

Art Forensics in Investigating and Proving Smuggling of Cultural Property

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The purpose of this article is to determine the specifics of appointment of art forensics during investigation of the smuggling of cultural values, to reveal the significance of the expert's conclusion for the process of proof. For achieving this goal, such general scientific methods as analysis and synthesis, the method of system analysis, logical-structural, generalization, etc. were used. It was found that art historical expertise is a rather rare phenomenon for law enforcement activities, but it is mandatory for appointment during investigation of smuggling of cultural values, because certifying the fact that a specific object has artistic, historical, ethnographic and scientific significance, which is the basis for its further preservation, reproduction and protection, is exclusively within the competence of specialists with the appropriate status. It was established that during the investigation, investigators quite often address the question of whether an object belongs to the category of cultural values to forensic expert, however, the solution of this issue is already the competence of lawyers. The competence of forensic expert consists in determining artistic level, historical significance, cultural value and condition of the work. In view of this, it is emphasized that before making a decision to appoint an art expert, it is advisable to consult with a specialist in the field of art history; this allows to properly formulate expert tasks, clarify the research topic of and ensure quality of subsequent conclusion and the collected evidence. It was found that the assessment of the expert's conclusion during the pre-trial

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investigation involves finding out whether all the tasks assigned to the expert have been solved, for what reasons some of them cannot be solved or what influenced the impossibility of solving them, and whether it is advisable to appoint an additional examination. At the assessment stage, it is important to pay attention to whether the conclusion reflects information about the expert's qualifications and competence in the relevant field of knowledge. During the trial, at the stage of evaluating the expert's conclusion, his interrogation may be conducted. Although the law does not directly determine the subject of the expert's interrogation at the stage of pre-trial investigation, in accordance with the legal nature of forensic examination, interrogation should concern only those circumstances that became known to the expert in connection with the performance of forensic research or those that are important for the proper assessment of the conclusion. It is justified that during investigation of the smuggling of cultural values, it is prudent to appoint an art historical examination, and not to resort to other forms of specific expertise application, because only the conduct of the examination will guarantee the receipt of evidence that meets the criteria of admissibility, relevance and reliability and therefore can be used as the basis for proof.

Keywords: criminal offense; crime; specific expertise; examination; art forensics; evidence evaluation.

Research Problem Formulation

Specific expertise is important for the investigation of criminal offenses related to smuggling. Trial is impossible without their application, since a number of issues that need to be resolved are beyond professional competence of the prosecution. First of all, these questions concern the clarification of nature and essence of the object that the person tried to move outside the customs control or with concealment from such control.

Availability in the actions of a person of signs of smuggling of cultural values, which are understood as objects of material and spiritual culture that have artistic,

“historical, ethnographic and scientific significance and are subject to preservation, reproduction and protection”¹, responsibility for which is provided for in Art. 201 of the Criminal Code of Ukraine², is established on the basis of specific expertise use by specialists and experts.

Unlike ordinary movable property, cultural values have a number of specifics distinguishing them from other objects of material world. Therefore, while determining whether a certain object moving across the customs border of Ukraine belongs to the category of cultural or historical values, it is necessary to take into account the time of its creation (era, century), the method of manufacture (manual

1 Митний кодекс України від 13.03.2012 р. № 4495-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4495-17> (date accessed: 10.05.2025).

2 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 10.05.2025).

or mechanized labor), degree of preservation, integrity, rarity, artistic value and originality of the work. Therefore, leading expert tasks in such a situation include finding out whether the object of research is endowed with the significant significance that is characteristic of cultural value. However, in practice, representatives of pre-trial investigation bodies quite often issue tasks, the solution of which is the competence of lawyers. In addition, it is in these studies that experts are quite often objectively unable to solve the tasks assigned to them. This complicates the procedure of evaluating the expert's conclusion and actualizes the task of finding alternative sources of evidence of those circumstances that constitute a mandatory subject of proof in criminal proceedings. Considering that representatives of scientific community have so far approached these issues indirectly, we consider it necessary to resolve them within the limits of this research paper.

Article Purpose

For determining specifics of appointment of art forensics examination during investigation of smuggling of cultural property, to reveal significance of forensic expert conclusion for the proof procedure.

Research Methods

For achieving this goal, such general scientific methods as analysis and synthesis, dialectical method, system analysis method, logical-structural, generalization, etc. were used. The dialectical method provided a holistic understanding of essence of art forensics as a legal and cul-

tural phenomenon, its place in the system of judicial evidence, the relationship between competence of forensic expert and the powers of lawyers. The system-structural method made possible: 1) distinguish functional elements of art forensics examination (subject, tasks, stages of appointment); 2) determine its role in structure of criminal proceedings (especially at the stage of evaluating evidence); 3) systematize investigator functions, expert, prosecutor and court while appointing and evaluating forensic expert conclusion.

Formal logical methods (analysis, synthesis, induction, deduction) were used to determine and describe components of examination appointment procedure (collecting materials, asking questions, selecting forensic expert, etc.), the synthesis provided a generalization of the results obtained, induction was used to formulate general provisions based on the analysis of isolated examples from practice, deduction, formulate conclusions on admissibility and relevance of evidence.

Comparative legal method was used to compare the legal regulation of various forms of specific expertise application (consultation, participation of a specialist, examination), the delimitation of the competence of forensic expert and investigator, the court in resolving certain issues and assessing the expert's conclusion.

Analysis of Essential Researches and Publications

Theoretical and methodological aspects of art forensics were investigated and continue to be studied by V. Bitayev with co-authors ³, P. Bilenchuk and O. Shul-

3 Бітаєв В. А., Шульгіна В. Д., Шман С. Ю. Методичні засади експертного дослідження культурних цінностей : навч.-метод. посіб. Київ, 2010. 128 с. URL: http://library.nakkkim.edu.ua:8080/libdoc/knugy/knygy2/mystectvoznavci/bitayev_metod_zasady.pdf (date accessed: 10.05.2025).

ha ⁴, I. Hora ⁵, O. Dibikov ⁶, A. Doluda and O. Puklich ⁷, O. Kalashnikova ⁸, N. Karpinska ⁹, M. Kurko et al. ¹⁰, N. Revonok ¹¹, M. Romanov and E. Yefremian ¹², I. Khodchenko ¹³ and many others. An analytical review of the scientific works of Ukrainian theorists and practitioners makes it possible to state that this issue covers a wide range of issues, because the study of various objects (painting, musical creativity, old printed books, objects of numismatics and faleristics, etc.) is

characterized by its subtleties and problematic issues.

O. Shulha took a comprehensive approach to determining the essence and significance of the results of art forensics examination in the system of procedural activities of pre-trial investigation and court authorities in the investigation of criminal offenses related to encroachments on cultural and historical values ¹⁴.

Peculiarities of appointment of art forensics examinations in criminal

- 4 Біленчук П. Д., Шульга О. О. Консолідований порівняльно-аналітичний аналіз мистецтвознавчих досліджень в Україні: правове і науково-методичне забезпечення. *Порівняльно-аналітичне право*. 2016. № 4. С. 180—183. URL: https://pap-journal.in.ua/wp-content/uploads/2020/08/4_2016.pdf (date accessed: 10.05.2025).
- 5 Гора І. В. Проблеми судово-мистецтвознавчої експертизи в судочинстві України. *Часопис Академії адвокатури України*. 2015. Т. 8. № 4 (29). С. 42—49. URL: http://nbuv.gov.ua/UJRN/Chaau_2015_8_4_4 (date accessed: 10.05.2025).
- 6 Дібіков О. О. Судова мистецтвознавча експертиза. *Молодий вчений*. 2024. № 6 (130). С. 25—31. DOI: 10.32839/2304-5809/2024-6-130-5 (date accessed: 10.05.2025).
- 7 Долуда А. О., Пукліч О. С. Класифікація об'єктів судової мистецтвознавчої експертизи. *Теорія та практика судової експертизи і криміналістики*. 2016. Вип. 16. С. 399—405. URL: http://nbuv.gov.ua/UJRN/Tpsek_2016_16_55 (дата звернення 10.05.2025).
- 8 Калашникова О. Л. Основи мистецтвознавчої експертизи та вартісної оцінки культурних цінностей : підручник. Київ, 2006. 479 с. URL: <https://surl.li/dcfqao> (date accessed: 10.05.2025).
- 9 Карпінська Н. Проблемні аспекти судової мистецтвознавчої експертизи. *Історико-правовий часопис*. 2017. № 2 (10). С. 124—129. URL: http://nbuv.gov.ua/UJRN/ipch_2017_2_27 (date accessed: 10.05.2025).
- 10 Курко М. Н., Біленчук П. Д., Шульга О. О. Правове і наукове забезпечення мистецтвознавчих досліджень в Україні: системний аналіз. *Європейські перспективи*. 2014. № 3. С. 123—131. URL: http://nbuv.gov.ua/UJRN/evpe_2014_3_21 (date accessed: 10.05.2025).
- 11 Ревенок Н. М. Сучасні методи мистецтвознавчої та технологічної експертизи виробів з порцеляни та фаянсу. *Вісник Національної академії керівних кадрів культури і мистецтв*. 2015. № 2. С. 154—158. URL: http://nbuv.gov.ua/UJRN/vdakkkm_2015_2_35 (date accessed: 10.05.2025).
- 12 Романов М., Єфреман Е. Теоретичні питання та загальні методичні положення судово-трасологічного дослідження контактної взаємодії об'єктів. *Вісник Академії правових наук України*. 1999. № 2 (17). С. 147—155. URI: <https://dspace.nlu.edu.ua/jspui/handle/123456789/4235> (date accessed: 10.05.2025).
- 13 Ходченко І. Л. Теоретичні аспекти судової мистецтвознавчої експертизи. *Криміналістика і судова експертиза*. 2017. Вип. 62. С. 460—465. URL: http://nbuv.gov.ua/UJRN/krise_2017_62_57 (date accessed: 10.05.2025).
- 14 Шульга О. О. Судово-мистецтвознавча експертиза у кримінальному судочинстві України : дис. ... д-ра філос. у галузі права. Київ, 2020. 273 с. URL: <https://elar.navs.edu.ua/server/api/core/bitstreams/fcbf0619-4a2a-4fae-b698-c923a28bc157/content> (date accessed: 10.05.2025).

proceedings were investigated in their works by representatives of the Kharkiv National University of Internal Affairs ¹⁵, O. Shulha and T. Lelyuk ¹⁶ and some others. Until the issues are resolved, various aspects of appointment of art forensics examination in the context of the current investigative situation and the assessment of findings remain unresolved, so these issues are the basis of our research.

Main Content Presentation

Art forensics is a separate area of forensic expert activity that combines elements of art history and legal science. Its subject matter is the study and evaluation of art objects within criminal proceedings and their trial.

Objects that can be submitted for art historical expert examination include antiques, works of monumental and easel painting, graphics, decorative and applied arts, as well as architectural monuments, sculptural compositions, small forms of plastic, musical instruments, and sheet music. In addition, objects of numismatics, phaleristics, heraldry and vexillology (in particular, coats of arms and flags), as well as printed materials, audio and video

recordings, photographs are subject to re-search ¹⁷.

The main tasks of art historical expertise include, in particular, establishing the authenticity and identity of artworks, determining their artistic, historical and cultural value, as well as participation in resolving legal issues related to the division of property or investigation of the facts of illegal movement or trafficking of cultural objects ¹⁸.

Specialists in the field of art history combine knowledge of history and theory of art with the methods of forensic examination, allowing to formulate balanced, reasoned conclusions necessary for making informed decisions in cases involving art objects. In addition, it is quite reasonable and necessary for art historical examination to formulate questions not only about the identification of an object and its belonging to cultural property, but also about determining the nature, causes and time of deterioration of its condition, calculating the cost of work to repair damage caused by smuggling, or establishing the value of a destroyed object. In addition, the need to clarify circumstances that can indicate non-pecuniary damage to the owner of the cultural property as individual and as legal entity is not excluded ¹⁹.

- 15 Бугайчук К. Л., Корнієнко Д. М., Стреляний В. І. та ін. Особливості призначення і проведення експертизи щодо визначення розміру матеріальних збитків, шкоди немайнового характеру, шкоди довкіллю, заподіяної кримінальним правопорушенням : наук.-метод. рек. Харків, 2015. 63 с. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/bea43b05-e24c-4252-9f87-e6560334535a/content> (date accessed: 10.05.2025).
- 16 Шульга О., Лелюк Т. Організаційні й тактико-психологічні засади проведення судово-мистецтвознавчих експертиз у кримінальному провадженні. *Юридична психологія*. 2023. № 1 (32). С. 68—78. DOI: [10.33270/03233201.68](https://doi.org/10.33270/03233201.68) (date accessed: 10.05.2025).
- 17 Інструкція про призначення та проведення судових експертиз та експертних досліджень ; Науково-методичні рекомендації з питань підготовки та призначення судових експертиз та експертних досліджень : затв. наказ. Мін'юсту 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: 10.05.2025).
- 18 Інструкція ... ; Науково-методичні рекомендації URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 10.05.2025).
- 19 Костін М. І. Контрабанда. Доказування обставини вчинення злочину на досудовому слідстві : монографія. Київ, 2003. С. 75.

In the context of clarifying the specifics of the leading tasks of art expertise, it should be noted that the authenticity of a work of art lies in proving its authenticity and confirming the fact that it was created by a particular author or comes from a certain historical period. This is an extremely important aspect, given that the art market often faces copies and fakes. For determining authenticity, multidisciplinary research is carried out:

- 1) stylistic specifics and technique: assessing whether the work is consistent with the characteristic style of the author to whom the work is attributed;
- 2) materials: paints, canvas, frames and other materials are analyzed, which makes possible to establish approximate time of object creation;
- 3) history of origin (provenance): documents, archival sources, expert opinions confirming the chain of owners of the work are studied ²⁰.

Attribution (or authorship) involves identifying a specific author of an art object. For this purpose, experts: a) examine signatures, monograms; b) study historical materials and archives; c) apply technical methods, such as X-ray, ultraviolet light analysis, etc., which allow them to identify hidden signatures, records, or traces of alterations ²¹.

Another typical task is the assessment of market value, which involves determining the value of a work of art. This is important in litigation, in particular in cases of: a) division of property; b) insurance claims; c) assessment of losses caused by

damage to an object. For example, in the case of the Yampil District Court of Sumy Region, the value of 14 antiquities was established, in particular: a ring with a round flat shield of the III–IV centuries BC, made of an alloy of gold, copper, iron, palladium and silver, weighing 2.53 g; a three-bead temple ring of the XII–XIV centuries, made of an alloy of gold, copper, iron, palladium and silver, weighing 4.11 g; a wire earring belonging to the jewelry of the Chernyakhiv culture, made of an alloy of gold, copper, palladium and silver, weighing 0.84 g; a bucket-shaped scent pendant belonging to the jewelry of the Chernyakhiv culture, made of an alloy of gold, copper, palladium and silver, weighing 1.26 g; a horn-shaped scent pendant belonging to the jewelry of the Chernyakhiv culture, made of an alloy of gold, copper, palladium and silver, weighing 0.70 g. According to the conclusion of the forensic art examination № CE-19/111-21/12621-M3 dated on 26.04.2021, these collectible antique items belong to cultural values, the estimated value is UAH 15,414 ²².

Assessment of the state of preservation of damaged works is to determine the amount of damage caused and the need for restoration. The solution of this task involves conducting: a) visual assessment of the object; b) technical research, that can include infrared imaging, X-rays, microscopic analysis of paint layers and materials used to create the object.

Determination of cultural and historical significance is one of the typical tasks of art historical examination, which is appointed during the investigation of crimes of the type we study. This is relevant, for

20 Дібіков О. О. Зазнач. твір. DOI: 10.32839/2304-5809/2024-6-130-5 (date accessed: 10.05.2025).

21 Там само.

22 Вирок Ратнів. райсуд. Волин. обл. від 11.09.2020 р. Справа № 166/3518/20. Провадж. № 1-кп/166/71/20 / ЄДРСР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/91466914> (date accessed: 13.05.2025).

example, for: a) archaeological artifacts; b) works of ancient art that are important for history, national heritage or international cultural exchange ²³.

Within the class of art historical expertise, there are two main kinds:

- 1) *art forensics examination* of works of art aimed at studying objects to determine their historical, scientific or cultural value. The objects of such examination include paintings, graphics, sculpture, decorative and applied arts, architecture, etc.;
- 2) *forensic psychological and art forensics* that specializes in analyzing audiovisual, printed and digital materials (film, video, printing, multimedia, etc.) in order to determine whether they are pornographic or promote the cult of violence and cruelty.

These areas are of great importance in the context of criminal proceedings for the protection of public morality, national cultural heritage and legal assessment of art objects and media content ²⁴.

While conducting such examinations, art historian usually performs a variety of researches, that include: a) analysis of the materials from which the artwork was made; b) research on the author's signature or stamp; c) research on manner of writing (artistic style); d) detection of signs of interference (damage, restoration or later alterations).

In view of this, two main stages are usually distinguished in a multidisciplinary art forensics examination:

- 1) *technical and technological research* aimed at analyzing the material structure of the object and establi-

shing its authenticity, i.e. determining whether the object is an original work or only an imitation or copy;

- 2) *artistic research* includes: a) formal and stylistic analysis (study of elements of artistic style); b) historical and art historical research (determination of the time and place of creation of the object, its school or authorship, plot, functional purpose) ²⁵.

Diagnostic examinations in the field of art history are conventionally divided into simple and complex: simple ones are aimed at establishing individual properties or states of art objects without the need for a deep comprehensive analysis; complex ones are more detailed in nature and, while maintaining an art history basis, at the same time contain elements of forensic analysis. Such examinations can be used in cases involving the illegal circulation of cultural values, smuggling, forgery of works of art, etc.

It is worth noting that not all objects can be diagnosed or categorized by an expert. For example, in a case considered by the Oktyabsky District Court of Poltava, an art historical examination was ordered, for which three fragments of ancient clothing and fifty-three Scythian arrowheads were sent. According to the conclusion of the forensic art examination, the 53 arrowheads seized from the international mail item constitute an archaeological collection of Scythian arrowheads of the 7th century BC – 4th century AD and belong to cultural property of artistic, historical, ethnographic and sci-

23 Дібіков О. О. Зазнач. твір. DOI: 10.32839/2304-5809/2024-6-130-5 (date accessed: 10.05.2025).

24 Піддубний В. В. Подолання протидії розслідуванню злочинів економічної спрямованості : дис. ... канд. юрид. наук. Харків, 2009. 235 с. URL: <https://uacademic.info/ua/document/0420U100568> (date accessed: 11.05.2025).

25 Там само.

entific significance. It was not possible to establish the belonging of three fragments of household items, similar to fragments of a belt set or horse harness and a button, probably made in the VII-XIX centuries, to cultural property of artistic, historical, ethnographic and scientific significance, because these objects are only fragments of household items and their location (archaeological find) has not been determined ²⁶. This practice actualizes the need to identify alternative ways to search for and collect evidence in similar investigative situations, because, presumably, if all the fragments of the seized objects were available and provided to experts, it would still be possible to find out their origin and perform other tasks.

Art forensics performs not only a cultural and artistic, but also a law enforcement task, focusing on both artistic analysis and certification (proving) the circumstances of a criminal offense.

Appointment of art forensics examination in criminal proceedings is a complex, structured process that includes a number of sequential stages that are implemented by authorized persons: investigator, prosecutor or judge. This procedure involves:

- a) awareness of the need to conduct an art forensics examination;
- b) optimal moment choice for its appointment within the investigation framework;
- c) collecting and preparing relevant materials to be provided to forensic expert;
- d) formulation of expert tasks, i.e. range of questions to be answered by forensic expert;

- e) determination of forensic science institution or concert expert who will be entrusted with the examination;
- f) issuance of a relevant resolution on appointment of forensic examination (if initiated by an investigator or prosecutor) or a court order (in case of court proceedings).

Art forensic examination has the status of a procedural action that is carried out within the framework of proof and is an independent source of evidence. Its peculiarity lies in the fact that art forensics expert, relying on his or her specialized knowledge, experience and skills, independently establishes new facts of evidentiary importance to the case. This distinguishes the examination from other forms of specific expertise application, for example, participation of a specialist during the inspection or seizure of items.

In investigative practice, it is important to consider that conducting forensics art examination by experts who are not employees of State specialized institutions should be complementary in nature, and not replace official expert activities of State institutions.

Procedural decision to order an art forensics examination, if initiated by the prosecution, is drawn up in the form of a resolution of the investigator or prosecutor in accordance with requirements of the Criminal Procedural Code of Ukraine of Ukraine ²⁷. Before making such a decision, it is advisable to consult with a specialist in the field of art history, which allows you to properly formulate expert tasks, clarify the research topic and ensure quality of further procedural actions.

26 Вирок Солом'ян. райсуд. м. Києва від 12.11.2019 р. Справа № 554/5955/19. Провадж. № 1 кп/554/153/21 / ЄДРСР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/85603512> (date accessed: 13.05.2025).

27 Кримінальний процесуальний кодекс 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: 09.05.2025).

It should be noted that the clarification and verification of the professional competence of a forensic expert remains a rather controversial issue in law enforcement. Thus, in the previously mentioned court case (regarding Scythian arrowheads), the defense attorney denied the possibility of recognizing a forensic expert who had previously conducted research as one who meets the requirements of the Law of Ukraine: *On Judicial Examination*. In order to verify or refute the defense attorney's arguments, the court interrogated the expert. During interrogation, it was established that the said forensic expert has a higher art education, educational and qualification level of *Specialist*, qualification of forensic expert majoring in 15.1 *Art forensics*, 3rd qualification class of a forensic expert, and experience of expert work since 2008. The interrogated expert confirmed her conclusion, noting the literature and scientific sources that she used and indicated in the expert's conclusion. Examining 53 items submitted to her for examination, namely arrowheads, she concluded that they are in a satisfactory state of preservation with traces of natural patina. While comparing them with samples of Scythian arrowheads from the archaeological dictionary of W. Bray, it was established that by their external features and shape they belong to objects from the times of the Scythian culture (VII century BCE – IV century CE). The studied arrowheads are authentic, belong to the so-called "small pond"; as evidenced by the natural patina and state of preservation²⁸.

Based on evaluation results of this evidence, the court recognized the expert's conclusion as proper and admissible ev-

idence, and also rejected the defense's arguments that the antiquities submitted for examination could not be examined because they were not found during archaeological excavations and are not a collection.

Regarding evaluation of forensic expert conclusion, scientists emphasize that it occurs in two consecutive stages. The first involves an analysis of the procedural component of appointment and performance of the examination, and the second is an assessment of its scientific and factual validity. Within the framework of this assessment, it should be clarified: first, whether the opinion contains information that confirms the expert's qualification in the relevant field of knowledge; second, whether the profile of this knowledge corresponds to the questions posed to forensic expert; third, whether the solution of such questions really requires specific expertise; fourth, whether the methods used by forensic expert to perform the tasks assigned correspond to his specialization and level of competence. At the same time, it is important to find out whether the expert has exceeded the limits of his professional competence. One of the ways to verify the validity of forensic expert conclusion in pre-trial proceedings is to interrogate the expert. Although the law does not directly determine the subject of the expert's interrogation at the stage of pre-trial investigation, in accordance with the legal nature of the examination, the interrogation should concern only those circumstances that became known to the expert in connection with the performance of the expert study, or those that are important for the proper conclusion assessment²⁹.

28 Вирок Октябр. райсуду м. Полтави ... Справа № 554/5955/19 ... URL: <https://reyestr.court.gov.ua/Review/96157122> (date accessed: 10.05.2025).

29 Посашков О. О. Знач. твір. С. 74–75. DOI: <https://uacademic.info/ua/document/0420U101202> (date accessed: 02.05.2025).

Circumstances that may be clarified during the interrogation include, in particular, information about the expert's education, his professional experience, practical experience in conducting research of the relevant profile; methods used during the examination; explanation of the essence of the experiments conducted and their significance for forming conclusions. Thus, in the aforementioned case, the court referred to the fact that during the examination, the expert proceeded from the presence of traces of patina on the objects under examination and data obtained by comparison with samples of Scythian arrowheads from the archaeological dictionary substantiated in the descriptive part of the examination with reference to relevant scientific sources. The court had no doubts about the competence of the expert, who was warned of criminal liability for a knowingly false expert conclusion and refusal of the duties assigned to ³⁰.

At the same time, if during interrogation the investigator or prosecutor tries to obtain from the expert answers to questions that are not related to the conducted research, but belong to the sphere of his knowledge, such actions go beyond the permissible subject of interrogation. In this case, we are no longer talking about interrogation as a procedural action, but about an advisory form of specific expertise application. Providing consultations by forensic expert, although provided for by the possibilities of criminal proceedings, cannot be carried out in the form of interrogation, since the latter has a clearly defined procedural nature ³¹.

Conclusions

Art forensics is a rather rare phenomenon for law enforcement activities, but it is mandatory when investigating the smuggling of cultural values, because certifying the fact that a specific object has artistic, historical, ethnographic and scientific significance that is the basis for its preservation, reproduction and protection, is exclusively within the competence of specialists with the appropriate status.

Question of whether an object belongs to the category of cultural values is quite often put to the expert by investigators, but its solution is already the competence of lawyers. The competence of the expert is to determine the artistic level, historical significance, cultural value and condition of the work. Therefore, before making a decision to order an art expert examination, it is advisable to consult with a specialist in the field of art history in advance, which allows you to properly formulate the expert tasks, clarify research topic and ensure the quality of the collected evidence and the subsequent conclusion.

Evaluation of forensic expert's conclusion during a pre-trial investigation involves finding out whether all the tasks set for the expert have been solved, for what reasons some of them cannot be solved or what influenced the possibility of their solution, and whether it is advisable to order an additional examination. It is also important at the evaluation stage to pay attention to whether the opinion reflects information about the expert's qualifications and competence in the relevant field

30 Вирок Октябр. райсуду м. Полтави Справа № 554/5955/19 URL: <https://reyestr.court.gov.ua/Review/96157122> (date accessed: 10.05.2025).

31 Колесник Ю. В. Слідчі та негласні слідчі (розшукові) дії як криміналістичні засоби діяльності слідчого в досудовому розслідуванні : дис. ... канд. юрид. наук. Київ, 2016. 198 с. ; Шульга О., Лелюк Т. Зазнач. твір. С. 68—78. DOI: 10.33270/03233201.68 (date accessed: 10.05.2025).

of knowledge. During a trial, at the stage of evaluating an expert's opinion, his interrogation may be conducted. Although the law does not directly determine the subject of interrogation of an expert at the stage of a pre-trial investigation, in accordance with the legal nature of the examination, the interrogation should concern only those circumstances that became known to the expert in connection with his performance of the expert study, or those that are important for a proper conclusion evaluation.

It should be noted that when investigating the smuggling of cultural property, it is important to order an art history examination, and not to resort to other forms of application of specialized knowledge, because only conducting an examination will guarantee obtaining evidence that meets the criteria of admissibility, appropriateness, and reliability, and therefore can serve as a basis for proof.

**Мистецтвознавча експертиза
в розслідуванні та доказуванні
контрабанди культурних цінностей**
Юрій Ковальов

Мета статті — визначити особливості призначення мистецтвознавчої експертизи під час розслідування контрабанди культурних цінностей, розкрити значення висновку експерта для процесу доказування. Для реалізації цієї мети застосовано такі загальнонаукові методи, як аналіз і синтез, метод системного аналізу, логіко-структурний, узагальнення та ін. З'ясовано, що мистецтвознавча експертиза — доволі рідкісне явище для правозастосовної діяльності, однак є обов'язковою для призначення під час розслідування контрабанди культурних цінностей, оскільки засвідчення художнього, історичного, етнографічного та наукового значення конкретного об'єкта є під-

ставою для його подальшого збереження, відтворення й охорони та належить винятково до компетенції спеціалістів із відповідним статусом. Зазначено, що під час розслідування запитання про те, чи належить об'єкт до категорії культурних цінностей, слідчі доволі часто адресують експертів, однак відповідь саме на це питання вже є компетенцією правників. Компетенція експерта полягає у визначенні художнього рівня, історичного значення, культурної цінності та стану твору. З огляду на це наголошено, що перед прийняттям рішення про призначення мистецтвознавчої експертизи доцільним є попереднє консультування зі спеціалістом у галузі мистецтвознавства; це дає змогу належно сформулювати експертні завдання, уточнити предмет дослідження й забезпечити якість подальшого висновку та зібраних доказів. З'ясовано, що оцінювання висновку експерта під час досудового розслідування передбачає з'ясування того, чи виконано всі завдання, покладені на експерта, через що окремі з них не виконано або що вплинуло на неможливість їх виконати і чи доцільно призначати додаткову експертизу. На етапі оцінювання також важливо звернути увагу на те, чи відображено у висновку відомості про кваліфікацію та компетенцію експерта у відповідній царині знань. Під час судового розгляду (на етапі оцінювання висновку експерта) його можуть допитати. Хоча закон прямо не визначає предмета допиту експерта на стадії досудового розслідування, відповідно до правової природи експертизи допит має стосуватися лише тих обставин, які стали відомими експертів у зв'язку з виконанням експертного дослідження, або тих, які мають значення для належного оцінювання висновку. Обґрунтовано, що під час розслідування контрабанди культурних цінностей важливо призначати мистецтвознавчу експертизу, а не звер-

татися до інших форм застосування спеціальних знань, оскільки лише проведення експертизи гарантуватиме отримання доказу, який відповідатиме ознакам допустимості, належності й достовірності, а тому може бути покладений в основу доказування.

Ключові слова: кримінальне правопорушення; злочин; спеціальні знання; експертиза; мистецтвознавча експертиза; оцінювання доказу.

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