

FORENSIC ASSISTANCE IN THE PRIVATE SECTOR

Abstract:	<p><i>The desiderata implemented in forensics at the time of its birth as a special legal science, the knowledge gained during its development and its subject matter, overall determine the possibility of using forensic means, methods, and procedures in judicial and extrajudicial activities.</i></p> <p><i>This scientific paper describes the possibility of using the forensic arsenal not only in a criminal trial, but also in the context of other law enforcement actions, including in the field of civil law relations. In this regard, the methods of using forensic knowledge in civil and contravention processes are described, ensuring the economic and information security of the enterprise, establishing psychological contact in interviews, emphasizing the significant role of forensics in preventing and combating illegal acts. The author also highlighted some causes that prevent the use, outside the criminal process, of the opportunities offered by forensic.</i></p>
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Introduction

Currently, the speciality literature is addressed the possibility of extending the field of forensic beyond the traditional limits of research and the forms of this activity. On this line, we should talk about completing the system of theories of forensic with new theories, due to the achievements of the fundamental and applied sciences, as well as about the development of methods and forms of use of

the technical-tactical arsenal in the civil law, contraventional law, administrative law, and other fields¹.

In law enforcement activity, the main role is played by the legal norms and recommendations of the law sciences. At the same time, law enforcement practice shows us that non-legal or special legal sciences play an important role, which develops modern technologies for finding legal facts and working with them. Such science is forensics.

Unlike the purely legal sciences, which study certain fields of law and certain types of legal relations, forensics perceives the event, which is the object of the research, as an integral system, which includes the material part, procedural, etc., and for the research of which it is necessary to use both general and special knowledge.

Currently, forensics has an extensive arsenal of technical and tactical means as well as methodological recommendations necessary for the qualitative ascertainment, investigation, and prevention of crimes (or other illegal acts) that could be applied in judicial and extrajudicial activities.

The purpose of the paper is to elucidate the possibilities of using forensic knowledge to solve tasks other than those in the criminal process.

Methods and materials applied. To achieve the purpose, considering the specificity and complexity of the investigated topic, historical, logical, systematic, and comparison methods were used as forms of research. The research undertaken is based on the study of doctrine and legislation.

Results and discussions. It is known that forensic knowledge has been used successfully not only in the field of criminal proceedings but also in other fields of law enforcement, since the beginning of the 20th century, during the birth of this science. Thus, the Russian criminalist Burinsky E.” used the forensic knowledge he had acquired in the forensic study of documents and photographs, both in criminal and civil law proceedings, including the restoration of ancient manuscripts.”²

Discussions about the need for forensics to overcome its traditional research limits intensified between 1960 and 1970. In 1973, in the Soviet area, Vinberg A. initiated this discussion, defining criminology as a science that “develops a system of methods, procedures and special means for collecting, researching and evaluating the evidence used in the criminal proceedings for the prevention,

¹ Tat'yana Aver'yanova, Rafail Belkin, Yuriy Korukhov, Yelena Rossiyskaya, *Kriminalistika. Uchebnik dlya vuzov*, Norma, Moskva, 2000, pp. 74–76; Marina Zhizhina, *Kriminalisticheskoye obespecheniye bezopasnosti predprinimatel'skoy deyatel'nosti — novoye napravleniye v razvitii nauki (soderzhaniye, zadachi, printsipy, sistema)*, "Bezopasnost' Biznesa", No. 1, 2007

² Nikolay Yablokov, Igor' Aleksandrov, *Kriminalistika: uchebnik*, fifth ed., Norma, Moskva, 2017, p. 38

ascertainment, and investigation of crimes, as well as their use in hearing of criminal cases, as well civil cases"¹.

The idea was taken up by other researchers, who in the following years began to address the issue of using special forensic knowledge in civil, contravention, and administrative law cases, etc.² At the same time, no one had any doubts that forensics, like any other science, should have clearly defined boundaries and that the integrity of the forensic knowledge system needs to be grounded by strengthening conceptual approaches at the interdisciplinary level, as well as by improving forensic education³.

However, the development of scientific research – mention that forensics is not an exception – involves the emergence of promising areas related to the study of new objects⁴. But it must be understood that the object of forensics cannot be replaced by the object of scientific investigation of forensics.

Unlike the subject of forensics, the range of potential objects of forensic science research may vary depending on the scientific support needs of certain areas of law enforcement activity⁵. The emergence of new scientific directions (objects) of forensic research should occur in an active theoretical discussion.

Today it is becoming increasingly evident that forensic means, procedures, and methods are important both for criminal proceedings and for other areas of legal practice. The general approach of the evidentiary process allows the abstraction from the particularities of procedural regulations and the use of the possibilities of forensics in any other evidentiary process.

However, those opportunities are unfortunately not yet used properly. Yablokov N. explains this presence for several reasons⁶:

First, legal specialists are not fully aware of the possibilities of forensics in various areas of judicial practice, this refers mainly to specialists in the field of customs, civil procedure, contraventional and administrative law, etc., areas that require the observation and tactical use of legal facts. This situation is a consequence of the existing shortcomings in the teaching-learning process of forensics, which consists in the fact that the possibilities of the technical, tactical,

¹ Yevgeniy Ishchenko, *Kriminalistika XXI veka: strategiya i taktika razvitiya*, Prospekt, Moskva, 2016, p. 179

² Andrey Rozhkov, *Kriminalisticheskoye obespecheniye grazhdanskogo i arbitrazhnogo sudoproizvodstva: dis. kand. Yurid. Nauk*, Voronezh, 2003

³ Sergey Zhuravlev, Krepysheva Svetlana, *Kriminalisticheskaya metodika i taktika: kontekst sovremennogo ponimaniya roli kriminalistiki v yuridicheskoy deyatel'nosti i yuridicheskoy obrazovanii*, in *Sovremennaya kriminalistika: problemy, tendentsii, perspektivy. Materialy mezhdunarodnoy nauchno-prakticheskoy konferentsii, posvyashchennoy 90-letiyu so dnya rozhdeniya prof. N. Yablokova*, Moskva, 2015, p. 48

⁴ *Ibidem*, p. 41

⁵ Aleksey Eksarkhopulo, *Predmet i sistema kriminalistiki*, Spb., 2004, p. 24

⁶ Nikolay Yablokov, *Aspekty primeneniya kriminalistiki v yuridicheskoy deyatel'nosti*, <https://sarjurcomp.ru/index.php/stati/51-aspekty-primeneniya-kriminalistiki-v-yuridicheskoy-deyatelnosti>, (03.08.2022)

and methodological arsenal of forensics are revealed practically only in relation to its use in the field of criminal justice, without disclosure, simultaneous display, a clear and convincing demonstration of its capabilities in other areas of legal activity and law enforcement. The same opinion is identified by author Golubenco Gh: "In order to increase students' motivation toward the generous discipline of forensics, we believe it is necessary to undertake some concrete activities as well. First, it is required to emphasize and argue at every opportunity before students, that forensic knowledge today can be used and applied not only in the framework of criminal procedures but also in the proof of any legal facts, that the purpose of this discipline is to form a combinatorial forensic thinking, necessary for any civilized man in the modern age¹.

Secondly, the opinion that has taken root among lawyers (in the civil law field) is that in modern conditions, lawyers need mainly knowledge of civil, commercial, financial, banking, and other fields of law close to them, and not forensic knowledge. In their view, forensic knowledge is aimed exclusively at criminal proceedings.

Thirdly, the highly controversial views expressed in forensic literature on the non-legal nature of forensics contribute to strengthening the view on the insignificant role of forensic knowledge in extrajudicial activities.

For a lawyer, knowledge of the possibilities of forensics consists of the ability (ability) to borrow and implement methodically verified and tactically reasoned decisions and to perform actions within certain professional procedures. A significant part of these skills is based on analytical skills and the elementary ability to think, analyze, and compare the received information. The process of presenting and verifying versions, organizing and planning an investigation, analyzing many documents and materials of a criminal, civil, contravention, administrative, and customs case, conducting criminal prosecution and other actions under conditions of risk, the use of professional skills in exposing the offender – requires imposing forensic knowledge from the subject who applies them.

The technical means, tactical procedures, and methodological recommendations necessary for working with criminally relevant information in the process of detection, investigation, and prevention of crimes and adapted for use in other areas of law enforcement, do not lose their original forensic character. The activities of using these means, processes, and methods, by their epistemological nature, are of a general nature.

In forensic science, the results of an investigation can be systematized in different directions, depending on the way investigation will be distributed,

¹ Gheorghe Golubenco, *Criminalistica națională: probleme și tendințe*, in "Științe Penale", No. 3-4, 2015, <https://ulim.md/sju/nr-3-4-2015/criminalistica-nationala-probleme-si-tendinte>, (02.08.2022)

depending on the strength and importance of the evidence”, according to Hans Gross¹.

“The structure of forensics, established by Gross H., is an ideal model for solving all the basic tasks of law enforcement: Decoding information sources (technical), analyzing interaction in subjects (tactics), managing strategies (methodology)”, Koldin points out².

Forensics today should also focus on serving the professional activities of specialists in various legal and other professions. Being developed by forensics, to ensure the needs of the criminal process, technical means, procedures, and methodological recommendations can be used and are already used in civil law, contraventional and administrative processes, as well as in ensuring the security of the entrepreneurial activity. The finding, consolidation, examination, and assessment of evidence and other (ancillary) indicative information in other (not criminal) judicial proceedings, as well as in the field of ensuring the security of business structures, will inevitably require the use of forensic tools and possibilities.

The task of using forensics tools and methods outside criminal proceedings is related to the purpose of providing scientific aid and assistance to law enforcement agencies and other agencies involved in law enforcement and justice in general. Forensics, as a science, is not only capable of solving basic crime-fighting problems but is also a means of gaining knowledge of factual data for the purpose of objective and fair examination of litigious relationships outside the criminal process (in the civil law process).

One of the techniques developed by forensics, which can be successfully used outside the criminal process, is the situational approach to choosing the most optimal directions of searching for facts and actions to be applied in different circumstances and with different purposes including creating a favorable basis for choosing the most adjusted and effective method of communicating the circumstances of the case³.

Procedural legislation is not able to regulate in detail the entire side of the criminal process, but this is not necessary either. In forensics, as mentioned, the technical, tactical, and methodological bases of criminal prosecution and criminal case judgment have been developed, with help the existing problems in other law enforcement and related fields can be solved.

In this respect, lawyers whose profession is related to the types of legal and procedural activity mentioned above, use on a large scale and skillfully the

¹ Nikolay Yablokov, *Op. cit.*

² Valentin Koldin, *Kriminalistika v universitetskom obrazovanii Rossii*, in *Sovremennaya kriminalistika: problemy, tendentsii, perspektivy. Materialy mezhdunarodnoy nauchno-prakticheskoy konferentsii, posvyashchennoy 90-letiyu so dnya rozhdeniya prof. N. Yablokova*, MGU, Moskva, 2015, p. 67

³ Nikolay Yablokov, Igor' Aleksandrov, *Op. cit.*, p. 38

knowledge and forensic technologies necessary for working with legal facts, obtaining the expected results much faster.

Therefore, no impediments are formed regarding the inclusion in the circle of scientific objects of forensic research of knowledge aimed at applying forensic means, procedures, and methods in civil law, administrative law, and contraventional processes, including in the field of corporate law.

The expansion of the objects of forensic scientific research will not lead to the blurring of the object of forensics. For example, in the civil law process forensic knowledge can be successfully used to work with documents and material means of evidence (while they are discovered, investigated, and examined), to obtain explanations from witnesses, victims, and suspects, to arrange expertise, to obtain samples, to assess expert conclusions, in other words, in legal activities involving working with forged documents, when it is necessary to know and apply the forensics rules in working with documents because forgery complicates the realization of the task of justice.

Tactical procedures and forensic recommendations play an important role in the contravention procedure, which is like the procedural-criminal procedure¹. The contravention procedure regulates the process of hearing the victim and the witness, is concerned with technical-scientific and forensic findings, the study of documents and the investigation of the crime scene, as well as searches, etc. and in all the activities mentioned above, the tactical-forensic procedures are successfully used.

In the process of assessing the accumulated evidence, it is particularly important to use forensic thinking, which can greatly contribute to the adoption of legal and fair decisions in contravention cases or in other areas of law enforcement. However, for practicing lawyers to truly master forensic thinking, it is necessary to guide them to study such thinking and highlight and understand its content. It is also necessary that didactic practice become one of the important directions of forensic investigation. In order to do this, the existence of criminal activity and the specific thinking corresponding to it will be recognized and also the tasks that are solved by it will be highlighted, because only in this way is created the opportunity to select, through the path of forensic transformation, the means, useful procedures and methods to provide effective solutions both for criminal proceedings and for other judicial procedures and areas of legal activity.

Forensic education forms knowledge relevant to a lawyer and determines a forensic style of activity. Being a conductor of forensic knowledge for future generations of lawyers, this is a kind of marketing in the legal environment and related social fields. Through the prism of forensic education, lawyers must demonstrate to the scientific, educational, and administrative community that forensics teaches methodological algorithms and work tactics for various legal activities. The need for such preparation is obvious, which has led to the

¹ Art. 374 alin. (2¹) Cod Contravențional al RM nr.218-XVI din 24.10.2008, in "Monitorul Oficial al Republicii Moldova", No. 3-6/15, 16.01.2009

emergence of relevant sections in a series of forensic textbooks on the use of forensic knowledge in the civil law process and in the field of business security¹.

Today, more attention is paid to business security issues, as the state of security in the implementation of entrepreneurial activities is a vital condition for the normal functioning of any commercial entity, regardless of its form of ownership.

There are also a growing number of various courses and seminars designed to train managers and other business participants with knowledge, skills, and competencies in the field of business protection².

Doing business is often unsafe for the life, health, and financial situation of participants in this activity. The entrepreneur, the activities of the company he runs, the property of his company can be constantly threatened, both from traditional crime and organized crime, which has become particularly active in modern conditions. Here, compared to other types of activity, there can be more threats, accidents and conflicts that would cause people to die, economic, financial, material, and informational losses.

To ensure its own protection and the protection of the assets of the enterprise, it is necessary not only to use traditional security measures, but also to create security services within the enterprise, which operate based on the latest achievements of science and technology, including forensics. Speaking about its security of the enterprise, Jijina M. mentions that in order to accomplish above-mentioned task, the knowledge of forensics will be used as a legal science³.

Obviously, to succeed in countering external and internal threats, it is necessary to know what we want to combat and by what means to ensure this counteraction.

In the field of business property security, forensics develops and applies fingerprint and biometric identification systems, video surveillance, sound recording; uses the methodology of conducting internal procedures and methods of protection against various types of internal fraud (embezzlement, cash theft, securities, abuse of power); provides information recovery and analysis activities in implementing *business intelligence*, including protection measures against corporate espionage.

Forensic information security assurance includes Communication protection; means of information processing; problems of finding, preventing, and suppressing attacks in the information field; main directions of protection of information systems; protection of documents; means and techniques of protection against forgeries (signatures, seals, forms, etc.); document flow (how to work with confidential documents).

¹ Marina Zhizhina, *Op. cit.*

² *Magisterskaya programma „Kriminalisticheskoye soprovozhdeniye i zashchita biznesa”*, <https://www.law.msu.ru/courses/66>, (03.08.2022)

³ Marina Zhizhina, *Kriminalisticheskoye obespecheniye informatsionnoy bezopasnosti predpriyati*, in "Vektor yuridicheskoy nauki", No. 3, 2018, p. 31

In modern conditions, a special importance is given to ensuring the security of the personnel, which includes: The study of the procedure of checking a candidate for a position; the tactics of conducting an interview in special conditions; the use of a polygraph, which makes it possible to determine the reliability of the selected persons, etc.

Judicial practice shows that one of the significant risk factors in ensuring the economic security of business structures is their staff. Almost two-thirds of the crimes in the field of entrepreneurial activity are committed by or with the help of employees of these structures. Their violation of internal rules or technologies for the implementation of official operations is the main reason that contributes to criminal offenses and other illegal acts. Here, of course, all possibilities of forensics should be involved, developing research methodologies for various types of corporate and banking fraud. The means and methods of forensics prevention of crime and other illegal acts should be widely applied in this area.

Speaking about the role of forensic means, procedures, and methods in the prevention of illegal acts in various fields, I support the position of author Jijina M., who mentions: "The basis of the application of forensic methods and means in the field of prevention are becoming more and more in demand. Their aim is to ensure compliance with legal requirements in different judicial and non-judicial areas of public relations, including security"¹.

Important for any legal activity is the ability to establish appropriate psychological contact with stakeholders to obtain the necessary information from them, in conflict situations, as well as during negotiations. This skill is developed precisely in the process of studying and mastering the tactical forensic arsenal.

Forensics technology to collect and work with legally relevant information, organizational recommendations are used, as already mentioned, in banking regulations. Forensic recommendations are used here to protect the security of information from criminal attacks, and to counter the use of payment orders, checks and other forged documents to obtain a credit.

Conclusions. Of great importance for the success of any legal activity is the ability to correctly assess the situations that arise in this case and, consequently, to choose the best methods of action not only in communicating with stakeholders, but also in carrying out other actions necessary for the correct resolution of disputes, conflicts, etc. The theoretical and practical basis of the situational approach to solving research problems, developed by forensics, can be successfully used in any legal and other law enforcement activity.

¹ *Ibidem*, p. 34

Bibliography

Books

1. Aver'yanova, Tat'yana; Belkin, Rafail; Korukhov, Yuriy; Rossiyskaya, Yelena, *Kriminalistika. Uchebnik dlya vuzov*, Norma, Moskva, 2000
2. Eksarkhopulo, Aleksey, *Predmet i sistema kriminalistiki*, Spb., 2004
3. Gheorghîța, Mihail, *Tratat de criminalistică*, Chișinău, 2017
4. Ishchenko, Yevgeniy, *Kriminalistika XXI veka: strategiya i taktika razvitiya*, Prospekt, Moskva, 2016
1. Koldin, Valentin, *Kriminalistika v universitetskom obrazovanii Rossii*, in *Sovremennaya kriminalistika: problemy, tendentsii, perspektivy. Materialy mezhdunarodnoy nauchno-prakticheskoy konferentsii, posvyashchennoy 90-letiyu so dnya rozhdeniya prof. N. Yablokova*, MGU, Moskva, 2015, 2015
5. Rozhkov, Andrey, *Kriminalisticheskoye obespecheniye grazhdanskogo i arbitrazhnogo sudoproizvodstva: dis. kand. Yurid, Nauk, Voronezh*, 2003
6. Yablokov, Nikolay; Aleksandrov, Igor', *Kriminalistika: uchebnik*, fifth ed., Norma, Moskva, 2017

Studies and Articles

1. Golubenco, Gheorghe, *Criminalistica națională: probleme și tendințe*, in "Științe Penale", No. 3-4, 2015
2. Zhizhina, Marina, *Kriminalisticheskoye obespecheniye bezopasnosti predprinimatel'skoy deyatel'nosti — novoye napravleniye v razvitiu nauki (soderzhaniye, zadachi, printsipy, sistema)*, "Bezopasnost' biznesa", No. 1, 2007
3. Zhizhina, Marina, *Kriminalisticheskoye obespecheniye informatsionnoy bezopasnosti predpriyati*, in "Vektor yuridicheskoy nauki", No. 3, 2018
4. Zhuravlev, Sergey; Krepysheva, Svetlana, *Kriminalisticheskaya metodika i taktika: kontekst sovremennogo ponimaniya roli kriminalistiki v yuridicheskoy deyatel'nosti i yuridicheskom obrazovanii*, in *Sovremennaya kriminalistika: problemy, tendentsii, perspektivy. Materialy mezhdunarodnoy nauchno-prakticheskoy konferentsii, posvyashchennoy 90-letiyu so dnya rozhdeniya prof. N. Yablokova*, Moskva, 2015

Documents

1. Codul Contravențional al Republicii Moldova, nr. 218-XVI din 24.10.2008, in: Monitorul Oficial al Republicii Moldova, No. 3-6/15, 16.01.2009

Websites

2. <https://sarjurcomp.ru/>
3. <https://ulim.md/>
4. <https://www.law.msu.ru/>