in it: protection of the rights and legal interests of persons and organizations; victims from crimes; defence of a personality from illegal and unfounded accusation, conviction, restriction of his/her rights and freedoms. Part 2 of article 6 of CPC of RF says that criminal prosecution and assignment of justice punishment to accused persons are met to assignment of criminal proceedings to the extent that refusal from criminal prosecution of innocents; release them from

punishment, rehabilitation of each who has incurred of criminal prosecution [17, p. 7-8].

The CPC of Republic of Tajikistan, Kyrgyz Republic, Kazakhstan, Uzbekistan, Moldova, Ukraine and Estonia are contained the same tasks of criminal proceedings in various interpretations [18, p. 2; 15, p. 2; 14, p. 90; 19, p. 96; 16, p. 92; 20, p. 97; 21, p. 7].

All listed tasks of criminal proceedings with certain corrections might be related to the tasks of pre-trial production, but as it presents, in this case a goal of criminal procedural activity gets accusatory directness, ignoring of grounds of criminal responsibility for guilt.

Pre-trial criminal production is not always begun from examination of obvious crime's fact. As rule, in certain situations receiving and registration of information about committed or preparing crime, checking of its compliance with reality are the beginning of it. There not each event is an event of crime, like not each event contains the signs of crime. Therefore, establishing of presence or absence of crime event and its signs are the equal tasks of the stage of pre-trial production, where there is possible an assignment and production of forensic psychological expertise (FPE). It seems that this is a main task of pre-trial production, its elements in form of investigative and procedural actions, and court proceedings in whole, from which decision occur other ones. This is also concerned a stage of urgent initiation of criminal case (art. 209 of CPC), even under finding unknown human corpse, signs of infection or poisoning, firearms, ammunition, explosive material, explosive devices, explosions or fires in public places, in buildings of the state enterprises, institutions etc. [11, p. 214-215]. In these cases priority task is an establishment of crime's event and availability of corpus delicti, but not prompt disclosure of crimes, on presence or absence of which to state early. We may speak on disclosure of crimes only establishment their events and availability corpus delicti in them, i.e. after establishing of crime's fact. This is a main task of this stage of pre-trial and whole court proceedings.

It seems that above stated is determined and with subject of proving (art. 139 of CPC), the first point of which is an establishment of a fact of criminal incident [11, p. 154-155].

If disclosure of crimes to accent as a mandatory task of criminal proceedings then in case of absence of their event and corpus delicti, and following refusal in initiation of criminal case or its dismissal, declared purpose is remained unreached.

Other specific task of pre-trial production, in our opinion, is to provide a compensation of material and other losses caused by crime, and establishing its reasons and conditions, removal them. These tasks can and may be solved at the subsequent stages of court proceedings, but efficiency of this impossible to get without decision of them in pre-trial production. It should be taken in consideration under assignment of the FPE.

Indemnification caused by crime is not mentioned in the CPC of Azerbaijan Republic, and obligation of establishing and elimination of the circumstances, assisting to crime's commission, has related to the general conditions of preliminary investigation.

According to article 221 of CPC of Azerbaijan Republic, during preliminary investigation an investigator is obliged to make clear the circumstances (reasons and conditions), assisting to crime's commission. Being cleared these circumstances, an investigator send a presentation to appropriate legal and official persons about acceptance of the measure to eliminate the circumstances, assisting crime's commission. The presentation of an investigator about acceptance of measure to eliminate the circumstances, assisting crime's commission, should be subjected of mandatory consideration. Results of the consideration should be in month term sent an investigator in written form [11, p. 241].

It seems that stated provisions have a declarative nature and are not provided with other norms of the CPC. If an investigator are discovered circumstances (reasons and conditions) assisting to crime's commission then introduction on their presentation on their elimination should be obligation, but not alternative right. In

connection with this, words “under necessity” should be excluded from the text of article 221.1 of CPC, and clarification of the reasons and conditions, assisting to crime’s commission should be included in article 139 of CPC as the circumstances subjected to be proved.

Criminalistical tasks is determined with a subject of criminalistics like a science about regularities of mechanism of crime, appearance of information about crime and its participants, regularities of collection, examination, evaluation and usage of the evidences and based on cognition of these regularities of special methods and instruments of court examination and prevention of crimes [8, p. 62].

Investigation of crimes is a variety of cognitive activity, purpose of which, like of any cognition, is an establishment of the truth. This statement has methodological significance for investigatory practice as orientates towards usage of reliable methods of investigation but not only on establishment of the truth.

Under investigation of crimes cognition is a juridical, legal cognition, it is united with actions of the norms of criminal law, determining a corpus delicti, its legal construction, in frame of which should be established a guilt of subject in crime’s commission and other circumstances of crime.

Investigation is regulated with criminal procedure law, CPC determines conditions, subject and frames of proving, temporal borders whole process, its main and secondary tasks, which determined with nature of crime, content of information of it, provisions of criminal and criminal procedure law, specifics of investigatory situations.

Under investigation of crimes an absence of information or its lack, contradictions in testimonies of witnesses, accused person and a victim are the main obstacle to establish the truth. In order to remove these obstacles and to reach the main goal of investigation, an investigator should put interim tasks, resolution of which allows him making up the gaps in information, to eliminate contradictions and to make clear questions appeared.

A task is an acknowledged by man in the necessity to achieve a goal through obtaining of additional information, elimination of its uncertainty. Dependence of consideration's aspect these tasks in juridical literature are named in different way: legal, procedural, criminalistical, investigative, expert, operational etc. [1, p. 2-26].

Formulation of a problem is a cogitative procedure. Dependence on experience, special knowledge of an investigator, operation officer, complexity of situation and other factors a formulation of a problem (or a complex of them) might be relatively simple procedure, and might be caused by difficulties. In order to avoid the difficulties, criminalistics develops typical tasks (problems), which may appear in typical (regular) situations [5, p. 3-9].

In psychological aspect the task presents itself a result of perception of a situation's uncertainty and a necessity to overcome this uncertainty in order to continue an activity and achieve a goal. Owing inner efforts of man the task is always united with his/her will, i.e. with his ability to act purposefully.

In logical aspect, a task is united with obligatory assessment of concrete situation and available information with subsequent expression of the results of this assessment. Statement, in which a task is expressed, has an imperative nature, i.e. mandatory (peremptory) instruction. But dependence on assessment of situation the statement is distinguished in alternative or hypothetic and categorical – unconditional, instructing to act this way but not other one [4, p. 61-63].

Task is closely tied with such form of thought like question, which is one of the most and constantly used logical ways of transition from non-knowledge to knowledge, a way of its development at all spheres of human activity. Instigation is not an exception. Question appears in the situations, in which cannot be directly obtained knowledge, when it is not satisfied to the purposes of cognition and activity, i.e. when non-knowledge blocks truth's way.

In procedural aspect, a task is a normative, mandatory for execution instruction of the law, which comes from the purposes of criminal procedure activity. Tasks,

coming from criminal procedure activity, determine a nature of legal relations of participants of criminal process.

Criminalistical aspect of the tasks, appearing in criminal process, consists in the fact that in this aspect, as if is synthesized and obtained specific expression of psychological, logical, criminal procedural and informational aspects. Therefore, in criminalistical aspect, the task is one of the terms of purposeful activity, which provides crimes' investigation in scientific basis in frame of the law.

Criminalistical tasks are developed with considering their logical and psychological nature and criminal procedural orientation. They are based on generalization of an experience of operation searching, investigative, judicial and expert practices.

Appearance and decision of the criminalistical tasks, like a whole investigation, has a situational nature. This means that none criminalistical task is resolved without concrete situation. Indissoluble connection of objective (situation) and subjective (tasks) is manifested just in that and it is inherent to any kind of human activity, including crimes' investigation.

Investigative situation is considered in criminalistics in various ways, there is no common scientific conception about it. So, investigative situation is characterized by R.S. Belkin like some combination of actually existing conditions and circumstances, in which is carried out an investigation. These conditions are also included in itself information about crime event [3, p. 66-72]. Other researchers believe that investigative situation is informational model, reflection of the real situation [1, p. 2-26].

Not touching of all variety of cognitive activity in pre-trial criminal production, we will try to consider the particularities of tasks' resolution, appearing under investigation of grave crimes against a personality and the ways of their resolution through FPE in dependence on investigative situations.



An expert's report, including expert-psychologist, is one of the kinds of evidences, through of which is established the circumstances of an object's proving, which listed in article 139 of CPC [11, p. 154-155].

It is meant that determining with concrete situations, the criminal legal, procedural and criminalistical tasks of investigation are resolved through the FPE, and the tasks of the FPE come from them.

According to A.I. Zykov, the tasks of the FPE are determined with the tasks of investigation and are in interrelation with them; but in addition, an expert solves his tasks, which are independence ones and are not connected with an object of proving [6, p. 106].

The first part of the statement is not troubled, but the second one is to be wrong. Actually, at the first sight, an expert resolves specific tasks, which are not related to an object of proving (e.g. the tasks of organizational nature), they are determined and come from instruction of investigator who solves his investigative tasks through the FPE.

Criminalistical tasks of investigation, resolving through the FPE, impossible to enumerate as it is impossible to foresee all situations, which may appear under investigation. Though, we have tried to work out typical situations determining of application of special psychological knowledge. We have developed criminal legal and procedural matrixes, which are suggested to apply at concrete situations.

Let's consider opportunities of usage of developed method at specific example, in process of which we will try to discover a core, mechanism and opportunities of it.

On November 15, 2006, Binagadi RPD received information about the fact that approx. 16.30 citizen Jafarova had tried to suicide, being thrown off the balcony of the 7th floor of the building No. 33B located at Nakhchyvani Street, Baku city.

S.E. Jafarova kept alive by a miracle and, in connection with the injuries, she was delivered to the Baku city Central Medical Clinic, and then transferred to the Central Hospital of Oil Workers on November 20, 2006.

On November 16, 2006, the criminal proceedings were instituted upon the given fact by the Office of Public Prosecutor of Binagadi district of the city of Baku under the article 125 (incitement to suicide) of the Criminal Code of the Azerbaijan Republic. Further, on complaint of victim's father – Professor of Medical University, the case was resent for investigation at the Department on investigation for grave crimes of the Investigative of the Prosecutor's office of Azerbaijan Republic.

On 20 November 2006, being in the hospital, Jafarova was died.

In process of investigation there were produced some expert-examinations, had questioned the relatives, neighbours and fellow workers of the victim, repeatedly examined a scene, studying some documents etc., checked the versions on incitement to suicide by former husband of Jafarova and suicide due to mental disorder.

Few months later after incident, on basis of the expert records and own logical judgements based on special knowledge a father of victim made a statement about killing of his daughter.

The conclusion about killing the victim's father confirmed with impossibility of jumping from the balcony to the distance of 7.2 m (according to inspection, it was established that the distance from the handrails of the balcony to place of falling of a body is 7.2 m) and availability of the injuries in inner organs of the victim, which are characteristic for poisonous substances.

In addition, based on his own special knowledge of medical character, the victim's father indicated on the injuries of on Jafarova' face, which could not be resulted of falling from the 7<sup>th</sup> floor, but they had another nature of origin.

To check the complainant's judgements there were assigned complex commission forensic-medical and physical expert-examinations, which had partly confirmed his judgements. So, forensic-medical expertise confirmed that there were two types of injuries on the body of Jafarova: one – in result of fall and other one – (in area of head) in result of touching with blunt objects. In addition, according to record of the expertise, the victim's death was caused with injuries received and in result of poisonous substances got in her stomach.

Supposition was said by an investigator about that poisonous substances had worked out in result of the injuries that getting from fall. But, victim's father based on the photos of section of gullet and stomach, and also his knowledge in area of histology, cytology and other biological and medical sciences, had proved that hearth of tissues' injuries from poisonous substances had been located at the walls of gullet and stomach, where they could get only through mouth.

As for physical expert examination, it had been confirmed an opportunity of body's fall at distance 7 metres from balcony, but these conclusions had been doubted by the victim's father, and later were refuted by the specialists. Physical expert examination was conducted through special catapult and manikin, weight of the latter did not correspond to the victim's weight. In addition, under conducting of the expertise there were wrongly taken into account a force of jerk, supporting area and body's inclination under falling and it had been wrong resulted [2].

Stated above shows that there are no grounds to solve criminal responsibility issues in this situation, therefore nets of the matrix in this part are remained unfilled, and conditionally they might be marked with figure 0.

If there is a person (persons), suspected (accused) persons in murder commission, then it would appear necessity to solve the issues on age of criminal responsibility, ability on his psychic state to realize a nature and social danger his actions and to manage by them at time of commission, matters of mental health. Correspondingly, there would be filled the matrix's nets.

We are supporting the point of view of S.I. Lyubimov and S.G. Yarov in this issue, according to which under investigation of criminal cases on grave crimes against personality and some other grave crimes, and also crimes committed by minors, resolution of matters of criminal responsibility through the FPE should be stipulated in the law [9, p. 122-114].

In certain situations through the FPE can and should be resolved criminal legal matters of mental insanity, criminal liability of persons with psychic disorder, which

is not excluded sanity, form of guilt, liability of persons committing crime in the state of alcohol or drug intoxication.

In our point of view, the FPE allows answering to issues on impact of mental anomalies into subject's behaviour in concrete situation, to determine criteria of sanity, psychic opportunities and abilities of a person to control his behaviour in state of drug or alcohol intoxication.

In considered example there necessary to solve the matters of suicide, cruel treatment with a victim, threats, systematic humiliation of human dignity etc., and to conduct further investigation in compliance of results received.

Matters of psychological content, volitional regulation of behaviour, presence or absence of the overworks, extreme conditions, and psychological mechanism of crime are resolved under determination of guilt's form.

The tasks of determination of criminal group activity particularities, level of its stability, united and organization should be solved in concrete situations.

In addition, the matters of determination of a situation for necessary defence, extreme necessity, physical and mental violence, circumstances, mitigating or aggravating of punishment, choice of risky way of behaviour etc. are resolved through the FPE.

It seems that circumstances stated might appear as the tasks on all corpus delicti of crimes stipulated in the Criminal Code. But, it is impossible to assign the FPE on each criminal case.

So, on 300 studied cases about grave and special grave crimes against personality were detected the grounds to assign the FPE due to doubts in psychological particularities of a process' participant, non-adequate behaviour at various stages of criminal proceedings, contradictions between testimonies, indistinctiveness of the motives and goals of crime, unusual motivation, contradictions in explanation of reasons of behaviour, statement on psychological and physical influence, etc.

The same results were received in course of studying of criminal cases of other kinds of crimes.

For example, on 100 criminal cases about murders were found 1965 grounds to assign the FPE, i.e. 19.65 per case; on 90 cases about causing of serious body injuries - 1899 grounds, i.e. 21.1 per case; on 20 cases about kidnapping - 379 grounds, i.e. 18.95 per case; on 10 cases about forcible actions of sexual nature - 164 grounds, i.e. 16.4 per case etc.

Due to appearance of some question stipulated by results received, there were studied the cases about other categories of crimes. The following results are received. So, on 50 cases about theft of personal property were found 677 grounds to assign the FPE, on 10 cases about swindle - 198, on 10 cases on embezzlement and appropriation - 187, on 10 cases about robbery - 148, 10 cases about assaults- 146, on 5 cases about mass disorders - 98, on 50 cases about hooliganism - 660, on 10 cases about illegal distribution of pornographic materials - 93, on 10 cases about suicide - 122, on 5 cases about intentional causing of serious or less serious harm to health in state of urgent appeared strong mental trouble - 114, on 100 cases about illegal drug trafficking - 714.

Made analysis shows that on average a need in special psychological knowledge appeared not less ten times on each case.

Naturally, that ground to assign the FPE had appeared during investigation of criminal cases - receiving of the results these or those investigative actions. If take in account that assignment and production of expertise would take on average 10 days, then all terms of investigation would be spent only one investigative action.

Thus, there urgently appears an issue about the situations, in which the assignment of the FPE is obligatory and should not be given to discretion of an investigator. Based on a content of the dilemma, the FPE should be assigned under necessity and possibility of resolution of the tasks (problems) only with special psychological knowledge.

Another question is that there should be determined appropriate situations for that, when the principles of sufficiency and relevancy come into force.

Actually, in course of investigation might be appeared doubts in adequacy of the perception processes, remembering and perception this or that process participant. But, evidential significance of testimonies of similar person might be worthless, and is not concerned to a proving subject directly. It seems that in this case there might be done without the FPE.

Here the following question is appeared, who and what grounds will resolve an issue about evidential value of testimonies of a person, behaviour of whom was caused doubts of other participants.

In our point of view, assignment of the FPE in criminal proceedings should be stipulated with concrete terms, which desirable to fix in the law that excludes subjectivism and perfunctoriness under establishing the truth on a case.

It seems that these terms might be seriousness of crime, special subjects (minors and others), problems of sanity, form of guilt, justifiable defence, extreme necessity, psycho-physiological features of a person.

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