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The abstract and the doctoral thesis can be consulted at the library of the "Ştefan cel Mare" Academy of the MIA of the Republic of Moldova and on the website of the National Agency for Quality Assurance in Education and Research (www.cnaa.md) and on the website of the Doctoral School Criminal sciences and public law (https://academy.police.md/).

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CONCEPTUAL GUIDELINES OF RESEARCH

The topicality and importance of the topic addressee

The complete and objective investigation of the circumstances of the case is a positive obligation of the state, which is carried out only on the condition of cumulative fulfillment of several commitments reflected in the practice of the ECtHR. This obligation of the state is fulfilled through the representatives of the criminal investigation body, the prosecutor, as well as by the court. At the same time, we cannot exclude other people who participate in the criminal process and contribute to its proper conduct.

In the criminal investigation, the criminal investigation body has an active role, which is characterized by its obligation to take all necessary measures to investigate under all aspects, complete and objective, all the circumstances of the case.

In order to fulfill this positive obligation, the criminal investigation body is obliged to undertake certain criminal prosecution actions that will contribute to the clarification of all the circumstances important for the fair settlement of the case. Thus, based on the active role of the criminal investigation body and the prosecutor, as well as their duties, they are entitled to hear witnesses, the injured party, to carry out criminal prosecution actions, such as on-site investigation, search, etc. as well as to order the performance of forensic examinations.

Judicial expertise as a probative procedure in criminal proceedings is the scientific-practical activity that is characterized by conducting methodical research, with the application of special knowledge and technical-scientific procedures to formulate reasoned conclusions about certain circumstances, objects, etc.

The international treaties ratified by the Republic of Moldova, the Constitution of the Republic of Moldova, the Code of Criminal Procedure, as well as other laws, constitute the legal framework that regulates the procedure of disposition and performance of judicial expertise. However, the activity of ordering and carrying out judicial expertise is a complex one, and is not limited only to issuing the order of disposition and drawing up the report of judicial expertise, but it is an activity that has a course within which the rights of the parties must be respected criminal proceedings.

In order to have a probative weight in the criminal process, the technical-scientific development of this institution alone is not enough. No less important is the legal regulation of this institution, which provides sufficient guarantees to the participants in the criminal proceedings in order to achieve its procedural position.

The results of the research carried out in the process of carrying out the judicial expertise are materialized in the forensic report. The forensic report is a means of proof in the criminal

proceedings, but obtains probative value not only due to the content of the investigation, but also due to compliance with legal aspects regarding its disposition, performance, and assessment by law enforcement bodies.

In the process of disposing of the forensic examination, informing the parties about its disposition is one of the fundamental guarantees regarding the realization of the right of defense, which as a whole includes both the right to appoint an expert to conduct the investigation and the expert's questions, his recusal, etc.

Likewise, as a result of the forensic examination, the parties will be informed of its results. Informing the parties is an obligation of the authorizing officer of the forensic examination. As a result, the parties are given the opportunity to request repeated, additional expertise or, in some cases, a hearing of the forensic expert.

Proceed to the hearing of the forensic expert in cases where the report of the forensic examination is not sufficiently clear and there is a need for these ambiguities to be explained without the need for additional or repeated forensic examination.

In the same vein, it is not clear whether the statements of the judicial expert constitute a means of proof in the criminal proceedings: based on the provisions of art. 93 CPC, the expert's statements are not a means of proof, not being included in the category of evidence, but the national courts allow the forensic expert to be heard.

Description of the research situation and identification of research issues

A considerable contribution to the study of judicial expertise was made by local and foreign authors, including: Ig. Dolea, T. Osoianu, Iu. Odagiu, L. Luchin, D. Roman, M. Gheorghiță, I. Sedlețchi, M. Poalelungi, C. Rusnac, V. Dongoroz, S. Kahane, C. Bulai, N. Volonciu, I. Neagu, E. Stancu, C. Aioniţoaie, V. Bercheşan, IL Petruhin, N.A. Gromov, T.V. Sahnova, M.S. Strogovici, R.S. Belkin, Iu.K. Orlov, I.I. Muhin, T.V. Averianova, E.M. Livșiț, V.A. Mikhailov, M. Bowers, J. Hielkema et al.

Despite the fact that the forensic expertise was the object of study of several specialized works, we mention that those procedural problems faced by this institution were tangentially reproduced by the local literature, having only a fragmentary character.

The lack of a scientific-procedural study regarding the judicial expertise in the criminal process creates certain difficulties in the process of disposing of it as well as the appreciation of the report of judicial expertise.

In this sense, we consider that the elaboration of a study under procedural aspect of this evidentiary procedure will contribute to the correct application of the procedural norms that regulate the activity in the field of judicial expertise. Thus, the topic proposed for research is a current one and is of both theoretical and practical importance.

The purpose and objectives of the paper are to strengthen the legal provisions governing the activity of the institution of judicial expertise in order to remove the interpretive nature of the procedural rules governing the activity of the institution of judicial expertise and to prevent uneven application of national law on judicial expertise by prosecutors and the courts.

Thus, in order to achieve the proposed goal, it is necessary to achieve the following objectives:

- multispectral analysis of the national normative framework that regulates the field of the institution of judicial expertise within the criminal process;
- research and evolution of scientific materials related to judicial expertise in criminal proceedings;
- identification of the cases that determine the erroneous or arbitrary application of the procedural norms regarding the institution of the judicial expertise;
- the investigation of the criteria for assessing the report of judicial expertise by the criminal investigation body and the court;
- examination of the practice of the Constitutional Court and the Criminal College of the SCJ regarding the practice of applying the legislation regulating the activity in the field of judicial expertise;
- identification of the cases of conviction of the Republic of Moldova to the ECtHR, on the segment of non-compliance with the rights of the parties in case of erroneous disposition or assessment of the forensic report;
- elaboration of the recommendations of *ferenda law* regarding the improvement of the legal framework that regulates the activity of the institution of judicial expertise.

Scientific research methodology

In order to conduct an objective and multilateral research on judicial expertise in criminal proceedings, a number of research methods have been applied in this paper, including: the logical method (based on inductive and deductive analysis, interpretation of legal rules governing the activity of judicial expertise, etc.), the comparative method (applied for the purpose of studying scientific materials on the institution of judicial expertise published in the Republic of Moldova and other states, as well as the analysis of the laws of other states), the systemic method (applicable for the purpose of researching national and international legal acts containing regulations on the institution of judicial expertise in criminal proceedings), the empirical method (in the process of drafting the work by the author was examined the practice of the ECtHR, the Constitutional Court, the Criminal College of the SCJ, and consulted criminal cases).

Scientific novelty and originality

This doctoral thesis represents a complex and multiaspective research of the procedural regulations aimed at the institution of judicial expertise. In order to outline some particularities of the application of the criminal procedure norms regarding the judicial expertise, the author examined some doctrinal approaches both national and foreign, and examined the judicial practice of the Criminal College of the SCJ, the Constitutional Court of the Republic of Moldova, and practice CtEDO.

The elements of scientific novelty are characterized by the following theses of the paper:

- It was established that the legislator did not reproduce the notion of special knowledge and which knowledge belongs to this category. In the paper I mentioned that the category of special knowledge includes knowledge in the field of technology, art, medicine, craft, etc., which are obtained by a person based on special training and practical activity and which is accessible to a small number of people.
- Some procedural regulations have been identified that affect the right to defense of the suspect. In the text of the law, it is expressly specified which participants in the trial have the right to request the recusal of the suspect, and the forensic expert does not fall into this category; thus, the legislator violates the suspect's right to defense.
- In the cases provided in art. 152 CPC, the forensic expert may be heard regarding the submitted expert report, under the conditions of hearing the witness. In this paper, I have argued the need to include the statements of the forensic expert in the category of evidence, because these statements influence the inner conviction of the judge or the person conducting the criminal investigation, as well as new facts.
- In the present work, it was argued the need to modify the provisions of art. 374 CPC, which regulates the procedure for disposing of judicial expertise in the trial phase. The legislator, regulating the procedure for disposing of judicial expertise in this phase of the criminal process, only referred to the general rules governing the institution of judicial expertise, avoiding addressing the specifics of the trial phase and the principles governing this stage of criminal proceedings.

The scientific novelty of the thesis is also determined by the reasoned formulation of some proposals of the *ferenda law*, which will improve the legal framework of the institution of judicial expertise and will increase the fairness of the criminal process, namely**:**

- To be renamed Section VII of Chap. I of Title I of the CPC in „Judicial Expertise".
- Article 93 para. 2 point 1 of the CPC to be amended in the following wording: the statements of the suspect, the accused, the defendant, the injured party, the civil party, the civilly liable party, the witness, the forensic expert, the specialist.

- Article 57 para. 2 point 5 of the CPC, to be amended in the following wording: cites and hears persons as suspects, injured party, witnesses, forensic expert.
- Article 64 para. 2 point 14 of the CPC, to be amended in the following wording: to request the recusal of the person conducting the criminal investigation, the investigating judge, the interpreter, the translator, the judicial expert.
- Art. 153 CPC, to be completed par. 3 with the following content: In case of deficiencies or ambiguities of the forensic report, the parties to the trial are entitled to participate in the hearing of the expert.
- Art. 374 CPC regulates the procedure for disposing of the judicial expertise in the trial phase. In the given norm, the legislator only referred to the provisions of art. 142-155 CPC, but did not take into account the specifics of the trial phase. In this sense, we are of the opinion that the provisions of art. 374 of the CPC are to be amended in the following wording: The ordering by the court of the performance of the judicial expertise and the hearing of the expert in the court hearing are made in the cases and under the conditions provided in art. 142-155, respecting the principles of directness, orality and adversariality.

The theoretical significance of the work

Through this doctoral thesis, for the first time after the entry into force of the CPC and the Law of the Republic of Moldova on judicial expertise and the status of judicial expert, a complex and multi-aspect research of judicial expertise in procedural aspects is carried out.

The theoretical importance of the paper concerns all the topics discussed as well as the identification of legal and doctrinal issues, as well as the proposal to solve them in order to prevent any ambiguities faced by participants in the process with the right to dispose and appreciate. forensic report.

The applicative value of the work lies in the formulation of proposals of *law ferenda*, which would allow the improvement of the national legislation in the field and would perfect the application of the law by the criminal prosecution bodies and the courts in the process of ordering and assessing the report of judicial expertise. non-uniform and arbitrary application of criminal procedural legislation.

Also, the study and the proposals of the *law ferenda* can be used to train students of cycles I, II, III of studies in higher education institutions with legal profile, as well as training audiences for continuous training of employees in the field of criminal prosecution, prosecution, courts, as well as within the centers of expertise of the Republic of Moldova.

The main scientific results submitted for support consist in revealing the essential features of special knowledge as the inherent part of forensic expertise; the argumentation of the erroneous classification of the judicial expertise in obligatory and optional; arguing the inclusion of

the expert's statements in the list of means of proof; modification of art. 374 CPC in accordance with the principles governing the trial phase specified in art. 314 CPP.

Implementation of scientific results

The legal provisions examined in this paper in conjunction with the scientific-practical material researched, find their applicability in the case of the disposition and assessment of the results of the judicial expertise by the competent state bodies. The scientific results of the study can be used for training in higher education with a legal profile as well as for the continuous training of employees in the field of criminal prosecution, prosecution, courts. Also, the recommendations of *law ferenda* formulated by the author after examining the doctrine and judicial practice of the Criminal College of the SCJ, the Constitutional Court of the Republic of Moldova and the ECtHR, can be used to improve the normative framework in order to respect the fundamental rights and freedoms of the parties. The process of disposing and assessing the results of the forensic examination.

Approval of results

The results of the research were discussed in multiple national and international scientific forums, as well as international competitions. In this regard, scientific articles on the topic were published in various scientific journals: Scientific Annals of the Academy „Ştefan cel Mare" of the Ministry of Internal Affairs of the Republic of Moldova; Law and life; National Law Review, Федеральный научно-практический журнал „Медицинское право" and others.

Thesis publications

16 scientific papers have been published on the topic of the doctoral thesis.

Keyword: code of criminal procedure, judicial expertise, ordinance, criminal investigation body, parties to the trial, disposition, conclusion, court, assessment, forensic report, forensic expert.

The content of the thesis

This thesis consists of an introduction, three chapters divided into twelve paragraphs general conclusions and recommendations, bibliography.

The introduction of the paper is structured from the topicality and importance of the topic, the purpose of the paper, the research objectives, the research hypothesis, the scientific novelty, the synthesis of the research methodology, the theoretical importance and the applicative value of the paper, the summary of the thesis chapters.

Chapter I entitled **„Doctrinal approaches and the evolution of the normative framework regarding the institution of judicial expertise"**, composed of the following paragraphs: Evolution of theoretical research on the institution of judicial expertise in the Republic of Moldova; Research of the institution of judicial expertise in the specialized doctrine of other states; The current normative framework that regulates the institution of judicial expertise; Conclusions on Chapter 1.

In the criminal investigation, the criminal investigation body has an active role, which is characterized by its obligation to take all necessary measures to investigate under all aspects, complete and objective, all the circumstances of the case.

Judicial expertise is provided by the competent bodies in cases where special knowledge in the field of science, technology, art, craft or other fields is required for the ascertainment, clarification or assessment of circumstances that may have probative importance for the criminal case.

Some particularities of the forensic expertise were examined in the paper „Theoretical explanations of the Romanian Code of Criminal Procedure" by the authors V. Dongoroz, S. Kahane, G. Antoniu, C. Bulai. Who stated that „this procedure is used. sometimes to determine whether or not certain material objects contain evidence that is likely to serve as evidence, that is, to disclose data, facts which constitute evidence and can therefore be used as evidence, sometimes to assess the probative value of an existing means of proof or which clarifies any contradictions that exist between two or more means of proof" [23, p. 271].

The specifics of the judicial expertise, as well as other particularities of this institution were analyzed by the author A.R. Shleahov, who states in the paper „Sudanese Expertise: Organization and Proofing" that „judicial expertise is a procedural action consisting in the investigation of the circumstances of criminal procedure by the judicial expert in the field of science, technology, art, craft or in other fields in order to ascertain the circumstances that are important for the criminal case" [69, p. 7].

Authors Iu. Odagiu and L. Luchin in their work „Judicial Expertise" mentioned that „Judicial expertise is a qualified form of using special knowledge. It significantly expands the

possibilities of knowledge of the criminal investigation bodies and of the courts, accepting the use of all scientific means of knowledge" [38, p. 7].

A similar opinion is held by the authors Gh. Golubenco and D. Chiotici in the scientific article „Specialized knowledge" in criminal law of Romania and the Republic of Moldova „which states that specialized knowledge is any knowledge of science, technology, art, craft, other spheres of human activity (except in the field of material and procedural law), obtained as a result of professional training and experience or as a result of occupations and practical experiments, applied for the purpose of solving problems, arising in the administration of justice" [28, p. 105].

Another opinion, in this sense, was expressed by the author E. Baltaga in his doctoral thesis in law „Application of special medical knowledge to the investigation of criminal cases", who reiterated that special knowledge represents „a system of scientific-practical knowledge from – a field or another of science, technology and modern technologies, arts or crafts and skills acquired by a specific person as a result of specialized studies and professional training" [3, p. 63].

Regarding the concept of special knowledge, which is an indispensable part of the forensic expertise, the author M. Gheorghiță also exposed in his work „Treatise on Forensics", who mentioned that, „traditionally, in the legal literature by this notion is meant a system of professional theoretical knowledge and practical skills in a concrete field of science, technology, art or in a trade, acquired through special training and professional experience " [26, p. 690].

The notion of special knowledge was also formulated by the authors of S.V. Kivalov, S.N. Mishenko, D.Iu. Zaharchenko in the work „Уголовный процессуальный кодекс Украины: Научно - практический комментарий". „Special knowledge means knowledge in the field of science, technology, art or craft, obtained as a result of special training or professional experience and which does not fall into the category of professional knowledge of persons who have the competence to accumulate evidence in criminal proceedings" [52, pp. 216].

The same view is held by A.A. Aisman, who states that special knowledge is not accessible to all, the number of people possessing it being limited, is knowledge that does not have the criminal prosecution body, the prosecutor, etc. [71, p. 89].

Therefore, special knowledge is that professional knowledge in the field of science, technology and craft, obtained through professional training, which is used by a forensic expert to conduct a methodical research, reasoned conclusions of which can serve as evidence in a judicial process.

In order to reproduce some individual particularities of the judicial expertise, it is opportune to make a classification of them. The classification of the judicial expertise contributes to the achievement of the purpose of the criminal process as well as contributes to the correct choice of

the judicial expert, the correct formulation of the questions to be answered by the judicial expert, the correct assessment of the results of the judicial expertise.

In the opinion of the author M. Gheorghiţă „The problem of classifying judicial expertise has an importance not only theoretical but also practical, in order to determine their methodical, organizational orientation" [26, p. 696], as well as the procedural one. In his work „Treatise on Forensics", the author, as a basis for the classification of expertise, were taken „The object and methodology of research, the division of all expertise into nine classes, namely: forensics; forensic and psychophysiological; transportation engineers; accounting and economic-financial; technological-engineering; techniques; agricultural; ecological; biological and objects of animal or vegetable origin"[26, p. 696].

In turn, the authors Iu. Odagiu and L. Luchin [38, p. 11], in the work „Judicial Expertise" classify judicial expertise according to „fields of science: types, genres, groups and subgroups. Types make up those researches that serve as a source of formation of the theoretical and methodological basis of forensic expertise. The genres differ according to the object and method of the research. Groups are components of gender. They are distinguished by the specificity of the object in the general relations between the type of objects and the methodologies. Subgroups are the component parts of the groups, based on some specific research".

Following the forensic examination, the expert who carried out the investigation will draw up the forensic report.

Authors Ig. Dolea, D. Roman, Iu. Sedleţchi et al in the paper „Criminal Procedure Law" states that „the specificity of the expert report prepared by an expert in a field that is not sufficiently known to the prosecuting authority or the court, in the literature the opinion was put forward that the expert would carry out a „scientific trial". In this opinion, the expert report has a higher probative value than the other means of proof" [22, p. 303].

Regarding the „scientific judgment", we mention the opinion of the authors T. Osoianu, Iu. Odagiu, D. Ostavciuc, C. Rusnac, who in the paper „Tactics of criminal prosecution „noted that" judicial expertise does not solve problems regarding the legality or illegality of acts committed by individuals or legal entities" [40, p. 323].

Regarding the features of the forensic report, the author Gh. Mateuţ stated in the manual „Criminal procedure. The General Part", thus, the judicial expertise represents the technical research undertaken by the expert, after which he reaches conclusions regarding the issue that must be clarified for the settlement of the case by a criminal investigation or jurisdiction body, as the case may be. These conclusions are nothing more than the evidence to be used in the process of establishing the truth, and the expert report in which they are contained is the means of proof [35, p. 429]. In this regard, the author A.V. Cudreavţeva in the article „Заключения и показания

специалиста как вид доказательств в уголовном процессе России" the specialist and the specialist are necessary. The forensic expert as a result of conducting an investigation, applying special knowledge, formulates the conclusions in the specialty in which he is authorized, regarding certain facts, circumstances, material objects, phenomena and processes, the body and the human psyche. The main premise is the information on the criminal case, the second premise is the special knowledge of the specialist, following the application of which a conclusion is reached [55, p. 56].

A similar position was put forward by the author V.M. Bîcov in the work „Заключение и показание специалиста как новый вид доказательств", which states that the specialist, as a rule, is limited only to the examination of the objects presented.

Therefore, the forensic report is the act in which the forensic expert materializes his conclusions following the investigation, and which is composed of three parts: introductory, descriptive and conclusions. Despite the fact that the forensic report materializes in the forensic report and the conclusions reached by the forensic expert, this means of proof is to be assessed equally with the other means of proof, the results of the repeated forensic examination have the same probative value as and the results of previous expertise and are assessed in conjunction with other evidence.

The process of disposing of the forensic expertise is worth paying attention to, as well as the formulation of the questions to be submitted to the experts. In this regard, the authors V. Cuşnir and V. Rusu, in the scientific article „Judicial expertise and technical-scientific findings in criminal proceedings", stated that „when formulating questions it is necessary to take into account the requirements that must be meet these:

Emphasis is also placed on the quality of the materials submitted for examination. In this sense, ensuring the quality of the materials sent for expertise is the basic premise of obtaining the expected results by administering this means of proof. In order to carry out the work indicated by the judicial body, the expert will usually have to have at his disposal, on the one hand, the traces, the objects that constitute material means of proof, and on the other hand, the comparison models. The materials subject to expertise must be representative and sufficient in quantity and quality. All the materials and objects they need to carry out the work in the best conditions are made available to the experts. When a new expertise is ordered, the criminal investigation body is obliged to check the bodies of the offenses that will be subject to it, to ascertain whether they have not undergone changes during the first examination, changes that could mislead the expert, and if so, to assess the extent to which the conclusions can be influenced by them [31].

Following the examination of the forensic report, the parties are entitled to submit requests for the hearing of the forensic expert. Regarding the hearing of the forensic expert, the author D. Gherasim stated that in the scientific article „Peculiarities of hearing the expert in the judicial

investigation" he noted that „in the process of verbal hearing of the expert can be identified by experts will prove to be incomplete, insufficiently clear or contradictory "[27, p. 271].

The same opinion is supported by Ig. Dolea the grievance that states that „The condition of the need to hear the expert is the ambiguity of the report, or certain deficiencies. These vices, as the author mentions, must not be of a nature that would require additional expertise"[21, p. 524].

In some cases, the experts heard differ significantly from the opinion expressed in the expert report. „In such cases, the prosecuting authority or the courts must verify the reasons which led to the discrepancies between those indicated in the expert report and the statements of the expert heard" [40, p. 323].

Regarding the probative value of the statements of the judicial expert, the author L. Furnică maintains the opinion that "the local legislator did not grant probative value to the statements of the judicial expert, based on the provisions of art. 93 CCP. Considering that the data that are not collected through the evidence cannot serve as evidence in the criminal case, we conclude that the expert's statements have no probative value in the criminal case and must be neglected by the court in ruling sentence. At the same time, the expert's statements can be seen as an integral part of the expert report and thus can be included in the category of evidence, being attributed to the expert report. However, the expert's statements do not refer to the merits of the case, they are necessary if the expert report is not clear or has some shortcomings, the removal of which does not require further investigation, or the need to specify the methods applied by expert or some notions [25, p. 627].

However, there is no uniform position in the doctrine and literature on the role of the head of the institution of judicial expertise in criminal proceedings. In this regard, the author Dulov A.V. mentions that the head of the institution of judicial expertise is a procedural consultant of the authorizing officer in the process of ordering and conducting judicial expertise [51, p. 131].

The opinion of the author A.V. Dulov was criticized by A.I. Paliaşvili in the work „экспертиза в суде по уголовным делам" [60, p. 73], who thinks that following the granting of the head of judicial expertise of such rights, his position will be confused with the function of the prosecuting officer.

In the work „Правовые основы организации и деятельности судебно-экспертных учреждений СССР" [69, p. 25], the author A.V. Shleahov claims that the head of the forensic institution is entitled to check the quality of the objects received during the investigation. We do not support the opinion of the author A.V. Shleahov regarding the fact that the head of the forensic institution is entitled to check the quality of the objects received in the investigation, as the objects arrive packaged and sealed and it is necessary for the forensic expert to determine their condition in order to prove their quantity and how they were packaged.

Regardless of the fact that the criminal investigation body has a positive obligation to investigate all the circumstances of the case, also ordering the performance of judicial expertise as well as the performance of other criminal prosecution actions, thus ensuring the right to an effective investigation. Unlike the criminal investigation body, the court has a passive role, but in order to clarify the circumstances of the case, at the request of the parties, it may order the performance of the judicial expertise.

Chapter II, entitled **„Judicial expertise - probation in criminal proceedings”**, presents the analysis of the concept of judicial expertise, the report of judicial expertise as evidence in criminal proceedings, also by the author was a correlation between technical and scientific findings or forensic and forensic report. The author also examined legal issues regarding the assessment of the forensic report.

Due to the considerable progress of society in various fields of science, technology and, last but not least, information, the possibilities of those evidentiary proceedings that were traditionally used by law enforcement, such as the hearing of the suspect, the experiment in criminal proceedings, even on-the-spot research, in some cases, could not already provide a broader, more objective and multi-faceted range of all the circumstances of the case.

In this regard, we mention that the statements of the suspect, the witness or the injured party, the minutes of the criminal prosecution actions, in conjunction with other means of proof, are necessary in the examination of the criminal case, this means of evidence is practically found in the content. investigation of any criminal case. In this regard, we consider that it is necessary to broaden the evidence base in the process of examining the criminal case, first of all by attaching to the criminal case those means of evidence which have an individual probative value and contribute to the verification of evidence, including the suspect's statements the injured party, etc. The report of judicial expertise in conjunction with other means of proof would effectively contribute to solving this obstacle in achieving the purpose of the criminal proceedings.

In the opinion of the author A.A. Aisman, special knowledge is not accessible to all, the number of people who possess it is limited, it is knowledge that does not have the criminal prosecution body, the prosecutor, etc. [71, p. 89]. We presume that the criminal investigation body or the prosecutor possesses this special knowledge, and this does not exclude the fact of having a judicial expertise and conducting the investigation by a competent person.

We mention the opinion of the author E.Iu. Samuticeva, which he presented in his doctoral dissertation „Заключения эксперта и его оценка в уголовном процессе. (сравнительно-правовое исследование)”, that the essence of special knowledge in the Anglo-Saxon and Roman-German law system is identical, the element that characterizes them is the lack of knowledge in the given field of the person conducting the criminal investigation [62, p. 57].

In the criminal proceedings of Germany, the category of special knowledge possessed by the persons invited to the trial includes knowledge and experience in the field of science, art or craft, which is not possessed by the person prosecuting or examining the case in court. judgment, but this knowledge is necessary for solving some questions about the case [4, p. 147].

Likewise, US law offers the possibility of applying special knowledge in criminal proceedings. Despite the fact that the Federal Evidence Rules do not define the term of special knowledge, but examining the provisions of art. 702, we deduce that special knowledge represents knowledge in different fields (science, technique or others) or skills obtained as a result of professional training [63, p. 109].

The similar definition of special knowledge is given in the English doctrine, the emphasis being placed both on the theoretical knowledge obtained and on the professional experience of the competent person [43, p. 298].

In Anglo-Saxon criminal proceedings, it is necessary that the information provided by the person with special knowledge should not be part of the spectrum of knowledge held by the court, so the information will be obtained from the application of special knowledge.

Various opinions are expressed in the literature on the essential features of forensic expertise, in most cases they coincide, but we found that specialists in the field do not attribute the procedural independence of the expert and personal responsibility for deliberately false conclusions to the essential features of this institution. we do not support the opinion that the judicial expert does not benefit from the procedural independence, the judicial expert is independent and will formulate his conclusions only on the basis of the research carried out, based on the principle of objectivism. At the same time, in case of drawing up an intentionally false conclusion, the judicial expert may be held criminally liable in accordance with the provisions of art. 312 of the Criminal Code.

The problem of classifying forensic expertise began in the 1950s and 1960s and, as we have seen, is still unresolved. The opinions of specialists in the field are diverse and the common denominator, regarding the classification of expertise, has not been identified. At the same time, we recognize that, due to technical and scientific progress, new fields of science, technology, new research methods appear, which contributes to the impossibility of listing all forms of forensic expertise.

The current law on judicial expertise and the status of the judicial expert provides for a classification of judicial expertise that is contrary to the Code of Criminal Procedure. Therefore, art. 27 of the Law on judicial expertise and the status of the judicial expert provides for the classification of judicial expertise according to the following criteria:

- „The consecutive performance of the expertise;

- The volume of research;
- The number of experts who participated in the research;
- The number of scientific fields applied to the performance of the expertise" [34].

The Code of Criminal Procedure classifies judicial expertises according to the same criteria as the Law on Judicial Expertise and the status of the judicial expert, but, depending on the classification criterion, the expertise are classified differently. The Code of Criminal Procedure provides for the following expertise: expertise in the commission, complex expertise, additional expertise, repeated expertise.

Proceeding from the Government Decision no. 195 of 24.03.2017 [30] on the approval of the Nomenclature of forensic expertise, forensic expertise is classified by: field (traditional forensic, chemical-forensic, biological, economic-engineering, technical-engineering, psychological-judicial, psychiatric-legal), type of expertise judicial expertise (dactyloscopic expertise; expertise of materials and substances; biological expertise, etc.), specialty of forensic expertise (expertise of digital footprints, palmar and planting; expertise of white weapons; ecological expertise of vibrations and background vibrations).

According to the provisions of art. 93 CPC, the forensic report is a means of proof in the criminal process. It is not correct to state that the forensic report is evidence in the criminal proceedings, the evidence is precisely that element of information (information) that is materialized in this report following the investigation by the forensic expert.

We consider that no evidence in the criminal process is superior to the other evidence, the assessment of the evidence must be based on the legal provisions: their relevance, conclusion and usefulness. The evidence must also be assessed according to its veracity. Truthfulness is the attribute, the character of what that which is true, that is, that which is in accordance with the truth, true and real. The veracity of the evidence can be characterized as a correspondence of the date of fact examined by the criminal investigation body or the court that proves it this time, but, as a whole, all the evidence is appreciated from the point of view of their corroboration [21, p 545].

The author Gh. Mateuţ defines the expertise report as a means of proof provided by the CPC, and the expert becomes a privileged and essential interlocutor of the criminal process bodies. Recourse to the expert is currently a common procedure [35, p. 629].

The growing complexity of criminal cases, especially in the economic and financial sectors, is forcing criminal jurisdictions to turn to experts more frequently than ever before. The frequency of recourse to experts depends on the evolution of criminal justice itself [2, p. 40].

In terms of comparative law, we note that the Criminal Procedure Law of Ukraine defines the forensic report as an act in which the investigations are described and the conclusions are formulated, following the conduct of the investigation, the answer to the questions submitted by the

authorizing officer. A similar definition of the forensic report can be found in the legislation of the Russian Federation [65].

According to art. 4 of the CPC of the Netherlands, an expert report means the act in which the results of the research carried out based on the indications of the competent bodies are materialized, which are carried out on the basis of the professional competences of the expert [32].

In the criminal law of Northern Ireland, England and Wales, the forensic report is characterized as a report by a person with special knowledge, who submits statements on questions to which he is competent to answer [64, pp. 35].

In the criminal proceedings of the Russian Federation, Ukraine, France and the Netherlands, the report of the forensic report obtained after the investigation in the criminal investigation phase or the trial phase is considered as an independent means of proof and may be the basis of the sentence acquittal or conviction, issued by the court.

At the same time, German criminal law does not provide the status of an independent means of proof to the forensic report. In this regard, we note that the forensic report obtains probative value only if the expert who conducted the investigation was present at the trial of the case and submitted statements on the report submitted.

Compared to the other means of proof, the forensic report has certain individual characteristics that distinguish it from the other means of proof [53, p. 112].

The substantive and formal conditions of the forensic report are provided both in the Code of Criminal Procedure of the Republic of Moldova, the Law on Judicial Expertise and the status of the forensic expert as well as in internal normative acts of forensic institutions. The content of the expert report must be clear and explicit to all participants in the criminal proceedings.

The forensic report as well as the technical-scientific or medico-legal finding, according to art. 93 The CPC is a means of proof which, inter alia, possesses some similar features. For this reason, it is necessary to establish common features as well as to identify those criteria that differentiate these two means of proof.

The inclusion by the legislator of the technical-scientific or medico-legal finding in the category of evidence in the criminal process has aroused some confusion among both theorists and practitioners. Examining the legal provisions that regulate the procedure for drawing up the report of technical-scientific or medico-legal finding in which the results are materialized.

To the finding, we deduce that the institution of the technical-scientific or medico-legal finding is not regulated sufficiently clearly, and allows an extensive interpretation of the legal provisions.

In the process of conducting the forensic examination, the legislator expressly provided that the expert applies special knowledge, but in case of technical-scientific or medico-legal finding the

legislator stipulates that the criminal investigation body, the finding body or the court may use the knowledge of a specialist it is specified what the nature of this knowledge is.

If the norm that regulates the conditions for carrying out the technical-scientific or medico-legal finding does not expressly specify the fact that the specialist will apply or will not apply special knowledge, in his turn art. 87 para. 2 The CPC expressly provides that the specialist must have sufficient knowledge and special skills to provide the necessary assistance to the criminal investigation body, prosecutor, investigative body or court, but not to conduct an investigation, as in the case of judicial expertise.

A provision diametrically opposed by the legislator provided in art. 6 pt. 43 CPC defining the specialist as a person who has a thorough knowledge of a discipline or a certain problem and is involved in criminal proceedings, in the manner provided by law, to help establish the truth.

Proceeding from the above, we notice a discrepancy between the legal norms that regulate the institution of technical-scientific or medico-legal finding.

In addition to such an ambiguous regulation, the legislator did not provide the structure of the report of technical-scientific or medico-legal finding, or the structure of this report is identical to that of the forensic report, but we also did not identify a regulation which will provide an answer to this question.

Analyzing the provisions of the Code of Criminal Procedure, we conclude that the procedure for drawing up the report of technical-scientific or medico-legal finding was not reflected in the law, which raises many questions both in its assessment and in the investigation of the report. of technical-scientific finding in the court.

Therefore, we mention that the structure of the report of technical-scientific or medico-legal finding, the procedure for its preparation, verification, assessment and use in criminal evidence is not clear, which negatively influences the probation process.

Regardless of the legal regulations of each piece of evidence provided by the criminal procedure code, the criteria for assessing them are identical and are to be observed both by the criminal investigation body and by the courts.

In this regard, we note that in the opinion of the author I.I. Muhin, the appreciation of evidence is the intellectual activity, performed in certain logical forms, as a logical process to establish the presence and interaction between evidence [58, p. 97], establishing their role and content, the sufficiency and use of evidence to solve important circumstances for the just settlement of the case.

Regarding the assessment of the evidence in the criminal process, the Criminal College of the SCJ also stated: „ the assessment of evidence is one of the most important moments of the

criminal process, because the entire workload of the parties in the process, focuses on the solution that will be given as a result of this activity ”[17].

One of the guarantees of the correct and objective assessment of the evidence is the impartiality and procedural independence of the prosecuting officer, the prosecutor and the judge. The legislator acknowledges that in the process of assessing the evidence an important role is played by the personality of the judge and the criminal investigation officer. For this reason, one's own conviction, formed after researching all the evidence administered, which has in its content and psychological aspect, is an essential element in assessing the evidence.

His own conviction, as a basis for assessing the evidence, arises from the examination of all the evidence in terms of its corroboration. It was through his own conviction that the theory of free appreciation of evidence was put forward.

His own conviction is the influence of the personality of the criminal investigation officer, the judge on the process of assessing the evidence. For this reason, one's own conviction is examined from several points of view: gnoseological, procedural, as well as psychological. We consider that in the process of assessing the evidence, the basic aspect is occupied by the psychological aspect.

We support what was stated by the author Iu.V. Korenevski, who believes that in the criminal proceedings, the prosecuting officer, the prosecutor and the judge, based on the evidence administered, create a mental image, an alleged image of the place where the crime was committed, and remain face to face with the image they created. Each of them has to make a decision: is the image created correct, does this image correspond to reality, are the conclusions he reached correct? There is no objective criterion in the process of assessing evidence, because the circumstances of the case are known only on the basis of the evidence administered and the image created on the basis of them [54, p. 154].

The Constitutional Court of the Republic of Moldova also commented on the intimate conviction of the judge. „The Court notes that the free assessment of the evidence is closely linked to the rule of investigation in all respects, complete and objective of the circumstances of the case and the evidence [29].

We also identify the term self-conviction in the criminal procedural laws of France, Ukraine, Germany, the Netherlands, etc.

In the current French Code of Criminal Procedure, the term "self-conviction" is used several times. After examining the criminal case in court, before retiring to the deliberation room, the chairman of the hearing asks the members of the jury if they have created their own conviction after examining the case [50, p. 278].

In the criminal proceedings in the Netherlands, the judge's „own conviction" is limited to certain legislative conditions. For example, a person cannot be convicted solely on the basis of statements by which he has pleaded guilty, etc.

„Self-belief" is also an element of the process of assessing evidence in German law. This principle is provided in art. 264 of the German CPC. The respective norm refers to the activity of the court, the appreciation of the evidence based on one's own conviction also takes place in the prejudicial stages of the criminal process [67, p. 75].

Based on the above, as well as the essence and concept of the forensic report, we consider it necessary to establish and examine the criteria for assessing the forensic report, defining elements of the forensic report, after which the competent bodies his.

Chapter III, entitled **„Disposal of judicial expertise in criminal proceedings"** composed of the following paragraphs: Procedure for disposing of judicial expertise in the criminal investigation phase; Disposal of forensic expertise and investigation of the forensic report in the trial phase; Conclusions in Chapter 3.

The disposition of the judicial expertise consists of a set of actions undertaken by the criminal investigation body or the court in order to respect the fundamental rights and freedoms of the parties to the trial.

The use of this institution in the prosecution or trial of the case contributes to the resolution of certain circumstances, the resolution of which is not possible without the application of special knowledge.

The disposition of the judicial expertise constitutes a procedural action that can be carried out only on the basis of certain grounds with the observance of the conditions provided by the criminal procedural law [42, p. 558].

The factual basis for the disposition of judicial expertise consists in clarifying or evaluating the circumstances that may be of probative importance for the criminal case, but this requires specialized knowledge in the field of science, technology, art, craft or other fields. The clarification of some circumstances that may be important in the criminal case results from a set of evidence administered. Author A.P. Ryakov reiterated that the factual basis for disposing of the expertise

Judicial evidence is the evidence administered in compliance with the legal provisions, the investigation of which, with the application of special knowledge in the field of science, technology, art and craft, contributes essentially to identifying the factual elements that are necessary for the fair settlement of the case [61, p. 77].

Judicial expertise may not be ordered when special knowledge is not required to clarify or assess the circumstances. The same opinion is supported by the author T. Osoianu [39, p. 76].

The legislator does not expressly stipulate at what stage of the criminal investigation the judicial expertise must be ordered, such a question is one of the tactical field: thus, the time of disposing of the judicial expertise is conditioned by the circumstances of each case.

At the same time, from a procedural point of view, it is important that the forensic examination be ordered at the appropriate time (the appropriate time is set by the authorizing officer), so that it takes a long time, which negatively affects compliance with the reasonable time of prosecution.

The Code of Criminal Procedure of the Russian Federation and Ukraine does not stipulate the obligation of the authorizing officer to set the deadline for conducting the forensic examination. At the same time, the Law on Judicial Expertise of the Russian Federation provides for certain deadlines for conducting judicial expertise with the possibility of extending them [66].

The criminal procedural legislation of the Netherlands, France and Germany obliges the authorizing officer of the judicial examination to set the time limit for its execution. The French Code of Criminal Procedure also provides for the possibility of extending the time limit for carrying out judicial expertise on the basis of the expert's request. If the expert did not carry out the expertise within the set time, he will be replaced by another expert and will also present his explanations as well as the objects that were submitted for research. Article 77 of the German Code of Criminal Procedure provides for a pecuniary penalty if the expert refused to perform or did not comply with the deadline.

US criminal law does not provide for the term of the forensic examination. Usually, the deadline is set after consulting one of the parties with the expert who will conduct the research [5, p. 82].

The head of the institution of judicial expertise is entitled to set the deadline for conducting the investigation. Taking into account the provisions of art. 251 CPC, all actions performed after the expiration of the established term are null and void. We are of the opinion that from a tactical point of view, in order to exclude any procedural sanction, the time limit for carrying out the forensic examination should be reasonable, on the grounds that the legal basis for carrying out the forensic examination is individual in each case.

In this sense, we mention the Decision of the Romanian Constitutional Court which reiterates that the criminal process involves the development of an activity composed of a succession of acts regulated by the law of criminal procedure, which requires that, in disciplining procedural and procedural acts, be taken into account by the time element [20].

Therefore, among the conditions required by law for a procedural act or procedure to be valid, there is also the condition regarding the time in which the act must be performed. Thus, the time frame within which or the deadline by which certain activities or acts may be or must be

performed in the criminal proceedings must be fixed in such a way that the proceedings maintain an accelerated pace, but without impeding the finding of truth or observance the rights of the parties.

Thus, in order to be able to carry out the judicial expertise, it is necessary the existence of two grounds: legal and factual. The legal basis represents the criminal act committed, the moment when the criminal procedural relations arise, but the presence of the legal basis alone is not enough. It is not necessary to apply special knowledge in any case, therefore, the emergence of the need to apply special knowledge in different fields is the factual basis of the disposition of judicial expertise.

We already deduce the type of forensic expertise to be ordered based on the factual basis, which is individual in each case.

A similar opinion was expressed by the authors C. Aioniţoaie, V. Bercheşan, I.N. Dumitraşcu „In case of legal basis, we do not concretely establish the type of judicial expertise to be ordered, in case of investigation the crime differs from case to case in relation to the nature of the traces and material means of evidence discovered during the investigation of the place where the crime was committed" [1, p. 134].

The authors E.M. Livsit and V.A. Mikhailov reiterates that „Non-compliance with the procedural provisions regarding the disposition and performance of judicial expertise is qualified as a violation of the criminal procedural law, the results of which cannot be based on a conviction or other decisions" [56, p. 36].

The representatives of the criminal investigation body do not comply everywhere with the provisions of the Code of Criminal Procedure. Thus, „the court found that the criminal investigation officer did not take into account the provisions of art. 145 para. (1) The CPC found that in the process of disposing of the forensic examination, the right of the defense person, the right to ask questions to the expert, the completion or modification of these questions, as well as the right to request the appointment of a certain expert were violated" [24].

According to the provisions of art. 145 CPC, the parties to the trial will be informed about the disposition of the judicial expertise until the necessary materials for the performance of the judicial expertise are sent. Notification of the parties about the performance of the forensic examination after sending the necessary materials, excludes the possibility of appointing an expert or requesting the performance of the forensic examination in a certain institution of expertise or asking additional questions to the forensic expert [59, p. 172].

In the practical activity, the criminal case often includes two or more persons with the status of suspect, and the case is not clear which suspects will be notified of the order of disposal of the judicial expertise. In such situations there is no single opinion, some consider it necessary to notify

all persons concerned in the process, others reduce the number of persons to be notified of the order of disposal of judicial expertise.

At the same time, we consider that informing all the suspects, the accused, about the disposition of the judicial expertise is not a necessary one, because this procedure requires additional time and contributes to the violation of the reasonable term. In this regard, we reiterate that in the process of disposing of the forensic examination will be informed only those suspects who are related to the circumstances of the case to be established following the expertise or whose samples will be used in the investigation.

Violation of the legal provisions regarding the disposition procedure and assessment of the forensic report was the object of examination in the practice of the ECtHR, here we mention: Ciobanu v. Republic of Moldova; Tomac v. Republic of Moldova; Dogotar v. Republic of Moldova; The case of H.L. v. Great Britain; Luberti v. Italy, etc.

The order of disposal of the forensic examination is mandatory both for the forensic expert and for the head of the forensic institution, but in judicial practice there were situations when the forensic officer appointed an expert at the request of the parties, but the head of the forensic institution did not take in the calculation and did not appoint the expert requested by the parties.

The disposition of the judicial expertise represents a procedural obligation of the body and of the prosecutor if the explanation of some circumstances requires the application of special knowledge. Judicial expertise is also ordered in favor of the suspect, the accused in order to respect the principle of equality of arms.

In the provisions of art. 142 para. (2) of the CPC, it is mentioned that the parties, on their own initiative and on their own account, are entitled, through the criminal investigation body, the prosecutor or the court, to submit to the public institution of judicial expertise / office of judicial expertise a request for a forensic examination to establish the circumstances which, in their opinion, could be used to defend their interests [14].

In judicial practice, the question of the constitutionality of the expression „and on one's own account" has been debatable. In this regard, on August 17, 2018, the Constitutional Court of the Republic of Moldova was notified regarding the unconstitutionality of the text "and on its own account" from article 142 par. (2) of the Code of Criminal Procedure [19], regarding which the Constitutional Court of the Republic of Moldova was exposed.

Therefore, in order to ensure the validity of the forensic report, the authorizing officer will determine whether the forensic laboratory and the forensic expert comply with the requirements established by law. Due to non-compliance with the imposed conditions, the forensic report will not be admitted and will be excluded from the file.

In addition to the requirements established by the judicial expert or the forensic laboratory provided by the law on judicial expertise and the status of the judicial expert, the criminal procedural legislation provides for certain cases of incompatibility of the judicial expert. Therefore, at the disposal of the judicial expertise, the authorizing officer will obligatorily check whether or not there are cases of incompatibility of the judicial expert.

One of the essential requirements for the proper conduct of criminal justice is the full trust that litigants must have in criminal justice. „The lack of confidence in the way officials perform their duties shakes the authority of criminal judgments and undermines the prestige of the judicial bodies of criminal justice. Therefore, for the situations in which the presumption of impartiality and objectivity would be questioned, the legislator provided the appropriate procedural remedies such as: incompatibility, recusal and abstention" [36, p. 293].

Regarding the incompatibility of the expert, the ECtHR has commented in the case of Sara Lind Eggertsdottir v. Iceland [12].

The national judicial practice knows the cases when the parties to the trial have had their right to challenge the judicial expert violated. The competent authorities shall provide the parties with information on the judicial expert following the investigation. In the criminal case 202008041, on October 12, 2020, the forensic examination was ordered. On the same day, the defense counsel signed the notification report regarding the disposition of the forensic expertise in charge of CML. In the minutes, both the defense counsel and the suspect M.V. requested that additional medical documents of a primary nature be made available to the expert, which formed the basis of the Extrajudicial Expertise Report no. 202002P258 of September 1, 2020 as well as the appointment of an independent expert, according to art. 145 CPC, but did not receive any answer according to art. 246 CPP. Judicial expertise report no. 202002D1886 of October 20 was notified to the parties on November 6, 2020, and the corresponding report was drawn up indicating that the parties have the right to request the recusal of the expert (post factum) [45].

The legislator stipulates that the judicial expertise be ordered and performed in the trial phase of the criminal process.

The independence, impartiality and immovability of the judge are expressed by their observance of the principle of adversarial proceedings, including in the case of the need to carry out judicial expertise or the hearing of the judicial expert in the trial of the case.

The procedure for disposing of the judicial expertise in the trial phase is regulated by the provisions of art. 374 of the CPC Here, the local legislator did not bother to examine the features of the trial phase, the conditions in which it takes place and the principles governing this stage of the criminal process, but simply indicated that the judicial expertise in the trial phase will be ordered in the cases and conditions provided in art. 142-155 CPP. On the other hand, the specifics of these

two phases of the criminal process are diametrically opposed. The court hearings are public (except for the cases provided in art. 18 CPC), respecting the principles of orality, directness, publicity and adversariality. These principles, which underlie the trial of the case, differentiate the procedure for disposing of judicial expertise in the trial phase from the procedure for disposing of expertise in the criminal investigation phase.

In turn, the following features are specific to the criminal investigation phase [41, p.127].

In addition to these essential features of the criminal investigation, the criminal investigation body has an active role, which is manifested by its obligation to take measures provided by law to investigate under all aspects, completely and objectively, all the circumstances of the case. Therefore, we support the opinion that the procedure for disposing of the judicial expertise provided by art. 142-155 is expressly provided for the criminal investigation body and is specific only for the criminal investigation phase.

The procedure for disposing of the expertise in the trial phase is an individual one, which essentially differentiates from criminal prosecution. First of all, the court does not have an active role, therefore, the judicial expertise in this phase of the criminal process will be ordered only at the request of the parties to the trial, not ex officio. Likewise, in the provisions of art. 374 The CPC does not regulate the procedure for examining the application regarding the disposition of the judicial expertise and what is the procedure for communicating the parties about the fact of disposing of the expertise.

In this sense, we are of the opinion that the provisions of art. 374 CPC does not meet the requirements of a fair trial and to avoid an ambiguous interpretation we believe that the text of the rule should be amended.

The purpose of the judicial expertise in the trial phase is to resolve by the expert some ambiguities, the solution of which requires the application of special knowledge in various fields of science, art, technology or craft, which arise in the examination of the criminal case.

The legislator offers the possibility to the parties to submit the requests regarding the hearing of the judicial expert or the disposition of the judicial expertise, during the preliminary hearing, but, from a tactical point of view, we consider that the requests regarding the hearing of the judicial expert or the disposition of the judicial expertise courts.

In order to admit or reject the request of the parties for the disposition of judicial expertise, it is necessary for the court to examine all admissible evidence, but in the preliminary hearing the court cannot rule on the admissibility of certain evidence, the Constitutional Court notes that „The examination of evidence in contradictory conditions is reserved for the stage of judicial investigation [18].

The legislator obliges the parties to the trial to present the list of evidence that they intend to investigate in the trial of the case, including those that have not been examined in the criminal investigation. Thus, the parties will indicate the list of evidence that they intend to investigate in the judicial investigation: the hearing report of the judicial expert, the forensic report, etc.

„Failure to present the list of evidence will make it impossible to examine the evidence in the judicial investigation. However, if the party who invokes the fact of the discovery after the stage of filing the criminal case, there will be no impediment to examine the given evidence" [21, p. 956].

The court, after hearing the views of the parties, shall decide on the relevance of the evidence proposed by the parties, and shall order that any of them be presented at the trial. At the trial of the case on the merits, the party to the trial may repeatedly request the presentation of evidence recognized as irrelevant at the preliminary hearing.

In the preparatory part of the hearing, the chairman of the hearing establishes the identity and competence of the judicial expert, explains his rights and obligations, and warns the judicial expert of the criminal liability he bears for intentionally making false statements. In accordance with art. 363 CPC, the president of the court hearing establishes only the identity and competence of the judicial expert, but in the preparatory part of the court hearing the president of the court hearing will explain the right of refusal of the judicial expert, but to exercise this right it is necessary to inform information on the activity of the judicial expert.

In this regard, we support the position of the author A.I. Paliaşvili, who states that it is not enough for the parties to be informed only of the identity and competence of the judicial expert, but also of the information concerning his place of work (the case of Sara Lind Eggertsdottir v. Iceland [12]), his position, degree especially the scientific title, studies, etc. [60, p. 73].

In the case of Mirilashvili v. The Russian Federation, the European Court of Human Rights found that in the criminal investigation phase it was ordered to conduct the forensic examination in the phonoscopic commission. The group, consisting of three forensic experts, was provided with samples of the applicant's voice in Russian. The experts searched the audio recordings, in which discussions were recorded in Georgian. Two of the three experts on the committee who did not speak Georgian found that the voice belonged to the applicant. In turn, the Georgian-speaking forensic expert, included in the Committee of Experts, concluded that the voice did not belong to the applicant [11].

The judicial investigation investigates all the evidence presented by the parties, including the reports of the forensic examination carried out in the criminal investigation phase. The court, having examined and assessing all the evidence presented as a whole by the parties at their request, may order the performance of the forensic examination. The effectiveness of the judicial expertise

ordered in the trial phase is directly proportional to the ability of the president of the court hearing to perceive not only the purpose of this evidentiary procedure, but also to understand the specifics of this means of proof, compared to other means of evidence examined in the judicial investigation.

In this regard we mention the opinion of the author V.M. Bozrov, who classifies the procedure for ordering the judicial expertise in stages, emphasizing the powers of the court in the process of disposing, conducting and assessing the report of judicial expertise [47, p. 26].

Author D.A. Harcenko states that the basis for dividing the activity of ordering and conducting judicial expertise into stages is characterized by the objectives of each stage [68, p. 153].

In the course of the investigation, the court will investigate all the evidence presented by the parties to the trial. However, due to its passive role, the court is not ex officio entitled to order the performance of the forensic examination or to state in advance the admissibility of the forensic report carried out in the criminal investigation phase.

In this regard, we will refer to the conclusion issued by the Chisinau Court, based in Buiucani, regarding the request for recusal of the judge who, after withdrawing from the deliberation chamber in order to pronounce the sentence, resumed the judicial investigation, exposing himself to the violation of the procedure disposition of the judicial expertise, which was ordered and carried out until the beginning of the criminal investigation. In this case, the judge questioned ex officio the opportunity to perform the repeated expertise on the grounds of procedural defects that affected the report of the primary expertise, commenting in advance on the admissibility of this evidence, calling it irrelevant [33].

„Within the judicial investigation, each party to the trial is entitled to submit the request for the performance of the forensic examination. The request for request regarding the performance of the judicial expertise it is formulated in writing, indicating the facts and circumstances subject to the finding and the objects, materials to be investigated by the expert" [14].

Requests will be substantiated, and if new evidence is requested, the facts and circumstances to be proved will be indicated, the means by which such evidence may be administered, the location of such evidence, and the identity of the experts will be indicated and their address if the party cannot ensure their presence in court [14].

The European Court of Human Rights, which stated in the case of Brandstetter v. Austria [7] that „The court on the basis of the request of the defense party is not obliged to order an additional, repeated examination, or appoint another expert to conduct the forensic examination if the primary expert report supports the allegations made by the prosecution. Thus, the fair trial does not only refer to the acceptance of the requests submitted by the parties, but the rejection of the requests submitted must be grounded and argued".

In the process of resolving the requests submitted regarding the disposition of the judicial expertise, the court will evaluate the contribution of the decision regarding the ordering of the performance of the judicial expertise on the settlement of the criminal case; what circumstances are to be established following the performance of the forensic examination; is special knowledge required to establish such circumstances; the circumstances established following the performance of the forensic examination will contribute to the elimination of some shortcomings; Can applications be made?

Regarding the obligation to examine the requests or approaches submitted by the parties to the trial, the Criminal College of the SCJ was also exposed, which reiterated that the appellate court did not comment on the approach, thus admitting the error provided in art. 427 para. (1) point 6) Code of Criminal Procedure. However, according to the minutes of the court hearing in the appellate court, from June 25, 2019, September 17, 2019 and October 8, 2019, there is no statement or solution of the defense action on which the appellate court was to state its reasons, after case its admission or rejection, respecting the principle of adversariality [16].

Therefore, the violation of the procedure for examining the defense's approach was the ground for quashing the decision of the appellate court.

Author V.A. Mikhailov, mentioned that the court will order the performance of the judicial expertise, in the situation where it was necessary to perform the expertise in the criminal investigation phase but in certain circumstances it was not ordered or in the situation when new circumstances were identified on the case. to be clarified [57, p. 164].

The literature has outlined the opinion that if the forensic examination was performed in the criminal investigation phase, it will not already be performed in the trial phase [72, p. 45].

We do not support what Iu.K. Yurkov, considering that forensic expertise is an activity in which certain objects, phenomena, etc. are investigated, but for the investigation of which special knowledge is required. Similarly, if an object has been the subject of an expert's examination, it could be further investigated or repeated if new circumstances are found in the trial, but this rule is not absolute, the court is entitled to refuse the expertise, but its refusal must be argued.

Author Ig. Dolea reiterates that in the „examination of the case on the merits or on appeal, the court may order the performance of the expertise, if following a request or request of the parties it will be found that certain circumstances have not been established in the prosecution, and without finding them impossible to resolve of the cause" [21, p. 1015].

Therefore, if certain circumstances are found in the trial of the case, the solution of which requires the application of special knowledge, each party to the trial, both the prosecution and the defense will submit a request for the disposition of judicial expertise. „The request for the performance of the forensic examination shall be made in writing, indicating the facts and

circumstances subject to the finding and the objects, materials to be investigated by the expert" [14].

Following the submission of the request for the disposition of the judicial expertise, the judge listens to the opinion of the parties regarding the need to carry out the judicial expertise. The opposing party shall be required to be aware of the request for the ordering and conduct of the forensic examination, and shall state its merits.

In the opinion of the authors E. Stancu and T. Manea „when ordering the judicial expertise, it is important to pay attention to the way of formulating the questions to which the expert will answer. One of the main causes of reaching erroneous or scientifically unfounded conclusions is the superficiality in setting the objectives of the expertise, not to mention the situations in which these objectives are left to the discretion of the expert" [46, p. 116].

Establishing the possibility of appointing an expert recommended by the parties, as well as addressing the questions posed by the parties even during the criminal investigation, in accordance with the provisions of art. 145 of the CPC, the contradictory nature of the expertise has been legislated, with procedural law in line with ECtHR case law in Mantovanelli v. France [10], according to which „respect for the right to a fair trial presupposes the right of the parties to express their views before the formulation of the expertise report, the simple possibility granted to discuss the conclusions of the expertise not being sufficient to satisfy the exigencies of art. 6 EARLY" [40, p. 313].

The national practice also knows cases of violation of the rights of the parties to dispose of the expertise [44].

In the case of Ciobanu v. The Republic of Moldova „The applicant was refused the appointment of an expert recommended by her, in order to participate in the performance of the expertise, in this case the European Court found a violation of art. 2 ECHR from a procedural point of view" [8].

The appointment by the parties of a recommended expert as well as the submission, modification or completion of questions contribute to the observance of the right to defense as well as to the equality of arms in criminal proceedings. Regarding the importance of the forensic report, the ECtHR also stated in the case of Beraru v. Romania [6].

Following the deliberation, the judge or the president of the panel will announce whether the request is admitted or rejected. Regardless of whether it was admitted or rejected, the judge will argue the decision. In case of admitting the request, the judge, following the information of the parties, will send the conclusion of the disposition of the expertise and the objects to be submitted to the investigation to the institution of expertise.

Following the investigation, the forensic expert will present his findings to the authorizing officer in a forensic report. During the court hearing, the minutes of the full or partial reading of the procedural actions confirming circumstances and facts ascertained by search, search, on-the-spot investigation, body examination, reconstitution of the deed, carrying out special investigative measures, technical-scientific finding are given and forensic, the report of forensic examination and other means of evidence, as well as the documents attached to the file or presented at the court hearing, if they are exposed or they confirm circumstances that are important in the case [14].

The time and place when the report of the forensic examination will be made known and in which the sequence will be given to the reading in conjunction with the other means of proof are established by the court. The forensic report shall be made public to the parties, which may be read in whole or in part.

As a rule, the court reads only the conclusions of the expert report, but the parties to the trial may request the court to acquaint themselves with the other parts of the expert report.

The parties to the trial and the court do not have special knowledge in this regard, in order to clarify some particularities of the report of the forensic report, the court will summon and hear the judicial expert who carried out the investigation and will hear him in the conditions of hearing the witness.

The author D. Gherasim states that „In the process of verbal hearing of the expert can be found the need to order and perform a new expertise, if the report submitted by experts will prove to be incomplete, insufficiently clear or contradictory" [27, p. 71].

The same opinion was expressed by the author Ig. Dolea, who mentions that „The condition of the expert's hearing is the ambiguity of the report, or certain deficiencies. These vices, as the author mentions, must not be of a nature that would require additional expertise" [21, p. 524].

Author S.F. Bicicov states that the ambiguity of the forensic report implies the need to argue the research methodology used by the forensic expert as well as the technical means used in the investigation by him [49, p. 66].

We support what was stated by the author S.F. Bicicov, considering that the argumentation of the methodology used to carry out the investigation can be interpreted only by the forensic expert who carried out the investigation, and possesses special knowledge.

In some cases, the experts heard differ significantly from the opinion expressed in the expert report. In such cases, the prosecuting authority or the courts must verify the reasons which led to the discrepancies between those indicated in the expert report and the statements of the expert heard [40, p. 323].

In order to support the above, we will refer to the case of Ghimp and others v. the Republic of Moldova [9]. Doctor I.C. was part of the first commission of forensic doctors who, after

examining the victim's body, came to a conclusion on the possible time at which the fatal injury was caused. Two years later, for reasons known only to him, I.C. he expressed an opinion before the Court of Appeal which tipped the balance of the charges against the three police officers quite differently. His new opinion was upheld by the Court of Appeal without being asked questions about the reasons behind the decision of Dr. I.C. to change his mind after such a long time. In addition, the judges who accepted the new opinion of I.C. they did not consider it necessary to state reasons for their preference for the new opinion to the detriment of the autopsy report and the opinion of the forensic commission which had the task of examining the victim's body. Subsequently, the Supreme Court overturned the acquittal of the defendants, which was based on the opinion of Dr. I.C. and ordered a re-examination of the case. The Supreme Court of Justice did not draw attention to the fundamental issues mentioned above, but only to a simple technicality, namely that the opinion of a single doctor was insufficient to challenge the findings of the medical commission of May 31, 2006.

In the case of Tomac v. The Republic of Moldova [13], the Court notes that the statements of the judicial expert are in contradiction with the report of the forensic expert report prepared by him, according to which I.T. he could have caused the injuries he found himself after his death. In this regard, it recalls that the internal regime for forensic expertise must be surrounded by sufficient guarantees capable of maintaining its credibility and effectiveness, in particular by asking experts to give their reasons. In view of the above considerations, the Court considers that, in the present case, the opinion of the judicial expert was not sufficiently reasoned and that the documents in the file do not show that there were sufficient guarantees.

General conclusions and recommendations

Analyzing the legal provisions regarding the judicial expertise in the criminal process, some legislative gaps were identified, which inevitably create impediments in the activity of the criminal investigation bodies and the courts. The subject of judicial expertise in the procedural aspect was not addressed in the national doctrine, but some topics related to this evidentiary procedure were examined tangentially, but we consider that those fragmentary approaches reflected in the local literature do not reveal all the legislative gaps of the expertise judicial.

Thus, in order to achieve the proposed objectives of this doctoral thesis, the specialized literature was examined both nationally and abroad. At the same time, the empirical basis of the paper is characterized by examining the practice of the ECtHR, the Constitutional Court of the Republic of Moldova, the Criminal College of the SCJ, court rulings, etc., which created an image of the applicability of procedural rules and errors committed by the body criminal prosecution and the courts in the process of disposing of judicial expertise and assessing the report of judicial expertise.

According to the purpose and objectives of the paper, as well as the judicial practice highlighted in this doctoral thesis, we formulate the following conclusions:

- Judicial expertise, as a probative procedure in the criminal process, has several stages of development, which have had a positive effect on the process of both legal and methodical improvement of this institution. However, with the entry into force of the Law on Judicial Expertise and the Status of Judicial Experts, as well as subsequent amendments to the CPC, as well as the Constitutional Court Decisions, some issues encountered by the competent bodies have been resolved, but legislative omissions persists and creates impediments to the observance of the procedural guarantees of the parties to the trial.
- In the national doctrine, the institution of judicial expertise lacks a procedural study in which to be reflected, as a whole, all the particularities of this institution. In the works, in the field of criminal proceedings, some particularities of this institution were tangentially addressed and researched, but in this paper, due to the evolution of national judicial practice, the practice of the ECtHR as well as scientific materials, created the possibility to identify those elements that define this institution. of the criminal procedural law and to highlight its particularities arising from the phase of the criminal process when for the clarification of some circumstances special knowledge is necessary.
- No matter how well a legal rule is drafted, there will always be room for interpretation, but for clarity, the margin for interpretation must be minimal. In the case of the judicial expertise, the legislator left room for interpretation that directly influences the procedure for disposing of the judicial expertise both in the criminal investigation phase and in the trial phase. The ambiguous interpretation of the law directly affects the rights and freedoms of the person to dispose of the forensic examination: the recusal of the forensic expert, the hearing of the forensic officer by the criminal investigation officer, etc., as well as the communication of the parties' expert report. the statements of the expert who according to art. 93 The CPC is not a means of proof in criminal proceedings.
- The lack of clarity of the norm of criminal procedure was also established in the provisions of art. 374 CPC, which does not make any difference between the procedure of disposing of the judicial expertise in the trial phase with the criminal investigation phase. The provisions of art. 374 CPC leaves no room for interpretation, these provisions are absolutely erroneous, because, in order not to complicate things, the legislator only refers to the provisions of

art. 142-153 of the CPC, not taking into account that the court is not entitled to order the performance of judicial expertise ex officio, which results from the principles governing the trial phase.

- The assessment of the forensic report as a means of proof in the criminal process is a positive obligation of the judge and the person conducting the criminal investigation, which consists in examining it and assessing it in collaboration with other evidence administered in the criminal process. Compared to other means of proof, the process of assessing it is a complex one and in some cases requires the application of special knowledge by the person who possesses it.
- In the process of elaborating this doctoral thesis, the author examined the judicial practice of the Criminal College of the SCJ, as well as the Decisions of the Constitutional Court of the Republic of Moldova. Due to the practice of the Criminal College of the SCJ, we have identified some legislative gaps regarding the procedure for both the disposition and the communication of the forensic report. The Constitutional Court, in turn, checked the constitutionality of some expressions that are part of the procedural norms that regulate the field of judicial expertise. With regard to the disposition of judicial expertise on behalf of the parties, the Constitutional Court mentions that this is an additional guarantee that the parties benefit from the trial.
- In the doctrine of criminal procedural law, as well as in judicial practice, the question regarding the judicial expenses incurred following the performance of the judicial expertise is debatable. In this regard, the High Court reiterated that if the forensic examination is ordered to clarify the circumstances relevant to the criminal case, the costs will be borne by the State, but if the forensic examination is ordered at the initiative of the parties and on their behalf, the party whoever requested it will bear the costs.
- In case of contradictions between the forensic report and the expert's statements regarding the report, the national court gave priority to the expert's statements, which do not even constitute a means of proof in the criminal proceedings.

Following the study, some legislative omissions were identified which in our opinion do not correspond to the requirements of a fair trial. Therefore, we make a series of recommendations that would contribute to the uniform application of criminal procedural law in the process of ordering, assessing and hearing the judicial expert:

- To be renamed Section VII of Chap. I of Title I of the CPC in „Judicial Expertise".
- Currently, the 7th Section of Chap. I of Title I of the CPC is entitled "Carrying out judicial expertise", but we claim that Sec. VII does not regulate the actual performance of the forensic examination, but provides some procedural aspects of the forensic examination.
- Article 93 para. 2 point 1 of the CPC to be amended in the following wording: statements of the suspect, the accused, the defendant, the injured party, the civil party, the civilly responsible party, the witness, the forensic expert, the specialist.

The judicial expert is heard on the forensic report submitted by him if the expert report is not clear or has some shortcomings, but there is no need for further investigations. The expert's statements contribute to the fair assessment of this means of proof, as well as influence his assessment by the person conducting the criminal investigation or the judge, but the expert's statements are not included by the legislator in the category of evidence.

- -Article 57 para. 2 point 5 of the CPC to be amended in the following wording: cites and hears persons as suspects, injured party, witness, forensic expert.

Art. 153 of the CPC offers the possibility to the criminal investigation officer to hear the expert regarding the submitted report, but in his attributions it is not indicated that he can hear the expert regarding the presented forensic report.

- Article 64 para. 2 point 14 of the CPC to be amended in the following wording: to request the recusal of the person conducting the criminal investigation, the investigating judge, the interpreter, the translator, the judicial expert.

Proceeding from art. 64 para. 2 point 14 of the CPC, the suspect is not offered the right to request the recusal of the judicial expert, thus affecting his right to defense, the right to defense consists of all prerogatives and possibilities that the person enjoys, according to the law, to defend his interests , we therefore consider that the above rule should be amended.

- Art. 153 of the CPC to be completed with par. 3 with the following content: In case of deficiencies or ambiguities of the forensic report, the parties to the trial are entitled to participate in the hearing of the expert.

In order to respect the principle of equality of arms at trial, the parties are created equal conditions for the realization of their interests; therefore, we support the opinion that in case of hearing the expert will participate only the representative of the criminal prosecution body. the opinion that at the hearing of the expert by the representative of the criminal investigation body, the participation of the suspect, the accused and his defense counsel will contribute to the observance of his right to defense.

- Art. 374 CPC regulates the procedure for disposing of the judicial expertise in the trial phase, in the given norm, the legislator only referred to the provisions of art. 142-155 CPC, but did not take into account the specifics of the trial phase. In this sense, we are of the opinion that the provisions of art. 374 of the CPC are to be amended in the following wording:

The ordering by the court of the performance of the judicial expertise and the hearing of the expert in the court hearing are made in the cases and under the conditions provided in art. 142-155, respecting the principles of directness, orality and adversariality.

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ADNOTARE

Pilat Artiom, Expertiza judiciară în procesul penal. Teza de doctor în drept. Chişinău 2022.

Structura tezei: introducere, trei capitole, concluzii generale şi recomandări, bibliografie din 219 de surse, text de bază 150 pagini. Rezultatele obţinute au fost publicate în 16 lucrări ştiinţifice.

Cuvinte-cheie: expertiză judiciară, dispunerea expertizei judiciare, aprecierea raportului de expertiză judiciară, organul de urmărire penală, cunoştinţe speciale, expert judiciar, cercetare, instanţă de judecată, instituţia de expertiză judiciară.

Scopul lucrării: Scopul prezentei lucrări constă în consolidarea prevederilor legale care reglementează activitatea instituţiei expertizei judiciare în vederea înlăturării caracterului interpretativ al normelor de procedură care reglementează activitatea instituţiei de expertiză judiciară precum şi prevenirea aplicării neuniforme a legislaţiei naţionale cu privire la expertiza judiciară de către organele de urmărire penală şi instanţele judecătoreşti.

Obiectivele cercetării: în vederea realizării scopului propus, este necesar de a fi realizate următoarele obiective: analiza multiaspectuală a cadrului normativ naţional care reglementează domeniul instituţiei expertizei judiciare în cadrul procesului penal; cercetarea şi evoluţia materialelor ştiinţifice referitoare la expertiza judiciară în procesul penal; identificarea cauzelor care determină aplicarea eronată sau arbitrară a normelor de procedură cu privire la instituţia expertizei judiciare; cercetarea criteriilor de apreciere a raportului de expertiză judiciară de către organul de urmărire penală și instanța de judecată; examinarea practicii Curții Constituționale și a Colegiului Penal al CSJ cu privire la practica aplicării legislației care reglementează activitatea în domeniul expertizei judiciare; identificarea cauzelor de condamnare a Republicii Moldova la CtEDO, pe segmentul nerespectării drepturilor părţilor în cazul dispunerii sau aprecierii eronate a raportului de expertiză judiciară.

Noutatea şi originalitatea ştiinţifică: Prezenta teză de doctor constituie prima cercetare complexă şi multiaspectuală a reglementărilor procedurale din momentul intrării în vigoare a prezentului CPP, care vizează instituţia expertizei judiciare. Pentru a reda unele particularităţi de aplicare a normelor de procedură penală cu privire la expertiza judiciară, autorul a examinat unele abordări doctrinare naţionale cât şi străine. De asemenea, a fost cercetată practica judiciară a Colegiului Penal al CSJ, a Curții Constituționale a RM, precum şi practica CtEDO. Noutatea ştiinţifică a tezei de doctor constă în formularea unui set de recomandări de lege ferenda care vor contribui la perfectarea cadrului legal şi aplicarea uniformă a legii procesuale penale.

Problema ştiinţifică soluţionată: constă în elucidarea unor aspecte procesuale ale expertizei judiciare, precum şi înaintarea unui set de recomandări de *lege ferenda*, pentru a perfecta activitatea organului de urmărire penală şi a instanţelor judecătoreşti în procesul dispunerii şi aprecierii raportului de expertiză judiciară.

Semnificaţia teoretică: semnificaţia teoretică a lucrării este caracterizată prin analiza literaturii de specialitate autohtonă precum şi a practicii judiciare a Curţii Constituţionale, CSJ şi CtEDO, care vor contribui la identificarea cauzelor de aplicarea neuniformă şi arbitrară a normelor de procedură penală în domeniul expertizei judiciare.

Valoarea aplicativă: se exprimă prin formularea propuneri de *lege ferenda* care ar perfecta şi îmbunătăţi activitatea în domeniul dispunerii şi aprecierii raportului de expertiză judiciară, care va uniformiza aplicatibilitatea legii procesuale penale de către organele de urmărire penală şi instanţele judecătoreşti.

Implementarea rezultatelor ştiinţifice: rezultatele cercetării vor contribui la perfecţionarea activităţii organelor de urmărire penală, procuraturii, instanţelor de judecată precum şi a altor participanţi în procesul dispunerii şi aprecierii rezultatelor expertizei judiciare. De asemenea, rezultatele obţinute pot fi folosite pentru instruirea studenţilor din ciclul I, II şi III precum şi a audienţilor ai cursurilor de formare iniţială şi continuă.

РЕЗЮМЕ

Пилат Артём. Судебная экспертиза в уголовном судопроизводстве. Докторская диссертация. Кишинэу, 2022.

Структура диссертации: введение, три главы, общие выводы и рекомендации, библиография из 219 источников, основной текст 150 страниц. Результаты опубликованы в 16 научных статьях.

Ключевые слова: судебная экспертиза, распоряжение о производстве судебной экспертизой, оценка заключения эксперта, орган уголовного преследования, специальные знания, судебный эксперт, следствие, суд, учреждение судебной экспертизы.

Цель работы: Целью настоящей работы является усовершенствование правовых норм, регулирующих деятельность учреждения судебной экспертизы, с целью устранения толкования норм процессуального права регулирующих деятельность учреждения судебной экспертизы, и недопущения незаконного применения норм национального законодательства регламентирующие институт судебной экспертизы.

Задачи работы: для достижения поставленной цели необходимо решить следующие задачи: анализ отечественной нормативной базы, регулирующей сферу института судебной экспертизы в уголовном процессе; исследование научных материалов, связанных с судебной экспертизой в уголовном процессе; выявление причин, обусловливающих ошибочное или произвольное применение процессуальных норм регламентирующие норм судебной экспертизы; исследование критериев оценки заключения судебной экспертизы органом уголовного преследования и судом; изучение практики Конституционного Суда и Уголовной коллегии ВСП по практике применения норм уголовно процессуального права, регулирующего деятельность в сфере судебной экспертизы; выявление дел об осуждении Республики Молдова ЕСПЧ, в части несоблюдения прав сторон в случае ошибочного постановления или оценки заключения судебной экспертизы.

Научное новшество и оригинальность: Настоящая докторская диссертация является первым комплексным и многоплановым исследованием процессуальных норм с момента вступления в силу настоящего УПК, который регламентирует институт судебной экспертизы. Для демонстрации применения некоторых особенностей уголовно-процессуальных норм в части судебной экспертизы автором были рассмотрены некоторые отечественные и зарубежные доктринальные подходы, а также судебная практика Уголовной коллегии ВСП, Конституционного Суда Республики Молдова и практика ЕСПЧ. Научная новизна докторской диссертации заключается в формулировке комплекса рекомендаций lege ferenda, которые будут способствовать совершенствованию правовой базы и единообразному применению уголовно-процессуального закона.

Решенная научная проблема: заключается в разъяснении некоторых процессуальных аспектов судебной экспертизы, а также представлении комплекса рекомендаций lege ferenda, в целях совершенствования деятельности органа уголовного преследования и судов при рассмотрении и оценке заключения судебной экспертизы.

Теоретическая значимость: Теоретическая значимость работы характеризуется анализом отечественной литературы, а также судебной практики Конституционного суда, ВСП и ЕСПЧ, что позволит выявить случаи неравномерного и произвольного применения уголовно-процессуальных норм в сфере судебной экспертизы.

Прикладная ценность: выражается в формулировании предложений lege ferenda, которые усовершенствуют и улучшат деятельность в области распоряжения и оценки заключения судебной экспертизы, что упорядочит применимость уголовно-процессуального закона органами уголовного преследования и судами.

Внедрение научных результатов: Результаты исследования будут способствовать совершенствованию деятельности органов уголовного преследования, прокуратуры, судов, а также иных участников процесса, кроме того, они могут быть использованы в процессе преподавания студентам I, II и III циклов обучения в высших учебных заведениях с юридическим профилем и слушателей курсов по переподготовки кадров.

ANNOTATION

Pilat Artiom, Judicial Expertise in Criminal Proceedings. Doctoral Thesis in Law. Chisinau, 2022.

Thesis structure: introduction, three chapters, general conclusions and recommendations, bibliography from 219 sources, basic text 150 pages. The results were published in 16 scientific papers.

Keywords: judicial expertise, disposition of judicial expertise, assessment of judicial expertise report, criminal investigation body, special knowledge, judicial expert, investigation, court, institution of judicial expertise.

The purpose of the thesis: The purpose of this paper is to strengthen the legal provisions governing the activity of the institution of judicial expertise in order to remove the interpretative nature of the rules of procedure governing the activity of the institution of judicial expertise and to prevent uneven application of national law on judicial expertise by prosecutors.

Research objectives: In order to achieve the proposed goal, it is necessary to achieve the following objectives: the multifaceted analysis of the national normative framework that regulates the field of the institution of judicial expertise in the criminal process; research and evolution of scientific materials related to judicial expertise in criminal proceedings; identification of the causes that determine the erroneous or arbitrary application of the procedural norms regarding the institution of judicial expertise; the investigation of the criteria for assessing the report of judicial expertise by the criminal investigation body and the court; examination of the practice of the Constitutional Court and the Criminal College of the SCJ regarding the practice of applying the legislation governing the activity in the field of judicial expertise; identification of the cases of conviction of the Republic of Moldova to the ECtHR, on the segment of non-compliance with the rights of the parties in case of erroneous disposition or assessment of the forensic report.

Scientific novelty and originality: This doctoral dissertation is the first complex and multifaceted investigation of the procedural regulations since the entry into force of the current CPP., which aims at the institution of judicial expertise. In order to reproduce some particularities of the application of the criminal procedure norms regarding the judicial expertise, the author examined some national and foreign doctrinal approaches, as well as the judicial practice of the Criminal College of the SCJ, the Constitutional Court of the Republic of Moldova and the ECtHR practice. The scientific novelty of the doctoral thesis consists of the formulation of a set of recommendations of lex ferenda that will contribute to the improvement of the legal framework and the uniform application of the criminal procedural law.

The scientific problem solved: consists of elucidating some procedural aspects of the judicial expertise as well as submitting a set of recommendations of lex ferenda, in order to perfect the activity of the criminal investigation body and the courts in the process of disposing and assessing the report of judicial expertise.

Theoretical significance: The theoretical significance of the paper is characterized by the analysis of local literature and judicial practice of the Constitutional Court, SCJ and ECtHR, which will help identify cases of non-uniform and arbitrary application of criminal procedure in the field of judicial expertise.

Applicable value: is expressed by formulating proposals of lex ferenda that would perfect and improve the activity in the field of disposition and appreciation of the report of judicial expertise, which will standardize the applicability of the criminal procedural law by the criminal prosecution bodies and the courts.

Implementation of scientific results: the results of the research will contribute to the improvement of the activity of the criminal investigation bodies, the prosecutor's office, the courts as well as other participants in the process of arranging and assessing the results of the forensic expertise, as well as audiences of initial and continuing education courses.

PILAT Artiom

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