THE EXPERT'S CONCLUSION IN THE PRE-TRIAL INVESTIGATION IN UKRAINE

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Abstract. The role of forensic expertise becomes more and more important. Two factors contribute to this: first of all, the very nature of expertise, as a source of reliable, objective information about the facts, and the fact that forensic expertise is constantly being improved, attracting the most recent advances in scientific and technological progress. The article deals with the concept of the expert's conclusion in Ukraine. Legislative base. First of all, due to the use of new and more advanced methods, the possibilities of studying traditional objects are increased in order to obtain additional information. And, secondly, it becomes possible to explore new, previously unreachable objects.

Key words: *expert opinion, forensic expertise, special knowledge, evidence, practice.*

Introduction

The complication of socio-economic relations in Ukraine, on the one hand, and the development of science, the improvement of methods and means of research, on the other hand, increased the possibilities for the treatment of investigators and judges to persons with special knowledge in order to use this knowledge in the process of proof. This applies not only to the resonance crimes that are known throughout the country and beyond, but equally important, and the expert provision of justice in any case where the person or body subject to criminal, administrative, civil or economic proceedings On the right, it is necessary to solve the issues that require the use of special knowledge. That is why it is very important for the forensic examination to be conducted on the basis of legislation. After all, in accordance with the requirements of Art. 3 of the Law of Ukraine "On Judicial Expertise" - legality is one of the main principles of the implementation of forensic expert activity.

The pre-trial investigation in Ukraine

Reforming criminal justice is one of the priority directions of the development of any law-governed state, since it reflects the state's attitude towards human rights and freedoms [2]. Obviously, the complicated conditions in which Ukraine began to build the right-wing state has affected its course. However, that significant inheritance left over from the elements of the legal system of the past has given us a certain advantage in reforming our criminal justice system. Especially now, when Ukraine is fully embraced by the law-reform process.

On the way to advancing to objective proceedings, the issues of reforming the criminal process require increasingly scrupulous attention. The new Criminal Procedural Code of Ukraine will soon come into force, which will radically change the established system of legal relations in this area [3].

Before judicial proceedings in a criminal proceeding with new enthusiasm, such tasks as protecting a person, society and the state from criminal offenses, protecting the rights, freedoms and legitimate interests of participants in criminal proceedings, as well as ensuring prompt, complete and impartial investigation and judicial ros View, so that anyone who has committed a criminal offense has been prosecuted in the guilt of his own, no one has been

accused or convicted, no person has been subjected to neo Priming procedural coercion and that each participant of the criminal proceedings was used prav proper procedure.
Consequently, now criminal proceedings are intended to guarantee all its participants the creation of such conditions that would contribute to the full and unconditional implementation of legitimate rights, duties and interests.
An important aspect of the renewed criminal proceedings is the introduction of new general principles of criminal proceedings, where, among others, the constitutional principles of the rule of law, the presumption of innocence and ensuring the proof of guilt lie in the leading position. It should be emphasized that the Ukrainian legislator, using the discovery of world legal science, has created a foundation foundation for the full implementation of justice in our country, reduced the number of problematic issues, including endless conflicts, white spots and gaps.
One of the important components of improving criminal justice in Ukraine is the use of special knowledge - knowledge beyond the ordinary, domestic, obtained through professional education and / or practical activities in any field of science, technology, art or crafts , used by certain participants of the process within the limits of the powers granted to each of them for the resolution of a particular procedure of procedural tasks [4, 22].
Based on the axiom, the proof is directed at the establishment of certain facts of the past, information about investigations or protection in the form of information of any form requiring special detection, research, fixation, and interpretation, then the establishment of such factual data is impossible without the use of special knowledge in the form of scientific research. It is impossible to give an exclusive list of all branches of science that can be used. But the fact that a crime can occur in all conditions and can affect various social relations leads to the use of such knowledge.
The main and most important form of the use and application of special knowledge in legal proceedings is judicial expertise [5]. Article 1 of the Law of Ukraine "On Forensic Examination" states that judicial expertise is a study by an expert on the basis of special knowledge of material objects, phenomena and processes, which contain information about the circumstances of the case being invented bodies of inquiry, pre-trial and judicial investigation. In other words, forensic examination transforms information into a more suitable form of criminal proceedings [6]. In addition, the need for expertise is also due to the effectiveness of this means of proof [7, 343; 8, 188].
The forensic examination, by its very nature, reaffirms evidence of evidence, since it contains the unity of factual data and sources where these factual data are located. As an important means of cognition, forensic expertise is one of the arguments that is an integral part of the stage of indirect knowledge in criminal proceedings and contributes to the principle of ensuring proof of guilt. Article 84 of the new Code of Criminal of Ukraine sets out a list of procedural sources, which separately mentions judicial expertise as evidence in the form of an expert opinion.
Problems of appointing and conducting court examinations and the use of their results occupy an important place in the complex of issues related to the investigation of crimes. The question of compulsory appointment of the examination began to become relevant for a very long time. The statistics show that almost every crime investigation uses forensic expertise, since at certain stages of the criminal process it may be necessary to establish,

evaluate and explain the existing circumstances or features on the part of the carrier specialist

The concept of forensic examination is fixed at the legislative level, namely in Art. 1 of the Law of Ukraine "On Judicial Expertise". Therefore, according to the law, forensic examination is a study by an expert on the basis of special knowledge of material objects, phenomena and processes that contain information about the circumstances of the case that is under investigation by the bodies of inquiry, pre-trial and judicial investigation. [1].

Forensic examination in forensic literature is considered to be a form of application of special knowledge in the investigation of crimes or as a procedural investigative action, for which scientific, technical and other special knowledge is required. Hence, the examination is an investigation for solving issues requiring specialist knowledge missing from the investigator and the court. [2., 398].

According to Part 1 of Art. 101 of the Criminal Procedure Code of Ukraine, the expert's conclusion is a detailed description of the research conducted by the expert and the conclusions drawn from their results, the answers to the questions put forward by the person who attracted the expert or the investigating judge or the court which commissioned the examination were substantiated [3].

Article 102 of the Code of Criminal Procedure of Ukraine contains a list of the main components of the content of the expert opinion, among which paragraph 6 states that the conclusion should contain a detailed description of the research conducted, including the methods applied in the study, the results obtained and their expert assessment.

It should be noted that when assessing the court two conclusions on similar questions drawn up by various experts, which can be filed both by the prosecution party and the defense party, and in the event of a difference, the questions of the methods applied by the expert will be crucial for the consideration and assignment of the results of the examination in the basis of the decision.

The procedural sources of evidence, along with the expert's opinion, include his testimony given orally or in writing during the interrogation (Articles 84, 95, 356 of the Criminal Procedural Code of Ukraine), which will also ensure the completeness of the investigation of evidence and improve the procedure for assessing the expert's conclusion in court

Expert research is a creative process in which knowledge of achievements and methods of various sciences, dialectical materialist theory of knowledge, possession of modern highly effective research methods, expert skills, and his personal experience [4, 92] are manifested.

The expert formulates his conclusion, confident that this conclusion is correct and correlates with the real circumstances and data of science. If there is no such conviction, the expert can not and should not give a conclusion in a categorical form - he informs the investigator and the court of his reasoned assumption or points to the reasons for the impossibility of resolving the issue in essence [5, 240].

Investigative-judicial practice can also be considered as a criterion for the truth of the conclusions of experts. The expert's conclusion about the fact is verified on the basis and in connection with other evidence, with the system of factual data on the case. The circumstances of a particular case are not the only criterion for the truth of the expert's conclusion. Thus, the fact established by the expert may contradict the known investigator and the court of actual data. Contradictions, inconsistency of the conclusion with other

evidence are not always considered as grounds for asserting that the expert's conclusions are false: possible uncertainty, inconsistency of the validity of individual circumstances established in the case. In such cases, the investigator, the court continues to collect and examine evidence, including by conducting an additional or re-examination. The new evidence obtained and the set of facts and circumstances established by them allow us to verify the truth of the previously collected evidence, and it is possible that the correspondence of the actual fact established by the expert will be confirmed [4, 121].

Among the above types of forensic examinations, in our opinion, commission assessment is of particular importance. This is due to the fact that there may be a situation where the same evidence can simultaneously become the object of research of experts, who were assigned to examination different aspects of criminal justice - prosecution and defense. In this case, many questions arise about the priority of the research by each of the parties. Exit from this provision may be the appointment of commission expertise. But in this case, there are questions about the place of expertise, the necessary equipment, terms of conduct, etc. In clause 8 of Art. 101 Criminal Procedure Code of Ukraine states: "If several expert experts are involved in the examination, experts have the right to draw up one conclusion or separate conclusions." In our view, this provision needs to be expanded in view of the above-mentioned possibility of appointment of examinations by different parties simultaneously with respect to the same objects. Although, perhaps at the stage of the formation of a competitive legal system that is taking place today, these proposals are premature. We think that they will become necessary after the occurrence of such situations in practice with their respective solutions.

The expert's conclusion must be comprehensively studied by the investigator and the court in order to establish its reliability as a source of evidence in a particular case. The reliability of the conclusion is the complete correspondence of the researches described in it and the conclusions based on them on the facts of reality [2, 478].

During the procedural proof, the authenticity of the conclusion is determined not only by the examination of the above parties, but also by the clarification of the conformity of the conclusions to the circumstances of the case, which do not call into question the investigator and the court. Establishing the correspondence of the expert's conclusions with other evidence in the case is a necessary stage in the assessment of each of his conclusions.

At the same time, investigative, judicial and expert practice testify to the presence of mistakes in the conduct of expert investigations due to the violation of these guarantees by investigators, judges, experts, and the availability of a number of issues requiring legal improvement.

There are both objective and subjective conditions for the emergence of regulatory and legal errors, which include the problems and shortcomings of the procedural (legal) nature. It follows that overcoming of these errors can be carried out, first of all, by legal improvement of the relevant normative acts that regulate the conduct of forensic examinations. The elimination of the disadvantages of a subjective nature can hardly be avoided without methodological measures directed, in particular, on the improvement of the qualifications of experts, investigators, judges, the lack of which, as a rule, causes violation of procedural requirements in appointing and conducting forensic examinations.

Disadvantages of complex research

Draw attention to the disadvantages of complex research. In forensic literature, it was repeatedly noted that during the reform of the system of forensic examinations it is necessary to find a solution to the issue of procedural regulation of conducting a complex examination [1, 8]. Proceeding from the growing role of expertise in judicial knowledge and the availability of gaps in the development of its theoretical foundations, it is necessary to solve the question of using complex investigations in criminal proceedings. They, first of all, must be regulated in the criminal-procedural law and found in the departmental documents of forensic examination. Another direction of eliminating the problem issues arising in the recognition and carrying out of complex studies is the development of programs and the purposeful training of experts from different departments for the peculiarities of conducting such examinations.

From the classification and certain conditions for the emergence of expert mistakes, it follows that regulatory errors also appear because of non-compliance with the requirements of the Code of Criminal Procedure, orders, instructions, and other normative acts regulating the activity of a judicial expert during research. It should be noted that the condition for the occurrence of procedural mistakes may also be the violation of the relevant provisions of normative documents by the persons who appoint an expert examination if the expert does not reveal such violations in the study of materials provided for research.

The most widespread legal and regulatory error is the fact that the expert is outside the powers granted to him by law. Exceeding the powers of the expert can be both in the range of issues that are solved and in the method of research. Yes, it is already known that the establishment during the examination of the fault of a person, the motive, the intentions of the crime are issues of a legal nature and means interference in the competence of the investigator. However, practice shows otherwise.

Article 75 stipulates that the questions submitted to the expert, and his conclusion on them, can not go beyond the limits of expert knowledge. However, the analysis of the conclusions of the examinations carried out by I.Fridman showed that violation of this requirement of procedural law takes place in the practice of appointment of forensic examinations [2, 6].

In some cases, experts are beyond the scope of their competence with the help of an investigator. Answering questions that contain evaluative concepts, they interfere with the competence of the investigator and give a legal, legal assessment of the facts. Thus, when appointing forensic examinations, experts are sometimes asked about the guilt of individuals, and at the same time, they are given a legal assessment of the actions (inaction) of the perpetrators (for example, the question: "Is the material damage to the state interests caused by abuse of office?"). In this case, the expert's conclusion should include an assessment of the actions of the officials. However, the expert assumes the role of the investigator when he gives his point of view on the legal assessment of the facts and their qualifications. Therefore, the question of the legal assessment of the actions of individuals will be appropriately reformulated.

The procedural law provides for the right of a judicial expert to establish circumstances in respect of which he was not asked questions, that is, the law provides for an expert initiative). Issues that are solved on the initiative of an expert should be based on his special knowledge and relevant to the case in which the examination is conducted. However, in the

conclusions there are incorrect statements. If the expert makes conclusions in such cases, not on the basis of special knowledge, but based, for example, on his life experience or on the analysis of facts that were not the object of research (case materials), they should also be considered incorrect.

Most often, the initiative takes place in determining the circumstances that contributed to the offense. However, there are a number of shortcomings, including errors. In particular, exaggerating the competence in formulating recommendations for crime-causing factors consists in proposing law enforcement authorities to take preventive measures on the grounds that "personal observation has established that the same offenses occur during unloading of cars and other stores" or "the specified circumstances contributed to theft of goods as at the place of departure, and on the way to follow. "

The following mistakes in the implementation of preventive work by experts arise due to the influence of several factors: the lack of rules of procedural legislation, by-laws, regulating the procedure for the implementation of expert-preventive activities; ignorance of investigative possibilities of expert-preventive work; incorrect organization of preventive work of the expert unit; the lack of generalization of the data of expert-preventive work on certain types of expertise, the lack of methodological work with employees of both investigative and expert departments; absence of a methodology for solving the corresponding preventive tasks, etc.

Excessive initiative can be done by solving issues not based on their special knowledge. For example, an expert accountant articulated the conclusion that the signatures in the registries were executed by the person who wrote the order, because the details were made with a different color.

Sometimes the possibility of formulating the correct conclusion directly depends on the knowledge of the expert on the circumstances of the occurrence of certain features of the object. In this regard, the procedural law creates the conditions for giving the right conclusion by giving the expert the right to get acquainted with the materials of the case concerning the examination; to file a petition for the submission of new materials. These guarantors are conditioned by the practice of conducting expert examinations, when investigators in the resolution do not indicate the important circumstances of the case, and the expert ignores the possibility of obtaining additional information, which leads to expert mistakes (Article 77). Objective conditions for the occurrence of errors include the operation of the wrong information, the lack of complete, sufficient data characterizing the identification value and the value of the signs, the stability of their reflections in the objects.

The source of legal mistakes of a forensic expert may be both deliberate and unintentional misconduct or inactivity of the persons who take the exam. Of course, as already noted, an erroneous conclusion will be considered only in the event that the expert can not establish the violation of their actions.

As a result of the generalization of expert practice, it has been established that for various types of expertise typical of the general procedural imperfections are: incorrect formulation of issues, including legal nature; unsatisfactory preparation of comparative material; the lack of decisions on the appointment of the exam necessary for the study of information; incorrect definition of the source data; improper packaging of material evidence and treatment of them, etc. All these disadvantages are the result of insufficient legal regulation

of activities related to the appointment and conduct of forensic examinations; improper preparation of investigators, judges, specialists; lack of up-to-date information on the possibilities of forensic examinations, etc. If there is a contradiction between the conclusions and other evidence, then it is necessary to examine the interrelated materials of the case and to find out if their divergence results from the false (false) conclusions of the expert or the unreliability of the evidence that contradict them. In cases where the opinion itself is the cause of the dispute, the investigator or court has the right to appoint an additional (with incomplete or insufficiently expressive conclusion) or review if the expert's conclusions are in conflict with the conditions established by the case or new data that may affect the expert's findings, as well as on material procedural violations that were allowed during the appointment and conduct of the examination. It is important to conduct a re-examination of the expert's opinion. Legal guarantees of the correctness of the conclusion of a court expert, the procedure for conducting forensic examinations, the requirements for the conclusion of an expert judge, his rights and duties, the main content of the conclusion referred to in Article 4 of the Law of Ukraine "On Forensic Examination" and other normative and legal acts that are important legal guarantees of the quality of such exams.

An expert opinion is one of the sources of evidence provided by the procedural law, and without a predetermined force subject to mandatory assessment by the subjects of evidence. The purpose of the assessment is to establish the possibility of using this conclusion as the source of the facts on which the main decision is based, and at the same time, these facts as evidence [7, 376].

In accordance with the provisions of Article 84 of the Criminal Procedure Code of Ukraine, the expert's conclusion is a source of evidence in criminal proceedings, since forensic examination is based on scientific criteria and is the result of conducting special investigations beyond the limits of everyday knowledge, does not make this a privileged proof. Investigative and judicial practice knew a lot of cases where a critical evaluation, according to the expert, based on other gathered evidence, allowed to reveal errors and, as a result, to successfully complete the investigation. [8, 16].

The expert's conclusion on other evidence can not be considered separately, it is determined only in the context of a particular case and other evidence gathered therein.

The expert's conclusion as a source of evidence has no advantage over other evidence, is not binding, and is subject to criticism of the person during the proceedings, since, like any other evidence, he must be thoroughly, thoroughly checked and evaluated. Expert judgment, as well as any evidence, may be doubtful or incorrect, as a specialist may have false results or fake objects, he may apply an inappropriate methodology and even make a mistake. In addition, unfortunately, the probability of a knowingly false conclusion can not be ruled out.

The expert's conclusion is one of the sources of evidence provided for by the procedural law, and, without a predetermined statutory force, is subject to mandatory assessment by the subjects of evidence. The purpose of the assessment is to establish the possibility of using this conclusion as a source of facts on which the substantive decision is based, and, at the same time, these facts as evidence.

Legislation, first of all - criminal procedure, provides rules for assessing evidence, according to which the assessment is subject to all available evidence in terms of their admissibility, affiliation, authenticity and in aggregate - sufficiency to resolve the case.

Dependence of the expert's conclusion is determined by the presence of links and determinations of the facts established by him in relation to the subject of proof or its individual elements. It is known that the facts established as a result of the examination often belong to the objective part of the crime: in what way by which means, how, at what time, etc., a crime was committed. However, these facts may also contribute to the establishment of circumstances that characterize other features of the crime, to assist in its criminal-law assessment, proper qualifications, establishment of the perpetrator, determination of the guilt, motives and objectives of the crime. In other words, in assessing the expert's conclusion in terms of its affiliation, it should be borne in mind that the facts established by expert judgment may relate to any of the elements of the crime and other circumstances to be proved.

In order to recognize the expert's opinion it is permissible that the conclusion should be based on the results of the study of objects collected in accordance with the relevant procedural requirements. As in the vast majority of cases, during the examination, objects are investigated, in the detection and removal of which the expert does not take part, one of the important components of the assessment of the conclusion is the verification of compliance with the procedural order of obtaining (detection, fixation, seizure, packaging) of the investigated material evidence, documents and samples Violation of the procedure for extracting the objects under investigation and sampling may raise doubts as to the admissibility of the expert's opinion, since it is doubtful whether such objects belong to the investigated event and the origin of samples from the checked-up facility.

More complicated is the assessment of the reliability of the expert's conclusion, which should be considered from the formal and the content side. The first is to analyze the material submitted for research (objects to be tested, and samples); output data received by persons who have appointed an examination; compliance with the number and completeness of the expert's answers to the questions raised; account is taken of the experience of the expert, his degree, etc.

The semantic side of the assessment of the reliability of the expert's conclusion involves the study (statement): the competence of the expert; scientific substantiation of the applied means and methods of research; the level of applied research methods in terms of contemporary achievements in science and technology; logical reasoning expert; completeness and thoroughness of the conducted research; the correctness of the expert's findings and the persuasiveness of the justification of the advantages of coinciding characters over differences; the correspondence of the data obtained during the research and described in the research part of the conclusion, the summary conclusion.

In assessing the expert's conclusions different in nature, it should be remembered that the most (concrete) evidence is uniquely positive or negative conclusions from identification and diagnostic studies, on the basis of which existence (existence in the past) or lack of certain facts. The expert's conclusion about the same group belonging to the objects being compared can not be regarded as a conclusion about their identity. At the same time, the conclusion about the different group belonging of objects, based on the differences in their common features, indicates that the object under study in any case could not be related to the investigated event. The inappropriateness of an object for identification should not be evaluated as an objection to identity. The possibility of its existence is not denied, but it can

not be established by the expert for reasons beyond his control. The results of the re-examination are evaluated according to the same rules.

Conclusions

Therefore, evaluating the expert's conclusion is a rather complicated procedure. In particular, during this procedure, the investigator or the court must also assess the expert's conclusion in terms of its completeness and scientific validity. [8, 120]. An adequate level of expert advice and justice in Ukraine is impossible without the development of the theoretical foundations of forensic expertise, the development of new and improved existing methods of expert research in order to implement the results of scientific works in expert practice. The analysis of regulatory (procedural) errors has shown that the ways of overcoming them should be aimed at eliminating the conditions that cause them to occur, and therefore should include a set of measures not only to improve the legal framework governing the activities of investigators and experts related to appointment and conduct of forensic examinations, but also methodological and organizational principles. The conclusion of the forensic examination is one of the procedural sources of evidence, and the actual data taken from it, must be investigated in the same way as the rest of the evidence obtained by another. However, forensic expertise differs by its high scientific authority and, as a general rule, should exclude the subjectivity of evidence obtained as a result of its conduct.

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