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Research of theoretical foundations of forensic economic examination in modern conditions

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Abstract: The scientific work examines the modern theoretical foundations of the formation and development of forensic economic expertise as a separate class of expertise that has emerged in recent decades. The main attention is paid to the analysis of the differences between forensic economic and non-forensic expertise. The author highlights the need for specialized research to address the problems and challenges arising in the course of economic activity performed by highly qualified experts. The position of a forensic expert is considered to be unique due to the specific features which have been analyzed in detail in this study. It is concluded that forensic economic expertise should be carried out in accordance with the requirements of the judicial process and the established regulations, which depend on the specifics of the object under study and the scope of application of the expert's specialized knowledge.

Keywords: expert, forensic economic examination, legal proceedings, economic crimes.

Introduction

Security is one of the key priorities of any state, encompassing the protection of both material and spiritual interests of society. The problem of economic crime is gaining a global scale, which is becoming a serious challenge at the international level. In the context of the active development of the financial and economic sphere, the volume of crimes related to the economic activities of business entities is increasing. The resolution of court disputes is inextricably linked to the analysis of business transactions reflected in primary accounting and reporting documents. Today, solving economic crimes is impossible without knowledge in the field of forensic economic expertise.

Considerable attention has been paid to the theoretical aspects of forensic economic examination by such scholars as Hasanov (2022), Rosenthal (1976), Esposito and Tuzet (2020), Popa and Necula (2013), Keulen and Kwakman (2011), van Ruth & Smithuis (2019), Ploscowe (1935), Magnússon (2012), Sobolovic (2009), Huyghe and Chan (2014). At the same time, these scholars have different approaches to defining the essence of the concept of "forensic economic examination", its object, subject and methods, which necessitates the systematization and streamlining of these aspects.

The **purpose** of this study is to determine the characteristics of forensic economic examination and to reveal its potential in establishing the facts which are subject to mandatory proof in the course of investigation of economic crimes at the macro- and microeconomic levels.

Research Results

Forensic science in Azerbaijan plays an important role in ensuring effective justice. Forensic experts make a significant contribution to the establishment of facts that are important for the consideration of cases and affect the adoption of court decisions. Taking into account the importance of forensic expert activity, the Law of the Republic of Azerbaijan "On Forensic Expert Activity" was adopted on November 18, 1999, which regulates its legal and organizational principles and social relations arising in the course of forensic examination. This law is aimed at implementing the principle of protection of rights and freedoms, as well as ensuring the legitimate interests of a person and citizen. Subsequently, on November 29, 2019, significant amendments were made to this law, which strengthened its effectiveness (Hasanov, 2022, pp. 211-214).

The development of technology and changes in legislation, as well as the lack of clarity in some regulations, have created the preconditions for an increase in the number of economic crimes. For example, in 2005, 491 crimes in the field of economic activity were registered in Azerbaijan, while in 2020 their number increased to 938, which is an increase of 91%. Given the growing need for forensic economic expertise, the number of examinations conducted by the Forensic Center of the Ministry of Justice of the Republic of Azerbaijan has also increased significantly. In 2014, 5670 economic examinations were appointed, and in 2020 their number increased by 33.5% and amounted to 7570 (Hasanov, 2022, pp. 211-212).

Today, solving economic crimes is becoming impossible without the use of forensic economic expertise. The use of economic methods in the legal professions is recognized as important worldwide (Towfigh & Petersen, 2015; Rosenthal, 1976; Esposito & Tuzet, 2020). Forensic economic expertise is a type of expert research, but it has certain differences from non-forensic economic expertise (see Table 1). Speaking about the production of economic expertise, it is impossible to ignore the key participant in this process - the economic expert. In European countries, the term "expert" is usually defined indirectly, by reference to the relevant regulations. Often, the status of an expert is established by the relevant state body, such as a court or other specially designated institution (Popa & Necula, 2013). In most European Union countries, the Ministry of Justice or other authorized justice authority appoints experts or grants them status through appropriate platforms. For example, in Hungary, Romania, Serbia and Slovenia,

expert status is granted directly through the relevant state authorities, while in Denmark, Ireland, England and Wales, the process is carried out through websites that are authorized to grant the status (Keulen & Kwakman, 2011, p. 7). In the Netherlands, since 2010, an official register of experts (Nederlands Register Gerechtelijk Deskundigen - NRGD) has been operating, which guarantees the appropriate qualification of specialists with special knowledge (Smithuis, Van Ruth, & Wieles, 2012).

Table 1

Differences between forensic and non-forensic economic expertise

Characteristic features	Forensic economic	Non-judicial economic
Forms of use in legal proceedings	Procedural form	Non-procedural form
Appointment.	Appointed by the court or investigation authorities	Appointed by a lawyer or other person interested in the examination
Purpose and grounds for holding	It is carried out in the course of investigation and/or litigation of economic cases, as well as in civil and arbitration cases	Conducted for the purpose of concluding an amicable agreement to avoid litigation or as other documents at the request/decision of the court
The final document and its legal effect	An expert's opinion that is an independent evidence in court	An act of non-judicial examination. It cannot be an independent evidence in court

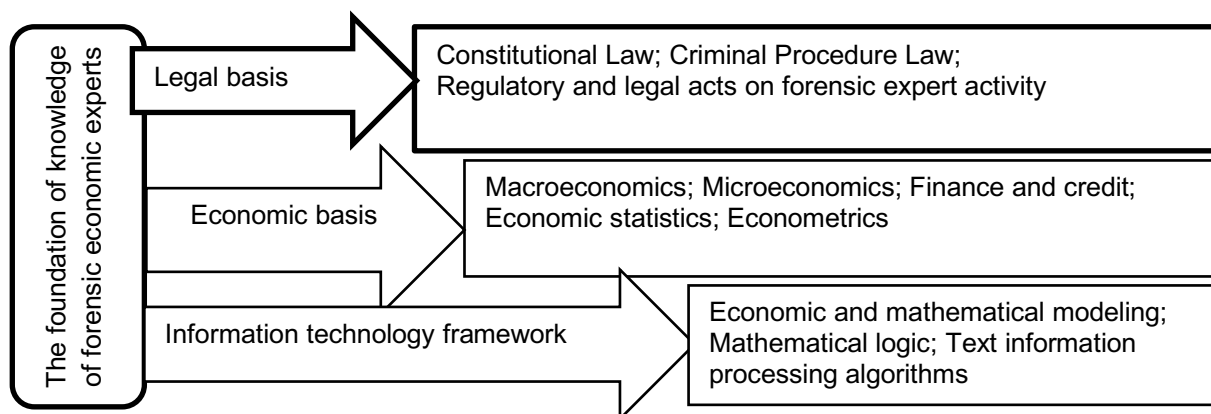
Source: author's own development

The main requirement for experts is a high level of specialized knowledge in a particular scientific field and the ability to ensure the quality of their conclusions. Ethical and professional standards are also important, as they require adherence to values such as independence, impartiality and professionalism, as well as legal competence (Ploscowe, 1935).

In the Icelandic judicial system, which is based on professional judges who make decisions independently without the participation of a jury, an economic expert serves as an "expert judge." During the trial, he or she sits alongside a professional judge. The main task of the "expert judge" is to provide the court with his specialized knowledge, formulate the right questions for the participants in the process, and independently evaluate the evidence presented (Magnússon, 2012). In the Czech Republic, the system of forensic expertise has its own peculiarities: economic experts can provide their services to all state bodies, not just courts. However, all experts, including economists, are obliged to avoid cooperation with private companies. The Czech Republic has a register of experts covering 128 specializations. If an economic expert gives a false opinion, he or she is obliged to pay compensation, so civil liability insurance is mandatory for persons with special knowledge (Sobolovic, 2009). In England and Wales, expert economists are given the role of expert witnesses. Their main task is to assist the court in establishing the material truth by providing objective and impartial assessments of facts based on specialized economic knowledge (Huyghe & Chan, 2014). The English legal system has no official registers of forensic experts. Expert economists can only be those individuals who have sufficient experience and specialized economic knowledge in their field, and are generally recognized as having quality control over the expert's work that meets scientific standards. The procedural role of an expert in the United States is closely related to the peculiarities of the common law. Similar to the English system, a court expert is considered a specific type of witness in a case - his or her testimony is an expert opinion on certain facts and helps to interpret them correctly. When a specialist in a particular field of knowledge testifies as a witness, except as provided by the Federal Rules of Evidence (FRE), the witnesses may not be questioned about their personal impressions and opinions of the facts. The criteria under which Rule 702 of the FRE sets forth the requirements for an expert are as follows: "A witness who, based on his or her knowledge, skills, experience, training or education, may be recognized as an expert may testify in the form of an opinion. Such a person will be admitted only if the scientific, technical, or other knowledge possessed by the expert is relevant to the evaluation of the relevant facts" (Rule 701, 2013). This provision regulates the process of engaging experts - specialists with certain knowledge and witnesses in the US criminal justice system. The parties to a trial select specific individuals who can present their specialized knowledge and serve as experts in the United States.

Figure 1

The foundation of special knowledge of forensic economists



Source: author's own development

It is true to say that forensic experts should be only highly qualified professionals who constantly improve their knowledge not only in their specialization but also in other areas, based on international experience.

Conclusions

The scientific and theoretical nature of forensic examination and the evidentiary power of forensic economic examination is that it is aimed at investigating certain facts and situations of a financial and economic nature. Forensic economic examination covers the economic activities of business entities to solve the tasks set by the judicial authorities. It investigates situations and factual circumstances based on information contained in economic records and material documents, interprets this evidence and draws conclusions based on the issues investigated, relying on laws and regulations governing the relevant field of activity. The conclusions drawn by the expert have evidentiary value for forensic economic examinations. The Institute of Economic Expertise plays an important role in combating economic crime by providing high-quality analysis and conclusions that contribute to establishing the truth in court cases.

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