

Usage of Special Knowledge during the Investigation of Crimes in the Budget Sphere of Ukraine

Olena SHAPOVAL,
Student of the Juridical Faculty of
Taras Shevchenko National
University of Kyiv

Theoretical and practical problems of the usage of special knowledge during the investigation of crimes in the budget sphere are analyzed. In particular, the strict and general sense of the idea of the special knowledge concept and the forms of its usage during prejudicial criminal proceedings are investigated.

Keywords: methodology of investigation, budget legislation violation, budget crimes, criminalistic characteristics of crimes, budgetary funds

20

According to Article 95 of the Constitution of Ukraine, the budget system of our state is based on the grounds of fair and unprejudiced distribution of social wealth between citizens and territorial communities. At the same time, state property is one of the most desirable objects of criminal infringements, so the prevention of crimes in the budget sphere is specified as a priority for law enforcement bodies. Consequently, the above-mentioned direction cannot be left unnoticed by the science of criminalistics, especially in terms of the development of modern means and methods of inquiry by prejudicial inquiry bodies.

The scientific assurance of crime prevention in the budget sphere is a significant task of all the sciences of criminal and legal cycle. These issues remain conceptually under-investigated in the science of criminalistics. Theoretical conceptions and practical recommendations set out in works of L. Arkusha, O. Bandurka, V. Bakhin, R. Belkin, H. Zuikov, I. Luzgin, M. Saltevsy, M. Selivanov, V. Shepitko, B. Shchur, M. Iablukov and other scientists are of vital importance for their solution. Problems of the application of special knowledge during a crime investigation were studied in the works of V. Goncharenko, I. Groshevy, M. Kostytsky, etc. Although, insufficient exploration of this problem negatively affects the scientific and research sphere and the practical activity of the prejudicial inquiry bodies and the courts.

The objective of the publication is to reveal the possibility of the use of special knowledge during the investigation of crimes committed in the budget sphere of Ukraine.

The success of criminal investigations is often connected with the competent usage of special knowledge and skills. The investigator as the person initiating the involvement of experts to the investigation process should completely understand their role and possibilities, taking the latter into account in order to make well-grounded tactical decisions, proceedings and organization.

In the 1960-s, A. Koni revealed wide ranging possibilities regarding the application of special knowledge in the judicial activities of that time in his article 'Court – Science – Art'. He noted that "very often judicial practice requires us to turn to special researches, the centre of case balance being concentrated there, or to ask for the help of well-informed people, i.e. experts in different special spheres of knowledge, art and trades" [Koni, 1966: 192–193, 200]. A similar picture of special knowledge application has been preserved till now.

The necessity of using scientific, technical and other knowledge in criminal proceedings is connected with the fact that crime investigation is a complex process requiring the cognition of objective reality. No matter how intelligent and well-prepared an investigator is, he will always remain a subject matter expert and will not obtain the great potential of science, technology, trades, and art to their fullest extent [Obraztsov, 1997: 281]. That is why, the examination of a criminal event and the identification of the person who has committed it, requires the application of different special knowledge and the skills of various kinds of activities.

V. Goncharenko and other scientists believe that special knowledge meets the requirements of the developments of modern science and can be used in criminal procedural activity for proving certain circumstances of a criminal case, the collection and preservation of evidence, etc. [Goncharenko, 1980: 11, 112–115]. Such a definition completely meets the norms of the Criminal Procedure Code of Ukraine, in particular, Article 22 which prescribes thorough, complete and objective investigation of factual background using modern scientific knowledge.

A lot of researchers (in particular, M. Kostytsky) think that only two forms of the application of special knowledge are regulated by law: a specialist's participation in investigative actions and the carrying out of an examination [Kostytsky, 1990: 58].

The author supports the other positions offered by V. Goncharenko, V. Lysychenko and V. Tsyrcal. These scientists specified three procedural forms of usage of this knowledge during pretrial investigation dependent on the subjects who obtain such knowledge: an investigator, a specialist and an expert [Goncharenko, 1980: 112–115; Lysychenko, 1983: 8–18]. In our mind, such a division is the most possible and correct in criminal proceedings.

The necessity for special knowledge during the investigation of crimes in the budget sphere of Ukraine is conditioned, first of all, by the specific nature of the subject of the criminal infringement and by way of the commitment of crimes in cases of this category. In connection with that, the investigator should objectively involve subject matter experts to assist him in the investigation of such crimes.

Thus, in criminalistics, special knowledge is distinguished as scientific, technical and other (in particular, criminalistics) knowledge obtained as a result of generalization, as well as skills to be used together with scientific and technical means for search, identification, withdrawal and investigation of the vestiges of a crime in order to receive the evidence and orientating information which is necessary for ascertaining the truth with regard to a case, i.e. which is received during the work in certain spheres of practical activity [Kravchenko, 1999: 48].

The analysis of investigative and judicial practice materials gives reasons to affirm that investigation of crimes in the budget sphere is impossible without the usage of special knowledge by an investigator before the institution of a criminal case and during the pretrial investigation while carrying out investigative and other actions.

In order to provide the effective usage of special knowledge, it is necessary to take organizational measures, that is to specify and involve certain people with special knowledge in a proper sphere (accounting, construction, finance, banking specialists, etc).

An investigator can apply special knowledge both in procedural and non-procedural forms. Practice shows that the most efficient forms of its usage in the investigation of crimes connected with budget law violations are the following: a) consultations with people who are well-informed in different spheres;

b) auditing; c) assignment of expert assessments; d) involvement of a specialist to carry out certain investigative actions [Stepaniuk, 2012: 102]. Also, in investigating crimes of this kind, in certain cases one can interrogate experts, auditors and other well-informed people.

Consultations are the most widespread form of non-procedural assistance to the investigator given by people who are well-informed in certain professional spheres in order to solve a wide range of issues. The analysis of practice of the investigation of crimes connected with budget law violations, as well as information received on the basis of a questionnaire survey of investigators proves that such a statement is also just for these crimes.

More often investigators address people with special knowledge in different spheres if they need the following:

a) an explanation of the provisions of legal acts in the budget sphere (for this purpose, it is reasonable to address specialists in the sphere of finance law);

b) an acquaintance with special issues, e.g. on the peculiarities of the procedure of appropriation and usage of budgetary funds; accounting and preparation of financial reports in a state body or institution (the auditors who carried out the audit, as well as the officials of the State Treasury Service of Ukraine or other financial bodies can also provide such consulting assistance);

c) consultation concerning an audit certificate and assistance in the assessment of auditors conclusions. If an investigator knows the basics of accounting, he/she is undoubtedly able to analyze generalized information by themselves. However, scientists indicate that even in this case the ascertainment of certain items of an audit certificate or other document, which is carried out together with an accountant, enables an investigator to assure the correctness of the analysis of obtained information [Romaniuk, 2002: 6]. Moreover, the necessity to obtain additional data in the sphere of construction (if criminals used budgetary funds to finance construction expenses), banking (by investigating the facts of budget law violations connected with credit funds), etc. could arise;

d) assistance while preparing for the proper investigative actions (different specialists, in particular, engineers, economists, accountants, criminalists are involved in consultations). For instance, when the issue on the appointment of an audit or accounting expert is resolving forensic examination, a specialist in the accounting sphere can provide assistance to the investigator in order to formulate questions to an auditor or an expert in the correct manner. Besides that, sometimes a specialist can suggest to an investigator a sequence of investigative actions in the case and help to choose the tactical methods which could be reasonably used while carrying out a certain investigative action.

The audit as a non-procedural form of the application of special knowledge is actually used in all cases of investigation of criminal violations of the budget law. Documentary inspection is one of the most important forms of financial and economic control over the economic activity of enterprises, institutions and organizations which are completely financed from the state budget or receive budgetary funds. Any criminal case on criminal violations of the budget law cannot be successfully completed but also even initiated in most cases without this form of documentary control.

Great difficulties arise while appointing and carrying out documentary inspections and economic forensic examinations. These impede the successful investigation of crimes connected with budget law violations, in particular, the problem of appointing audit by law enforcement bodies which requires detailed consideration.

The audits and inspections in the institutions of the budget sphere have their own specific features, however in practice the significance of proper preparation for an audit is often underestimated. Often investigators do not formulate specific questions to auditors at all because they hope that they will find some violations of the budget law by themselves. It can cause the further necessity of additional audits, loss of evidence, procrastination of investigation, and so on [Bondarenko, 2010: 70].

The questions to auditors in cases on budget crimes could be the following:

a) Was the receipt of budgetary funds by an institution legally acceptable?

b) Did the expenses correspond to the designated usage of funds?

c) Did the expenditures exceed the limitations specified by regulatory acts and planned documents or not?

d) What amounts of budgetary funds were used with violations?

e) Which officials were responsible for adherence to the requirements of the budget law which has been breached?

Due to the specific features of a case, the questions could be detailed in each instance.

The quality of audit significantly depends on the close cooperation of the employees of the State Financial Inspection of Ukraine (hereinafter, the SFIU) bodies with the field service officers and investigators.

Such collaboration during the investigation of economic crimes (including budgetary) should consist of the following:

a) common discussion on the lineup of the audit group and approval of the audit programme;

b) collective actions and measures to create appropriate audit conditions;

c) if necessary, carrying out the audit in the presence of law enforcement officers on-site or in the building of the law enforcement body using the documents exempted in the proper way;

d) if necessary, an assurance of the presence of the officials of the controlled object by law enforcement officers in order that they give explanations to auditors and sign the audit certificate;

e) common solution of the issue on the involvement of specialists in other spheres to the audit process;

f) mutual informing of the investigator or field service officer and auditor about the results of their work;

g) common determination of the most effective audit methods;

g) discussion and determination of the sequence of certain audit actions and selection of explanations from the officials whose activities are under inspection;

h) common determination of the area of actions within the framework of the audit and signature of the final or interim audit certificate;

i) if necessary, a prolongation of the audit term;

j) termination of contrariety of the officials to be under inspection to the auditors by law enforcement officers, protection of the representatives of the supervision and auditing service, documents and materials under inspection, as well as cooperation in taking measures for bringing guilty persons to legally determined responsibility;

k) transfer of accounting documents (which were exempted at the controlled object earlier) by law enforcement officers to the auditors;

l) solution of the issue on renewal of lost accounting at the controlled object by law enforcement officers;

m) taking collective measures for the receipt and storage of materials deemed necessary for an audit and the particular criminal case;

n) assurance of counter inspections by law enforcement officers;

o) taking measures for compensation of damages caused to the state and liquidation of other financial law violations;

p) periodical verification of the results of audit material analysis by the SFIU and law enforcement bodies.

In judicial literature one can find other forms of collaboration, e.g. assurance of the suddenness of certain audit actions, common formulation of concrete audit task, etc. [Kolomiets, 2010: 163].

We would like to stress the urgent need for regulation of the interaction of law enforcement bodies with the Accounting Chamber of Ukraine. The activity of this specialized authority in the sphere of supervision of the abidance by the budget legislation is of great significance. At the same time, V. Klochkov emphasizes that there are substantial shortcomings in the cooperation of the Accounting Chamber of Ukraine with the Prosecutor's General Office of Ukraine. These drawbacks are conditioned by insufficient legislative regulation of the process



of the transferring of inspection materials of the Accounting Chamber of Ukraine to the Prosecutor's General Office, as well as by the refusal of courts to consider its reports as sources of evidence. In connection herewith, the author makes essential propositions aimed at improvement of the interaction of the Accounting Chamber of Ukraine with the Prosecutor's General Office [Klochkov, 2004: 28]. In our opinion, it is also reasonable to improve such interaction with the Ministry of Internal Affairs. In order to do that, the appropriate regulatory and legal framework should be developed.


The involvement of specialists in the conducting of certain investigative actions is a procedural form of the usage of special knowledge in an investigation (Article 71 of the Criminal Procedure Code of Ukraine). Scientific literature contains conditions that determine the necessity of a specialist's participation in conducting a certain investigative action (interrogation, seizure, search, etc.). Such conditions include: 1) absence of the corresponding special knowledge and skills of the investigator; 2) insufficient investigator's knowledge of techniques and means of quick and qualitative execution of work that requires special knowledge and skills; 3) necessity for ethical or tactical reasons to entrust the execution of certain actions to a specialist only; 4) simultaneous application of different means of criminal investigation technique; 5) necessity for the execution of a great scope of work requiring special competence [Stepaniuk, 2012: 107].

Conclusion. Therefore, generally speaking, special knowledge in the investigation of crimes in the budget sphere of Ukraine is any professional knowledge deemed necessary for solving issues arising during pretrial investigation and judicial proceedings. In the strictest sense, it is any professional knowledge of well-informed people involved in the fulfillment of the tasks of criminal proceedings in accordance with the procedures established by law.

Successful investigation of criminal violations of the budget law requires especially thorough organization, taking into consideration the specific subject of infringement and the complicated mechanism of committing these crimes. In particular, there is always a need for the widespread usage of special knowledge concerning the spheres of accounting, financial law, and some others. This aspect is not always taken into account by investigators in planning their actions. An investigator is simply not able to collect enough evidence and give the necessary qualified estimation without the help of specialists. It is conditioned by the complexity of understanding the peculiarities of the usage of budgetary funds and the documentation of operations herewith, as well as by the imperfections of budget legislation.

Generalizations regarding the experiences of the investigation of criminal violations of specialized legislation provide reasons to conclude that the necessity for a specialist's involvement while conducting investigative actions in these cases arises more often than it is actually done. The execution of complex investigative actions without specialist involvement is a reason for shortcomings when not all the necessary documents are exempted, far more time is spent for conducting interrogations, which then are not conducted knowledgeably, etc.

The usage of special knowledge, consultations with well-informed people (specialists), appointment of audits, participation of specialists in preparation and conducting of tactical operations, public and non-public investigative (search) actions, and forensic examinations are typical for the investigation of crimes committed in the budget sphere of Ukraine. Each of the above-mentioned forms has its own specific features, and forensic examination (which is the most important among them) requires organizational and legal improvement, in particular, clearer differentiation of expert tasks and additional exploration of the issue on the acceptability acknowledgment of jurisprudential examinations in criminal proceedings.

Thus, widespread and effective usage of special knowledge in the cases on budgetary funds misapplication, adjustment of tight interaction with specialists is the most significant aspect regarding organization of the investigation of the above-mentioned kind of crimes. 

References

1. **Bondarenko O., Stepaniuk R.** (2010) 'Оцінювання та використання матеріалів ревізії при розслідуванні злочинів, пов'язаних із порушеннями бюджетного законодавства [Estimation and usage of audit materials while investigating the crimes connected with the budget law violations], *Теорія та практика судової експертизи і криміналістики: збірник наукових праць* 10: 68–73.
2. **Goncharenko V.** (1980) *Использование данных естественных и технических наук в уголовном судопроизводстве (Методологические вопросы): Монография* [Usage of data of natural and engineering sciences in criminal proceedings (Methodological issues): Monograph]. Київ: Вища школа.
3. **Klochkov V.** (2004) 'Взаємодія Генеральної прокуратури України з Рахунковою палатою щодо охорони прав і свобод особистості' [Interaction of the Prosecutor's General Office of Ukraine with the Accounting Chamber of Ukraine concerning protection of rights and freedoms of the personality], *Міліція України* 2: 28.
4. **Kolomiets O.** (2010) 'Взаємодія Державної контрольно-ревізійної служби та оперативних підрозділів при розкритті розкрадань на об'єктах бюджетної сфери' [Interaction of State Supervision and Auditing Service and operational subdivisions while detecting plundering at the objects of budget sphere], *Науковий вісник Київського національного університету внутрішніх справ* 1: 156–164.
5. **Koni A.** (1966) *Собрание сочинений: В 8 т.* [Collected edition: In 8 volumes]: *Volume 1*. Москва: Юридическая литература.
6. **Kostytsky M.** (1990) *Використання спеціальних психологічних знань у радянському кримінальному процесі* [Usage of special psychological knowledge in Soviet criminal proceedings]. Київ: НМК ВО.
7. **Kravchenko A., Shcherbakovsky M.** (1999) *Применение специальных познаний при раскрытии и расследовании преступлений* [Application of special knowledge while detecting and investigating the crimes]. Харьков: Ун-т внутр. дел.
8. **Lysychenko V., Tsyrcal V.** (1983) 'Формы использования специальных познаний и виды участия специалистов на предварительном следствии' [Forms of usage of special knowledge and kinds of specialists' participation in pretrial investigation], *Применение специальных познаний в борьбе с преступностью: Межвуз. сб. научн. тр.*, pp. 8–18. Свердловск: Свердловский ордена Трудового красного знамени юридический институт им. Р. А. Руденко.
9. **Obratstov V.** (1997) *Выявление и избличение преступника* [Detection and exposure of a criminal]. Москва: Юристь.
10. **Romaniuk B.** (2002) *Сучасні теоретичні та правові проблеми використання спеціальних знань у досудовому слідстві: автореф. дис. ... канд. юрид. наук: 12.00.09* [Modern theoretical and legal problems of usage of special knowledge in pretrial investigation: Dissertation abstract for the Ph.D. in Law, specialty: 12.00.09]. – Київ.
11. **Stepaniuk R.** (2012) 'Використання спеціальних знань під час розслідування злочинів у бюджетній сфері України' [Usage of special knowledge during the investigation of crimes in the budget sphere of Ukraine], *Криміналістичний вісник: [наук.-практ. зб. / голов. ред. Коваленко В. та ін.] / ДНДЕКЦ МВС України; НАВС* 17: 102–108.