



Juridical Psychology

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On the structure of judicial and psychological examination

The article is devoted to a debatable problem of classification and systematization of judicial and psychological examination. It is analyzed a position of psychological examination in a system of other judicial examinations and its internal structure. The author discusses opinions on these questions appearing in the literature.

Key words: class, kinds, sorts, forms of judicial and psychological examination.

Judicial and psychological expertology takes an important place in a structure of modern judicial psychology, since judicial and psychological examination (JPE) is the leading form of use of special psychological knowledge at exercising a law application activity. Definition of the structure of the JPE allows outlining its subject sphere and generating the program of professional training of judicial psychologists-experts.

Solution of problems of classification (distribution of the phenomena on groups on the basis of common attributes) and systematization (distribution of the phenomena on groups coordinated with each other) of the JPE is realized in two planes: on the one hand, its position in the general system of judicial examination is revealed, and on the other hand, the internal differentiation of the examinations entering into it is established.

In judicial expertology all judicial examinations can be divided into following levels according to a degree of community and a subordination: classes (types) which are divided into kinds; kinds are divided into sorts; sorts are differentiated into forms (or groups) [1, p. 310, 311].

Depending on a subject, objects, methods of research and character of special knowledge judicial examinations are divided into 10 classes: criminal law, medical and psychophysiological, engineering and technical, engineering and transport, engineering and technological, economical, biological, ecological, agricultural, art criticism. According to this classification the JPE doesn't form an independent class, but alongside with such kinds of judicial examination as medical, judicial and psychiatric and complex psychological and psychiatric examinations, as a kind it enters into a "medical and psychophysiological examinations" class [2, p. 416]. In this class it is distinguished a subclass consolidating base judicial and psychiatric examination and JPE, and also complex psychological and psychiatric examination (CPPE) derived from them. On a level of kind of community all three examinations have a common orientation on



research of features of mental functioning of the person, however their subjects are essentially concretized [9, p. 17, 18].

In view of development of judicial and psychological expertology, notion of position of the JPE in a judicial examinations system changes. Thus, V.N. Kitaeva marks that psychology and psychophysiology are independent branches of a science, therefore a "judicial and medical and psychophysiological examinations" class should be renamed into a "judicial and medical and psychological examinations" class [8].

Recently, in performing the JPE it is widely used knowledge of not only judicial, but also social, developmental, pedagogical, engineering, medical psychology. In this connection in the literature there appeared classifications according to which the JPE is defined not as a kind but as an independent class. Analyzing various theoretical schemes and judicial and expert practice, E.N. Holopova suggested to examine the JPE not as a kind of "medical and psychophysiological examinations" class, but as a "judicial-psychological and pathopsychological examinations" class. As initial criteria for such decision there served the positions according to which a defining of limits and a competence of each class of examination should be essentially determined by subject classifications of base sciences, and the sciences having different subjects of studying, scientific principles, methods and agents of corresponding researches should not enter into one class. Basing on this it is substantiated and suggested to distinguish the following independent classes presented in the previous classification as kinds: judicial and medical examination, judicial and psychiatric examination, judicial and psychological and pathopsychological examination, judicial and psychophysiological examination. If the class of judicial examination, from the point of view of E.N. Holopova, is determined by its connection with a concrete science, the kind characterizes concrete group of bearers of judicially significant information [18].

Other point of view on a designation of the class including the JPE as a kind is stated by S.S. Shipshin on the Academic council of the Russian federal center of judicial examination of Ministry of Justice of the Russian Federation (2001). In his opinion, the JPE and psychophysiological examination are the kinds of a separate "psychological and psychophysiological examinations" class [Cite on: 18, p. 22, 23]. According to the order of Ministry of Justice of the Russian Federation "on the statement of the list of kinds (sorts) of the examinations which are carried out in state judicial and expert establishments of the Ministry of Justice of the Russian Federation, and the list of expert specialties on which it is given the right of independent execution of judicial examinations in state judicial and expert establishments of the Ministry of Justice of the Russian Federation" from May, 14th, 2003 №114, JPE were included into the List of expert specialties on which it is given the right of independent execution of judicial examinations in judicial and expert establishments of Ministry of Justice of Russia. Thus, the kind of examinations was defined as "Psychological", and the expert specialty was named as "20.1. Research of psychology and psychophysiology of person".

Besides the listed, in a system of the JPE as a kind S.S. Shipshin includes also psychological examination in the juvenal justice divided in three forms of psychological exami-



nation of the minor (examination of the delinquent, the victim, and also the witness of law-breaking) having the specificity in criminal, civil and administrative trial [20].

In the classification of S.S. Shipshin psychophysiological examination which maternal science is not psychology itself, but the scientific sphere contiguous to psychology enters into one class with the JPE. At carrying out of psychophysiological examinations parameters which in the further receive psychological interpreting are established by means of a science of physiology. However, such case is not the only one in a system of judicial examinations. The similar situation takes place at carrying out a psycholinguistic examination: on the basis of the established linguistic parameters of the text or its fragments by the methods of linguistics they make psychological conclusions (purpose of creation of the text, character of its psychic influence on the addressee, psychological portrait of the author, etc.). In this connection it is natural the classification suggested by T. N. Sekerag. There the class of "psychological examination" includes three kinds: psychological (as examination of psychic processes, properties and states), psychophysiological and psycholinguistic examinations [15, 16].

We share the opinion of scientists defining the JPE as independent class in a system of judicial examinations in which a psychological examination itself is a kind and is presented by the examinations basing on all actually existing branches of a science of psychology. Other kinds of examinations of this class constitute those by means of which expert conclusions of judicial and psychological character are formed; however, as means for this purpose they use the possibilities of non-psychological science (e. g., physiology, linguistics).

Classification of sorts of JPE is realized on the basis of the general for all judicial examinations criteria, on the basis of criteria applied for contiguous kinds (classes) of judicial examinations, and also in view of the criteria specific for the JPE.

Depending on a kind of legal procedure the JPE is divided into examination in criminal, civil and arbitration trial.

As well as for all judicial examinations, for the JPE it is actual distinguishing the process kinds possessing certain specificity within it [10, p. 105 - 121]. According to the current legislation they are the basic–additional, primary–repeated, commission–individual, complex–homogeneous examinations.

Depending on a place of executing the JPE according to the Federal act "On state judicial and expert activity in the Russian Federation" on May, 31st, 2001 № 73 psychological examinations are divided into those that take place in state judicial and expert establishments, and those that take place outside of state judicial and expert establishments. State judicial and expert activity of psychologists now is realized in two ways. First, it is realized by experts-psychologists working in judicial-expert establishments of the Ministry of Justice of the Russian Federation. Secondly, it is realized by the medical psychologists working in judicial and expert establishments of Ministry of Health and social development of the Russian Federation and taking part in realizing of the CPPE as judicial experts. The homogeneous JPE doesn't take place in medical institutions [14]. Non-state psychological



and expert activity is carried out, as a rule, by employees of higher educational establishments.

Analogically to judicial and psychiatric examination, the JPE can be realized in dispensary form, in courtroom or stationary [13, p. 22, 23].

Depending on the stages of process they distinguish the JPE at a stage of preliminary investigation and JPE at a stage of law-suit. Depending on the body which set the examination, they distinguish JPE which is set by a person realizing the inquiry, and also by the inspector, the public procurator, the judge, the court.

According to the named law depending on object of expert research, the JPE can be realized basing on materials of a case or in connection with live people.

Examination basing on materials of a case is set when experimental psychological inspection of a person is impossible. It may be realized by correspondence or post-mortem. Postmortem examination is widely realized in lawsuit procedure when there are doubts in a psychological state of mental healthy person which have made the civil acts during lifetime (the will, huckstering, donation, marriage, etc.). Postmortem examination is realized in investigation of cases of depth including suicide cases [3, 7]. In other cases the examination basing on materials of case can be realized by virtue of specificity of expert research subject and object which do not assume psychological inspection of the person. As examples textual examinations [11] and also psychological examinations of soundtracks or videorecordings [4] can serve that.

Concerning live people, as well as in judicial and psychiatric examination, the JPE is divided into sorts depending on process position of the person examinee. In criminal trial all JPE are divided into examination of the accused (suspected, defendant), examination of the victim and examination of the witness. In lawsuit it is an examination of the civil plaintiff, examination of the respondent and examination of the witness. In trial of cases of administrative breaking of a law it is the JPE of persons concerning which the trial is led; JPE of victims; JPE of witnesses.

Proceeding from the features of the person examinee, it is distinguished the examination of persons suffering sensory disadvantages (deaf persons, mute, deaf mute, blind, and also persons with serious defects of hearing, speech, vision). Depending on a sexual attribute it is distinguished the judicial and psychological examinations of men and women. On the basis of such qualifying attribute as age they distinguish the examination of minors and examination of full age persons. Depending on amount of the examinees participating in experimental-psychological inspection it is distinguished: examination of groups, examination of a person, examination of two and more persons [18, p. 72, 73].

The classification of sorts of the JPE which is carried out on the basis of criteria specific for JPE is realized proceeding from a concrete definition of general subject of JPE as a kind of examination. Different scientists distinguish various JPE subject kinds. Thus, F.S. Safuanov attributes to them the JPE of individual-psychological features of a accused (defendant); JPE of an affect; JPE of an ability of minor accused (defendant) to realize actual character and the social danger of his actions or to regulate them;



JPE of an ability of the witness or the victim to perceive correctly the circumstances important for a case and to give evidence of them correctly; JPE of ability of the victim of a rape case to understand the character and meaning of actions made with her or to offer resistance; JPE of psychic state of a person committed suicide [13].

E.N. Holopova suggested the following classification of the JPE subject sorts: JPE of emotional and other states of personality; JPE of regulative abilities of personality; JPE of cognitive abilities of personality; JPE of communicative abilities of personality; JPE of characteristics of motive; JPE of individual-psychological features of personality; JPE of influence; JPE of groups; JPE of interactions of personality and a situation [18, p. 94, 95]. In this classification the name of a sort is determined by a psychic phenomenon established during carrying out the JPE. Such approach seems to be more productive as it allows the further differentiation of the JPE subject forms according to a degree of a community and subordination in subsorts (forms).

Thus, subject forms (on classification of F.S. Safuanov) of "JPE of affect" and "JPE of psychic state of the person committed suicide", as subsorts enter into a united "JPE of emotional and other states of personality" sort group (on classification of E.N. Holopova) alongside with "JPE of affect and other emotional states" [17], and also "JPE of psychic state of the person which has made the transaction" [24].

It is possible to mark the differentiation of a "JPE of cognitive abilities of personality" sort. It is applied to an establishment of circumstances in cases when categories of consciousness and comprehension are included in norms of criminal and civil law as an intellectual attribute of *the limited responsibility* ("accused could realize, but not fully, the value of his actions"); *an age irresponsibility* ("during the fulfillment of socially dangerous act, the minor owing to the delay of psychic development, which hasn't been connected with psychic disorder, could not realize fully actual character and social danger of his actions"); *a helpless state* of the victim of sex violence ("the victim by virtue of individual-psychological features was not capable to realize and understand character of actions made with her"); *transactions with defect of the will* ("during the moment of fulfillment of the transaction the capable citizen was in a such state when he was not capable to understand the value of the actions") and also *abilities of the victim and the witness* to perceive correctly the circumstances important for a case and to give evidence.

Forms of the "JPE of influence" are applied in establishment of illegal influence from the inspector on the persons participating in a case; in taken proceedings in connection with organizers of religious and pseudo-religious formations; in cases of investigation of swindle in the form of financial pyramids; in civil cases of recognition of the invalid transaction accomplished by the person being under influence of psychic violence.

In recent years many JPE began to be defined through categories of cases or the legal concepts designating circumstances liable to proving in case and containing a psychological component. To above named it is possible to add the JPE of the proved risk [17], the JPE of cases of accidents [5], the JPE of cases of the incidents bound with management of



technical equipment, and also cases of rape [17], etc. In lawsuit it is the JPE of cases of indemnification of moral harm [22, 6], protection of honour and dignity [23], recognition of void transactions [24], etc. These JPE are interspecific. We share the E.N. Holopova's opinion that from the point of view of formation of evidentiary base on separate categories of cases such approach is very convenient and effective [18, p. 86].

In the general theory of judicial examinations those of them which yet have no precisely expressed division into kinds (classes) are attributed to forming examinations [12, p. 141]. It is necessary to agree with the opinion of the scientists considering that in comparison with such judicial examinations as medical or psychiatric the JPE has no well-formed structure [2, p. 416]. It is a debatable question of definition of the class including the JPE, and also the list of kinds of examinations of this class. At the same time, now the tendency of isolation of the JPE in an independent class is observed; first attempts to define the kinds of this examination are undertaken [8]; differentiation of the JPE in subject sorts and forms is developed.

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