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Regarding the improvement of the scientific and methodological framework of forensic economic analysis of budget funds (Review article)

The relevance of issues associated with spending budget funds in forensic expert practice has been substantiated. According to the authors, certain peculiarities of conducting researches on budget transactions lead de facto to the formation of a particular subtype of forensic economic analysis. It is mentioned that consideration of issues related to misuse of budget funds by forensic experts is only allowed in the presence of tax inspection report of the Units of Ukraine State Audit Service. It is proved that budget funds which their holder transfers to accounts of work executors, lose the status of budget. The emphasis is on the need to update the algorithm for conducting forensic economic analyses in the use of budget funds.

Keywords: *budget funds, forensic economic analysis, methodical framework.*

Formulation of Research Problem. The main component of improving the quality of forensic expert support of justice is advancement of scientific and methodological framework of forensic activity, in particular, forensic economic analysis.

As forensic expert practice demonstrates, in recent years, the most complicated researches have been performed while conducting forensic examination of spending budget funds, development of cost estimates, implementation stages and budget process participants.

Analysis of Essential Researches and Publications. The issue of scientific and methodological support as one of directions of ensuring activities of forensic institutions in Ukraine is not devoid of scientific interest and receives extensive coverage in writings of leading Ukrainian and foreign scientists: experts in the field of forensic science, such as T. V. Averianova, L. Yu. Arotsker, V. D. Arsenieva, V. D. Basai, V. V. Biriukov, A. I. Vinberh, O. O. Eisman, O. M. Zinin, A. V. Ishchenko, N. I. Klymenko, M. V. Kostytskyi, V. K. Lysychenko, O. M. Lytvynov, H. M. Nadhornyi, I. V. Pyroh, M. Ia. Sehai, E. B. Simakova-Yefremian, I. Ya. Fridman, M. H. Shcherbakovskyi and others.

At present, the basic expert methodology on research on forensic economic analyses of the issue of budget funds (under registration number: 11.0.12) ¹ misuse is in force, however, it was created in 2003, therefore its content does not correspond to current budget legislation. What is more, the Register of certified expert methodologies includes the Methodology of expert research on the use of inter-budgetary transfers, but it concerns a rather narrow issue that excludes its use as the basic.

The **Article Purpose** is to study the need to develop scientific guidelines of research on spending budget funds.

Main Content Presentation. Optimization of income generation and budget expenditures at all levels is one of the main directions of structural reforms implementation in the economic sector required by international financial institutions. An important instrument in solving these tasks is control and audit in the budget process.

According to Article 26 of the Budget Code of Ukraine², control over compliance with budget legislation aims to support efficient and effective management of budget funds and, in particular, ensures:

- evaluation of budget funds management by conducting a state financial audit;
- verification of the correctness of budget funds accounting and reliability of financial and budget reporting;
- increasing the economy of budgetary savings, their targeted use, efficiency and effectiveness in the activities of budget holders by adopting substantiated management decisions;
- conducting analysis and evaluation of the state of financial and economic performance of budget holders;
- prevention of budget legislation violation;
- substantiation of planning of incomes and expenditures from the budget.

¹ Реєстр методик проведення судових експертиз. URL: <https://rmpse.minjust.gov.ua/page/11> (date accessed: 21.02.2021).

² Бюджетний кодекс України : Закон України від 08.07.2010 р. № 2456-VI (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/2456-17> (date accessed: 21.02.2021).

Control over the use of budget funds is performed by the Accounting Chamber, State Audit Service, bodies of the State Treasury Service of Ukraine. Activity of central executive authorities ensuring provision of state policy in the field of control over budget legislation directs, coordinates and controls the Cabinet of Ministers of Ukraine.

Holders of budget funds in persons of their heads organize internal control and internal audit and support their implementation in their institutions and corresponding budget institutions.

Criminal liability for misuse of budget funds, implementation of budget expenditures without certain budget assignments or with their increase is stipulated in Article 210 of the Criminal Code of Ukraine¹.

According to the 1 Note to this article, budget funds include funds belonging to the state budget and local budgets regardless of the source of their formation.

A huge amount of budget funds, in accordance with paragraph 2 of this note, is considered to be the amount that exceeds the non-taxable minimum income of citizens in thousands and more times. A particularly large amount is thought to be the sum exceeding non-taxable minimum of citizens income in three thousand and more times (paragraph 3 notes).

In conformity with Article 119 of the Budget Code of Ukraine², misuse of budget funds is spending them for the purposes not corresponding to:

- budget assignment required by the law on the State Budget of Ukraine (decision on local budget);
- directions for the use of budget funds stipulated in the budget program passport or in the procedure for budget funds use;
- budget allocations (budgeting, estimate cost, budget funds use plan).

In the process of investigating criminal proceedings on budget offenses, investigative bodies (in accordance with Article 242 paragraph 2 of the Criminal Procedural Code of Ukraine³) appoint forensic economic analyses to confirm conclusions drawn while state regulatory authorities inspection.

For qualitative performance of such forensic examinations which are quite complicated and have a certain specificity, the presence of a modern expert methodology of researches on budget funds is highly important.

Currently, such forensic examinations are carried out within the framework of the specialization 11.2: *Research on documents on economic activity of enterprises and organizations*, but accounting and reporting regarding the use

¹ Кримінальний кодекс України : Закон України від 05.04.2001 р. № 2341-III (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/2341-14> (date accessed: 21.02.2021).

² Бюджетний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/2456-17> (date accessed: 21.02.2021).

³ Кримінальний процесуальний кодекс України: Закон України від 13.04.2012 р. № 4651-VI (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (date accessed: 21.02.2021).

of budget funds significantly differ from the accounting of the rest of business transactions.

According to the authors, certain peculiarities of conducting researches on budget transactions lead de facto to the formation of a particular subtype of forensic economic analysis.

While application of construction budget programs, after conducting procedures stipulated by the Law of Ukraine: *On Public Procurement*, budget funds are directed to construction organizations as payment (prior payment) for goods, work (services). Before 01.01.2020, Procedure for implementation of such payments was governed by the Resolution of the Cabinet of Ministers of Ukraine No. 117: *On ensuring prepayment for goods, work and services purchased for budget funds*¹ dated on 23.04.2014 .2019; after 01.01.2020, by the Resolution of the Cabinet of Ministers of Ukraine No. 1070: *Certain issues of budget funds provision by holders (recipients) for prepayment of goods, works and services* dated on 04.12.2019.

After crediting funds to accounts of executors of a corresponding construction work, enterprises use them to fulfill their obligations, as well as can carry out transactions with such expenses not related to the implementation of relevant construction contracts (for example, to allocate them on deposit accounts). In the course of performing expert tasks, a need to define these funds as budget and confirmation of their misuse according to Article 119 of the Budget Code of Ukraine² may arise.

First and foremost, it should be stressed that (in conformity with provisions of Art. 1 and 8 of the Law of Ukraine: *On State Control Auditing Service in Ukraine*³), the implementation of state financial control and control over targeted and effective use of State and local budgets lie within the competence of state financial control body: State Audit Service of Ukraine. Results of the working meeting with participation of Directorate for Justice and criminal justice, the Department of Expert Support of Justice and the National Anti-Corruption Bureau of Ukraine, which was held on 24.12.2020 in the Ministry of Justice of Ukraine demonstrate the relevance of a significant improvement in the scientific and methodological framework of carrying out forensic examinations on the use of budget funds based on inspections performed by state financial control bodies. As stated in the information letter of the Ministry of Justice of Ukraine No. 185/09-16/a2/21 dated on 02.02.2021, based on the results of the meeting,

¹ Про здійснення попередньої оплати товарів, робіт і послуг, що закуповуються за бюджетні кошти : Постанова КМУ від 23.04.2014 р. № 117 (expired). URL: <https://zakon.rada.gov.ua/laws/show/117-2014-%D0%BF> (date accessed: 21.02.2021).

² Бюджетний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/2456-17> (date accessed: 21.02.2021).

³ Про основні засади здійснення державного фінансового контролю в Україні : Закон України від 26.01.1993 р. № 2939-XII (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/main/2939-12> (date accessed: 21.02.2021).

agreements were reached on revision of paragraph 3 of Scientific and methodical recommendations concerning preparation and appointment of forensic examinations and expert researches approved by the Order of the Ministry of Justice of Ukraine No. 53/5¹ dated on October 8, 1998 (hereinafter referred to as *scientific guidelines*), and introduction of provisions into them concerning the fact that forensic experts cannot solve issues belonging to exclusive competence of state financial control bodies. It is mentioned that consideration of issues related to misuse of budget funds by forensic experts is only allowed in the presence of tax inspection report of the Units of Ukraine State Audit Service.

According to authors, when considering provisions of paragraph 3 of Guidelines, it is expedient to specify tasks of forensic economic analysis of budget funds use and to provide issues being resolved while its implementation.

After reviewing guidelines as a basic guideline, a modern algorithm for conducting forensic economic analysis of budget funds use should be developed where attention has to be drawn to certain problematic issues that may occur while research process.

First of all, a forensic expert must address the issues of whether a concerned organization is a participant in the budget process and whether transactions are carried out on the use of obtained budget funds by an organization within the budget process.

According to Article 19 of the Budget Code of Ukraine ²:

“Stages and participants of the budget process

1. The following stages of the budget process are recognized:

- 1) compilation and consideration of the Budget declaration (the local budget estimate) and making a decision on it;
- 2) compilation of budget projects;
- 3) consideration of a project and adoption of the Law: *On the State Budget of Ukraine* (decision on local budget);
- 4) budget execution including amending the Law: *On the State Budget of Ukraine* (decision on local budget);
- 5) preparation and consideration of a report on budget execution and making a decision on it.

<...>

3. Participants in the budget process are bodies, institutions and officials, endowed with budget powers (rights and responsibilities for budget funds management)”.

At the second stage, it is important to track the flow of funds after crediting funds to budget holder accounts and to determine directions for their use. At the

¹ Науково-методичні рекомендації з питань підготовки та призначення судових експертиз та експертних досліджень : затв. наказом Мін'юсту України від 08.10.1998 р. № 5 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98> (date accessed: 21.02.2021).

² Бюджетний кодекс України ... URL: <https://zakon.rada.gov.ua/laws/show/2456-17> (date accessed: 21.02.2021).

same time, it should be borne in mind that current regulations governing banking in Ukraine does not provide for analytical accounting of budget surplus sources that are on the bank account. Thus, in the availability of funds other than paid in advance to fulfill the budget program, it will be impossible to find out which funds were used for certain goals: advance funding or own funds.

In the text of the methodology, separately attention should be drawn to the fact that misuse can be considered as spending precisely budget funds.

According to the requirements of the Regulation of the Cabinet of Ministers of Ukraine No. 117: *On provision of prepayment for goods, works and services purchased for budget funds* dated 23.04.2014 ¹, which has lost validity:

«2¹. A budget funds holder (recipient) carries out prepayment according to capital expenditure plans and government contracts by directing budget funds to executors of work, providers of goods and services (except non-residents) to *non-budget accounts* [here and hereinafter in quotations emphasis added: *Author's note*] opened in their names in Treasury authorities <...>».

According to the Procedure of opening and closing accounts in national currency in the State Treasury Service of Ukraine approved by the Ministry of Finance of Ukraine No. 758 ² dated on 22.06.2012 :

«1.2. In that Procedure, below-mentioned terms are used in the following meaning:

<...>

non-budget accounts are accounts opened by Treasury authorities for budget holders and budget funds holders, separate structural units of budget funds, enterprises, institutions, organizations and natural persons-entrepreneurs according to transactions that *do not belong to budgets execution transactions* <...> in cases stipulated by legislative and other legal regulations.

According to Article 11 paragraph 2 of the Budget Code of Ukraine ³:

“budget funds (funds of budget) are incomes and expenditures of the budget compliant with legislation”.

Consequently, budget funds being transferred by a budget holder to non-budgetary account of work executors, lose the status of budget and are transferred to financial assets of recipients.

Therefore, although budget funds that a holder transfers to non-budget accounts of work executors, after their transfer to a non-budget account do not possess the status of budget, budget funds are the source of their origin.

¹ Про здійснення попередньої оплати ... URL: <https://zakon.rada.gov.ua/laws/show/117-2014-%D0%BF> (date accessed: 21.02.2021).

² Порядок відкриття та закриття рахунків у національній валюті в органах Державної казначейської служби України : затв. наказом Мінфіну України від 22.06.2012 р. № 758 (as amended and supplemented). URL: <https://zakon.rada.gov.ua/laws/show/z1206-12> (date accessed: 21.02.2021).

³ Бюджетний кодекс України ... URL: <https://zakon.rada.gov.ua/laws/show/2456-17> (date accessed: 21.02.2021).

As we have already stressed, in accordance with requirements of the Resolution of the Cabinet of Ministers of Ukraine No. 117: *On provision of prepayment for goods, works and services purchased for budget funds* dated on 23.04.2014:

«2¹. Prepayment of budget funds under capital expenditure plans and government contracts by holders (recipients) is carried out by directing budget funds to work executors, providers of goods and services (except non-residents) to non-budget accounts opened in their names in Treasury authorities based on the established by law procedure, with *further use* of the mentioned funds by work executors, providers of goods and services exclusively from such accounts *for the purposes defined in the contracts on procurement of goods, works and services*.

At the same time, the term: *use* in such agreements is not interpreted in detail. Interpretation of the terms of agreements concluded between budget holders and work executors does not belong to the competence of a forensic economist. Consequently, in case of conclusions wording on non-compliance with the terms of agreement by forensic experts, it is recommended to indicate that (for example) placement of funds credited to deposit accounts is their use according to a corresponding agreement.

When solving similar issues, additional information contained in acts of audits (inspections) of state financial control bodies should also be used.

Conclusions. The development of an updated algorithm for conducting forensic economic analysis on the use of budget funds is relevant and will enable to further identify integrated approaches to solving pressing issues of this type of researches.

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Щодо вдосконалення науково-методичної бази
судово-економічної експертизи бюджетних коштів
(оглядова стаття)

Основною складовою підвищення якості експертного забезпечення правосуддя є вдосконалення науково-методичної бази експертної діяльності, зокрема — судової економічної експертизи. Станом на сьогодні існує базова експертна Методика дослідження судово-економічної експертизою питань нецільового використання бюджетних коштів (реєстраційний номер П.0.12), створена ще 2003 р., через що її зміст багато в чому не відповідає чинному бюджетному законодавству. Як свідчить експертна практика, останнім часом найскладнішими є дослідження під час проведення експертиз з питань витрачання бюджетних коштів. Виконуючи бюджетні програми з будівництва, після проведення процедур, передбачених Законом України «Про державні закупівлі», бюджетні кошти спрямовують будівельним організаціям як оплату (передоплату) товарів, робіт (послуг). Після їх зарахування на рахунки виконавців відповідних будівельних робіт, підприємства використовують ці кошти на виконання взятих на себе зобов'язань, а також можуть здійснювати операції, не пов'язані з виконанням відповідних договорів на будівництво (наприклад, розміщувати їх на депозитних рахунках). У процесі виконання експертних завдань може виникнути потреба вирішити питання належності зазначених коштів до бюджетних і можливості підтвердження їх нецільового використання в розумінні ст. 119 Бюджетного кодексу України. Розгляд експертами питань щодо нецільового використання бюджетних коштів допускається винятково за наявності акта перевірки підрозділів Державної аудиторської служби України. Бюджетні кошти, перераховані розпорядником бюджетних коштів на небюджетний

рахунок виконавців робіт, утрачають статус бюджетних і зараховуються до активів одержувачів коштів.

Необхідно оновити алгоритм проведення судово-економічних експертиз із використання бюджетних коштів, що дасть змогу надалі виробити єдиний підхід до вирішення проблемних аспектів цього різновиду досліджень.

Ключові слова: бюджетні кошти, економічна експертиза, методична база.

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**Относительно усовершенствования научно-методической базы
судебно-экономической экспертизы бюджетных средств
(обзорная статья)**

Основной составляющей повышения качества экспертного обеспечения правосудия является усовершенствование научно-методической базы экспертной деятельности, в частности — судебной экономической экспертизы. В настоящее время существует базовая экспертная Методика исследования судебно-экономической экспертизой вопросов нецелевого использования бюджетных средств (регистрационный номер 11.0.12), созданная ещё в 2003 году, в силу чего её содержание во многом не соответствует действующему бюджетному законодательству. Как свидетельствует экспертная практика, в последнее время наиболее сложными являются исследования при проведении экспертиз по вопросам расходования бюджетных средств. При выполнении бюджетных программ по строительству, после проведения процедур, предусмотренных Законом Украины «О публичных закупках», бюджетные средства направляются строительным организациям в качестве оплаты (предоплаты) за товары, работы (услуги). После их зачисления на счета исполнителей соответствующих строительных работ, предприятия используют их на выполнение взятых на себя обязательств, а также могут осуществлять операции, не связанные с выполнением соответствующих договоров на строительство (например, размещать их на депозитных счетах). В ходе выполнения экспертных заданий может возникнуть потребность в решении вопросов отнесения указанных средств к бюджетным и возможности подтверждения их нецелевого использования в понимании ст. 119 Бюджетного кодекса Украины. Рассмотрение экспертами вопросов относительно нецелевого использования бюджетных средств допускается исключительно при наличии акта проверки подразделений Государственной аудиторской службы Украины. Бюджетные средства, перечисленные распорядителем бюджетных средств на небюджетный счёт исполнителей работ, утрачивают статус бюджетных и зачисляются в активы получателей средств.

Необходимо обновить алгоритм проведения судебно-экономических экспертиз по использованию бюджетных средств, что позволит в дальнейшем выработать единый подход к решению проблемных аспектов этой разновидности исследований.

Ключевые слова: бюджетные средства, экономическая экспертиза, методическая база.

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Contributors

The authors contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.