

On Forensic Economist Specific Expertise

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DOI: 10.32353/khrife.2.2021.09 UDC 343.98

Submitted: 1 Oct 2021 / Reviewed: 10 Oct 2021 / Approved for Print: 4 Nov 2021 /
Available online: 10 Dec 2021



Effectiveness level of the practical activities of forensic economists to some extent depends on theoretical validity of specific expertise and their clear regulation by law.

This article purpose is to investigate the essence of special economic knowledge, to determine the boundaries of competence of forensic economists. While generalizing scientific content, the main systemic elements that reflect essence of special economic knowledge their forms, structure, characteristic features are considered.

With the help of methods of analysis and synthesis, generalization, effectiveness dependence of the use of special economic knowledge and their relevance on the conditions of economic environment has been established. It was found that economic knowledge based on theoretical principles of economic sciences should be of a practical, applied nature, which makes appropriate requirements for organization of the educational procedure while professional training of persons entitled to conduct forensic economic examinations. In turn, the level of personal competence of a forensic economist depends on his practical skills and abilities and improves as more complex expert researches is carried out.

It has been established that it is impossible for forensic economists to study issues that go beyond specific expertise scope and have a legal nature (establishing the circle of culpability of persons, interpreting norms of law, legal assessment of the actions of persons, including the establishment of cause-and-effect relationships between targeted

This article is translation of the original Ukrainian content, which source is available at the link: <https://khrife-journal.org/index.php/journal> (translation by Andriy Bublikov). The author acknowledges translation as corresponding to the original.

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actions and the resulting negative consequences) which deprives the forensic examination of the status of objective economic research.

Keywords: specific expertise; special economic knowledge; forensic economics; forensic economist; economic relations.

Research Problem Formulation

Judicial system in modern social and economic conditions in its architecture provides for availability of such an important and necessary element as forensic science, the importance and role of which are undeniable. This is due to the range of specific tasks facing procedural law that require an integrated approach to address them. This fully applies to forensic economics which professionals solve their tasks based on synergy of economic and legal knowledge. Forensic investigators often order forensic economic examinations for complex as well as high-profile economic crimes, which establishment circumstances (meaning their economic side) requires the use of special economic knowledge, because otherwise it is impossible to solve the issues.

For a long time in the center of scientific discussions is the question of the forensic expert competence, the limits of his specific expertise, especially in current complex, contradictory economic and legal conditions of a multifaceted economic

environment, when emergence of new types of economic crimes expertise. This applies to the amount and ratio of applied economic and legal knowledge which together ensure effective functioning of forensic economic examination as a relatively independent subsystem in the hierarchical structure of forensic science. This issue determines relevance of the topic of our research.

Analysis of Essential Researches and Publications

Theoretical provisions of specific expertise in legal field were studied by a whole constellation of domestic and foreign scientists among which it is worth mentioning: M. M. Vinogradova, D. P. Gurin, L. V. Dikan, O. S. Lekhanov, N. I. Klimenko, N. P. Mykhailyshyn, I. V. Perevozov, I. A. Petrova, O. R. Rossinska, E. B. Simakova-Yefremian, H. O. Spitsyna, H. S. Bidniak, V. V. Fedchyshyn, N. Ye. Filipenko, A. P. Cherednichenko, M. G. Shcherbakovskyi and many other¹. Given transformational economic and

1 Виноградова М. М. Спорные вопросы определения пределов компетенции судебных экспертов-экономистов. *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2010. Вип. 10. С. 540–547 ; Гуріна Д. П., Калініна І. В. До питання щодо компетенції та компетентності судового експерта у кримінальному провадженні. *Криміналістика і судова експертиза*. 2018. Вип. 63 (1). С. 195–203 ; Дікань Л. В., Понікаров В. Д., Кожушко О. В. Судово-економічна експертиза : навч. посіб. Харків, 2014. С. 278–282 ; Леханова Е. С. Некоторые проблемы применения судебно-экономических знаний в уголовном процессе. *Проблемы в российском законодательстве*. 2009. № 4. С. 234–237 ; Клименко Н. І., Федчишина В. В. Судово-економічна експертиза: сучасний стан і актуальні питання. *Криміналістичний вісник*. 2016. № 1 (25). С. 57–58 ; Михайлишин Н. П., Будник Л. А. Правовий статус судового експерта-економіста, зміст його спеціальних знань і компетенцій. *Облік, оподаткування і контроль: теорія та методологія* : мат-ли міжнар. наук.-практ.

social changes of recent decades, as well as changes and the constant evolution of the judicial system of the country, further development requires forensic economics in terms of determining expert specific expertise, his competence.

Article Purpose

This article purpose is to investigate specific expertise of forensic expert, the need for which forensic investigators arise quite often while investigating offenses in the economic field.

Main Content Presentation

While forensic examinations assigned to different types of legal proceedings (criminal, civil, commercial, administrative ones), economic experts

examine various issues related to the correctness of the reflection in the accounting of business transactions, the implementation of tax obligations (including accrual and payment VAT), performance by contractors of agreements (in particular, credit), misuse of enterprises, organizations, institutions of State funds under budget programs, determination of indicators of financial condition of the enterprise, availability of financial opportunities to fulfill its obligations to creditors and many other issues economic relations between the subjects of different ownership forms and organizational and legal management forms. Such researches require appropriate determination of quantitative and qualitative parameters of special economic knowledge in persons involved in forensic examinations of this type.

інтернет-конф. (Тернопіль, 30.06.2017). Тернопіль, 2017. С. 324–326 ; Перезовова І. В. Економічна експертиза як специфічна галузь знань. *Економіка: реалії часу* : електрон. наук. вид. 2013. № 3 (8). С. 98–100 ; Петрова І. А., Чекін Д. О., Силенок К. П. Процесуальні та непроцесуальні форми застосування спеціальних знань у цивільному та господарському процесі. *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2020. № 22. С. 146–161. DOI: 10.32353/khrife.2.2020.11 (date accessed: 25.09.2021) ; Россинская Е. Р. Судебна експертиза в гражданском, арбитражном, административном и уголовном процессе : монография. 3-е изд., доп. Москва, 2014. С. 7–23 ; Сімакова-Єфреман Е. Б. До питання про введення у кримінальне процесуальне законодавство поняття «висновок спеціаліста». *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2019. Вип. 20. С. 110–120. DOI: 10.32353/khrife.2.2019.07 (date accessed: 25.09.2021) ; Спіцина Г. О., Відняк Г. С. Форми використання спеціальних знань. *Ibid.* 2018. Вип. 18. С. 240–248. DOI: 10.32353/khrife.2018.26 (date accessed: 25.09.2021) ; Федчишина В. В. Спеціальні економічні знання та їх використання в ході оперативно-розшукової діяльності, досудового розслідування і судового розгляду: теоретико-правові основи. *Актуальні проблеми вітчизняної юриспруденції*. 2018. № 3. С. 215–218 ; Філіпенко Н. Є., Снігерьев О. П., Бубліков А. В. Застосування спеціальних знань під час виявлення, профілактики й розслідування злочинів у сфері комп'ютерної інформації та високих технологій (оглядова стаття). *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2020. № 22. С. 162–178. DOI: 10.32353/khrife.2.2020.12 (date accessed: 25.09.2021) ; Чередніченко А. П. Межі компетенції судового експерта-економіста. *Незалежний аудитор*. 2012. № 11. С. 86–88 ; Щербаковський М. Г. Проведення та використання судових експертиз у кримінальному провадженні : монографія. Харків, 2015. С. 37–67 ; Його ж. Сутність, структура та цілі використання спеціальних знань у судочинстві. *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2018. Вип. 18. С. 184–193. DOI: 10.32353/khrife.2018.20 (date accessed: 25.09.2021) ; Щербаковський М. Г., Куриленко Д. В. Обізнані особи у судочинстві України. *Ibid.* 2019. Вип. 19. С. 143–157. DOI: 10.32353/khrife.1.2019.011 (date accessed: 25.09.2021).

One of aspects that determining relevance of the research issue in scientific opinion is the lack of reasonable position on the specific scope of forensic expert in general, as well as the inconsistency of procedural legislation. This type of specific expertise is on the border of economic sciences and legal norms that regulate economic life. This is their “border” position and causes numerous scientific discussions about specific expertise scope of forensic expert as a participant in criminal proceedings while investigation of economic crimes by law enforcement agencies.

Examining this issue, we will consider the main key elements that relate to forensic expert specific expertise. The latter in the form of interconnected and complementary elements is the unique system that reflecting their essence through the specific expertise purpose, as well as their form depending on the accepted classification criterion, relationship between different types of specific expertise which identifies their characteristics and specifics, etc.

According to clause 14 of Part 1 of Article 92 of the Constitution of Ukraine ², principles of forensic science are determined exclusively by laws of Ukraine. This indicates that issue of using specific expertise is exclusively in regulatory field. It should be noted that nowadays this concept definition is not enshrined in domestic legislation.

Historical retrospective shows that one of the first to characterize specific expertise were such well-known jurists and scholars as V. D. Spasovich and A. F. Koni. They considered special knowledge as knowledge in the field of science, technology, art or craft ³. This issue has been the subject of discussion in the scientific world for a long time and has not lost its relevance to this day.

The author of one of the most cited in scientific literature definitions of this economic and legal category is O. O. Eisman: “*Specific expertise is knowledge that is not well-known, not publicly available, is not widespread, in short, it is knowledge that has a limited number of professionals and it is likely that deep knowledge in the field, such as physics, is in this sense specific for biologist, and vice versa*” ⁴.

The *Criminalistics* multimedia textbook states that specific expertise is not related to conducting criminal proceedings knowledge, which content goes beyond general and special educational programs used to achieve legal goals in criminal proceedings ⁵.

Summarizing the research of criminologists on the essence of specific expertise in general, H. O. Spitsyna and H. S. Bidniak consider the following characteristics ⁶ : 1) constitute a set of knowledge and skills in various fields; 2) contain a system of information in the field of science, technology and other areas of human activity; 3) used in the

2 Конституція України прийнята Законом України від 28.06.1996 р. № 254к/96-ВР (зі змін та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 25.09.2021).

3 Климович Л. П. Научные основы современной экономической экспертизы : монография. Москва, 2014. С. 8.

4 Эйсман А. А. Заключение эксперта. Структура и научное обоснование. Москва, 1967. С. 91.

5 Криміналістика : мультимед. підруч. URL: https://arm.naiu.kiev.ua/books/kriminalist/lections/lection_3.24.html (date accessed: 25.09.2021).

6 Спіцина Г. О., Бідняк Г. С. Ор. cit. С. 241. DOI: 10.32353/khrife.2018.26 (date accessed: 25.09.2021).

pre-trial investigation and while hearing in the case and in the manner prescribed by criminal procedure legislation; 4) they are used in conjunction with scientific and technical means; 5) certain subjects of criminal proceedings implement them in the process of practical activities, special training, taking into account professional experience; they are based on a system of theoretical knowledge in the relevant field; 6) for the most part their implementation requires significant expenditure of time and intellectual effort; 7) contribute to the development of technical means and methods of working with evidence and the establishment of important circumstances that are important for proof.

On the basis of the above systematization Ha. O. Spitsyna and Ha. S. Bidniak offer the following specific expertise definition: it is scientific, technical and other professional knowledge acquired as a result of training, as well as skills acquired in the process of working in certain areas of practice used simultaneously with the use of scientific and technical means in the collection and investigation of traces of crimes in order to obtain evidentiary and indicative information necessary for crime investigation⁷.

In the monographic study L. P. Klymovych gives the following specific expertise definition: it is professional experience of expert witnesses (except for the professional activities of investigators, judges) that belongs to a certain field of knowledge used in criminal proceedings in forms prescribed by law to obtain new information based on the detection of

particularly specific or hidden properties and relationships of objects (phenomena)⁸.

V. M. Kovbasa, based on the research of scientists, identifies the following main objectives of the use of specific expertise: facilitate the full and rapid detection and investigation of crimes; establishing the truth in a criminal case; study of certain objects and phenomena; obtaining necessary information to establish the circumstances relevant to correct reasoned decisions in the case; facilitating identification, recording and seizure of evidence and clarification of special issues that arise while investigative actions; development of tactical and technical means and methods of gathering evidence, etc.⁹

In general, scientific opinion considers the following forms of use of specific expertise: *first form* – specified and regulated by criminal procedure legislation, *second form* – provided but not regulated by criminal procedure legislation (consultative and reference activities of specialists in certain fields of knowledge), *third form* – not provided and is not regulated by law¹⁰. There are some discussions about, for example: if specific expertise is not provided by law, it does not make sense to examine them due to ambiguity in law. Normative-legal field of Ukraine does not define the forms of specific expertise use. Instead, in the scientific literature, in research, scientists consider their different forms depending on classification criterion.

It should be noted that the forms of applied special knowledge depend entirely

7 Ibid.

8 Климович Л. П. *Op. cit.* С. 20–21.

9 Ковбаса В. М. Криміналістична характеристика спеціальних знань. *Науковий вісник Дніпропетровського державного університету внутрішніх справ* : зб. наук. пр. 2014. № 2. С. 228.

10 Спіцина Г. О., Бідняк Г. С. *Op. cit.* DOI: 10.32353/khrife.2018.26 (date accessed: 25.09.2021). С. 243.

on the qualification of the offense and on the use of sustainable or modern ways of committing them, adapted to new social conditions. The most common form is the appointment of forensic examinations, which should be preferred ¹¹.

In the process of systematic research Ha. O. Spitsyna and Ha. S. Bidniak come to conclusion that there is no single approach to the forms of specific expertise use, but they are much more widely reflected in legislation. In such circumstances, scientists classify the forms of specific expertise application by type of activity and distinguish the following forms: forensic examination assignment; reference and consulting activities; audits and verification of records; professional involvement while investigation; interrogation of the expert; investigator presence while forensic examination. The success of their use depends entirely on determining their timeliness, optimal sequence and feasibility ¹².

Analyzing this issue, it is important to note the following. Specific expertise in the field of economics can have such basic carriers of this knowledge as forensic experts (specialists who are employees of State specialized institutions, as well as those who are not employees of these institutions), auditors (government agencies, private auditors, audit firms), inspectors.

The common basis that unites these types of special economic knowledge is the economic field, namely the multifaceted nature of modern production, economic and financial activities of economic entities, reflected primarily in relevant accounting documents. The defining and

distinctive feature that distinguishes these types of knowledge is the availability or lack of procedural nature. Accordingly, forensic economics as a specific field of knowledge has a procedural meaning while inspection and audit are types of financial control of economic activity of economic entities.

We agree with N. I. Klimenko's statement that the new economic conditions of management require integrated use of special economic knowledge from various subsectors of the economy for successful detection and investigation of economic offenses ¹³.

If we take into account the history of formation and application of special knowledge, which is also important in our study, we can identify the factors influencing this process: the development of general theoretical knowledge; emergence and development on the basis of general theoretical knowledge of forensic, forensic medical and other applied specific expertise; involvement of specialists in the process of investigation of criminal proceedings; use of scientific knowledge while forensic research that is evidence in criminal proceedings ¹⁴.

To this list should be added such an important factor as property relations, dominating economic environment, as forensic economics performs its research in the multifaceted economic field, respectively, change of property relations that is fundamental to a certain type of economic system and socio-economic relations, affects the methodological tools of forensic economics and hence, development of special economic knowledge.

11 Ibid. C. 243–244.

12 Ibid. C. 247.

13 Клименко Н. І. Оп. cit. С. 57.

14 Романюк Б. В. Участь спеціаліста на стадії досудового слідства : навч. посіб. Київ, 2010. С. 13.

Currently, the issue of using special economic knowledge is the subject of research not only by legal professionals but by economists. For example, N. P. Mykhailyshyn and L. A. Budnyk believe that an expert should have a specific expertise set to the extent necessary to conduct a qualitative research and provide an opinion on the issues raised. Accordingly, on the basis of special economic knowledge, they consider accounting (financial and management), economics and enterprise management, finance and credit, taxes and taxation, banking, labor economics, etc., supplemented by knowledge of criminalistics, economic, civil and criminal proceedings, as well as various branches of law (civil, administrative, financial, land, labor, criminal one, etc.)¹⁵.

According to V. V. Fedchyshyna, special economic knowledge is the knowledge, skills, abilities and practical experience of expert witnesses in the field of economics on issues that reflect the current level of development of economics, objects, phenomena and processes¹⁶.

L. P. Klimovich under special economic knowledge understands the professional experience of expert witnesses belonging to the field of economic and forensic economic knowledge used in criminal proceedings in the forms prescribed by law in order to obtain new information by identifying particularly specific or hidden properties and relationships objects (phenomena)¹⁷.

V. V. Fedchyshyna notes that specific nature of economic knowledge used in the investigation of offenses involves knowledge of economics. According to modern doctrine, in determining specific

expertise content as not well-known knowledge, it is necessary to consider four aspects¹⁸:

- 1) characteristics of economic knowledge that form the basis of special economic knowledge;
- 2) structure of special economic knowledge;
- 3) ways to obtain special economic knowledge;
- 4) purpose of using special economic knowledge.

Last aspect: purpose of using special economic knowledge has important theoretical and practical significance, as it is the vector that determines development of the methodological basis of this type of forensic examination and the level of efficiency of its use in forensic activities.

Special economic knowledge is a theoretical basis that provides solutions to forensic economic issues and emergence of new theoretical developments, forms the limits of competence and competence of forensic economics¹⁹.

While considering the issues of special economic knowledge, it is impossible to ignore the relevant categories, such as the *competence* of a forensic expert (regardless of the field of application of his specific expertise). Due to his procedural status, an forensic economist has a certain range of rights and responsibilities that can be collectively represented as his competence. For its part, competence is understood as the skills and abilities that forensic expert has acquired while practical activity and improves as he successfully solves increasingly complex tasks. That is, the improvement of his professional knowledge by an forensic

15 Михайлишин Н. П., Будник Л. А. *Op. cit.* С. 325.

16 Федчишина В. В. *Op. cit.* С. 217.

17 Климович Л. П. *Op. cit.* С. 30.

18 Федчишина В. В. *Op. cit.* С. 216.

19 *Ibid.* С. 215.

economist leads to an increase in his competence.

In our opinion, special economic knowledge is an organic complex of various applied economic, as well as legal knowledge that forensic economist uses within his competence to solve the procedural tasks. The scope of such knowledge has a steady tendency to expand in connection with development of social production and improvement of its scientific and technological capabilities.

Specifics of forensic science activity make necessary for forensic economists to acquire and apply, in addition to economic knowledge, also legal knowledge in order to conduct a complete, objective and sound research to provide expert opinion in the procedural field. It should be noted that the very economic knowledge based on theoretical principles of economics should be practical, applied. This sets appropriate requirements for organization of educational process while training of persons who will have the right to conduct forensic economics.

The need for the use of special economic knowledge arises mostly in the case when the forensic investigation of circumstances of economic crimes is impossible without forensic economics. V. S. Davydenko notes that forensic accounting examination is appointed if there are doubts about completeness, objectivity, professionalism of the audit and methods used by auditors, as well as if necessary to check the correctness of certain financial and economic transactions²⁰. A similar opinion is held by M. T. Bilukha, who notes that liability for damages to businesses and individuals is established by law and function of their detection is entrusted to such forms of

financial control as inspection and audit. In disputed situations, amount of material damage should be confirmed by a forensic accounting examination²¹.

In view of the above, considering multifaceted nature of special economic knowledge of a forensic expert, establishment of the so-called faces, a number of important aspects should be taken into account that allow to achieve this goal:

- procedural nature of appointment and conducting forensic economic examination. In other words, it cannot exist outside procedural field, because its emergence is a need of the legal system which also determines key moments of its development;
- formation of the application purpose of special economic knowledge. This aspect is a logical continuation of the first, as the main purpose of the use of special economic knowledge is to provide forensic authorities with sound and irrefutable evidence in the form of forensic expert conclusion in investigation of recent economic crimes;
- specific expertise ratio of forensic expert economist with inspection and audit, where forensic economics is secondary and conducting audit actions and inspections; primary in establishing material losses in economic environment.

In the context of the above, it is worth paying attention to such important epistemological moments related to our research. Assessing economic relations in the field of material production it is possible

20 Давиденко В. С. Спеціальні знання в розслідуванні економічних злочинів. *Юридичний часопис Національної академії внутрішніх справ*. 2016. Т. 12. № 2. С. 184.

21 Білуха М. Т. Судово-бухгалтерська експертиза : підручник. Київ, 2004. С. 35.

to identify characteristic dependencies regarding efficiency level of special economic knowledge use, as well as the objective need of forensic investigators in this type of forensic examination:

- use effectiveness of special economic knowledge in the legal system increases as stability of the economic environment regulated by law and vice versa, effective return of forensic science in the judicial system decreases as stability of economic relations and law effectiveness. Such dependence is an objective phenomenon in development of socio-economic relations;
- complexity of economic processes as a result of the intensive development of information technology and communications, as well as algorithms for committing economic crimes causes an increase in the need for forensic economics, i.e. in special economic knowledge. This dependence is characteristic of goods/money production and is inviolable in its development.

Special economic knowledge is inseparable from economic activity, because their basis is a set of economic sciences that explain processes of social production in both tangible and intangible fields. Accordingly, this type of knowledge should be considered simultaneously with the study of economic conditions of management which is due to economic laws.

In the current state of economic relations and intensive implementation and use of information technology, the above is extremely relevant, because special economic knowledge in the most intensive

period of its development (from the beginning of XX century to nowadays) has undergone appropriate transformations affected their quality, and therefore stop on this aspect in more detail. First of all, it should be noted that special economic knowledge (that professional had at the turn of the XIX-XX centuries, in 1950-1970 and with the beginning of intensive informatization, in particular digitalization of economic relations) given traditional unity in unchanging legal nature of its use have characteristic features.

In this regard, it is worth noting the following. As early as the beginning of the XX century, well-known Russian scientist-accountant S. F. Ivanov in his famous paper: *Accounting expertise while hearing on the qualities of an forensic accountant* stated quite clearly and extensively: “*Forensic accountant should have thorough knowledge in accounting (job seniority: professional) and known internal qualities (scientific judge of facts). If in general an accountant is considered to be someone who, absolutely devoted to the science of accounting, still has a number of knowledge in the field of mathematics, law, finance and political economy, then the accountant-expert should be subject to increased requirements*”²². This historical retrospective testifies to the level of requirements for the professionalism of expert accountants (expert economists) at the very beginning of the acquisition by accounting expertise of the features of scientifically sound research, which is, of course, relevant for current conditions.

The change in the socio-economic structure of economy after 1917 and transition to a command-and-control system of management greatly influenced development of forensic science. The reason is as follows: property

22 Иванов С. Ф. Бухгалтерская экспертиза в судебном процессе: пособие для юристов и бухгалтеров-экспертов. Санкт-Петербург, 1913. С. 12.

relations (private, national or collective) always reflect the way of management characterized by its elements of accounting and control and therefore the replacement of private property by the state has led to a completely new socio-economic model of management and judicial system. Under such conditions, special economic knowledge had a single strategic direction of use: assistance to justice in the fight against theft of socialist property by offenders.

Until the first half of the XX century there was autonomy in the development of forms of use of special economic knowledge, due to lack of a single methodological basis for their application. Establishment in 1948 of the Bureau of State Accounting Expertise that had branches in the union republics and was subordinated to the Ministry of Finance of the USSR was a positive moment in the development of forensic economics. And the change in subordination of the expert structure in the 1960s to the Ministry of Justice significantly accelerated the progressive dynamics in development of forensic science activity²³. It was during this period that the scientific base for the use of accounting information in criminal proceedings was formed.

These positive changes are associated with the name of S. P. Fortinskyi, one of the well-known developers of the methodological framework of forensic accounting who argued that economic knowledge used in legal proceedings, in addition to accounting knowledge should also contain specific expertise of economic analysis, finance and credit which is a scientifically sound approach. In other words, he emphasized the complex aspect of economic knowledge use dictated by the gradual but obvious transformation of the way of managing a planned economy.

This constructive proposal did not find its theoretical and practical application until the end of the 1980s, because, as noted above, special economic knowledge was most often used to determine the size of shortages due to the theft of inventory by materially responsible persons and persons responsible for accounting at enterprises in terms of State ownership.

Fundamental reform of economic system (replacement of planned production by market principles on a national scale), creation of new conditions for economic relations (multifaceted type of economy as a set of subjects of various organizational forms of management and ownership), and transformation of the judicial system contributed to a radically new direction theoretical and methodological basis of forensic economics which was directly related to improvement of special economic knowledge. First of all, expert accountants (expert economists) faced a number of new tasks, which within the existing specific expertise with appropriate methods and techniques of research could not be solved definitively due to lack of methodological tools. For example, economic research in the field of investment activities, corporatization, distribution of land and property shares, privatization of state and communal property, etc. Accordingly, domestic experts turned to the rich experience of forensic activities of developed countries, as well as developed their own theoretical and methodological basis which took into account domestic historical traditions and the specifics of economic relations.

The level of modern requirements for special economic knowledge can be defined by the following important aspects: forensic economist should be highly educated professional in the field of

23 Коваленко О. В. Розвиток судово-економічної експертизи в Україні. *Криміналістика і судова експертиза* : міжвідом. наук.-метод. зб. 2013. Вип. 58 (2). С. 485.

accounting and tax accounting, economic control and analysis, financial and economic law; he should combine basic scientific training and deep practical skills, continuously replenish his professional knowledge, have high civic qualities²⁴.

Intensive development of economic processes under influence of digitalization as a component of information technology requires from forensic economic examination similar changes in the use of special economic knowledge. First of all, it concerns their volume supplemented by new methods and techniques of research. For example, research on documents in electronic format and/or accounting transactions carried out using 1S Accounting, etc.

Currently, special economic knowledge, their structure and forms of application are gradually harmonizing with international standards in this area that is quite expected and logical, as unification of international economic relations due to the impact of intense globalization processes directly affects all national socio-economic processes. However, in this context, it should be noted that such harmonization with international standards (in the European Community there is currently an issue of implementation of international requirements and standards of forensic science²⁵, due to inability to unify all requirements at the national level due to the risk of unbalanced judicial system.

established model of the national economy) should be built under the condition of their positive effect for domestic forensic activities.

According to para. 5 of clause of 2.3 of section II of Instruction on appointment and conducting forensic examinations and researches, approved by the order № 53/5 of the Ministry of Justice of Ukraine dated on 08.10.1998 (hereinafter referred to as Instruction), forensic expert is forbidden to “solve issues which go beyond forensic expert specific expertise and clarification of legal issues and provide an assessment of the legality of the procedures regulated by regulations”²⁶.

In this context, it is appropriate to cite the experience of forensic expertise in Germany. Thus, according to § 75 sec. VII of the Code of Criminal Procedure of Germany (Strafprozeßordnung (StPO); adopted in 1877, operates to date with numerous changes and additions) appointed by an expert person must comply with the appointment if he provides forensic expert conclusion on the basis of law or professional activity or appointed or authorized by the state to carry out such activities in the field of science, arts or crafts, knowledge of which is a prerequisite for providing an expert opinion²⁷. In this regard, German professional legal literature uses the term *Scheuklappen* which means “blinds” and is interpreted as follows: if the court instructs the expert to provide forensic expert

24 Дікань Л. В., Понікаров В. Д., Кожушко О. В. *Op. cit.* С. 277.

25 Федчишина В. В. Спеціальні економічні знання у правових системах Європи, Австралії та США. *Науковий огляд*. 2018. № 3 (46). С. 126.

26 Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказом Мініюсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 15.09.2021).

27 Strafprozeßordnung (StPO): Gesetz von Bundesrepublik Deutschland 12.09.1950. Strafprozeßordnung in der Fassung der Bekanntmachung vom 7. April 1987 (BGBl. I S. 1074, 1319), die zuletzt durch Artikel 4 des Gesetzes vom 5. Oktober 2021 (BGBl. I S. 4607) geändert worden ist. URL: <https://www.gesetze-im-internet.de/stpo/BJNR006290950.html#BJNR006290950BJNG000802311> (date accessed: 15.09.2021).

conclusion, he should strictly adhere to the answers to the questions asked by the court to which he should provide his conclusion²⁸. According to the Code of Criminal Procedure of Germany, choice of experts involved in forensic examination, their number is determined by the court. The court concludes an agreement with them on the terms of providing forensic expert conclusion. If state experts are appointed for certain types of forensic expert conclusions, other persons can be elected only if special circumstances so require²⁹.

Appointment and conducting a forensic economic examination is a procedure of interaction between forensic experts and initiators of economic research. The issues raised for examination cover a fairly wide range of production, financial and economic activities.

In accordance with Part 1 of Art. 242 of Criminal Procedural Code of Ukraine is not allowed to conduct forensic examination to clarify the law³⁰. In this context, it is incorrect to ask questions for forensic economic examination (for example, establishing the scope of guilt of persons in missing inventory as a result of inventory, interpretation of law, legal assessment and qualification of actions of persons including establishing cause-effect relations between purposeful actions and subsequent negative consequences, etc.) require forensic expert to go beyond his specific expertise.

Resolution of these issues is beyond the competence of forensic experts, because they require interpretation of the law or are aimed at qualifying actions of specific persons that is unacceptable for forensic expert, as it is the prerogative of investigative bodies.

Forensic economists while conducting research should be limited to stating the facts about reflection of certain transactions in accounting. However, it is not their competence to assess reliability and the proof degree of specific circumstances, as evaluation of evidence is the prerogative of the investigative bodies.

Of particular note is the issue of determining the material damage caused to the participant of economic relations (enterprise, institution, organization), which are put to the study by the initiators of forensic economic examinations. In this case, forensic expert has the right to determine the amount of material damage, but only if the results of inspections of control bodies (audit certificates, inspection reports, etc.), as audit activities are beyond the competence of the expert economist. That is, economists take into account only the economic nature of material damage, which belongs to their special knowledge and does not allow to go beyond their competence. In accordance with para. 4-5 clause of 2.3 Chap. II of the Professional Instruction, the expert is prohibited from *“independently collecting materials to be studied, as well as select the source data for*

28 Der gerichtliche Sachverständige und die ihm verordneten „Scheuklappen“. URL: <https://www.k3s-rechtsanwaelte.de/aktuelles/aktuelle-rechtsprechung/bauundarchitekten-recht/294-der-gerichtliche-sachverstaendige-und-die-ihm-verordneten-„scheuklappen“.html> (date accessed: 15.09.2021).

29 Strafprozeßordnung (StPO) URL: <https://www.gesetze-im-internet.de/stpo/BJNR006290950.html#BJNR006290950BJNG000802311> (date accessed: 15.09.2021).

30 Кримінальний процесуальний кодекс України : затв. Законом України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 15.09.2021).

the examination, if they are reflected in the materials provided to him ambiguously”³¹.

Awareness of forensic investigators with procedural possibilities of forensic economics, its research topic, as well as competence of economists significantly affects correctness of the questions to be investigated by forensic economists and thus, completeness of economic research, quality and deadline carrying out.

Conclusions

In order to conduct a complete, sound and objective forensic economic research, which in procedural field is carried out by forensic economists, the latter must have a comprehensive multifaceted special economic knowledge (accounting; finance and credit; taxation; banking; labor economics, industry, rural economy), to be acquainted with the main software products of accounting in enterprises of all forms of ownership and management, as well as to have knowledge of various branches of law (land, labor, etc.), which is an important point of effective cooperation of economic professionals and forensic authorities in investigation of recent economic crimes. One of the important aspects is a clear legal regulation of the specific expertise use in various types of proceedings, consistency of the basic knowledge of economists with other fields of knowledge.

Further development and improvement of application of special economic knowledge is possible only if a detailed study of theoretical provisions of the complex of economic sciences, which have a practical, applied nature and explain essence of economic procedures in a dynamic economic environment for different economic activities.

До питання про спеціальні знання судового експерта-економіста Олексій Горлачук

Рівень ефективності практичної діяльності судових експертів-економістів певною мірою залежить від теоретичної обґрунтованості спеціальних знань і чіткого їх регламентування нормативно-правовим законодавством.

Мета статті — дослідити суть спеціальних економічних знань, визначити межі компетенції експертів-економістів. У процесі узагальнення наукового матеріалу розглянуто основні системні елементи, що відбивають суть спеціальних економічних знань,— їхні форми, структуру, характерні ознаки.

За допомогою методів аналізу, синтезу й узагальнення встановлено залежність ефективності використання спеціальних економічних знань і їхньої застосуваності від умов економічного середовища. З'ясовано, що економічні знання, які ґрунтуються на теоретичних положеннях економічних наук, повинні мати практичний, прикладний характер, що висуває відповідні вимоги до організації освітнього процесу під час професійної підготовки осіб, які мають право проводити судові економічні експертизи. Зі свого боку, рівень особистої компетентності судового експерта-економіста залежить від його практичних умінь і навичок та вдосконалюється в міру проведення складніших експертних досліджень.

Установлено неможливість дослідження експертами-економістами питань, які виходять за межі спеціальних знань і мають правовий характер (визначення кола винності осіб, інтерпретування норм права, юридичне оцінювання дій осіб, зокрема встановлення причиново-наслідкових зв'язків між цілеспрямованими

31 Про затвердження Інструкції про призначення та проведення судових експертиз ... URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 15.09.2021).

діями й негативними наслідками), що по-збавляє судову експертизу статусу об'єктивного економічного дослідження.

Ключові слова: спеціальні знання; спеціальні економічні знання; судова економічна експертиза; експерт-економіст; економічні відносини.

К вопросу о специальных знаниях судебного эксперта-экономиста

Алексей Горлачук

Уровень эффективности практической деятельности судебных экспертов-экономистов в известной степени зависит от теоретической обоснованности специальных знаний и четкого их регламентирования нормативно-правовым законодательством.

Цель статьи — исследовать суть специальных экономических знаний, определить границы компетенции экспертов-экономистов. В процессе обобщения научного материала рассмотрены основные системные элементы, отражающие сущность специальных экономических знаний — их формы, структуру и характерные особенности.

С помощью методов анализа, синтеза и обобщения установлена зависимость эффективности использования специальных экономических знаний и их востребованности от условий экономической среды. Выяснено, что экономические знания, основанные на теоретических положениях экономических наук, должны иметь практический, прикладной характер, что предъявляет соответствующие требования к организации образовательного процесса при профессиональной подготовке лиц, имеющих право проводить судебные экономические экспертизы. В свою очередь, уровень личной компетентности судебного эксперта-экономиста зависит от его практических умений и навыков и совершенствуется по мере проведения более сложных экспертных исследований.

Установлена невозможность исследования экспертами-экономистами вопросов, которые выходят за пределы специальных знаний и имеют правовой характер (установление круга виновности лиц, интерпретация норм права, юридическая оценка действий лиц, в том числе установление причинно-следственных связей между целенаправленными действиями и наступившими негативными последствиями), что лишает судебную экспертизу статуса объективного экономического исследования.

Ключевые слова: специальные знания; специальные экономические знания; судебная экономическая экспертиза; эксперт-экономист; экономические отношения.

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funders had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

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

Declaration of Competing Interest

The author declares that he has no conflict of interest.

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