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**FORENSIC RESEARCH AND EXPERTISE IN THE PROCEEDINGS,
ARBITRATION AND INTERNATIONAL ARBITRATION**

A. Fedchyshyn

Law Firm ONSTAN, Ukraine, Kyiv

The article deals with the modern concept of providing forensic research and expertise in the proceedings, arbitration and international arbitration. The expert opinion is an important source of evidence in criminal proceedings, arbitration and the arbitration court. The analysis of existing legal provisions to provide expert arbitration jurisdiction in Ukraine and international legal regulations and proposed a mutually beneficial approach. Thesis there is determined questions that require deeper research.

Keywords: forensic examination, arbitration litigation expertise, destination expertise, the expert opinion process, expert activity in the arbitration proceedings, proceedings, arbitration and international arbitration.

Introduction. The efficiency of justice relies on the support of forensic research.

Without forensic examination as the main form of using expertise there can be no comprehensive, complete and objective investigation of criminal offenses. The expertise of forensic researchers allows to significantly enhance the quality of the investigation because of scientific explanation of the established facts and circumstances. At the present stage forensic examination became important evidence in the court proceedings.

Formation and development of the judicial expert study - the new independent science of forensic subject of many scientific works of literature. Forensic scientists of Ukraine, Russia and other CIS countries, in particular, the Kyiv School (T. Aver, O. Rossinska, M. Sehay, H. Prohorov-

Lukin, V. Lysychenko, V. Honcharenko, N. Klymenko, A. Ischenko, P. Bilenchuk and others) recognized the forensic study as independent judicial branch of jurisprudence, but differed in the interpretation of its place in the other areas of legal knowledge.

The legislation in Ukraine is not defined approaches to the use of expertise of knowledgeable persons in the arbitration proceedings as a source of evidence.

Turning to the concept of "provision", it is considered what is provided by someone or something.

The verb "to provide" has several interpretations: a) to launch something in the required amount; b) to provide adequate facilities for life; c) make possible valid and real performance; d) fence. Studying in terms of providing maintenance, we can conclude that "provide" is the same as to "provide subjects by means of specific activities aimed at achieving the goals in front of him. The established targets cannot be achieved without such tools".

The question arises: on what is meant by these tools? Based on a general philosophical understanding, we can assume that these tools are the result of any purposeful activity. This result will become the tool itself only when it meets necessary conditions in order to allow one to achieve the goals he is facing

So the criminalistics (expert) activities are referred to as tools, because they are generated in the depths of criminalistics (the expert study) and are the result of activities carried out within the framework of science. This concept is the nature of the industry that corresponds to the field of knowledge.

The forensic (expert) tools may also be referred to as means of action. Forensic (expert) detection, investigation and prevention of crime (crimes) are:

- a certain "technique" that is specifically designed or adapted as objects, tools, instruments and appliances used in forensic practice;
- some of the technologies, processes, common techniques, methods and approaches, developed for the effective implementation of investigative (detective) action and expert research;
- specialist, i.e. "professional" received the necessary education in forensic (expert) sciences, acquired the necessary respective basic skills, constantly improving them, and thereby gains experience of this specific activity.

On the dissertation level the forensic accompanying of a problem of investigational practices is seen since 1984. In 1997, with the contribution of A. Ishchenko the guide was prepared for theses defended specialized scientific research entitled "Forensic accompanying of combating crime" [1, p. 72, 138].

The majority of researches is based on the fact that information provided is the best search and use information. Scientific and methodological support of investigation of crimes - is to create conditions for the implementation of science and technology in practice.

These issues are reflected in scientific works of V. Bahina, V. Lysychenko, I. Mountian and others. The problem of expert support received considerable spread in Russia. In Ukraine the provision of investigative and expert practices considered mainly in information, methodological, organizational and managerial aspects. They can be seen as the expert support.

Informational accompanying of the forensic research consists of the best search and use of the information necessary for expert research. Scientific and methodological support allows creating the conditions for the implementation of scientific and technological expertise in practice (testing, specification of the application, development of guidelines or instructions, training users and customers). Organizational and management services is

in the process of implementation of expert opinion of coordination center, development and implementation in practice of law enforcement, scientific achievements and functions of their study, evaluation, and verification of implementation.

Today we can already speak of an expert insurance of crime investigation or trial, for examination as part of criminology has been developed significantly expanded its capabilities both on specific activities and as an institution, was the subject of an independent scientific knowledge. It creates a general theory of judicial examination [2, p. 3]. Conditions that contributed to the creation of forensic expert study are:

- availability of empirical data of some genera (species) examinations and the creation of the basis of their individual theories;
- development of principles of methodological foundations, legal and institutional framework of different genera (species) forensic examination;
- the existence of intermediate theoretical development of some problems of legal expertise in monographs, methodical and scientific literature;
- continuous improvement of methods and techniques of expert research;
- the existence of a developed system of public and private research institutions in the various departments of the country, which coordinate their practical and scientific activity [3, p. 7].

Further, its formation requires a clear definition of its object and subject, conceptual bases of its methodology, which should be based on expert knowledge model and intersectional teaching them how ontologically-epistemological orientations [2, p. 740-761].

Institute of forensic research as a professional and systematic activity is becoming increasingly important in the proceedings. One of the main tasks of the Ministry of Justice of Ukraine is to provide the forensic support to judiciary system.

Expertise in Ukraine is departmental. Each agency has its own forensic institutions [3]. Today, the Ministry of Justice of Ukraine supervises six research institutions of forensic examination and their fifteen departments whose work aims to maximize the courts, law enforcement agencies, enterprises, institutions, organizations, objective forensics.

In terms of arbitration and international commercial arbitration, the burden of proof issues with experts, for the most part has no special regulation "is quite laconic"[4].

Arbitrators and arbitrators, mostly do not possess the necessary expertise. Although arbitrators and arbitrators have considerable experience of different practices (not just legal), they need help independent expert to decide the case. Within the regulations and rules of arbitration and international arbitration courts assessed value, which should provide expertise.

With the development of science and technology there can be no comprehensive, complete and objective investigation of criminal offenses without forensic examination as the main form of application expertise. They are enhances the judiciary by significantly by scientific explanation and interpretation of the studied facts and circumstances today.

The issue of dispute settlement arbitration may come from the fields of natural sciences and engineering, from accounting and economics, surveying and many other industries. Thus, the basic principles of a fair process (usually) require arbitrators assessment expert evidence any sphere of professional activity, using any range of specialized professional knowledge. And within regulations and rules, the tribunal when deciding how empowered to attract the expert and failure.

The expert opinion is an important source of evidence. The result of the work of the expert is formalized in a written document that reflects the content of his research and conclusions on the issues put before it by the

parties or the investigating judge. For the expert as a form of evidence, it is essential that it:

- appears in the proceedings as a result of the study;
- comes from conscious individuals with certain expertise, without further investigation or hearing would be impossible;
- specially provided in compliance with procedure established by law;
- based on other evidence collected in the proceedings.

The expert opinion process in search of the truth, is a guide for arbitration and international commercial arbitration.

In practice common law arbitration proceedings to provide evidence there. Concept of different legal cultures diverge. A key role in modern international arbitration proceedings given the use of expertise of experts and expert opinion required to inform the tribunal of the key controversial issues [5, p.62].

Unlike other sources of evidence it contains knowledge of the facts and circumstances of interest to the investigation and trial.

Similar to "forensic accompanying", providing expert judgment can be defined as a system of "implementation in pre-trial and trial practice combat crime" expert knowledge and skills [6, p.27]. This system consists of subsystems of science expert, expert education and expert research methods.

Some criminologists (V. Kolomaksky Z. Udovenko and others) consider the provision of expert judgment rather narrowly, only as the necessary conditions for the use of expert knowledge. Other scientists have greatly extended the concept of "security", including the proper operation of such business, expanding the range of its facilities - consideration of criminal proceedings.

V. Lysenko believes that provision is a systematic design and implementation in practice of investigating crimes expert findings and its

recommendations to optimize and improve the efficiency of detection, investigation, prevention of criminal offenses [7, p.7].

We believe that providing expertise is to ensure the process of investigating crimes, support of individual law enforcement agencies or their units and prevent criminal offenses.

Thus, expert support is a complex concept, aimed at increasing the effectiveness of investigations of offenses and their trial and characterized by a set of interrelated components:

1. The presence of his business expertise and skills (forensic medicine, psychiatry, psychology, criminology, physics, chemistry, computer science, etc.);
2. The practical implementation of these knowledge and skills by creating the necessary conditions for their implementation;
3. Methodological support systematic and standardized methods proven expert research;
4. Information provision of forensic examinations.

There is a positive position of A. Kudryavtseva, who wrote that "conducted expert cognition process and logical substantiation of forensic studies from the point of view of the acquired argumentation intellectual activity, psychological processes does not differ from the process of seeking truth in other industries, including, from activities of investigation of judge and from the search investigation and comments of evidence Criminal proceedings" [8, p.203].

The essence of the use of expertise arbitration tribunal dealing with the matter is to analyze the knowing person - an expert on the instructions of the arbitral tribunal granted for the disposal expert examination of material objects (documents, physical evidence) to establish evidence relevant for the proper resolution of the case.

According to Art. 43 of the Law of Ukraine "On arbitration courts", the arbitration court to ensure proper resolution of the dispute has the right to require the parties or one party to request the examination to clarify issues that require specialized knowledge, such as the court imposed the appropriate decision.

This provision of the content matches the rules of criminal, civil, administrative and economic procedural law. However, although it is the same, filling her legal content is different.

Most of the problems with the implementation of legislative provisions providing expert arbitration arise from the lack or inadequacy of relevant rules, which are caused by the special nature of the arbitration court as a body of private jurisdiction.

Regarding efficiency expert support to the process of proving the pre-trial investigation and in court, the process requires:

- study of the needs of the practical process of proving the pre-trial investigation of expert knowledge;
- the development, standardization and registration practices relevant to the needs of specific methods of examination;
- experimental verification carried developments;
- assessment of expert opinions and comparing them with other evidence in criminal proceedings;
- informing experts about new research that apply and test them in practice;
- the collection and compilation of data on the results of application and effectiveness of recommendations submitted to improve the efficiency expert research;
- improving the experience of experts and some types of forensic examinations remotely.

During the arbitration process often raises questions concerning complex or technical issues, construction, engineering, natural resources

(number of disputes linked mainly with issues of production, sale and transportation of oil and gas), etc. In such disputes arbitrators have a great need for experts (specialists) and require their assistance to be able to understand the specific issues important for the case.

A professional expert opinion (in the form of a written report or testimony during questioning of experts), therefore, is an important part of the process of making decisions in the courts of arbitration.

Almost any activity can be the subject of expert research.

In criminal proceedings, arbitration and the arbitration court seeking "information that can guide him in search of the truth. Thus, expert opinion process in search of the truth, is guiding" [9, p.53].

The expert gives an opinion only on the basis of direct study of material objects or expertise on the basis of this study involving data obtained from the criminal proceedings or only on the basis of the case file. Loyalty conclusions using data contained in the interrogation and other written materials depends on the reliability of the information.

The conclusions of the expert to classify as follows:

- a) conclusions that are clear and precise. In such cases there is no need for interrogation expert (expert);
- b) findings that require explanations and additions during interrogation expert;
- c) expert opinions vary or terms used by experts are not clear.

So, expert opinion can be both incriminating and acquitting. Conclusions of expert can recognize guilt and deny the involvement in the offense committed. Thus, experts are divided into definitive - positive or negative, probable - positive or negative. Definitive expert conclusion is the evidence in criminal proceedings. Reliable conclusions are plausible character. Probable conclusion is not an evidence in criminal proceedings

[10, 11 p.58], but can be used to form versions, as well as for the purposes of further research.

Evaluating expert opinion, the investigator (the court) has to take one of the following decisions:

- a) recognize the conclusion as full and reasonable and the evidence as credible and relevant to the proceeding;
- b) not to recognize the conclusion as clear or to deem it incomplete. If necessary, an additional research can be assigned or additional questioning of the expert can be demanded in order to explain or supplement his opinion;
- c) recognize the expert opinion as incomplete or causing doubts about his loyalty and where required to appoint a re-examination or conduct other proceedings in order to verify his conclusions.

Examination is an effective means to establish the circumstances of the criminal proceedings or proceedings.

Despite the consensual nature of arbitration [12], the burden of proof and credibility is always a priority of all stakeholders.

For IBA Rules of admissibility, relevance, materiality and relevance of evidence determines the arbitral tribunal [13, Article 9 Admissibility and assessment of evidence, p.14].

Based on the results of the study provided facilities, expert sets new, previously unknown facts or establish the facts about ascertain or provides estimates of the facts in light of special knowledge.

Thus, in the judicial practice and expert opinion alternative consideration (provided the correct address to the expert as authoritative persons) is increasingly becoming necessary in proving Law:

1. The argument should be valid regardless of the authority of the expert who supports it.

2. The expert is to be an authoritative source of industry, which includes research questions.
3. Survey questions should be exclusively within the competence of the expert.
4. The interpretation given to the expert of (expert task) must be correct.
5. Experts should be independent and impartial (in his judgment should not affect extraneous reasons such as financial interest, fear, intimidation, general and so on. Al.).
6. The expert study should be representative about the problem without changing the logical sequence and using improper methods to prove their assertion, not based on random statements.

The opinion of a forensic researcher is not a predetermined force and is not necessarily required for pre-trial investigation to lawyers, prosecutors or courts. Each subject of proof can disagree with the expert, but its disagreement must be motivated in the relevant procedural document, request, ruling, order or judgment of the court.

Conclusions. In domestic science devoted to the issue of arbitration, focuses on the concept of alternative proceedings. However, the problem of providing expert analysis of the institute arbitration method of resolving disputes remained unnoticed by scholars.

Historically legislation on international arbitration cases in many countries and much of the rules of arbitration and arbitration tribunals formed under the influence of legal traditions.

That, along with positive innovations arbitration legislation contains some inaccuracies and gaps related to regulating the appointment and expert research in the arbitration proceedings. It is essential to implement the principles of the arbitral tribunal, namely the rule of law, independence and submission only to the law.

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