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DETERMINING THE AUTHOR OF THE TEXT AND THE EXPERTISE OF FRAUDULENT TRANSACTIONS

Abstract:

The current requirements of the judicial process impose the need to develop the theoretical bases of legal (but not procedural) and scientific-organisational assurance of judicial expertise in new areas, not yet sufficiently explored. These aspects need to be developed by judicial expertology - the science of judicial expertise. At the same time, the procedural aspects on this segment remain in the custody of procedural law sciences. Thus, discussing the study of the legalities of judicial expert activity is generally not possible without examining the legalities of the unique legal and organizational assurance of judicial expert activity, regardless of the type of process [1, p.181].

Actuality of the theme

Economic crime continues to be the scourge of society that cannot be discovered without the use of special knowledge. Investigators of these types of crime are placed in difficult situations, linked to the preparation and arrangement of several expert opinions to clarify the circumstances in which the crimes were committed using scientific methods. The criminal world operates in groups, with roles and tasks well shared between the participants in the crime, so that the illegal aim of obtaining financial benefits is achieved under very well-defined conditions. Lately, the judicial authorities are calling on the services of experts including to establish facts related to the community of authors of financial documents in the form of feasibility studies, Price water hous reports, etc.

The issue of the use of special knowledge in the judicial process is still under discussion, even if it has a certain "age" in this sense. It is well known that the diversity of human knowledge is endless, i.e. the diversity of expert knowledge is much wider than the traditional spectrum known by the actors of the judicial process. However, judicial bodies are gaining professional 'courage' and are using expertise in economic cases from the traditional forensic field, considered by some to be 'old-fashioned', and are finally obtaining scientific conclusions which are very useful in resolving cases.

We considered it very important to approach in our study on this area of forensic expertise activity, a practical case, where a kind of expertise has been successfully applied, which at first sight has no connection with the field of economic-financial fraud, but nevertheless, the objects of research emerge from the object of study of forensic science (judicial expertise - ad. author) - "the discovery and investigation of crimes in order to find out the truth" [2, p.28].

Starting from the opinion that "...there is no field of human activity in which it is not possible at some point, through the natural course of a case subject to judicial resolution, to arrive at the need for an expert opinion" [3, p.2], we note that in cases involving economic activities, expert opinions in the given field are invariably obtained, but also in others, which can only be provided by means of specialized forensic expertise.

Objectives of the work

Taking into account the current situation of judicial cases related to financial-economic fraud in Moldova, we consider it necessary to analyze, on the basis of a real example, the possibility of expanding the spectrum of judicial expertise services, to which the judicial bodies can resort, other than the usual one, in order to provide relevant expert opinions to the judicial process, ensuring the optimization of the activity and increasing the quality of the scientifically acquired evidence.

Research material and methods

A set of general and special scientific methods of knowledge was used to achieve the desired objectives. Initially, the dialectical method was used, according to which all the issues addressed in this article are presented in terms of their unity of content and legal form. To deepen the conceptual apparatus, the following methods were used: logical-semantic, sociological (by studying official, scientific and bibliographical sources) - in the process of collecting and accumulating scientific information about the object of study; comparative - to establish similarities and differences in approaching problems related to the object of study, previous practice as well as their interpretation; legal logic - when presenting reasoning and elaborating proposals, in the context of the object of research. The research was carried out on the basis of multidisciplinary judicial expertise carried out by the authors of the article in a real case, normative acts and scientific literature in the fields concerned (forensic and judicial expertise).

Results, discussions

To begin with, we will give an overview of the circumstances of the case with the avoidance of personalization, based on the fact, that the case is not consummated [4, p. 1,2].

The subject of investigation in the named criminal case includes actions of public and publicly dignitary persons, as well as legal persons up to the actual concession and lease of a State Enterprise.

According to the materials of the criminal proceedings, it was established that, over a period of time, the leaders and members of the organized criminal group, using their powers and competences related to public or dignitary positions, in the interest of the criminal group, organized and executed actions aimed at modifying and adjusting the legal framework at different levels necessary to achieve personal and group goals,by exceeding the duties of their office, abuse of office and the use of techniques to halt the action of restrictive normative acts, including at institutional and departmental level, which allowed the organisation and the directed and concerted launch of a large process of public-private partnership and closed competition, concerning the concession of assets of the state enterprise and the conditions of the concession.

The prosecution body had evidence that the conclusions of the feasibility study were vitiated by the fact that they were issued in the interests of the criminal group and were not based on the actual work of the State Enterprise, was not made by the Agency appointed by the Government, but by persons co-interested in the interests of the criminal group. Respectively, taking into account the fact that in order to establish the truth in the present criminal case, special knowledge is required, the prosecutor among the objectives in the strictly economic field has formulated also one which is related to the specialties of forensic expertise:

(e) whether the text of the feasibility study for the concession of the assets of the State Enterprise Chisinau International Airport and the operation of the corresponding airport services approved by the Public Property Agency on February 8, 2013 have the same common author with the text of the Price water hous coopers Advisory SRL report on the modalities of private sector involvement in the development of the Chisinau International Airport (part I and part II) and whether the mentioned texts are executed using the same textual file [4, p. 3].

In the given sense, in the judicial practice of at least 30 years in the R. Moldova, judicial expertise in the field of authorship in economic cases has not been ordered. A common practice attests the ordering of technical expertise of documents, handwriting, but no how of those of establishing the author [5].

And because we have evoked the possibilities of the system of expertise with reference to meeting the needs of the judicial process, it becomes clear, that today the traditional vector towards modernization and unusual approach to the process of using special knowledge by the judicial process is modified.

Thus, the judicial experts in order to solve the submitted objective (e) conducted complex examinations in the field of forensic expertise of technical expertise of documents and establishing the author of the text, following which they formulated the following conclusion*: "e).The text of the feasibility study for the concession of the assets of the State Enterprise and the operation of the corresponding services, approved by the designated Agency on (is omitted) - on x pages and the text of the Price water hous report (is omitted), on the modalities of private sector involvement in the development of the State Enterprise (part I and part II) presents common authorship. These texts are based on the same text file."* [6, p. 10].

Conclusions

For reasons of confidentiality of the judicial process, not yet resolved, we cannot present details of the expert research, but we will only bring to light the conclusions formulated, in order to provide clarity about their importance in finding the truth on the given case. However, finding the truth is the ultimate goal of any judicial process. And if we are talking about the truth, Professor E. Stancu's invitation to meditate on Oscar Wilde's statement: "The plain truth is seldom plain and never simple" [2, p. 9].

In other words, in order to obtain the solid evidence needed to resolve cases, including those involving economic objects, courageous efforts are required on the part of both the judicial body and the judicial experts to apply a case-specific, non-algorithmic, highly professional approach, which naturally can never be simple or easy.

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ОСОБЛИВОСТІ ПРОВАДЖЕННЯ У СПРАВАХ ПРО НЕПЛАТОСПРОМОЖНІСТЬ (БАНКРУТСТВО) ФІЗИЧНИХ ОСІБ У ВІДПОВІДНОСТІ ДО ПУНКТУ П'ЯТОГО ПЕРЕХІДНИХ ПОЛОЖЕНЬ КОДЕКСУ УКРАЇНИ З ПРОЦЕДУР БАНКРУТСВА

У зв'язку зі зміною макроекономічної ситуації в Україні у 2008 – 2019 роках, в тому числі зміною курсу валют, знецінення гривні, політичної нестабільності, війна на Сході України, спалах у світі короновірусу COVID-19, економічна криза в Україні, виникла така ситуація, за якої валютні позичальники втратили можливість погасити виниклу заборгованість, а відтак – існує реальна загроза втрати квартири чи будинку, що є єдиним місцем проживання позичальника та його родини.

З 20 жовтня 2019 року введено в дію Кодекс України з процедур банкрутства.