A forensic expert report as evidence in the civil proceedings of Latvia

**Formulation of Research Problem.** In accordance with Article 121 of the Civil Procedure Law of Latvia (hereinafter –the Civil Procedure Code), an expert report is one of the means of evidence. As the judicial practice shows, the problem arises in cases of assessment of the expert report, which was given during pre-trial procedure. Following the grammatical interpretation of the first part of Article 121 of the Code of Civil Procedure, it implies that an examination is done when appointed by the court, i.e., in the court proceedings that have already been initiated. However, taking into account the optionality of the civil process, the interested party, while defending its interests during pre-trial procedure, has the right to turn to a forensic expert to conduct an examination. At a meeting of the Constitutional Court of Latvia (Satversme Court of the Republic of Latvia), a thesis was expressed that one cannot disagree with, namely, the principle of optionality dominates in civil matters, according to which the civil proceedings are carried out at the insistence of the interested party, who protects his/her civil procedural rights. However, while assessing evidence, a forensic expert report, given during pre-trial procedure, is assessed only as written evidence and a new forensic re-examination is appointed in this case. Such a statement has negative consequences, namely, the time for consideration of the case is extended and the rights of the parties to a speedy and procedurally economic trial are infringed.

**Article purpose.** The purpose of the article is to analyze the legal regulations of the key positions of forensic examination and a forensic expert report as the evidence conducted in the framework of trial and before it, in connection with the principles of civil proceedings, in order to offer solutions to the problem of assessing an expert report as evidence in civil proceedings.

**Main Content Presentation.** When examining the corresponding provisions of law, scientific works of legal theorists, in conjunction with judicial practice, on the basis of the Civil Code and the Law On Forensic Experts, the author of the article concludes that the difference between the examinations conducted while pre-trial and court proceedings is insignificant.

The Law on Forensic Experts is the legal basis for conducting a forensic examination in Latvia. In particular, the law establishes that both state and private forensic experts have the right to conduct forensic examinations. Article 13 of the Act limits the range of forensic examinations that are allowed to conduct by private forensic experts. In particular, private forensic experts do not have the right to conduct the following examinations: inpatient forensic

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2. Ibid.

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ВИСНОВОК СУДОВОГО ЕКСПЕРТА ЯК ДОКАЗ У ЦИВІЛЬНОМУ ПРОЦЕСІ ЛАТВІЇ

Відповідно до статті 121 Цивільно-процесуального закону Латвії висновок експерта є одним із засобів доказування. При оцінці доказів, висновок судово-го експерта, даний в досудовому порядку, оцінюється лише як письмовий доказ і по справі при-значається нова, по суті повтор-на, судова експертиза.

Метою статті є аналіз пра-вового регулювання ключових позицій судової експертнії і висновку судового експерта як доказів, проведеної в рамках судового процесу і до цього, в взаємозв'язку з принципами цивільного судочинства, для того, щоб запроводити вирішення про-блеми оцінки висновку експерта, як доказу в цивільному процесі.

Не дивлячись на те, що люди із доказів заздалегідь не зобов'я-зує суд, висновок судового експерта може допомогти довести ті факти, щодо встановлення яких необхідні спеціальні знання в галузі науки, техніки, мистецтва або в іншій області. Не нала-ючи доказової сили досудової експертнії як висновку судового експерта, зацікавлена сторона змушена проводити експертизу за тим-же обставинами вже в судовому процесі, щоб отрима-ти висновок судового експерта. Обмеження прав сторони, яка не брала участи в призначеній експертнії на досудовій стадії, уявне, оскільки в разі несоди з висновком експерта всі процесу-альні недоліки незгодна сторона може усунути в судовому процесі, або додаткова експертиза, допит судо-ового експерта в суді, або ап-еляційної скарги. Але визнання досудової експертнії в доказово-му плані в повноцінтому якості висновку судового експерта, а не письмового доказу, скоротило б термін судочинства.

Ключові слова: судовий експер-ерт, досудова експертніза, судо-ва експертніза, оцінка висновку експерта як доказу.

psychiatric examination, firearms and ammunition examination, explosives examination, post-mortem forensic examination, a number of examinations related to the assessment of the quality of treatment performed by the medical personnel, as well as examination as to establishing the presence of narcotic and other substances of strong influence in the human body. As for the rest, the professional activity of a private forensic expert is not limited.

Private forensic experts have to correspond to the same qualification requirements as state forensic experts, as well as all other foundations of the activity of both state and private forensic experts coincide. Also the necessary components of a forensic expert report have been established by the Law On Forensic Experts, in particular Article 16. In which, in addition to the organizational data (time, examination location, grounds for examination, requestor, expert data), it is necessary to mention questions addressed to the expert, material provided for the examination, the method used in the examination, results of the study and their assessment, answers to the questions raised. Assessment of legal regulations makes it possible to conclude that the examination carried out by a private forensic expert is equivalent in content, quality and competence of a forensic expert to the examination conducted by a state forensic expert. It also follows that an expert report is also the same both in content and in form.

This is important, taking into account that in civil proceedings, including pre-trial procedure, traditionally the examination conducted by a private forensic expert is used.

When considering a civil case in court, an expert report is one of the means of evidence of the significant circumstances in the case. The grounds for the examination were established by Article 121 of the Code of Civil Procedure⁶. An examination is necessary in those cases when, in order to establish the significant facts of the case, special knowledge in the field of science, technology, art or special knowledge in any other field is required. It follows that carrying out an examination is conditioned by objective circumstances. The parties, as well as the court, don’t possess the mentioned special knowledge, in view of which a forensic expert becomes a neutral participant of the process, whose purpose is only to research material on scientific grounds and provide answers to questions raised on the subject. As the Head of the Bureau of State Forensic Examinations of Latvia M. Čentoricka states, an expert report is the final result of investigation of the object of examination by the approved scientific methods, conducted by an impartial person a forensic expert. However, an expert report is interpreted by the court in conjunction with all the evidence in the case⁶. A similar opinion was expressed by Professor V. Bukovsky - a famous scientist from Latvia, who noted that an expert opinion is different from other evidence (witnesses testimony, written evidence) and is characterized by objectivity, but, despite this, an expert report has no advantage over other evidence in the case and assessed by the court critically in relation to other evidence⁷. The principle of evidence assessment is established by Article 97 of the Code of Civil Procedure⁸, according to which the court evaluates evidence by relying

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on its internal conviction and no evidence has a predetermined force that binds the court.

However, as stipulated, the conclusion of a forensic expert is still different from other evidence, and differs in that it lists arguments based on the scientific method, evaluated by a specialist in the relevant field, in which the parties and the court lack knowledge. It is also necessary to take into account that a forensic expert is a specialist whose rights and qualifications are acknowledged by the state in the form of appropriate certification. Thus, when assessing evidence, the court must take these factors into account, especially in cases of controversy in the testimony of witnesses or any other ambiguously assessed evidence. The author of the article immediately denies possible fears that such a position contradicts the principle of independence of the court, which is stipulated by Article 83 of the Constitutional Law of Latvia - Satversme of the Republic of Latvia. When assessing the report of a forensic expert, the court must take into account those peculiarities that single it out from other evidence. In case of disagreement with the conclusions indicated in the report of a forensic expert, the court is obliged to motivate its decision in detail and disagree with the forensic expert arguments. In doing so, it should be borne in mind that there are also facts that are established solely by examination. For example, the severity of bodily harm. In such cases, the preference for other evidence to a forensic expert report, without proper argumentation, may cast doubt on the objectivity of the court. It inherits a certain duality of a forensic expert report and its assessment by the court. Since the court doesn't possess the special knowledge that a forensic expert possesses, it assesses the reports of a forensic expert. But it must be taken into account that this is legal assessment, not reassessment of the conclusions. The attention is also drawn to it in the guidelines on the role of the expert in legal proceedings for the European Council members, from which it follows that the expert is not interested in the process and acts largely as court adviser, while only the court is responsible for adopting the decision in the case in accordance with legal acts. Thus, it can be concluded that an expert report is a tool that helps to achieve legitimacy while resolving a dispute, since it's precisely the expert report that enables the court to comprehensively study facts in which the court, due to the lack of special knowledge, would not have navigated without the help of an expert.

The report of a forensic expert will be significant in the case when assessed by the court. The expert report of the CCP is distinguished as a separate means of evidence. The essence of a forensic expert report is broader than the essence of any other written evidence. The expert report is executed in writing, however, in accordance with Article 122 of the Code of Civil Procedure, the forensic expert may be questioned by the court at the hearing and, if necessary, the court may appoint an additional examination if, according to the court, a forensic expert report does not contain answers to all the questions raised, or the answers are unclear or incomplete. These are the procedural differences of a forensic expert report from other written evidence.

I. Kudeikina

PORT AS EVIDENCE IN THE CIVIL PROCEEDINGS OF LATVIA

A forensic expert report is an important part of the evidence process in civil proceedings. An examination is possible both before the initiation of a civil case, and while its consideration. In some cases, it is expedient to conduct examination immediately, until the actual circumstances are not lost or changed, for example, in cases of property damage in fire, in water, in cases of vehicles damage in road accidents. An interested party has the right to ask a forensic expert to conduct an examination. However, according to the Civil Procedure Law of Latvia, the examination conducted at the initiative of one of the parties and not appointed by the court does not have the power to obtain a forensic expert opinion and is assessed as written evidence.

The article is devoted to the issues of assessing a forensic expert report as evidence in civil procedure.

Keywords: forensic expert, pre-trial examination, forensic examination, assessment of a forensic expert report as evidence.

I. Kudeikina

FORENSISCHES SACHVERSTÄNDIGENGUTACHTEN ALS BEWEIS IM ZIVILPROZESS LETTLAND


However, when assessing the report of a forensic expert, the court takes into account the procedural stage of the case in which the examination was carried out. As already indicated above, the examination can be carried out before the initiation of civil proceedings. Such an examination is carried out not by the court decision, but by the request of one of the parties. Judicial practice of a forensic expert report, given during the pre-trial process, only gives it the status of written evidence. Thus, the Supreme Court of the Republic of Lithuania in the case No. SKC-318/201312 indicated that the court has the right to accept the expert pre-trial report as evidence in the case, but only as written evidence. A similar opinion is expressed in a legal doctrine, a lawyer T. Bordans writes that the court has the right to accept as evidence the expert report, without the court decision13.

Therefore, we can conclude that the pre-trial report of a forensic expert is evidence, but it is not given the status of a forensic expert report and can’t be considered a special form of evidence, as stated in Article 121 of the Civil Code14.

Such kind of provision is criticized in view of the following considerations. Certain principles form the basis of the legal organization of civil court proceedings, which can not be viewed hierarchically, but are considered together. As a sworn attorney, Doctor of Law I. Kronis, states that civil procedural principles are fixed in the Constitutional Law of the Republic of Latvia and in other legal norms ideological foundations of organization of the trial, guaranteeing a reasonable and lawful court decision15. Civil procedural principles are established by Articles 1-15 of the Civil Code16.

However, in relation to individual institutions of civil proceedings, principles may be opposing. According to the author of the article, it is important to consider some of the principles in the framework of the article. These principles include the principle of procedural economy, the principle of establishing the truth and the principle of optionality. In a civil dispute, the parties always have opposite interests. The principle of optionality provides the party with an exclusive right to protect his/her rights in court. The Constitutional Court of the Republic of Latvia on this occasion has stated that each person has the right to treat freely her/his subjective rights and remedies17.

In turn, filing a complaint presupposes the need to prove it. “The purpose of evidence is to enable the court to take the right decision in the case”18. Further analysis shows that the evidence process is the use by the parties of means that are provided by law as legal and reliable, to convince

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the court in his/her rightness. One of such means is the report of a forensic expert.

As it was stated above, a forensic examination is appointed by a court. This stipulates that a forensic examination is appointed in court, in the process of an already initiated case, i.e., a court hearing should be held. In practical terms, it means that a fairly long time passes, in Latvia it is on average about two months before the first court hearing, where the parties will only have the opportunity to ask the court for a forensic examination. The examination itself may take an indefinite period, in which the proceedings in the case will be suspended. It should be borne in mind that even at the time of the consideration of the case, one of the parties may already possess the report of a forensic expert, since the party had the right to conduct a forensic examination before the trial. But, as has already been established, the conclusion of a forensic expert on an examination carried out outside the trial, will be evaluated only as written evidence. And if a party, using his/her rights to prove the significant facts of the case, considers it necessary to submit the report of a forensic expert to the case, then he/she has to agree to a forensic examination, which will, indeed, duplicate the forensic examination that has already been conducted. In this case, the above-mentioned principles of establishing truth and optionality oppose the principle of procedural economy. As indicated in the scientific literature, the principle of procedural economy implies the use of more efficient organizational processes when considering cases. Analyzing the content of the principle, we may conclude that the principle implies the exclusion of all circumstances that prevent or may prevent a speedy examination of the case. However, it must be taken into account that the principle of procedural economy can not be an end in itself. This principle should not infringe other principles, including worsening the rights of the parties or the quality of the court decision.

The analysis of a forensic expert report, made while pre-trial examination and by the court order, revealed one difference between them, namely, in a pre-trial expert examination, the second party has no right to ask the forensic expert questions since the forensic examination is appointed before initiation of civil proceedings in court, as well as for this reason the second side of the case is not able to challenge the forensic expert. These are procedural components, shortcomings that undoubtedly affect the rights of the second party. But, these are the shortcomings of the process itself, since the very report of the forensic expert in form, content, quality, responsibility of the forensic expert in both cases does not differ. Are these procedural flaws indefinable? According to the author of the article, these shortcomings may be eliminated in other ways. The principle of procedural economy is important, and the mentioned shortcomings can be eliminated when considering a case in court. A party that did not participate in the appointment of the expert examination may bring all his/her claims during the court hearing, including requesting a forensic re-examination, attaching the report of a forensic expert on the examination initiated by him/her, as well as all of his/her arguments as to presumptive bias in the forensic expert report, which could be expressed in the appeal.

There are a lot of procedural means that fully protect the rights of the party who did not participate in the appointment of the examination.

Conclusions. Based on the above, several important conclusions can be drawn. In judicial practice, in the evidence process, preference is given to the

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принципов и опциональности как на принципах процедурной экономики. Такая декларация не оправдана, так как система процедурных принципов не установлена соответствующими актами. Кроме того, как и в случае судебного эксперта, приговор суда не обязывает судьи предпринимать оба рассмотрения при рассмотрении дела. Тем не менее, решение судебного эксперта является недопустимым, поскольку при этом оба рассмотрения уничтожены. Следует отметить, что при рассмотрении дела судебный экспертиза является недопустимым, так как при этом оба рассмотрения уничтожены.

Ключевые слова: судебный эксперт, судебная экспертиза, эксперт, судебный эксперимент, досудебная экспертиза, судебное производство.

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