

Use of Special Knowledge in the Investigation of Crimes in the Field of Credit*

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Abstract

Based on the results of the analysis of judicial and expert practice, as well as scientific sources, a study of the problematic aspects of the involvement of a specialist in the conduct of individual investigative (search) actions, the appointment and conduct of expert studies in the investigation of crimes in the field of lending was carried out. It has been established that the existence of schemes of criminal activity is typical for the technology of criminal enrichment through credit and financial transactions, which include appropriation of bank credit resources, fraudulent obtaining of credit, and fraud with financial resources. It was emphasised that clarifying certain circumstances in the mentioned criminal proceedings is impossible without using special knowledge, primarily related to making changes to the relevant official documents. Typical investigative (search) actions are highlighted, in which it is necessary to actively use the help of a specialist, as well as the main areas of application of special knowledge by the parties to criminal proceedings, in particular, the investigator and the defence attorney. The importance of forensic examination (technical examination of documents, handwriting examination, complex forensic dactyloscopy, handwriting and technical examination of documents) is indicated as one of the primary means of obtaining evidence during the investigation of criminal offences in lending. Particular attention is focused on determining the purpose, subject and tasks of technical examination of documents in the investigation of criminal offenses of this category.

Keywords: Special Knowledge; Examination; Investigation; Forgery of Documents; Criminal Offenses in the lending field; Lawyer; Investigative (Search) Actions

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A. INTRODUCTION

The banking sector, a strategic segment of the market economy, plays a leading role in implementing economic relations in almost all developed countries. Statistics show that crime in this field has become a large-scale phenomenon. Such criminal offences are distinguished by their diversity, highly intellectual character, quick adaptation of criminals to new forms and economic activity methods, and new banking operations technologies. Studies prove that more than 75% of all losses caused by economic crime fall on banking institutions. They are increasingly used in the technology of criminal enrichment in the field of tax evasion, embezzlement of bank clients' funds and legalisation of income obtained illegally.

Lending is one of the widespread and, at the same time, vulnerable banking operations from a criminological point of view. Recently, the financial market has seen a growing interest in loans from both entrepreneurs and citizens ([Pchelina, 2014](#)). Loans, grants, subsidies, and subventions are usually types of monetary assistance provided by the state in the person of its central or local authorities at the expense of state or local budgets, as well as assistance provided by business entities, various funds, in particular charitable, and by individual citizens at the expense of their funds to business entities, public organisations, associations of citizens or individual citizens.

The existence of complex criminal activity schemes in terms of their internal structure and criminal law features is typical for the technology of criminal enrichment through credit and financial transactions. The main crimes in carrying out bank loan operations are appropriation of bank credit resources (Part 2 of Article 191 of the Criminal Code of Ukraine), fraudulent obtaining of credit (Article 190 of the Criminal Code of Ukraine), fraud with financial resources (Article 222 of the Criminal Code of Ukraine). The following actions are usually auxiliary to the commission of the leading crime: creation of a fictitious enterprise (Article 205 of the Criminal Code of Ukraine), official forgery (Article 366 of the Criminal Code of Ukraine) and other crimes in the field of official activity (Articles 364, 365-368 Criminal Code of Ukraine).

During the investigation of the specified criminal offences, there is a need to use special knowledge (obtaining expert advice or involving him in investigative (search) actions, appointment and conduct of forensic examinations, etc.). Special knowledge is possible during the investigation of any criminal offence if it is appropriate to establish or explain its circumstances. They can be used as often as necessary to form a sufficient evidence base. ([Kovalchuk, 2021](#))

Under conditions of scientific and technical development and changes in legislation and law enforcement practice, the theoretical and practical principles of the use of special knowledge by investigators, defence attorneys, and other subjects of the criminal process in the investigation of crimes in the field of lending acquire special importance and require comprehensive research. The speed and completeness of investigating this category's criminal offences and the subsequent trial depend on solving the existing problems of increasing the efficiency of using special knowledge.

The specified circumstances indicate the unconditional relevance of the researched issues and determine the choice of the research topic. The purpose of the scientific article is to provide a comprehensive solution to the problem of forming methodological principles for the application and use of special knowledge in the investigation of crimes in the field of lending, with the development of proposals and recommendations aimed at improving the methodology of investigating illegal acts of this category.

B. METHODS

The methodological basis of the scientific article is the dialectical-materialistic method, which contributes to the understanding of the research subject in the context of combining the needs of science and practice, as well as the position of the theory of knowledge and the general theory of criminology. The following methods are also used in work: formal logic (for determining and classifying the methods of committing crimes in the field of lending, describing the forms of using special knowledge in such criminal proceedings); morphological analysis (to clarify the conceptual and categorical apparatus for the problem); dogmatic (to interpret legal categories); modelling (within the definition of typical investigative (search) actions and traces left in documents that are subject to expert research); abstract-logical (for conducting theoretical generalisations and formulating conclusions).

C. RESULT AND DISCUSSION

1. The Mechanism of Committing Crimes in The Field of Lending by Forging Documents

Misleading bank employees by potential borrowers is carried out in various ways, which can be grouped into two groups: 1) by using fictitious enterprises specially created for embezzling credit resources; 2) by falsifying documents and using other methods of deception, as a result of which bank

employees are misled about the possibilities and prospects of returning the loan and the quality of its security. So, for example, officials of one of the Limited Liability Companies, intending to obtain and appropriate credit funds, provided the same collateral property for six banking institutions, causing losses in the total amount of about 19 million hryvnias. In this case, the financial fraudsters managed to bypass even the single register of prohibitions on the alienation of real estate and mortgages, in particular, by forging letters from banking institutions about the exclusion of property from registers of encumbrances, each time receiving extracts from such a register from a notary, which testified that the property, as it were, was not in no pledge. ([Pchelina, 2011](#))

In the first stage, at least two fictitious companies are created or used - business entities in whose name it is planned to receive loans. Their founders, owners, and managers are the same persons who are accomplices of the crime. In some cases, company managers (directors, chief accountants) appoint bogus persons who do not have the appropriate qualifications to perform the duties assigned to them. Therefore, they unquestionably follow the instructions of the persons who hired them. In the second stage, they develop "packages" of forged documents, which banking institutions require to grant loans. At the same time, one of the firms acts as the loan recipient. In contrast, the others are partners in agreements (purchase-sale, supplies, etc.), which "justify" the necessity and economic expediency of receiving (granting) the loan.

Subsequently, the specified "package" of documents is submitted to the banking institution in person or through intermediaries. To facilitate the commission of a crime, members of a criminal group may enter into a conspiracy with a responsible bank official, which deals with the issue of loans, to pay a bribe of 10 to 50% of the loan amount. After that, credit agreements and other documents are signed, and credit resources are transferred to the loan and later to the company's current account. After that, the received money is transferred to the accounts of pre-selected business entities, where they are converted, after which part of the currency is transferred to the management of the banking institution, and the rest is appropriated by the criminal group. In the future, the cash currency will be received personally by members of the criminal group or false persons, based on which forged documents are prepared. The receipt and appropriation of the national currency in cash are also disguised by forged documents for issuing wages to fictitious or fictitious persons, acts of purchase of products, etc. ([Pchelina, 2011](#))

Documents (copies) that are confirmation of criminal actions, 1) that were used as a means of committing a crime, 2) that were a means of concealing a

crime, 3) that are the subject of a crime, may include valid or forged funding, accounting, settlement and banking and other documents reflecting separate accounting operations, movement of money, material values (registration and statutory documents, balance sheets, forms of financial reporting, technical and economical justifications, memorial orders for bank accounting, credit documents, contracts for opening current or deposit accounts, agreements for settlement and cash service, letters of credit, payment orders /requirements/, current account statements, money flow analysis, payment instructions, etc.). ([Pchelina, 2014](#))

According to investigative practice, the person is charged under several articles of the Criminal Code. Thus, embezzlement committed through credit and financial operations is often impossible without fictitious entrepreneurship (Article 205 of the Criminal Code of Ukraine), use of the opportunities of the position of bank employees (Articles 191, 364-369 of the Criminal Code of Ukraine), forgery of documents (Article 366, 358 of the Criminal Code of Ukraine), crimes in the field of use of electronic computing machines, computer systems and networks (361-363 of the Criminal Code of Ukraine), etc.

2. The primary forms of special knowledge used in the investigation of crimes in the field of lending

At the initial stage of the investigation, the investigator must decide on the appointment of audits, inspections, if they were not carried out, additional audits and assessments, and examinations. These actions aim to solve several tasks: obtaining evidence and other information necessary for the investigation, identifying signs of other crimes, persons involved, circumstances contributing to committing criminal offences, etc. It is needed to establish financial and economic transactions related to the commission of a crime and to identify signs of the commission of other crimes (signs of forgery, falsification, giving bribes for assistance, etc.).

During the analysis of the documents received from the bank institution, the investigator must pay attention to the following circumstances: whether all the necessary documents testifying to the signs of this crime have been provided (documents of a contractual and licensing nature and other documents with signs of forgery); whether the documents received are originals or copies, genuine or forged. During searches, the objects of search and seizure are actual documents relevant to the case (accounting, banking, business correspondence, identity documents) and documents with signs of forgery. The implementation of the specified procedural actions requires the use of the knowledge of relevant

specialists.

Also, at the stage of pre-trial investigation, the expediency of using special knowledge by the defence attorney during the collection of evidence often arises at the stage of pre-trial investigation of criminal proceedings. In particular, under Part 3 of Art. 93 of the Criminal Procedure Code of Ukraine, the defence attorney gathers evidence by requesting and receiving from state authorities, local self-government bodies, enterprises, institutions, organisations, officials and individuals, items, copies of documents, information, expert opinions, audit conclusions, inspection reports; initiation of investigative (search) actions, secret investigative (search) actions and other procedural actions, as well as by carrying out different actions capable of ensuring the submission of proper and admissible evidence to the court. ([Criminal Procedure Code of Ukraine, 2012](#))

The active use of specialist knowledge and assistance by the defence attorney in compliance with the procedure established by criminal procedural law not only helps the defence obtain good-quality evidence but also provides an opportunity to resolve conflicts between the investigator and the defence in advance and on time in evaluating the evidence that exonerates the suspect. The investigation of crimes in the field of lending is no exception in this aspect.

As evidenced by the analysis of numerous scientific sources, the use of special knowledge during the investigation of crimes in the lending field, from a practical point of view, is most expedient in dividing into procedural and non-procedural (organisational) forms. Among the primary procedural forms, it is worth mentioning the involvement of a specialist in the conduct of procedural actions and the appointment of forensic examinations. Among the non-procedural (organisational) forms, the most effective are consultative and reference and analytical assistance of a specialist in the relevant field. ([Kovalchuk, 2018](#))

Any person who possesses relevant special knowledge and is disinterested in the results of criminal proceedings may be invited as a specialist. However, unlike an expert who independently conducts expert research in criminal proceedings, a specialist only observes the scene of the incident and investigative (search) actions carried out by the investigator or prosecutor and provides explanations and clarifications in court sessions. ([Ablamskyi, 2017](#))

Consultations with a specialist can be provided both independently (organisational form) and during separate investigative (search) actions and examinations (procedural form) ([Pchelina O., 2014](#)). The primary purpose of involving a specialist is to expand the practical capabilities of participants in

criminal proceedings to identify and recover evidence during pre-trial investigation. In particular, the lawyer is not prohibited by law from consulting a specialist, which is carried out at his own expense or at the expense of those persons on whose behalf he acts (depending on the terms of the concluded contract).

Forensic examination is one of the most important means of obtaining evidence during the investigation of criminal offences in lending. Conducting various types of forensic examinations is regulated by the Law of Ukraine "On Forensic Examination", which states that a forensic examination is a study based on special knowledge in the field of science, technology, art, crafts, etc., of objects, phenomena and processes to provide a conclusion on issues, which are or will be the subject of judicial proceedings (Article 1). ([Criminal Procedure Code of Ukraine, 2012](#))

Under Part 1 of Art. 69 of the Criminal Procedure Code of Ukraine, an expert in criminal proceedings is a person who possesses scientific, technical or other special knowledge, has the right under the Law of Ukraine "On Forensic Expertise" to conduct expertise and is entrusted with researching objects, phenomena and processes containing information about the circumstances of the commission of a criminal offence, and give a conclusion on issues that arise during criminal proceedings and relate to the field of her knowledge. According to the provisions of Art. 71 of the Code of Criminal Procedure of Ukraine, a specialist in criminal proceedings is a person who has special knowledge and skills in the use of technical or other means and can provide advice during pre-trial investigation and court proceedings on issues requiring relevant special knowledge and skills. ([Criminal Procedure Code of Ukraine, 2012](#))

The parties to the criminal proceedings, in particular the investigator and the defence attorney, can take advantage of specialist consultations, based on the results of which they can receive a conclusion. As for the probative value of this conclusion, part 1 of Art. 298-1 of the Criminal Procedure Code of Ukraine provides procedural sources of evidence in criminal proceedings on criminal misdemeanours, in addition to those specified in Art. 84 of the Criminal Procedure Code of Ukraine, there is also a specialist's opinion. As for criminal proceedings on crimes, such a conclusion is not a source of evidence (Part 2 of Article 84 of the Criminal Procedure Code of Ukraine). ([Criminal Procedure Code of Ukraine, 2012](#))

3. Possibilities of Carrying Out Technical Examination of Documents During the Investigation of Crimes in The Field of Lending By Forgery of Documents

Technical examination of documents (hereinafter—TED) in criminal proceedings in the field of crediting is the study of a document to determine the method of its production, establishing the presence of changes in it and the methods of making them, identifying invisible records, and identifying the objects and materials that were used for creating a document or making changes to it. The subject of TED is the facts and circumstances related to the method of producing documents, making changes to them, identifying invisible records, identifying document materials, and technical means of creating documents, which are established based on the expert's unique knowledge in the field of technical research of documents.

TED objects are carriers of information about the circumstances of document production (method, time, technical means, materials used for document production, etc.); the primary content of the document, the presence of changes in the content of the document and the method of their introduction; the identity of the technical means, the specifically defined amount of material used for the production of the document; belonging of parts of the document to one whole.

According to the procedural nature, documents, objects and substances that carry evidentiary information are considered objects of TED in criminal proceedings. They are divided into inspected objects, whose relation to the proceedings is determined depending on the results of the examination; documents evidence that can be one of the means of committing corruption criminal offences, as well as comparative sample objects (free, experimental) or produced by an expert during an expert experiment during research. According to the material nature of the TED objects, the following can be distinguished: actual documents, devices for their production or for making changes to previously produced documents, and substances for making or making changes to them.

During the investigation of crimes in the field of lending by forging documents, if the criminal used documents (primarily as a means to commit fraud), there is a need to appoint other expertise: a technical and forensic examination of documents (to detect signs of forgery), traceological (to establish a whole by parts); examination of materials, substances and products (to detect microparticles or micro traces of adhesive substances on carrier objects).

Technical and forensic examination of documents can solve the following

questions: 1) in what way is the image in the document applied; 2) whether the image in the researched document is not: a) an impression of a printed form; b) drawn; c) copied from another document; 3) whether the document was produced by using the pasting of fragments of other similar documents.

We emphasise that, if possible, all issues of an identification nature concerning documents produced entirely on printed media should be resolved at this stage. Along with the researched document, samples of documents printed in the period closest to the research document's creation should be sent to the expert. Technical examination of documents includes the following subtypes: examination of document details, research of printing forms and other means of producing documents, and study of document materials. During the examinations, diagnostic, identification, and classification tasks are solved.

The main tasks of document requisites research: establishing the method of document requisites execution; determination of the statute of limitations for execution (imposition) of document details; establishing the fact and process of changing document details; establishing the primary content of the requisites; detection of poorly visible, invisible and unreadable props; identification of the technical means used to fulfil the details of the document.

According to the classification of requisites by the method of execution, examinations are distinguished within the scope of examination of document requisites: handwritten requisites, prints of printing forms, and pasted requisites.

The main tasks of the research of printing forms are: establishing the peculiarities of the production of printing means (forms) and their reflection in prints; establishing the type, system, brand, model and other classification categories of printing equipment (typewriters, cash registers, telegraphs, other alphanumeric devices), identification of these devices by imprints of their signs; establishing a change in the primary text of the document executed on a typewriter; establishing the type and identification of computer and duplicating equipment based on material documents produced with their help; establishing the method of applying seals, stamps, etc.; identification of seals, stamps, etc. by their impressions; correspondence of the time of application of seals, stamps and the date of production of the document.

The main tasks of document material research are determining the consumer purpose of the document material and the product from it; establishing the belonging of material formations that have lost the structure of the material and product (including the document) to a specific species; establishing whether the material belongs to standard products of domestic or foreign production;

establishment of the fact of manufacturing the material in an artisanal way; determination of the source of origin of the material, product; assignment of material to a certain mass, separated by the specifics of production, preservation, use; identification of a specifically allocated amount of material; establishing the belongingness of parts to one product; establishment of the fact of aggressive influence (thermal, chemical) on the materials of the document; establishing the execution time of the document based on the study of its materials.

According to the classification of document materials by consumer purpose, the following are distinguished within the limits of examination of document materials: examination of writing materials, examination of paper and paper products, examination of auxiliary materials, and examination of caustic (washing) substances.

The possibilities of TED largely depend on the preparation of materials for its implementation. During the preparation of materials, specific requirements regarding the selection of objects for research and the handling of physical evidence must be met, the expert's task must be formulated, the necessary comparative materials must be collected, and the information necessary for the examination must be collected.

The investigator (court) must provide the expert with the documents in the form and condition they were discovered and store documents evidence in separate envelopes, packages or files. In the investigator's decision, court decision, or in the motion to involve an expert by the defence, it is necessary to specify the objects to be investigated: specify the name of the document, the date of its preparation given in the document; to provide information about the circumstances of the discovery of documents-material evidence; point to the immediate object of research - describe its content, location in the document; mark the researched documents and comparative materials so that they do not get mixed up during the examination.

The expert's questions should not exceed his competence and require a legal assessment of the research results. When formulating the expert's task, it is unacceptable to use terms that have a double interpretation – technical and legal: "correction" and "forgery" as synonyms of the terms "change," "non-compliance with the rules," etc. The scope of the expert's tasks should be clearly defined when formulating the questions.

The object of identification must be clearly defined in issues that need to be resolved by conducting identification studies of document materials to establish the commonality of their origin and identification of an individually

allocated amount of material. If the objects of the examination are the technical means intended for the fulfilment of document requisites (writing instruments, sign printing machines, duplicating equipment, printing forms), then, depending on the expert task to be solved and the specific situation, the technical means may be provided for the examination either directly or executed with their help, comparative materials - free and experimental samples.

Specific expert research methods are associated with inevitable and necessary damage to the object or its destruction. The expert uses Such methods with the permission of the person or body that appointed the examination. When solving the issue of identifying seals and stamps by prints, along with the document under investigation, the seal being tested or experimental samples and free samples are provided for examination. Experimental samples should have a different degree of colour intensity, with other pressing forces, and be contained on various substrates.

The kit provides this technology to solve the identification tasks for documents produced with computer technology. Any work on it is not allowed before sending the computer equipment for examination. The resolution of identification issues is carried out within the framework of a comprehensive computer and technical examination and technical examination of documents in the presence of the electronic original of the document (file). A computer and technical research specialist must remove and inspect computer equipment.

Experts emphasise that it is advisable to use the help of specialists when preparing TED materials, particularly when selecting samples for researching the basis of documents and writing materials to establish the manufacturing company. Specialists' participation is also advisable when taking samples in cases where the display of signs largely depends on the device's specifics and the operation of individual nodes of the apparatus that need to be identified. ([Shramko et al., 2021](#))

The verdict of one of the courts testifies to the need to study a significant number of documents during the investigation of crimes in the field of lending. Thus, while serving as the chairman of the board of one of the credit unions, A. organised the activity of attracting deposits (contributions) of its members to deposit accounts based on a license and under the Statute of the Union. In connection with the violation of licensing requirements, the order of the State Financial Service of Ukraine decided to suspend the license temporarily and, subsequently, its deprivation in providing financial services, the validity of which was not renewed in the future. Knowing for sure about the ban on economic activity, using the credentials and seal of the union, A. continued to

attract deposits from members of the Central Committee to the deposit account, issue and issue receipts for profitable cash orders and other documents to them, thereby creating the appearance of legality of her activity. ([Verdict of the Lutsk City District Court, 2015](#))

In addition to the above, during the investigation of crimes in the lending field, a forensic handwriting examination may be ordered (first of all, to establish the person who executed the handwriting or signature). It is prescribed in cases where handwritten documents, receipts, and non-handwritten documents containing the resolution of a person suspected of committing a crime have been seized from a person. For the solution of this examination, the following questions are submitted: whether a confident person executed the handwritten text; whether the handwritten text was made with deliberately altered handwriting; the person of which gender wrote the handwritten text; whether the signature was executed by the person on whose behalf it is indicated or by another person. That is, we are talking about both diagnostic and identification issues. ([Kovalchuk O., 2018](#))

When conducting complex forensic dactyloscopy, handwriting and technical examination of documents, where the objects of research are paper media (documents, banknotes, etc.), to detect handprints on paper documents, it is also necessary to conduct research first using only non-destructive methods that do not hinder the further conduct of handwriting studies.

It should be noted that criminology has developed many recommendations that the investigator can use when evaluating the expert's opinion since the document itself, from a procedural point of view, does not have an advantage over other procedural sources of evidence. The following stages of evaluation of an expert opinion are distinguished: verification of compliance with the requirements of the law when appointing a specialist opinion; checking the authenticity and authenticity of the physical evidence and samples under investigation; assessment of the scientific validity of the expert methodology and the legality of its application; checking and evaluating the completeness of the conclusion; logical validity of the course and results of specialist research; connection of research results with a specific case (proceeding); compliance of the expert's conclusions with the available evidence. ([Biryukov V. et al., 2007](#))

Adhering to these recommendations will allow the investigator to objectively assess the expert's conclusion while investigating crimes in the lending field and make the correct procedural decisions (e.g., appoint a complex forensic examination or another type of it, interrogate the expert, etc.).

D. CONCLUSIONS

For the technology of criminal enrichment through credit and financial operations, the existence of complex criminal activity schemes in terms of their internal structure and criminal law features is typical, which include appropriation of bank credit resources, fraudulent obtaining of credit, and fraud with financial resources. Corresponding illegal acts may be accompanied by such "auxiliary" crimes as the creation of a fictitious enterprise, official forgery and other crimes in the field of official activity. Clarification of individual circumstances in the mentioned criminal proceedings is impossible without the use of special knowledge, first of all, before those related to making changes to the relevant official documents.

Typical investigative (research) actions during the pre-trial investigation of crimes in the field of lending, in which it is necessary to use the help of a specialist actively, are inspection (places of events, documents), interrogation (of the victim, witnesses, suspect); simultaneous interrogation; search; and presentation for recognition (persons, things). Special knowledge is also adequate when conducting such a procedural action as temporary access to things and documents.

The main areas of application of special knowledge by the parties to criminal proceedings, in particular the investigator and the defence attorney, in the investigation of crimes in the field of lending are methodical (application of scientific and practical methods and methods of conducting individual investigative (search) actions); praxeological (preparation, organisation and participation in procedural actions; search, detection, fixation and extraction of traces (micro-objects), tangible evidence, detection, examination and selection of samples for expert research); technical (use of scientific and technical means to identify and record physical evidence); consultative (clarification of certain issues during the conduct of specific investigative (search) actions).

One of the most important means of obtaining evidence during the investigation of criminal offences in the lending field is a forensic examination to solve diagnostic, identification, and classification tasks. First, it is a technical examination of documents, a handwriting examination, and a complex forensic dactyloscopy, handwriting, and technical examination of documents.

Technical examination of documents in criminal proceedings in the field of lending is a study of the document to determine the method of its production, establishing the presence of changes in it and the methods of their introduction, detection of invisible records, as well as identification of objects and materials

that were used for the production of the document or introduction changes to it. The subject of the said examination is the facts and circumstances related to the method of producing documents, making changes to them, identifying invisible records, identifying document materials and technical means of creating documents, which are established based on the expert's unique knowledge in the field of technical research of documents.

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