

Assessing the Means of Evidence by Forensic Reports in Criminal Cases of Business

PhD. Delia MAGHERESCU¹

Abstract

The new era of forensic investigation of criminal cases means currently a challenge for the judicial bodies in their duties of finding truth during the criminal proceedings. In achieving this purpose, the role of forensic evidence is as bigger as the forensic reports provide the judges and prosecutors with pertinent, conclusive and genuine data the criminal decisions shall be based on. The current research focuses on assessing the means of evidence by forensic expertise reports in the criminal cases of business, which present a high interest both for the area of forensic science and the decision-making process in criminal cases. In this respect, it has been identified three particular criminal cases related to the field of business. They refer to the cases of economic offenses, business-related corruption, and organized crime. The work uses a qualitative research methodology with elements of case-law references in the field of business. The results obtained during the conceptual study have stated that the forensic reports submitted by the forensic experts contribute to solving the criminal cases related to the field of business and making solutions as long as they are corroborated with the other means of evidence administrated in the criminal proceedings. The research conducted has been directed to the idea that, as a general rule, the forensic reports do not have a pre-established judicial value, although they provide scientific evidence, which are also very difficult to be reversed. Considering all these aspects, the conclusions state that assessing forensic reports in criminal cases of business is a complex activity which the judges should pursue in order to pronounce legal and evidence-based decisions.

Keywords: *criminal proceedings, field of business, forensic reports, assessing means of evidence, scientific evidence, criminal cases of business.*

JEL Classification: K14, K42

1. Introduction

The issue of solving criminal cases of business based on pertinent, conclusive, and genuine evidence is currently approached through several mechanisms used by the judicial bodies in purpose to achieve the truth in criminal cases. Most of time, they have to choose different means of evidence gathered and administered by the judicial bodies within a judicial legal environment.

In the area of criminal justice, the issue of assessing the means of evidence by forensic reports in economic criminal cases is also of high importance, due to the fact that the criminal procedure requires a set of judicial mechanisms to organize both the investigation and judgment stages in such a manner to achieve the final conclusions of solving criminal cases. In this matter, the prosecutors during the investigation phase of criminal proceedings, as well as the judges during the judgment phase are responsible for advancing the best practices of procedure in order to achieve the aims proposed including the activity of finding the truth in those criminal cases they are invested with.

In order to achieve this goal, the judicial bodies have to gather data and evidence which will conduct them to the legal solutions in criminal cases of business. The means of evidence gathered during the investigation procedure are useful in a criminal case as long as they are corroborated with the other means of evidence administered in the same case. No one has a pre-established judicial value in criminal cases, and, for this reason, the main role of the judicial bodies is, among others, the activity of discovering, sampling and gathering evidence related to the economic case involved. In the matter of fact, it has been observed that usually there are more than one forensic expertise ordered by the judicial bodies in the economic criminal cases. Based on the diversification of expertise conducted, the economic criminal cases are primarily solved through several expertise procedures, from financial to fiscal, from accounting to banking.

The forensic expertise report is a particular means of evidence provided to the judicial bodies which help them in the judicial activities of criminal proceedings. There is no doubt on this issue, came as a general rule of administering evidence. It presents a special interest in some criminal cases

¹ Delia Magherescu - Gorj Bar Association, Romania, delia_magherescu@yahoo.com.

of business, such as those related to the economic offenses, business-related corruption, and organized crime, as they will be highlighted in the next chapters.

Nevertheless, at the moment of the stages of criminal proceedings – *investigation and judgment* – the judicial bodies are usually faced with certain dilemmas on the following questions.

(a) Is the forensic expertise report able to solve the entire decisions making process of criminal cases?

(b) What kind of assessment should be done by the prosecutors and judges in order to achieve the decision?

(c) Is there a common principle of finding judicial results in criminal cases which should be respected?

(d) Are there particular cases that might provide the prosecutors and judges with special means of investigation?

A general evaluation of the means of evidence administered through the forensic expertise reports which are provided by the forensic experts have to confirm the idea that, as a rule of the activity of gathering evidence, including the forensic ones, there is no unity opinion advanced by different specialists in the same area of forensic science. In this regard, although they are scientific means of evidence, the forensic expertise reports provide the judicial bodies with different conclusions and opinions which will be assessed by them in criminal proceedings, by the prosecutor during the investigation stage and by the judge during the judgment stage as well.

Despite the standardization of the judicial activity in criminal cases, which requires the judicial procedural tools regulated by the Code of criminal procedure², the activity of assessing the means of evidence by forensic reports could be analysed from the point of view of the judges' evaluation of the entire means of evidence administered in criminal case and their own belief that the solution made by themselves is the only one provided beyond any reasonable doubt³. Moreover, it has been emphasized that the principles of criminal procedure, as they are regulated by the Code of criminal procedure of Romania, must provide procedural safeguards in reaching the best results in criminal cases⁴.

The research activity conducted on the topic of assessing the means of evidence by forensic reports in particular criminal cases has created the opportunity to use the general principles of theoretical methodology along with the conceptual approach and jurisprudence presentation. They were analysed in a particular manner taken into consideration the three areas the current paper was focused on. These ones refer to the *economic offenses, business-related corruption, and organized crime*, each of them being structured and featured by the main qualitative aspects of the research activity involved.

The methodology of research has respected the principles of conceptual paper, as a general rule of the core content, as well as the criteria for providing the appropriate results which characterize the field of forensic science and the judicial criminal proceedings as well.

Last but not least, it should be expressed that the procedure of assessing the forensic expertise reports is still both in the theoreticians and practitioners' attention, due to the fact that, on the one hand, it will reflect the real solutions that the judges will pronounce at the end of the criminal trial, and generates the other assessing issues on the other means of evidence administered in the same criminal case of business, on the other hand.

Consequently, the process of assessing the means of evidence through forensic expertise report is as important as it is a compulsory procedure for the entire judicial activity in the criminal cases, special attention being paid on the cases of economic crimes.

² Law no. 135 of 2010 on the Code of Criminal procedure of Romania, published in the Official Journal of Romania no. 486 of 15 July 2010, into force on the 1st of February 2014.

³ Criminal Decision no. 834/08.06.2018 of the Appeal Court of Craiova, available online at: <http://portal.just.ro> (accessed on 2.10.2022).

⁴ Council of Europe, European Court of Human Rights, Guide on art. 6 of the Convention. The right to a fair trial (criminal side), 2014, available online at: <http://ier.gov.ro/wp-content/uploads/2018/11/Ghid-art.-6-pen-2013.pdf> (accessed on 14.10.2022); V. Pătulea, *Proces echitabil – Jurisprudența comentată a Curții Europene a Drepturilor Omului*, Romanian Institute for Human Rights, Bucharest, 2007.

2. Assessing the forensic reports in the economic cases

The current study carried out on assessing the means of evidence by forensic reports in the criminal cases of business has been depended on analysing elements of both forensic science and criminal proceedings in a basic collection of data relevant in the matter. They create a nexus which the judicial bodies, in particular the judges, may take into account at the moment of making decision in the criminal cases of financial, fiscal, banking, accounting cases a.s.o. They advance solutions for difficult issues arisen in practice in cases, such as economic offenses, business-related corruption and organized crime. It is well-known that the particular feature of the strengthened connection between the two elements – *forensic investigation and judicial process of decision making* – should pertinently be placed under the objective framework of solving the criminal cases.

The doctrine has provided that „When choosing how to report their conclusions, forensic scientists should first consider what kinds of statements are warranted—i.e. what statements can be justified logically and empirically given the accuracy of the analytic methods used to reach the conclusion. Among statements that pass this initial test, the forensic scientist should then consider, as a second step, which statements best convey the forensic examiner’s conclusions about the strength (probative value) of the forensic evidence”⁵.

Thus, solving the complex criminal cases also involves an interdisciplinary activity which will be carried out within a complex team of investigation. The activities are not limited to the investigation one, due to the fact that the procedure of assessing the means of evidence is basically part of the judiciary and the other ones are subordinated, but not limited, to this one.

The research activity has identified three situations, which belong to the three kinds of the above-stated crimes. They present particular feature and, for this reason, were analysed separately.

2.1. Cases of economic offenses

The area of economic crimes is currently very developed all over the world. The mechanism of committing crimes and *modus operandi* were permanently upgraded by the criminals in their purpose to achieve the proceeds of crime. In this respect, both theoretics and practitioners have devoted their studies in order to find both legal and judicial ways of diminishing or even combating the phenomenon as much as possible. In this context, certain kinds of economic offences present a particular relevance in practice. It is about the financial and banking crimes, which can be committed even under the means of cyber-criminality context, as well as those of counterfeiting and smuggling goods.

From a jurisprudence point of view, there are several cases in which defendants are punishable for having committed financial crimes, particular attention being paid to the accounting field. The other ones have in view the offences which lead to the criminal actions committed by means of electronic payment, which facilitate the international transactions. The digital area of committing crimes is a complex one whose discovering procedure involves high-developed instruments and techniques. This is a consequence of the newer *modus operandi* of committing economic crimes by using electronic means of payment.

The legal doctrine usually prefers analysing the organized crime in a nexus with the money laundering issue, which is considered as a keystone of the phenomenon of organized crime⁶. However, from an investigative point of view, it is more appropriated to present the last kind of crime in the current section of paper due to its interference with the economic area as well as the consequences it presents in practice.

The phenomenon of money laundering leads to the financial crimes being in core position

⁵ W.C. Thompson, R. Hofstein Grady, E. Lai, H.S. Stern, *Perceived strength of forensic scientists’ reporting statements about source conclusions*, „Law, Probability and Risk”, Vol. 7(2)/2018, pp. 133-155, <https://doi.org/10.1093/lpr/mgy012>.

⁶ M. Levi, *Making sense of professional enablers’ involvement in laundering organized crime proceeds and of their regulation*. „Trends in Organized Crime”, vol. 24/2021, pp. 96-110, <https://doi.org/10.1007/s12117-020-09401-y>.

with the other crimes related to the economic field⁷.

Regarding the investigation procedure, which involves techniques and measures provided by the criminal procedure law, the legal doctrine has pointed out that it covers the process „to determine if the income from illegal activities, to determine the property of the suspect and third parties, to ensure the property by applying temporary security measures, and to confiscate the income from illegal activities”⁸.

The criminal procedure begins with the suspicious transactions and fraudulent operations⁹, identity theft, misappropriation of funds, bribery or corruption¹⁰ which requires special forensic investigation tools usually provided by the national law unit. Nevertheless, in cases of transnational criminal transactions the main role is given by the anti-money laundering units of criminal investigation under the international cooperation in criminal cases¹¹.

The criminal activity at the transnational level is characterized by „itinerant feature”, which involves complex forensic expertise, from different areas of competence, such financial, fiscal, banking and information technology. As a general rule, the steps the forensic expert should pass of deal to knowing the *de facto* circumstances the crimes were committed in; achieving the goals of the preliminary financial-accounting expertise; carrying out domiciliary and offices search; identifying the witnesses, perpetrators, and victims of crimes. The forensic experts use financial documents, means of payment, as well as the other relevant documents which serve to finding the truth in criminal cases. The case-law decision made in criminal financial case has stated that the goods import operation made through evading the intra-communitarian procurement procedures by avoiding the legal documents is beyond any reasonable doubt the crime of tax evasion, corroborated with the crime of money laundering¹².

The procedure of assessing the forensic report in cases of financial crimes does not imply a particular feature. It is submitted under the general rules of criminal procedure, although the forensic investigation activity has been carried out through means of special activities. The cyber-investigation of gathering the financial evidence is deepened by the other means of forensic investigation, came to clarify the financial crime investigated. As a good practice manual, it is usually advanced the idea of the best results in the area of the criminal investigation of financial crimes through using a real cooperation among the law enforcement agencies¹³. The involvement of several institutions is actually an explanation of how the forensic experts could obtain genuine data, including financial database information from banking system, in a proper period of time.

From a jurisprudence perspective, analysing financial crimes needs data in order to examine the proceeds of suspected financial crimes, also related to the organized criminal groups and frauds¹⁴. The general background should be focused around the topics of criminal mechanisms and their *modus operandi*, as well as specialized documentation in the financial field and connected areas, all of these being related to the issues of finding evidence on crimes and perpetrators.

The doctrine in criminal matters is speaking about the idea that converges to the forensic

⁷ D. Ravenda, M. M. Valencia-Silva, J. M. Argiles-Bosch, J. García-Blandón, *Money laundering through the strategic management of accounting transactions*, „Critical Perspectives on Accounting”, vol. 60/2019, pp. 65-85; L. dalla Pellegrina, G. Di Maio, D. Masciandaro, M. Saraceno, *Organized crime, suspicious transaction reporting and anti-money laundering regulation*, „Regional Studies”, vol. 54(12)/2020, pp. 1761-1775.

⁸ A. Šurković, *Criminal Investigation of Money Laundering in the Practice of the Financial Intelligence Unit of the State Investigation and Protection Agency*, „Praxis International Journal of Social Science and Literature”, vol. 4(2)/2021, p. 43.

⁹ S. Cindori, T. Petrovic, *The significance of assessing money laundering risk as a part of the auditing operations*, „Athens Journal of Business and Economics”, vol. 4(1)/2018, pp. 79-91.

¹⁰ T. K. Dasaklis, A. Veni, *Special issue on Financial Forensics and Fraud Investigation in the Era of Industry 4.0.*, „Digital Finance”, Springer, vol. 3/2021, pp. 299-300. <https://doi.org/10.1007/s42521-021-00044-4>.

¹¹ A. Šurković, 2021, *op. cit.*, pp. 42-52.

¹² Criminal Decision no. 116/RC/2020 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 8.11.2022).

¹³ O. Reznik, O. Bondarenko, N. Horobets, A. Kostenko, M. Nazarov, *Problem aspects of interaction of law enforcement authorities in the field of countering money laundering*, „Amazonia Investiga”, vol. 10(48)/2021, pp. 170-180. <https://doi.org/10.34069/AI/2021.48.12.18>.

¹⁴ Criminal Decision no. 197/2020 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 13.11.2022).

investigation as a forensic audit¹⁵ which particularly involves the forensic expertise of the financial-accounting document in cases of crimes committed by the legal entities.

2.2. Cases of business-related corruption

The research conducted has stated that the procedure of assessing the means of evidence by forensic reports in criminal cases of business-related corruption should be qualified as one of the most difficult activities carried out by the judicial bodies in criminal matters. The criminal cases of corruption in business are frequently met in practice¹⁶, providing interest both for the prosecutors and for the judges in their activity of assessing the means of evidence by forensic expertise reports.

The results obtained in cases of corruption and its implications in the field of business were analysed from the perspective of the involvement of forensic expertise and its conclusions in the area of assessing evidence by the judicial bodies, knowing the fact that this activity is connected to the process of solving criminal cases of corruption¹⁷. In this regard, the jurisprudence has stated that, in several situations, the judicial bodies order diverse kinds of forensic expertise in purpose to prove the corruption criminal activity, its *modus operandi*, as well as its connection to the business-related crimes. This is because the defendants are usually going to dispute the forensic expertise reports submitted in their criminal case. In these circumstances, the judicial bodies have to proceed to examine the evidence administered in criminal case by ordering one or many forensic expertise.

The main area of investigation leads to finding evidence on clarifying the circumstance of time and place the crimes were committed in. Often, the investigation imposes a special forensic procedure with particular technical proceedings and scientific methods of investigation. The forensic experts are accustomed to the procedure of flagrant delict due to the fact that in the beginning they have data enough on the crime, perpetrator and *modus operandi* based on criminal reporting, although the criminal activity is diversified.

For the flagrant crimes of corruption, special means of investigation are used by the forensic experts, such as intercepting the phones communications, accessing the informatic systems; surveying the video-audio devices; obtaining the data on financial transactions; using undercover investigators, all of them being corroborated with the witnesses' statements.

The specific elements are relevant for each category of corruption crimes committed¹⁸, from the cases of trafficking in influence or payment of influence to the cases of giving bribery and receiving bribery which highlight a forensic pattern of investigation namely of strengthening forensic conclusive remarks and final conclusions as well. In this regard, it has been highlighted that the corruption in public services is definitely high estimated and „Because of the high frequency of this problem and the associated damage, the aspects that impact overpricing should be better understood, including fraudulent acts”¹⁹.

Usually, the forensic investigation involves two steps. One of them is related to the data the forensic experts have in the beginning of such activity, also called as *typical traces*²⁰, while another one to the *generic traces*, reported in the other criminal cases, either material or ideal evidence, the

¹⁵ K. M. Kingsley, *Forensic accounting and financial investigation*, 2016, p. 9, available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2833785 (accessed on 4.09.2022).

¹⁶ A. Codreanu, *Fenomenul de corupție vizând achizițiile publice și moduri de evitare a acesteia*. In: „Competitivitatea și Inovarea în Economia Cunoașterii”, vol. 2(28-29)/2018, pp. 125-133.

¹⁷ The same is true in the other cases of serious crimes, although they are not linked to the business field. The forensic expertise reports are complex ones in cases of serious crimes due to the complex teams of forensic investigation they are participating in. A conclusive element of complex participation in the activity of forensic investigation appears in cases of collaboration between the forensic experts and the accounting or financial-fiscal ones. See, T. Aksoy, S. Uzay. *Relationship Between Fraud Auditing and Forensic Accounting*. In: „Auditing Ecosystem and Strategic Accounting in the Digital Era. Contributions to Finance and Accounting”, Aksoy T., Hacıoglu U. (eds.), Springer, Cham, 2021. https://doi.org/10.1007/978-3-030-72628-7_6

¹⁸ B. Warf, *Global corruption from a geographic perspective*, Springer, Cham, 2019.

¹⁹ A. de Oliveira, M. Andrade, *Fighting corruption in public works: The use of cost engineering in criminal investigation*, „Journal of Legal Affairs and Dispute Resolution”, vol. 14 (3)/2022.

²⁰ M. Fazekas, L. Cingolani, B. Tóth, *Innovations in objectively measuring corruption in public procurement*. In vol. „Governance Indicators. Approaches, Progress, Promise”, H.K. Anheier, M. Haber, M.A. Kayser (eds.), Oxford University Press, Oxford, 2018, pp. 151-156.

last one being gathered through the criminal reporting witnesses²¹.

However, in cases of business-related corruption, the doctrine is speaking about the issue of „institutionalised corruption” in public procurement, which refers to „the allocation and performance of public contracts by bending universalistic rules of open and fair access to government contracts in order to benefit a closer network while denying access to all others”²².

Despite the huge efforts made by the judicial bodies in order to prove the crimes committed in business-related corruption, in practice it is very difficult to discover and prove these crimes which are developed a real phenomenon. In the field of public procurements, it has been emphasized that „the practice has stated that one of the main obstacles in combating fraud and corruption in the public procurements is represented by difficile detection of the deviation from the law. This difficulty is based on the fact that in most cases neither the real perpetrator nor victim can be discovered because there is often a plot of the group of persons with common interests in maintaining secret their corruption acts, fact which is proved by their inexhausted creativity in distorting the procedure of assigning the contracts of public procurements”²³.

Despite the attenuating quotation assigned to the EU Member States which are involved in the public procurement procedures regulated by the EU Directives²⁴, the situation seems to be different organized and the practice expectation is also contrary both to the domestic and European legislation when the official authorities meet corruption.

One of the main dilemmas which arises from a doctrinal point of view is, on the one hand, to clarify the main causes which maintain and develop corruption in the field of business, and the public procurement is for certain one of the most sensitive areas of the business activity. On the other hand, both practitioners and theoreticians were concerned in finding appropriate solutions to diminish as much as possible the phenomenon of corruption in the public procurements, and the transparency is viewed as „an antidote to corruption”²⁵.

The same is true in the field of investigating the criminal cases of business-related corruption in those cases of public procurements in which elements of corruption are suspected. The suspicion is as big as the business companies’ representatives are vigilant in elimination any means of evidence which the judicial bodies could find and expertise in order for them to prove the criminal activity the business representatives have been involved in. From this point of view, the transparency in the procedure of public procurements could also be one efficient solution in controlling this phenomenon. This is because, missing a judicial instrument to control corruption involvement in business is a serious drawback which the investigating bodies cannot substitute.

In this respect, a new generation of skills in finding and discovering the means of evidence should be implemented in the criminal justice in purpose for the investigating bodies to be able to gather those traces and evidence useful for the judicial activity of proving the corruption practices in the public procurement contracts.

2.3. Cases of organized crime

First of all, it could be mentioned that the corruption crimes are often related to the organised crime phenomenon as well, in those criminal cases in which criminal schemes are established by the organized crime groups. They usually involve the connection between elements of organised crime group, corruption crimes and the field of business.

By definition, the organized crime, as a form of serious crime, is a more dangerous crime when committed by different aggravated circumstances, usually concurrent ones. Basically, they involve the means of committing such crime along with the other particular circumstances regulated

²¹ D. Magherescu, *Teoria generală a expertizelor criminalistice*, Hamangiu Publishing House, Bucharest, 2021, pp. 277-278.

²² M. Fazekas, L. Cingolani, B. Tóth, *op. cit.*, p. 156.

²³ A. Codreanu, *op. cit.*, p. 126.

²⁴ *Ibidem*.

²⁵ M. Bauhr, Á. Czibik, J. de Fine Licht, M. Fazekas, *Lights on the shadows of public procurement: Transparency as an antidote to corruption*, „Governance,” vol. 33(3)/2020, pp. 495-523.

by the criminal law in the field of business. It is about the criminal cases of counterfeiting and smuggling goods, trafficking in illegal products a.s.o. To these ones, the cases of criminality in business, such as the tax evasion as well as the other illegal market operations are added.

In this context, the issues of investigating and judging criminal cases related to the business environment should be analysed from the perspective of the forensic expertise and the reports²⁶ submitted by the forensic experts appointed in those economic criminal cases the judicial bodies are invested with. It is also very important at this stage to understand how the forensic expertise reports lead to the judicial activity of solving the criminal cases of organized crime.

The jurisprudence in criminal matters is usually focused on the main topic of forensic expertise carried out in different areas of competences. From a practical point of view, it presents importance for the conclusive remarks of the experts and their opinions the decision will be based on.

In the matter of fact, the forensic expertise reports in cases of organized crime do not have a spread area of activity due to the fact that no all kinds of organized crime are entitled to be examined by the forensic expertise. In fact, the practice is not very much accustomed to the idea that trafficking in goods could be investigated in the area of forensic expertise.

Nevertheless, some kinds of forensic expertise, connected to the main cases of the phenomenon of organized crime committed (*i.e.*, trafficking in counterfeit goods), could be ordered by the judicial bodies in purpose to find the truth in these cases and gather evidence which will help them to solve the criminal cases legally.

First of all, while investigating the cases of serious crimes in the field of business, the judicial bodies have to clarify some particular circumstances which are compulsory in the matter of assessing the means of evidence by forensic reports. For this reason, it has been highlighted that this kind of investigation is made by the complex teams of experts who can provide the judicial bodies with useful information on the crimes committed, the crime scene investigation report²⁷, the perpetrators as well as the circumstances the crimes were committed in. Although it does not involve the current research paper, certain features should be provided on this topic.

The investigation of the cases of organized crime connected to the business activity is usually featured by two forensic activities. One of these is related to the forensic investigation of the crime scene²⁸, while another activity is based on the laboratory expertise of the samples gathered from the crime scene²⁹. These two forensic activities complete each other and make the forensic experts provide the forensic expertise report, which contains scientific conclusions they have reached to.

For the study of organized crime, the doctrine has pointed out that „illegal activity tends to leave complex traces that networks are especially suited to describe and explain”³⁰. The study of organized crime is featured by the means of diversified investigation especially in cases of the economic field.

In cases of trafficking in drugs committed in business context, the complex forensic expertise will be conducted by the experts called to examine the crime scene. It is well-known that the crime scene is fully provided with evidence which the investigators should sample and transport them to the laboratory for examination.

One case provides that, the court of law has ordered a chemical laboratory expertise of the proceed of drugs confiscated from the perpetrator, which consists in about 21,78 grams of cannabis remained after the procedure of carrying out the chemical forensic expertise at the Laboratory of Analysis and Drug's Profile, the electronic scales which has highlighted tetrahydrocannabinol (THC) and traces of cocaine, 0,40 grams of powdered cannabis, metallic grinder containing traces of cannabis, as well as the other evidence of both pure and powder drugs³¹.

²⁶ D. Magherescu, 2021, *op. cit.*, pp. 187-226.

²⁷ *Ibidem.*

²⁸ *Ibidem.*

²⁹ D. Magherescu, *Criminalistică*, 2nd edition, ProUniversitaria Publishing House, Bucharest, 2020, pp. 95-106.

³⁰ J. Wachs, M. Fazekas, J. Kertész, *Corruption risk in contracting markets: a network science perspective*, „International Journal of Data Science and Analytics”, vol. 12/2021, pp. 45-60.

³¹ Criminal Decision no. 314/RC/2022 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 9.11.2022).

De iure, at the stage of the recourse in cassation, the court of law is neither entitled to assess again the forensic expertise report along with the other means of evidence administered in the criminal case, nor qualified to assess another evaluation to the probative materials as well as to retain a *de facto* situation differently from the one stipulated by the first instance. The law court's conclusion is reported neither to the *de facto* situation resulted as a consequence of the substantive penal law conflict the defendant is part of, not to his processual behaviour, but exclusively to the legality of the judgment pronounced³². On the one hand, regarding the law court's arguments, it is obvious that the defendant cannot require to the court of law to assess again the particular content of the forensic expertise report and the other means of evidence in order to retain another judicial result. On the other hand, the only one right of the defendant is that of evaluating again the legality of the first instance solution pronounced in that criminal case, in accordance with factual particularities of the case³³. The same is true in cases of counterfeiting foods, which can be investigated through forensic chemical expertise.

In criminal cases of trafficking in radioactive substances in atypical format, a constant is highlighted while it is about the categories of forensic expertise ordered by the judicial bodies. In this matter, the physical-chemical expertise is the only one which, beyond of the fact that it will confirm the presence of the radioactive substances by different aspects and possibilities of transportation, will contribute exclusively to setting up the conviction for the judicial bodies that those premises are genuine evidence which should be administered in the criminal case investigated.

In another case-law reference of practice, the laser scanner in the airport has detected radioactive substances over the passenger's luggage. More particularly, the radioactive material was found in a set of playing cards, used usually by players in the Far East. The *modus operandi* is relatively easy to be understood and consists in a laser detector owned by a player during the card game. The laser gives out a light which colours the cards even if they are upside down. However, once the player passes the light over the cards he sees them and knows what the chance he has in that position.

The physical-chemical expertise carried out in that case has stated that the cards were inserted in with small capsules of radioactive substances, which permits player to evaluate his own gambling situation in opposition with the other players and finally to win. The forensic report concluded that the perpetrator knew that the activity of transportation of radioactive substance is not a legal one, but he took into account the fact that the airport means of scanning control is not so performant to detect the small capsules inserted into the playing cards he travelled with.

Basically, the forensic report content is always assessed by the judicial bodies in accordance with the other means of evidence also administered in that criminal case. There is no principle applicable to advance the opinion of overrating the conclusions, although the physical-chemical forensic expertise is still institutionalized through its carrying out within a specialized laboratory.

On the one hand, a critical point of view should conduct to the idea that the forensic expertise conclusions might be assessed without an analysis during the judgment in the court of law. On the other hand, taking over the conclusions automatically by the judges may conduct to the wrong decision pronounced by the court of law, due to the fact that the solution based on an erroneous examination means the process of inducing decision from inaccurate deeds, or the court of law shall imperatively pronounce the criminal decision beyond any reasonable doubt in the cases of organized crime, knowing that they are serious crimes.

The jurisprudence has stated that the forensic expert should provide the entire *modus operandi* which refers to the crime committed, the circumstances it has been committed in, and the identification of perpetrators. From a judicial point of view, in criminal cases of trafficking in weapons, the judges will assess the conclusions provided by the forensic reports on the issues of the arms source of illicit markets. The same is true in the cases of serious crimes committed through ballistic means, in which the judicial bodies will assess the forensic report as well, although its conclusions are in opposition with the defendant's statements, as long as they are rejected by the

³² *Ibidem*.

³³ *Ibidem*.

entire means of evidence administered in criminal case³⁴.

The analysis on the means of evidence by forensic reports in the cases of organized crime concludes that being indifferent of the forensic methods used by the forensic expert, the conclusions have to provide doubtless elements in a certainty environment. The conclusions provided may firstly advance the procedure of assessing data for the judicial bodies, and secondly state the expert's opinion regarding the identity of causes.

3. Assessing the conclusions of the forensic expertise reports

The research conducted on the three cases of crimes – economic offences, business-related corruption and organized crimes also connected to the business activity – have reported three categories of conclusions the forensic experts may submit in their expertise reports. They refer to the specific criteria as provided below.

- (1) Resolute conclusions;
- (2) Probable conclusions;
- (3) Conclusions on impossibility to solve the problem.

However, the doctrine in criminal matters has advanced the fourth category of conclusions which could be reached by the forensic experts. It is about the conclusions of *generic identification*, which in terms of the current research means the procedure of assessing the conclusions of the forensic reports on generic identification³⁵.

The judicial framework arose between the forensic expertise reports and the judicial process of decision making, on the one hand, as well as the procedure of assessing these kinds of means of evidence, on the other hand, has created certain doctrinal ways of discussions on how the judicial activity can be carried out by assessing the means of evidence through forensic reports. The discussions are thus as interesting as they are organized around the argument that the scientific means of evidence could generate multiple possibilities of solving the criminal cases according to the particular circumstances the case is featured with.

Although the general principle of criminal proceedings should imperatively be respected, which states that the forensic expertise reports do not have a pre-established judicial value in front of the other means of evidence administered in criminal cases, the conclusions drawn up at the end of the research conducted have opened ways for multiple points of view on this topic.

Referring to the cases of serious crimes connected to the field of business, when complex forensic expertise is ordered, the situation seems to be more complicated³⁶. One reason advances the idea that this situation arises due to the mix team of collaboration between experts.

The procedure of assessing forensic reports involves two steps. One of these is made by the forensic experts, while the second one by the judicial bodies. Referring to the first step, it could be emphasized that the forensic evidence examined are primarily assessed by the forensic experts through applying appropriate methods and techniques of the forensic science. The result gathered are thus assessed by all forensic experts participating in the activity of examining the criminal case's means of evidence. A mutual conclusion will be stated in the end of the examination process of synthesizing entire elements they were invested with.

3.1. Assessing the resolute conclusions

Assessing the forensic expertise reports by the judge and prosecutor differs according to the manner in which the forensic report conclusions were solved. The first situation involves that the procedure of assessing the resolute conclusions is featured by the judicial bodies' conviction that the forensic experts have expressed their own belief regarding the identification value of the

³⁴ D. Magherescu, 2021, *op. cit.*, pp. 261-262.

³⁵ L. Ionescu, D. Sandu, *Identificarea criminalistică*, Scientific Publishing House, Bucharest, 1990, pp. 216-225.

³⁶ A.S. Bali, G. Edmond, K.N. Ballantyne, R.I. Kemp, K.A. Martire, *Communicating forensic science opinion: An examination of expert reporting practices*, Science & Justice, vol. 60(3)/2020, pp. 216-224.

characteristics which they have found out. The statement provided by themselves is then justified by the fact that the conclusions submitted through the forensic expertise report are enough to consider themselves that there is no error provided in the examined criminal case³⁷.

However, the resolute conclusions of the forensic expertise reports make the judges and prosecutors not to assess them as being automatically validated with establishing the truth in the criminal cases. Despite this inconvenient, the judicial activity of assessing the forensic expertise reports in criminal cases of business were pertinently taken into account by the courts of law at the stage of solving those criminal cases³⁸.

The resolute conclusions are thus firmly assimilated and provided in some criminal decisions made, or just limited and unmotivated in the other ones. The jurisprudence in criminal matters has argued that the particular features of the economic criminal cases may influence, casuistically speaking, assessing the means of evidence administered by the judicial bodies through the forensic reports which are corroborated with the other means of evidence, also administrated in the same criminal cases. From this point of view, it has been emphasized that the probative elements were based on the means of evidence scientifically argued, such as forensic reports³⁹. They were assessed by the court of law as deepened and proved evidence due to the fact that they have answered to the entire judicial aims submitted by the judicial bodies.

3.2. Assessing the conclusions of probability

The second possibility which the judicial bodies may give in the process of assessing the conclusions of the forensic expertise reports is one which leads to probable conclusions. It means an intermediate solution came to solve the criminal cases of business if the forensic expert does not submit the resolute conclusions, as explained in the first situation above. In practice, there are situations in which the judicial bodies cannot assess the forensic expertise conclusions in purpose to achieve the criminal proceedings' goals based on scientific evidence.

The conclusions of probability also provide different particular assessment for the judicial bodies, which cannot entirely be based on general similitudes gathered from the other criminal cases. Certain individual featured are required to be highlighted, as specific elements the criminal case is based on. In cases in which they are more substantial, then they would be more permissive.

The scientific conclusion of the forensic expert converges to one possible identity of the object or person examined⁴⁰. In the beginning of the forensic expertise, the expert is entitled to advance a set of hypotheses on how to solve the problem involved and answer the judicial bodies' queries. From the assessment point of view, the judicial bodies have to analyse the conclusions closer to the resolute conclusions, although it is not entirely possible. Consequently, it is thus almost a resolute conclusion, even if the statements do not allow the expert to provide so. For this reason, the algorism is presented as a percentage, whose amount can increase or decrease the conviction power.

Generally speaking, in practice it is very difficult to assess a conclusion of probability⁴¹ due to the fact that, on the one hand, it particularly delivers confusion and doubt, issues that becomes unconvincant to the fundamental principle of pronouncing criminal decision beyond any reasonable doubt. On the other hand, the contrary opinion has been taken into consideration, which converges to the idea that the conclusions of probability may be admissible in criminal cases. This opinion admits that they cannot be assessed solely in criminal case, but assessed by corroboration with the other means of evidence also administered in that criminal case. In this respect, it could be emphasized that the conclusions of probability are equally to the other means of evidence, being prevailed by the

³⁷ L. Ionescu, D. Sandu, *op. cit.*, pp. 216-225.

³⁸ Criminal Decision no. 185/A/2022, Criminal Decision no. 244/RC/2022, Criminal Decision no. 260/2022 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 2.11.2022).

³⁹ The same situation is met in the other kinds of serious crimes. In this regard, see D. Magherescu, 2021, *op. cit.*, p. 260.

⁴⁰ A. Biedermann, S. Bozza, F. Taroni, *Normative decision analysis in forensic science*, „Artificial Intelligence and Law”, vol. 28/2020, pp. 7-25. <https://doi.org/10.1007/s10506-018-9232-2>

⁴¹ D. Magherescu, 2021, *op. cit.*, pp. 220-226.

scientific feature.

3.3. Assessing the conclusions on the impossibility of solving problems

The third situation refers to the process of assessing conclusions on the impossibility to solve the problems which still creates difficulties in the area of limitation of the techniques of investigation. In fact, the judicial bodies are looking for identifying the elements which can provide them with probative conclusions on the criminal case and the perpetrators. Or, such conclusions do not meet these criteria. For this reason, the assessment should be one correctly. In this case, it is imperatively for the judicial bodies to corroborate the conclusions on impossibility of solving problems the experts provide them with to the other scientific means of evidence which will prove the deed committed and the circumstances it was committed in, as well as the element which confirm beyond any reasonable doubt that the person suspected is the perpetrator. This situation leads to a positive hypothesis advanced in the criminal cases of business.

In practice, it is inadmissible the situation of assessing conclusions on impossibility of solving problems and assimilating them with resolute conclusion. Therefore, it is not possible for the judicial bodies to assess the guilt on the perpetrator through using exclusively the conclusions on impossibility of solving problems. As long as the conclusions cannot be demonstrated scientifically, then the issue leads to the negative hypothesis.

Moreover, the forensic expertise report is the means of evidence which will be a scientific support for the judicial body's reasoning. In practice, there are situations in which the forensic experts provide the judicial bodies with erroneous opinions, which cannot cover the judicial issues entirely. Some of these could solve the issue of identification, while the other ones could be placed beyond these aspects, but not to all of them. As it has already been stated, the forensic expertise reports do not oblige the judicial bodies at all. This means that the judicial decision in criminal cases is not exclusively based on the forensic expertise reports, but on the impartial and legal assessing the means of evidence administered in criminal cases.

However, despite this solution, the judicial bodies in both cases of affirmative and negative hypotheses, should take into account the general principle of criminal proceedings *in dubio pro reo*.

4. Conclusions

The research conducted on the topic of assessing the means of evidence by forensic reports in the criminal cases of business has reached some points of view with general feature, as the following.

One of the main principles applied in criminal cases examined through the forensic reports is based on the idea of free assessing of the means of evidence, the prosecutor has reached during the investigation phase and the judge during the judgement phase of criminal procedure.

The feature of the conclusions stated by the forensic expertise reports are inferred from its concordance with the judicial decision made in the criminal case. The syllogism is argued by the fact that the judicial bodies have ordered the forensic expertise and consequently they have to mention them in the given decisions.

On the one hand, the conclusions provided by the forensic expertise reports have to be expressly mentioned by the judicial bodies in their statements due to the fact that they may be the only one evidence administered in the criminal case investigated and judged. On the other hand, the expertise reports are corroborated with the other means of evidence administered by the judicial bodies in criminal cases.

The importance of assessing the forensic expertise reports results also from the manner in which the critics of the parties involved related to the forensic conclusions are rejected by the judicial bodies, as long as there is no contrary forensic opinion provided in the criminal case. Nevertheless, in situation in which there are contrary opinions expressed by an independent forensic expert called by the parties involved in criminal case, then the judicial bodies are not obliged to affirm a positive value for these opinions.

Consequently, the judicial bodies are the only one person entitled to make decision in the criminal cases they are invested with, based on opinion expressed by the forensic experts appointed.

Bibliography

1. Aksoy T., Uzay S., *Relationship Between Fraud Auditing and Forensic Accounting*. In Aksoy T., Hacıoğlu U. (eds.), „*Auditing Ecosystem and Strategic Accounting in the Digital Era. Contributions to Finance and Accounting*”, Springer, Cham, 2021. https://doi.org/10.1007/978-3-030-72628-7_6.
2. Bali A.S., Edmond G., Ballantyne K.N., Kemp R.I., Martire K.A., *Communicating forensic science opinion: An examination of expert reporting practices*, *Science & Justice*, vol. 60(3)/2020. <https://doi.org/10.1016/j.scijus.2019.12.005>.
3. Bauhr M., Czibik Á., de Fine Licht J., Fazekas M., *Lights on the shadows of public procurement: Transparency as an antidote to corruption*, „*Governance*”, vol. 33(3)/2020.
4. Biedermann A., Bozza S., Taroni F., *Normative decision analysis in forensic science*, „*Artificial Intelligence and Law*”, vol. 28/2020. <https://doi.org/10.1007/s10506-018-9232-2>.
5. Cindori S., Petrovic T., *The significance of assessing money laundering risk as a part of the auditing operations*, „*Athens Journal of Business and Economics*”, vol. 4(1)/2018.
6. Codreanu A., *Fenomenul de corupție vizând achizițiile publice și moduri de evitare a acesteia*. In „*Competitivitatea și Inovarea în Economia Cunoașterii*”, vol. 2(28-29)/2018.
7. Council of Europe, European Court of Human Rights, *Guide on art. 6 of the Convention. The right to a fair trial (criminal side)*, 2014, available online at: <http://ier.gov.ro/wp-content/uploads/2018/11/Ghid-art.-6-pen-2013.pdf> (accessed on 14.10.2022).
8. Criminal Decision no. 116/RC/2020 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 8.11.2022).
9. Criminal Decision no. 185/A/2022, Criminal Decision no. 244/RC/2022, Criminal Decision no. 260/2022 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 2.11.2022).
10. Criminal Decision no. 197/2020 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 13.11.2022).
11. Criminal Decision no. 314/RC/2022 of the High Court of Cassation and Justice, available online at: <https://www.scj.ro> (accessed on 9.11.2022).
12. Criminal Decision no. 834/ 08.06.2018 of the Appeal Court of Craiova, available online at: <http://portal.just.ro> (accessed on 2.10.2022).
13. dalla Pellegrina L., Di Maio G., Masciandaro D., Saraceno M., *Organized crime, suspicious transaction reporting and anti-money laundering regulation*, „*Regional Studies*”, vol. 54(12)/2020.
14. Dasaklis T. K.; Veni A., *Special issue on Financial Forensics and Fraud Investigation in the Era of Industry 4.0.*, „*Digital Finance*”, Springer, vol. 3/2021. <https://doi.org/10.1007/s42521-021-00044-4>.
15. de Oliveira A., Andrade M., *Fighting corruption in public works: The use of cost engineering in criminal investigation*, „*Journal of Legal Affairs and Dispute Resolution*”, vol. 14(3)/2022.
16. Fazekas M., Cingolani L., Tóth B., *Innovations in objectively measuring corruption in public procurement*. In H.K. Anheier, M. Haber, M.A. Kayser (eds.), *Governance Indicators. Approaches, Progress, Promise*, Oxford University Press, Oxford, 2018.
17. Ionescu L., Sandu D., *Identificarea criminalistică*, Scientific Publishing House, Bucharest, 1990.
18. Kingsley K. M., *Forensic accounting and financial investigation*, 2016, available online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2833785 (accessed on 4.09.2022).
19. Law no. 135 of 2010 on the Code of Criminal procedure of Romania, published in the Official Journal of Romania no. 486 of 15 July 2010, into force on the 1st of February 2014.
20. Levi M., *Making sense of professional enablers' involvement in laundering organized crime proceeds and of their regulation*, „*Trends in Organized Crime*”, vol. 24/2021. <https://doi.org/10.1007/s12117-020-09401-y>.
21. Magherescu D., *Criminalistică*, 2nd edition, ProUniversitaria Publishing House, Bucharest, 2020.
22. Magherescu D., *Teoria generală a expertizelor criminalistice*, Hamangiu Publishing House, Bucharest, 2021.
23. Pătulea V., *Proces echitabil – Jurisprudența comentată a Curții Europene a Drepturilor Omului*, Romanian Institute for Human Rights, Bucharest, 2007.
24. Ravenda D., Valencia-Silva M. M., Argiles-Bosch J. M., García-Blandón J., *Money laundering through the strategic management of accounting transactions*, „*Critical Perspectives on Accounting*”, vol. 60/2019.
25. Reznik O., Bondarenko O., Horobets N., Kostenko A., Nazarov M., *Problem aspects of interaction of law enforcement authorities in the field of countering money laundering*, „*Amazonia Investiga*”, vol. 10(48)/2021. <https://doi.org/10.34069/AI/2021.48.12.18>
26. Šurković A., *Criminal Investigation of Money Laundering in the Practice of the Financial Intelligence Unit of the State Investigation and Protection Agency*, „*Praxis International Journal of Social Science and Literature*”, vol. 4(2)/2021.
27. Thompson W.C., Hofstein Grady R., Lai E., Stern H.S., *Perceived strength of forensic scientists' reporting*

- statements about source conclusions*, „Law, Probability and Risk”, vol. 7(2)/2018. <https://doi.org/10.1093/lpr/mgy012>.
28. Wachs J., Fazekas M., Kertész J., *Corruption risk in contracting markets: a network science perspective*, „International Journal of Data Science and Analytics”, vol. 12/2021.
29. Warf B., *Global corruption from a geographic perspective*, Springer, Cham, 2019.