DOI: https://doi.org/10.54477/LH.25192353.2024.3.pp.34-45

EXPERT CONCLUSION AS A KEY SOURCE OF EVIDENCE IN CASES OF CORRUPTION OFFENSES BY OFFICIALS

Vasyl Hudz
Department of Criminal Procedure
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
E-mail: hudzvm@gmail.com
https://orcid.org/0009-0007-4212-0720

Abstract

The article examines the issue of using an expert's opinion as a procedural source of evidence of receipt of funds in the form of an unlawful benefit by an official. The relevance of the topic is evidenced by the need to update the current legislation in the field of forensic examinations for the purpose of high-quality pre-trial investigation and trial, in particular, through the prism of the Ukrainian society's requirement to cleanse the state apparatus from corruption, effectively combat criminal offenses, and improve the current crime situation. Another factor is the rapid development of all spheres of public life. This is manifested on the one hand in the improvement and complication of the processes of proving the parties' positions in court and, on the other hand, in the massive introduction of computer information technologies into everyday life, the automation of many types of work processes, the spread of artificial intelligence technology, and its obvious potential. In the case of forensic examination and obtaining an expert opinion based on its results, the development of social relations and technology has a negative impact if ignored, but at the same time offers great potential for improving the process of proof. The purpose of the article is to study the specific aspects of using an expert's opinion when proving the receipt of funds in the form of an unlawful benefit by an official. As a result of achieving the objective, a method for addressing the identified negative factors has been proposed, which involves amending existing legislation or introducing new regulations in areas requiring legal oversight. In general, the study contributes to the study of the use of an expert opinion in proving the receipt of funds in the form of an unlawful benefit by an official. Outlining the legal characteristics of an expert opinion and examining the practice of its use in proving a corruption crime.

Keywords: expert conclusion; forensic examination; criminal proceedings; receipt of monetary funds as an unlawful benefit by an official.

1. Introduction

All evidence holds significance in proving a criminal offense, serving as primary in some cases and supplementary in others. Participants in criminal proceedings must maintain a comprehensive understanding of evidence collection sources. The expert conclusion occupies a pivotal role in substantiating a significant portion of criminal offenses, necessitating its creation through a properly regulated legislative procedure. This source of evidence plays a particularly critical role in proving the receipt of monetary funds as an unlawful benefit by an official, a criminal offense punishable under Art. 368 of the Criminal Code of Ukraine.

According to the lawmaker, an expert opinion is a thorough explanation of the expert's study, conclusions based on those findings, and rational responses to the expert's questions (Criminal Procedure Code of Ukraine, 2024, Art. 101).

In order for the expert conclusion to be recognized as admissible in proving the receipt of monetary funds as an unlawful benefit by an official, it must contain the following information: who conducted the examination, at what location, when, and on what grounds; a list of individuals present during the examination; a list of questions to which the expert was to provide answers; a detailed description of all materials obtained by the expert, as well as those used by them; a thorough description of the research conducted, including the methods applied, results, and expert evaluations; and substantiated answers to each question (Criminal Procedure Code of Ukraine, 2024, Art. 102).

The idea and process for getting an expert opinion in criminal proceedings have also been heavily regulated by the lawmaker. The term makes clear that it is prepared following the completion of a forensic expert examination.

The Law of Ukraine "On Forensic Expertise" is the normative document that establishes the process for carrying out forensic investigations and formulating expert opinions. In order to reach the necessary conclusion on matters that are currently or will be the subject of judicial consideration in the future, it defines forensic examination as an investigation based on pertinent specialized knowledge in the fields of science, art, technology, and crafts regarding specific phenomena, objects, and processes (On Forensic Expertise, 2024, Art. 1).

Other legislative acts regulating the issues of forensic examination and expert opinions are the Instruction on the appointment and conduct of forensic examinations and expert studies and the scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies (hereinafter - the instruction and scientific and methodological recommendations). The instruction classifies the main types of forensic examinations, which include: "forensic, commodity, psychological, engineering, art, economic, military, intellectual property, forensic veterinary, historical, archaeological, gemmological." Another classification provides for the division of forensic examinations into primary, commission, repeated, comprehensive, and additional" (On Approval of the Instruction on Appointment and Conduct of Forensic Examinations, 2024, clause 1.2, sub-cl. 1.2.13.). In the course of proving the criminal offense under investigation, the following subtypes of forensic examinations are mostly carried out: portrait examination; linguistic examination of speech; examination of video and sound recordings; handwriting examination; technical examination of documents.

The aim of this article is to examine the specific aspects of utilizing an expert opinion in proving the receipt of funds as an unlawful benefit by an official. To achieve this objective, it is essential to address the research task, which involves studying the legal characteristics of an expert opinion, analysing the practice of its use as evidence in proving the commission or non-commission of the corruption offense under consideration, and its influence on relevant judicial decisions. Based on the outcomes of this analysis, the author identifies several aspects that require attention during forensic examinations and the formulation of expert opinions based on their results. These factors significantly impact both the standards of criminal justice administration and the proof of an official's receipt of funds as an illegal advantage.

2. Materials and Methods

The study of the expert's opinion as a procedural source of evidence for the receipt of funds in the form of an unlawful benefit by an official was conducted in several stages. In the preparatory stage, the research topic was chosen, the objectives and goals of the study were formulated, and the methods of scientific inquiry were selected. The informational stage involved searching for and reviewing literature, examining the opinions of scholars, and analysing court practices. Additionally, a synthesis of personal practical experience was undertaken. The purpose of the narrative stage was to write the paper and formulate conclusions.

The main material was presented in a structured sequence. Initially, the legal

DOI: https://doi.org/10.54477/LH.25192353.2024.3.pp.34-45

characterization of the expert's opinion as a procedural source of evidence in the corruption offense under examination was discussed. The author then analysed the primary types of forensic examinations appointed to obtain an expert opinion during the process of proving the receipt of funds as an unlawful benefit by an official. Based on the findings of the study, the author proposes improvements to the use of expert opinions as evidence in criminal cases.

Researching any issue is impossible without the application of scientific cognition methods. The system of scientific cognition methods is intricate and multifaceted, providing researchers with a broad array of methodological tools to address specific issues. Given its diversity, each scientific work utilizes a unique set of methods. The selection of these methods is influenced by various factors and directly affects the quality and outcome of the research. In the study of the expert's opinion as a procedural source of evidence for the receipt of funds in the form of an unlawful benefit by an official, the following methods were employed:

- the dialectical method enabled the analysis of the use of expert opinion in the examined criminal proceedings through its development. This procedure was made easier by the dialectical method's categories, which helped to identify the traits and attributes of objective reality. The quality category gave researchers a way to describe the full topic of the study. The content category aided in the investigation of the shape that emerged in the expert's view as the ultimate result of the pertinent formulation process. The category of negation was utilized to support the need for legislative framework enhancements, particularly the development of new laws that conform to modern standards while maintaining those that are still pertinent;
- the comparative legal method was employed to examine the regulatory framework pertaining to the issue under investigation. The author presents the key principles from the legislation and analyzes the process of formulating an expert opinion through the lens of its properties and underlying patterns;
- the methods of analysis and synthesis were utilized in the study. The analysis allowed for the examination of contemporary practical approaches to using an expert opinion in proving the receipt of funds as an unlawful benefit by an official. Specifically, the author reviewed court practices regarding the use of expert opinions and their evaluation by the judiciary in relevant cases. The synthesis facilitated the identification of strategies to enhance the effectiveness of using expert opinions as evidence;
- the systemic and structural method contributed to the consideration of the concept of expert opinion as an independent procedural source of evidence. There are structured stages from making a decision on the need to obtain an expert opinion to its use along with other sources of evidence;
- the forecasting method was employed to model the potential impact of the proposed changes on the effectiveness of using an expert opinion in proving the receipt of funds as an unlawful benefit by an official.

The application of these methods enabled a comprehensive analysis of the topic under study and led to the formulation of conclusions aimed at enhancing the efficiency and accessibility of expert opinions for all parties involved, ultimately contributing to the achievement of the objectives of criminal proceedings.

3. Results and Discussion

The examination of the legal characteristics of an expert opinion in proving the receipt of funds as an unlawful benefit by an official holds significant practical value in understanding its role as a procedural source of evidence. Analysing the practice of its use will help assess its current state and importance in the process of proving the criminal offense under investigation. A systematic approach to the topic will facilitate the identification of legislative gaps and practical issues. This, in turn, will enable the proposal of solutions to address these gaps and mitigate their negative impact on the quality of criminal proceedings

3.1. Legal characteristics of an expert opinion as a legal source of evidence

An expert opinion, alongside testimony, material evidence, and documents, constitutes a procedural source of evidence (Criminal Procedure Code of Ukraine, 2024, Art.84). The classification of the expert opinion as a distinct source of evidence underscores, on one hand, its differentiation from other forms of evidence, and on the other, its critical significance in the process of establishing the facts of a criminal offense.

An expert opinion can only be produced by a qualified expert. Ukraine has established a Register of Certified Forensic Experts. According to the Law of Ukraine «On Forensic Expertise,» a person or entity requesting a forensic examination may only entrust the examination to those forensic experts whose details are included in the State Register of Certified Forensic Experts. Furthermore, the law permits the assignment of the examination to other specialists in relevant fields of knowledge, but only where explicitly provided by law (The Law of Ukraine No. 4038-XII on Forensic Examination, 2024, Art. 9).

Furthermore, if more than one expert is involved in the examination, they have the right to draw up one joint conclusion or separate conclusions (Criminal Procedure Code of Ukraine, 2024, Art.101). However, as practice demonstrates, even complex forensic examinations performed by experts in different fields of knowledge can be executed in one document. This approach is the most common in practice.

An expert examination can be initiated by an investigator, prosecutor, or the accused or their legal representative. The expert provides their conclusions based on an objective examination that is free from bias (Sugianto, Amiruddin & Wagian, 2024, p. 203).

Upon completion of the forensic examination, the expert's opinion is submitted in writing to the party that ordered the examination (Criminal Procedure Code of Ukraine, 2024, Art. 101). If the expert opinion is to be used as evidence in court, the party that received it must ensure that the other party is familiarized with it, following the procedure established by criminal law.

The Criminal procedure code of Ukraine, the instructions and the scientific and methodological recommendations provide for mandatory details of the expert's opinion in addition to the list of data required to be indicated in the expert's opinion. It must include the title of the document; the date of its preparation and the relevant registration number; the category of expertise; and the type of expertise. Furthermore, it should be structured in the following parts: Introduction; Research; Conclusion (On Approval of the Instruction on Appointment and Conduct of Forensic Examinations , 2024, cl. 4.12).

The expert's opinion, like other types of evidence, does not have a predetermined force. Moreover, it is not binding on the person conducting the proceedings. However, disagreement with it must be motivated in the relevant document (Criminal Procedure Code of Ukraine, 2024, Art. 101). An expert opinion in proving criminal proceedings can be used at all levels of investigation: during the pre-trial investigation, as well as during the trial (Ismawati, 2023, p. 33).

The examination of an expert's opinion is frequently one of the most contentious stages in criminal proceedings, particularly in cases involving the unlawful receipt of money or benefits by public officials. Several factors contribute to this. First, an expert opinion often serves as a key piece of evidence upon which the positions of either the prosecution or defense are primarily based. Second, conducting an expert examination and formulating an expert opinion requires specialized knowledge, which the court typically lacks. As a result, judges generally rely on the conclusions of the expert, whose findings they are unable to independently verify.

Given these circumstances, parties in criminal proceedings often exercise their

DOI: https://doi.org/10.54477/LH.25192353.2024.3.pp.34-45

right to request the court to summon an expert for further questioning, with the aim of obtaining clarification or additional information regarding the expert's opinion. In this context, it is essential that a forensic expert, when preparing an expert opinion, strives to present the results of their research in a manner that is comprehensible to individuals without specialized knowledge (Tymchyshyn, 2021, p. 133).

According to the legislation, forensic examinations may be initiated on the following grounds: a court decision, a decision by a pre-trial investigation body, or an agreement with the expert (Law of Ukraine No. 4038-XII on Forensic Examination, 2024, Art. 7-1). It is during the forensic examination process that the expert produces the expert opinion document.

To facilitate the conduct of a forensic examination, the expert must be granted access to materials that are necessary to address the relevant questions and prepare an expert opinion. These materials may be provided to the expert either concurrently with the decision to appoint the forensic examination or at a later stage. If required, experts have the right to submit requests for additional materials or to review case files pertinent to the forensic examination (Law of Ukraine No. 4038-XII on Forensic Examination, 2024, Art. 13).

In certain instances, conducting an expert examination may necessitate the expert's physical presence at a specific location. This is typically arranged by involving the expert in a particular investigative action. The expert has the right to attend court or investigative proceedings and may also submit motions related to the scope of the examination. However, this right can only be exercised with the permission of the person or body that appointed the examination (Law of Ukraine No. 4038-XII on Forensic Examination, 2024, Art. 13).

Moreover, there is a specific procedure for conducting a forensic examination at the scene of an event or at the location of the object of study. In such cases, the party commissioning the examination must ensure that the expert is provided with appropriate working conditions and unimpeded access to the object of study (Law of Ukraine No. 4038-XII on Forensic Examination, 2024, Art.6). In practice, most forensic examinations related to proving the unlawful receipt of funds by an official do not necessitate the expert's physical presence at the scene, as all relevant materials can typically be reviewed within the facilities of expert institutions. However, the process of proving can require various investigative approaches, and thus, situations may arise where an on-site examination becomes necessary.

Upon receiving the necessary documentation from the client requesting the examination, along with relevant materials and arrangements for access to the site of the event or the location of the object under investigation, the expert may proceed with conducting the expert study. Based on the findings of the study, the expert prepares a formal procedural document – the expert's opinion. This document should rely exclusively on information directly observed or obtained during the examination of the materials provided for the study (Criminal Procedure Code of Ukraine, 2024, Art.101). Upon completing the examination, the expert submits the opinion, along with all materials received for the study, to the client.

In criminal proceedings involving the receipt of unlawful financial benefits by an official, it is advisable to distinguish and outline the conditional stages of creating and utilizing an expert opinion:

- the first stage involves making a determination regarding the necessity of obtaining an expert opinion;
- the second stage is the appointment of an appropriate forensic examination (which may coincide with the first stage);
- the third stage is the expert's receipt of relevant materials, and, if necessary, physical access to the object of study;
- the fourth stage is the expert's expert study;

• the fifth stage is the preparation of an expert opinion based on the results of the forensic examination and its submission to the customer;

• the sixth stage is the customer's assessment of the expert's opinion and decision to agree or disagree with it;

• the seventh stage is the use of an expert opinion in proving criminal proceedings.

Obtaining an expert opinion is often a longer and more complicated process than other evidence. Sometimes an expert examination is appointed at the stage of pre-trial investigation, and the expert opinion is obtained at the stage of trial. This may occur when the expert's opinion is intended to establish circumstances that are not decisive for the submission of an indictment to the court. An instance is the valuation of expensive items that may be confiscated by the court. This refers to the confiscation of property as a form of punishment. If in the above example the subject of proof waited for an expert opinion at the pre-trial investigation stage, this could harm the objectives of criminal proceedings, such as prompt pre-trial investigation and trial.

A mandatory condition for conducting a forensic examination to prove the receipt of funds in the form of an unlawful benefit by an official is the existence of a relevant criminal proceeding under Art. 368 of the Criminal Code of Ukraine. There are also cases when an expert examination is ordered or an expert opinion is prepared in criminal proceedings under another article, although the criminal offence is subsequently reclassified.

It is important to emphasize that the primary purpose of any expert study is to obtain accurate and reliable data, which will subsequently be documented in the expert's opinion. To achieve this objective, it is essential to adhere to the established procedural requirements. Only by following these procedures can the expert's opinion be considered credible and admissible for evaluation by the relevant decision-maker.

3.2. Analysis of the practice of using an expert's opinion in proving the receipt of funds in the form of an unlawful benefit by an official

The purpose of the forensic examination of corruption-related crimes is to assist the anti-corruption authorities of Ukraine in answering the following questions: 'Who?', "What?", "Where?", "Why?", "When?", "How?" It is the expert's opinion that contributes to a comprehensive, complete and objective investigation of the circumstances of cases and the adoption of lawful and reasonable court decisions (Geller & Martynenko, 2023, p. 60).

In proving the receipt of funds as an unlawful benefit by an official, the subject of proof has discretion in selecting the type and sequence of investigative actions to be conducted. Moreover, each criminal proceeding is inherently unique and requires an individualized approach to documentation. Consequently, there are no established restrictions or specific guidelines regarding the appointment of a particular type of forensic examination, the results of which form the basis for the expert's opinion. However, as judicial practice demonstrates, expert opinions in such cases are often obtained through the following types of forensic examinations: video and audio recording analysis, linguistic speech analysis, portrait analysis, handwriting analysis, and technical document analysis.

An expert opinion based on the results of a forensic examination of video and audio recordings holds significant evidentiary value. As practice demonstrates, it is uncommon to document the receipt of funds as an unlawful benefit by an official without conducting covert investigative (detective) actions, such as audio or video surveillance of the individual. This involves interference with a person's private communications, carried out without their knowledge, and only in cases where sufficient grounds exist to believe that the individual's activities or related information may provide critical evidence for the pre-trial investigation. Such investigative actions are conducted exclusively under the authorization of an investigating judge (Criminal Procedure Code of Ukraine, 2024,

DOI: https://doi.org/10.54477/LH.25192353.2024.3.pp.34-45

Art. 260) and involve audio or audio-visual recording facilitated by specialized technical equipment.

When initiating a forensic examination of video or audio recordings, the parties to criminal proceedings seek to obtain an expert opinion with answers to the questions posed. When proving the receipt of money in the form of an unlawful benefit by an official, such questions are often the following: whether the relevant audio or audio and video files contain signs of editing or other artefacts; whether the content of the recorded conversation coincides with the text set out in the relevant protocol; whether the words and statements set out in the protocol and recorded in the relevant file were said by a particular person.

The above is confirmed by the verdict of the High Anti-Corruption Court delivered on 30 May 2023. The court found two people guilty of committing crimes under Part 4 of Art. 368, Part 3 of Art. 369-2 of the Criminal Code of Ukraine. The forensic expert was asked the above questions and provided answers to them in the relevant conclusion (Judgment, High Anti-Corruption Court, 2023, No. 127/13972/17).

An expert opinion derived from a linguistic examination of speech is a critical element in proving the receipt of money as an unlawful benefit by an official. In such cases, a specific subtype of linguistic analysis is conducted—the semantic and textual examination of oral speech. An expert in the field of semantic and textual analysis is tasked with determining, within the scope of their specialized knowledge, the presence or absence of statements that contain directives or calls for specific actions. This examination provides essential insight into the content and intent of the speech, contributing to the overall evidentiary process.

The High Anti-Corruption Court's decision from August 10, 2022, provides an example of an expert's opinion during a subspecies of linguistic speech examination, which is a semantic and textual study of oral speech. According to Part 3 of Art. 368 of the Ukrainian Criminal Code, the individual was found guilty of a crime. In the expert opinion, the expert said: «Considering the question's context, the statements made by the individual in the dialogue's text reveal statements that can be interpreted as a person's offer» (where «offer» refers to guidance, instructions on how to act, what to do, etc.) to provide funds in the amount of at least twenty-five per cent (in context, of the amount of the claim) for a quick positive result in his claim (Judgment, High Anti-Corruption Court, 2022, No. 550/101/18).

A professional assessment based on the findings of a portrait analysis is required. Expert opinion is sought to identify the individual involved in the provision or receipt of an unlawful benefit, with a focus on demonstrating the acceptance of monetary funds by an official as an illicit advantage. Conducting a portrait examination is both expedient and essential in criminal proceedings where the applicant's identity remains unknown. In such cases, the expert's analysis must address the following question: whether the individual depicted in the relevant video recording corresponds to the person shown in the comparative samples.

A comparable expert opinion, derived from the results of a portrait examination, contributed to the conviction of an individual for an offense under Part 3 of Art. 368 of the Criminal Code of Ukraine. The High Anti-Corruption Court issued the verdict on August 10, 2022. In this case, the expert concluded that the investigative materials and comparative samples provided depicted the same individual (Judgment, High Anti-Corruption Court, 2022, No. 550/101/18).

Similarly, expert opinions based on handwriting examination results play a crucial role in identifying the author of handwritten texts or signatures through comparative analysis. To ensure the accuracy of such analyses, it is essential to provide the expert with the original manuscripts.

In cases where an official receives money as an undue advantage, the parties involved may convey certain information to applicants through handwritten notes.

Occasionally, the receipt of an undue advantage is framed as the repayment or issuance of a loan, accompanied by the drafting of corresponding documents. These actions are typically initiated by the perpetrators of the crime to obscure the illegality of their activities.

On February 15, 2023, the High Anti-Corruption Court convicted two individuals of committing a crime under Part 4 of Art. 368 of the Criminal Code of Ukraine. The expert's conclusion, based on handwriting examination results, verified the signature of one of the offenders on an A4 document, positioned next to the word "debtor." This signature was employed to conceal the receipt of funds purportedly issued as a loan for the construction of cottages and penthouses (Judgment, High Anti-Corruption Court, 2023, No. 362/4895/16-к).

An expert opinion derived from the results of a technical examination of documents is also significant in such cases. When substantiating the receipt of funds as an unlawful benefit by an official, a technical examination of documents particularly the examination of printing forms is frequently conducted to confirm or refute the authenticity of banknotes transferred as the illicit benefit. This analysis is critical for determining the legal qualification of the offense, as the severity of the crime often depends on the verified value of the unlawful benefit received. Furthermore, it plays a vital role in assessing the extent of an individual's involvement in the criminal activity.

The decision of the High Anti-Corruption Court, issued on 27 March 2023, contains information on the expert opinion based on the results of the technical examination of documents. According to it, the $100 banknotes submitted for examination with the relevant series and numbers, based on the method of printing their details and the security features they contain, are the relevant $100 banknotes issued by the issuer of the United States of America.

It is noteworthy that after providing information about the expert opinion, the court stated in the judgement that the person directly received the money for himself for performing certain actions. Subsequently, the money requested and received by the person found guilty was called an unlawful benefit (Judgment, High Anti-Corruption Court, 2023, No. 729/1248/18).

3.3. Strategies for enhancing the utilization of expert opinions in proving the criminal offense under investigation

Ukraine's reforms in many areas of society, the establishment of new anti-corruption bodies, and its commitment to democratisation and human rights have significantly intensified the activities of the law enforcement system. This has resulted in an increase in the number of exposures of public officials attempting to obtain undue advantage. Consequently, there has been a significant increase in attention to the quality and completeness of pre-trial investigations and court proceedings, which is impossible without establishing the truth in cases where circumstances require it.

The quintessence, the result of any expert research within the framework of an expert examination is an expert opinion. The use of expert conclusions is of particular importance during the pre-trial investigation and trial of criminal proceedings. Indeed, the procedures for appointing, conducting research and drawing up a forensic expert's opinion are worthless if, for various reasons, the expert's opinion cannot be used in the process of proof - if it is rejected or disregarded by an authorised person or body (Mieshkov, 2021, p. 155). It is even worse when the expert's opinion was considered, however, for whatever reason, it was incorrect. This can lead to significant further negative consequences. Such consequences are especially significant when proving the receipt of money in the form of an unlawful benefit by an official, given the high public demand for eradicating corruption in Ukraine.

The importance of resolving problematic issues is also underlined by the fact that in some cases, the court's decision in cases of bringing or not bringing an official to criminal liability for the corruption offence under investigation is largely based on expert opinions. Otherwise, without an expert examination and an opinion, the objectives of criminal proceedings would not be achieved.

Both problems are: the impossibility of using an expert opinion and its incorrectness in proving the receipt of funds in the form of an unlawful benefit by an official have certain reasons that are worth investigating.

Today, there is a need to update and improve the regulatory legislation governing forensic examinations. The very fact of the adoption of the Law of Ukraine 'On Forensic Expertise' had a significant positive impact on the development of the forensic science institution, as it became the first law in the history of independent Ukraine to combine the basic principles of expert activity (Loza, 2023, p. 640). However, the Law, as well as the Instruction and Scientific and Methodological Recommendations, came into force more than a quarter of a century ago. Given the rapid development of social relations and technologies (which is especially relevant in many expert studies), this has a significant negative impact and requires an early response.

Even the Criminal Procedure Code of Ukraine, which was adopted relatively recently, has provisions that are controversial due to their impracticality and uncertainty of application. An example is the establishment of the right of an expert to indicate in his or her opinion information that was not asked, but is relevant to the pre-trial investigation (Criminal Procedure Code of Ukraine, 2024, p. 102). It remains unclear how exactly an expert can identify the data that contains information important for the pre-trial investigation.

More specific problems arise from the practice of pre-trial investigation and court proceedings in criminal proceedings related to the receipt of money in the form of an unlawful benefit by an official. Some of them can also be solved based on the experience of foreign countries and the ideas of scholars who have paid attention to the issue under study.

At present, it is necessary to update the regulatory framework of the institution of forensic examination and obtaining an expert opinion. In particular, it is necessary to: clearly stipulate the timeframe for conducting forensic examinations and providing expert opinions; outline the scope of expert research by private experts and expert institutions; regulate the institution of reviewing expert opinions to achieve efficiency; define important terms such as forensic examination, review of expert opinions, special knowledge, expert initiative, and others; and exclude from the legislation provisions that do not apply in practice.

This could be achieved by bringing the relevant law regulating forensic examination and expert reports into line with the current situation. The way to solve these problems is often discussed by Ukrainian scholars. And their opinions are divided on this issue: some propose to improve the existing legal acts, while others argue for the need to adopt new ones.

The director of the expert institution, his deputy, or the appropriate head of the structural unit decides how long the forensic examination should last in compliance with the Instruction and Scientific and Methodological Recommendations. It shouldn't be more than ninety calendar days. (10.On Approval of the Instruction on Appointment and Conduct of Forensic Examinations, 2024, cl. 1.12.).

A single mention of the examination period in the Law of Ukraine 'On Forensic Expertise' relates to one of the disciplinary offences of a forensic expert, namely, violation of the legal provisions regarding the time limits for conducting a forensic examination without good reason (The law of Ukraine No. 4038-XII on forensic examination, 2024, Art. 14). As is well known, the term of the examination starts on the next business day after the expert institution receives the materials and ends on the same day as the expert's opinion is drawn up (10. On Approval of the Instruction on Appointment and Conduct of Forensic Examinations, 2024, cl. 1.13).

Experience demonstrates that a sizable portion of exams are conducted for longer than the allotted period. As a result, the subject of proof is often forced to wait a long time for the expert's opinion. This is facilitated by several factors, the most problematic of which are: a significant workload on expert institutions due to staff shortages; outdated material base that is not updated due to lack of funding; lack of regulatory and up-to-date methodological support.

Precisely due to the above, at this stage, the ninety-day period established by the Instruction and the Scientific and Methodological Recommendations should not be reduced. However, it would be advisable to prescribe it in the Law of Ukraine 'On Forensic Expertise', along with clear cases and limits for possible extension.

Part of the problem of underprovision of qualified personnel in forensic examination can be solved by regulating the possibility of conducting expert studies by private experts and private expert institutions. The example of the United Kingdom is interesting in this regard, where it is envisaged to engage specialists from private forensic laboratories to perform specific types of examinations (e.g., forensic examination of documents) (Polianskyi & Juodkaitė-Granskienė, 2022, p. 42). This will contribute to qualitative changes in the use of expert opinions through the prism of competition among private and public expert institutions, the entry of new experts into the profession, and in the long run, a reduction in the burden on state expert institutions and a reduction in the time required for forensic examinations.

Another important issue is the need to properly regulate the process of reviewing forensic expert opinions. Currently, the review process is regulated by the Order of the Ministry of Justice 'On Approval of the Procedure for Reviewing Forensic Expert Opinions'. However, the procedures set out in the order regulate this issue to a very limited extent. For instance, the purpose of the review is to improve the professional skills of experts, as well as to improve the validity and quality of their conclusions (On Approval of the Procedure for Reviewing the Conclusions of Forensic Experts, 2023, clause 2, p. 1).

As demonstrated above, the present review focuses primarily on enhancing the skills of forensic experts to ensure the production of high-quality examinations—a critically important objective. However, it is worthwhile to consider the concept of reviewing an expert's opinion from a different perspective, namely, to provide for it in the regulations to help verify the actions of a forensic expert for compliance with the requirements of current legislation and current methods of conducting expert research.

In view of the above, it is proposed to make review of expert opinions mandatory in proving particularly serious crimes, since they pose the greatest level of public danger and are punishable by the highest penalty; in addition to particularly serious crimes, review should be required for those opinions that will be used to prove corruption criminal offences, which include those under Art. 368 of the Criminal Code of Ukraine. It is also necessary to warn those experts who will conduct the review of criminal liability for deliberately incorrect review. On the one hand, this will help to improve the quality of implementation of expert opinions, and on the other hand, it will help to establish law and order.

4. Conclusion

The significance of expert testimony in criminal cases concerning the acquisition of illicit financial gain by an official is paramount. In some court cases in which individuals are accused of committing a crime provided for in Art. 368 of the Criminal Code of Ukraine, it is the expert's opinion that is the basis for the ultimate court decision.

The influence of the challenges associated with the inability to utilize expert opinions, stemming from flawed legislation and erroneous judgments in criminal cases involving the acquisition of illicit financial gains by officials, can be mitigated by the implementation of essential legislative amendments.

It is proposed to regulate the terms of expert research in the specialized law that

DOI: https://doi.org/10.54477/LH.25192353.2024.3.pp.34-45

regulates the conduct of forensic examination and the preparation of an expert opinion. This is particularly relevant due to frequent violations of the ninety-day deadline set forth in the Instruction and the scientific and methodological recommendations. The established time limits should not be changed given the current realities and a comprehensive vision of the current state of affairs in forensic examination. However, it would be advisable to clearly provide for the cases and scope of its possible extension. This will contribute to a more responsible attitude towards the timing of expert research and the preparation of expert opinions based on their results.

The establishment of private specialists and expert institutions will enhance the entire landscape of forensic examination and, consequently, aid in the fight against corruption, which entails the acquisition of illicit advantages by authorities. Such a measure could bring several important advantages, including an influx of qualified personnel, improved quality of examinations, and decreased time for research and provision of relevant conclusions.

The implementation of their required evaluation under specific conditions is another component that reduces the dangers of employing forensic specialists' judgments that are erroneously incorrect or purposefully incorrect in the criminal processes under investigation. The author proposes to include the investigation of particularly serious crimes due to their social danger, as well as corruption criminal offenses, which include the receipt of funds in the form of an unlawful benefit by an official. Through the prism of understanding corruption as one of the main obstacles to improving living standards and economic development.

Forensic examination, expert opinion review, specific knowledge, expert initiative, and other terms should be defined by the legislator. Additionally, provisions that are not implemented in practice or that are hard to apply should be removed from the legislation.

The proposed measures aim to promote law and order, expedite the prompt, thorough, and unbiased investigation and trial of criminal proceedings pertaining to an official receiving money in the form of an unlawful benefit, and, when taken together, lower the overall crime situation in the area of criminal corruption offenses.

Referencese

Criminal Procedure Code of Ukraine, the Code of Ukraine No. 4651-VI (2024). https://zakon.rada.gov.ua/laws/show/4651-17#Text

Geller, B., & Martynenko, N. (2023). Issues of combating corruption oriented crimes: Forensic science aspect. *Theory and Practice of Forensic Science and Criminalistics, 28*(3), 47–63. doi:10.32353/khrife.3.2022.04

Ismawati, S. (2023). The importance of expert testimony in proving corruption crimes. *IJOLARES: Indonesian Journal of Law Research, 1*(2), 32–36. doi:10.60153/ijolares.v1i2.20

Judgment, High Anti-Corruption Court No 127/13972/17 (2023). https://reyestr.court.gov.ua/Review/111192800

Judgment, High Anti-Corruption Court No 729/1248/18 (2023). https://reyestr.court.gov.ua/Review/109801337

Judgment, High Anti-Corruption Court, No 362/4895/16-к (2023). https://reyestr.court.gov.ua/Review/109002711

Judgment, High Anti-Corruption Court, No 550/101/18 (2022). https://reyestr.court.gov.ua/Review/105668400

Loza, T.V. (2023). Problems of the organization of forensic expert activity in Ukraine and ways to solve them. *Analytical and Comparative Jurisprudence, 6,* 633–641. doi:10.24144/2788-6018.2023.06.112

Mieshkov, O. (2021). Problematical aspects of using forensic expert conclusion on results of the forensic examination of electric shock accidents. *Theory and Practice of*

Forensic Science and Criminalistics, 24(2), 152–164. doi:10.32353/khrife.2.2021.09

Order of the Ministry of Justice of Ukraine No 335/5 "On Approval of the Procedure for Reviewing the Conclusions of Forensic Experts" (2023). https://zakon.rada.gov.ua/laws/show/z0131-20#Text

Order of the Ministry of Justice of Ukraine No. 53/5 "On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on Preparation and Appointment of Forensic Examinations and Expert Studies (Ukraine)". (2024). https://zakon.rada.gov.ua/laws/show/z0705-98#Text

Polianskyi, A. & Juodkaitė-Granskienė, G. (2022). Foreign experience of interaction of forensic science institutions with law enforcement agencies and possibility of its use in Ukraine. *Theory and Practice of Forensic Science and Criminalistics, 24(*2), 26–51. doi:10.32353/khrife.2.2021.03

Sugianto, S., Amiruddin, A., & Wagian, D. (2024). Expert Testimony in Law Enforcement of Corruption in the Procurement of Goods and Services in Handling Emergencies. *International Journal of Social Science Research and Review, 7(*4), 196–216. doi:10.47814/ijssrr.v7i4.2061

The Law of Ukraine No. 4038-XII on forensic examination (2024). https://zakon.rada.gov.ua/laws/show/4038-12#Text

Tymchyshyn, A. M. (2021). Features of the appointment and implementation procedure forensic examinations under the current criminal procedural legislation. *Legal Position, 2*, 129–133. doi:10.32782/2521-6473.2021-2.25