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CONCEPT, ESSENCE AND MEANING OF REVISION (AUDIT) IN CRIMINAL PROCEEDINGS, ITS RELATION WITH OTHER FORMS OF USE OF SPECIAL ECONOMIC KNOWLEDGE

After investigating the work of various scholars who provided the definition of the concept and essence of the term «revision» (audit), and by comparing the analysis with the legally defined notion and the nature of the audit, the author suggests a more precise definition of it. According to the author, the audit is a form of state financial control, which consists of documentary and actual verification of a certain complex or separate issues of financial and economic activity of the object of control, and must ensure the detection of existing facts of violation of the law, the establishment of guilty in their acceptance of officials and materially responsible persons. The author also examined the circumstances of using the materials of the audit by an expert during the forensic economic expertise, as well as the participation of a specialist-economist by providing advice to the investigator, the prosecutor during the pre-audit, also by participating, together with the officials of the DASU, in conducting and drawing up the results of the audit itself.

Keywords: revision, audit, criminal proceedings, accounting expertise, tax inspection.

In modern legal science, the concept and essence of the term «revision» (audit) are given by scholars with different definitions and content. From the beginning of the 2000's to the present time, these questions were the subject of the study of M. Kamlik, L. Rogozyan, V. Vakhlov, N. Dondik, V. Glybko, O. Bushchan, N. Shostakivska, Z. Gutsaylyuk, Y. Meh, L. Shapiro and other scholars. The author proposes to study the main directions of thought of legal and linguistic science in this field and in conjunction

with the legislative definition of the concept and essence of the audit to formulate their own definitions of terms.

The Academic Explanatory Dictionary of the Ukrainian language offers an interpretation of the concept of revision in particular as: 1) verification of the correctness and legality of the enterprise, institution, organization or official entity; 2) survey, review in order to check the state or identify someone, something [1, p. 470]. Ozhegov's explanatory dictionary offers an interpretation of the concept of revision in particular as: 1) examination of someone's activity to establish the correctness and legality of actions; 2) reviewing something in order to make radical changes [2].

In legal literature, M. Kamlik has given the following definition of audit – a system of control actions, with which, for a certain period of time, in accordance with the program of audit, are established the legality, purpose and economic efficiency of the conducted business operations, as well as the correctness of the actions of officials in their feasibility [3, p. 212]. N. Dondik, referring to this formulation of M. Kamlik, also notes that control is carried out on the basis of the study of accounting and other documents, why the audit is called documentary [4].

At the same time, in the opinion of the author, such Dondik's conclusions do not correspond to the content of the scientific work of M. Kamlik, to which Dondik refers, since M. Kamlik rightly notes that in accordance with the Law the auditor has the rights, in particular: a) to audit and verify in the ministries, departments and other bodies of state executive power, enterprises, institutions and organizations monetary and accounting documents, reports, estimates and other documents confirming the receipt and spending of cash and property, on to conduct checks on the actual availability of valuables (cash, securities, raw materials, finished goods, equipment, etc.); b) unimpeded access to warehouses, warehouses, production and other premises for their inspection and clarification of issues related to audit or inspection [3, p. 215]. This corresponds to the requirements from Art. 4 of the Law of Ukraine «Main principles of state financial control in Ukraine» [5], according to which the inspection is carried out by the unit of state financial control service in the form of an revision (audit) and consists in documentary and actual verification of a certain complex or separate issues of financial and economic activity of the institution under review, as well and clause 16 of the Procedure for

carrying out inspections by the State Audit Office, its interregional territorial units, which was approved by the Resolution of the Cabinet of Ministers of Ukraine [6] from April 20, 2006, No. 550, according to which the revision (audit) is conducted through documentary and factual verification. The actual check involves monitoring the availability of cash, securities, forms of strict reporting, negotiable and non-current assets, other tangible and intangible assets through inventory, inspection and control of the work performed, the correct application of the norms of raw material and materials consumption, the output of finished products and natural losses by organizing control launches in production, control analyzes of finished products and other similar actions with the participation of relevant specialists of the state financial control service or other bodies, enterprises, institutions and organizations. Thus, according to the author, the conclusions of N. Dondik, concerning the exclusively documentary nature of the revision (audit) are false and incompatible with the provisions of national legislation.

L. Rogozyan, V. Vakhlakova determine the revision (audit) as a form of documentary control over financial and economic activity of the enterprise, observance of legislation on financial issues, reliability of accounting and reporting; a method of documenting exposures to shortages, embezzlement, appropriation or theft of funds and property, and preventing financial abuse. In their opinion, the audit is a versatile check of the company's activity to establish the legality, expediency and effectiveness of the action, which has a clear legal status, which establishes the limits of its dissemination, terms of conduct, rights and responsibilities of officials, the procedure for processing and reviewing the results [7, p. 41]. In this definition, the concept of revision L. Rogozyan, V. Vakhlakova, as N. Dondik misleadingly describe only the documentary component of the audit carried out by the auditors of the state financial control unit during the audit, leaving aside such a component of the audit as the factual examination, which involves outside the documentary control of the issues of financial and economic activity of the enterprise.

Instead, V. Glebko, O. Bashchan provide though not perfect, but closer to the national Ukrainian legislation, the definition of the concept that the revision (audit) consists in documentary and factual verification of a particular complex or separate issues of financial and economic activity of the controlled institution and is carried out in

order to identify violations of the law and establish the perpetrators in their admission of officials and financially responsible persons [8].

This definition of scientists completely coincides with the provisions of part 1 of Art. 4 of the Law of Ukraine «Main principles of state financial control in Ukraine» – nevertheless, it does not fully correspond to a comprehensive analysis of the national legislation in this area, since, in addition to the controlled entities, the concepts of which are defined in Art. 2 of the Law of Ukraine «Main principles of state financial control in Ukraine», according to court decisions, adopted by the units of state financial control in criminal proceedings, unscheduled on-site audits are also carried out by uncontrolled institutions, which stipulated in part 7 of Art. 11 of this Law.

N. Shostakivska divides the concept of revision in accordance with the current legislation of Ukraine into two separate concepts. So according to Shostakovsky revision is a method of documentary control of financial and economic activities of the enterprise, compliance with legislation on financial issues, reliability of accounting and reporting, a method of documenting the disclosure of shortage, squandering, appropriation and theft of funds and property values, preventing financial abuse. Actual revision is a complex of interconnected inspections of issues of financial and economic activity of enterprises, which is carried out with the help of methods of documentary and factual control, aimed at revealing the validity, feasibility and economic efficiency of economic transactions, the state of preservation of property [9, p. 21]. Determining the audit simply as a method of documentary control over the financial and economic activities of the enterprise, N. Shostakivska shares the false opinion of L. Rogozyan, V. Vakhlakova, N. Dondik, leaving out the attention of such a component of the audit, as an actual check. At the same time offering another term – «actual revision», N. Shostakivska combines this term with the methods of documentary and factual control during the verification of issues of financial and economic activity of enterprises, which, according to the author, leads to a semantic error.

It should be noted that according to the provisions of Art. 2, 4 of the Law of Ukraine «Main principles of state financial control in Ukraine», state financial control is ensured by the unit of state financial control through the carrying out of such inspections, and inspection is carried out by the state financial control unit in the form

of an audit. In this way, the audit is essentially a form of state financial control, which is carried out in accordance with the procedure established by the Law of Ukraine «Main principles of state financial control in Ukraine». In addition, specifying a range of objects for which a form of public financial control may be applied in the form of a planned, unscheduled on-site audit, it is worth using the term «object of control» as defined in clause 3 of the Procedure for conducting inspections by the State Audit Office, its interregional territorial units – the controlled institution, another entity, including its structural and separate units, which are not legal entities, for which the state financial control unit has full weighing and reasons for revision in accordance with the law.

Issues of initiating, appointing, carrying out the audit, as well as processing and appealing its results are regulated by the normative legal acts of Ukraine, in the first of all by the Law of Ukraine «Main principles of state financial control in Ukraine», the Resolution of the Cabinet of Ministers of Ukraine from April 20, 2006, No. 505, by a joint Order [10] of the Main Control and Revision Office of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the General Prosecutor's Office of Ukraine No. 346/1025/685/53 of 19.10.2006.

The use of audit results in criminal proceedings is governed primarily by clause 4 part 2 Art. 99 of the CPC of Ukraine [11], according to which the revision (audit) findings may belong to documents of evidence in criminal proceedings.

Investigating the work of scholars in this sphere and doing a comparative analysis with the legally defined concepts and the nature of the revision, the author proposes the following more precise definition.

Revision (audit) is a form of public financial control, which consists in documentary and factual verification of a particular complex or separate issues of financial and economic activity of the object of control, and should ensure detection of existing facts of violation of the law, the establishment of guilty in their permission of officials and financially responsible persons. It has a clear legal status that determines the procedure for initiating, appointing, conducting audits, as well as designing, using and appealing its results.

L. Rogozyan, V. Vakhlovskaya determine the following main reasons for the need for audits: low awareness of individual workers

in terms of thrift and preservation of public property; the previous and current control by the managers, accountants and specialists of the relevant branches of activity is not always effective; shortcomings in the selection of personnel materially responsible persons poor quality inventory, imperfection of the system of liability [7, p. 41]. N. Dondik adds that due to the fact that the movement and the state of the organization's property is reflected in various accounting documents, criminal acts committed in the field of production and financial and economic activity, always leave traces in these documents in the form of various falsifications, deviations from the normal circulation of values. Such falsifications are usually found during documentary audits, the results of which can serve as a means of gathering evidence in criminal cases. With the help of the audit act, as the source of evidence, the investigator establishes facts that are relevant to the case used to prove the facts of a criminal activity [4].

M. Kamlik observes the same opinion, noting that the materials of audits by units of the police (police) are used to assess the state of storage of material assets and cash in enterprises, to determine the objects of priority operational services, on the basis of these materials, to the ERDR information is provided on criminal offenses of theft of property of enterprises. Thefts and other mercenary crimes committed in the branches of the economy are always reflected in the documents and records of enterprises' accounting. This factor determines the role of revision as one of the effective other means of disclosing such crimes [3, p. 221–222].

The author of the research agrees with such a thought N. Dondik, M. Kamlik concerning the significance of the audit in criminal proceedings, pointing out the more important importance of the audit, which was initiated by the organs of pre-trial investigation, of the prosecutor's office, since it is a method of forming (creating) and collecting evidence in criminal proceedings. With the help of such a revision, not only the facts of the abuses disclosed by the preliminary audit or the operational way, but also new facts of the theft of inventories and money, and the participants of the criminal actions can be confirmed. This is primarily due to the fact that the investigator, the prosecutor, with the appropriate consultations (if necessary), officials of the DASU unit forms questions that are

subject to review during the revision (audit), and also participates in the approval of the program of such audit.

During the preparation for the revision (audit), officials of the DASU unit prepare a program of revision, which contains the name of the object of control, the subject, period and issues subject to revision. The program is approved by the head of the DASU body or its deputy. Paragraph 31 of the Procedure for conducting inspections by the State Audit Office, its interregional territorial units, stipulates that for conducting the audit at the request of the law-enforcement agency, according to the competence of the state financial control unit, is drawn up on the basis of the issues contained in the application, the resolution of the investigator or prosecutor, the court decision, the program of audit, which agrees in writing with the law enforcement agency. New facts of the commission of crimes may be established, in particular, during the planned on-site audit of issues of financial and economic activity of the control object, since according to paragraph 32 of the Procedure for conducting inspection of the program, in addition to those specified in the appeal of the law-enforcement body, issues may be included on the initiative of the State financial control authority other issue in accordance with the competence of the state financial control unit.

Fixation the findings of the audit revealed violations of the legislation, the size of the damage caused by such violations (damage), guilty of their permission of the persons contained in the audit findings, which are part of the audit act, which, in turn, is drawn up on the results of the audit of the DASU unit. In turn, these data, according to the provisions of Art. 91 CPCs of Ukraine are subject to proof in criminal proceedings. As already mentioned above, the audit findings are documents in the criminal proceedings. Part 2 Art. 84 of the CPC of Ukraine determines that the documents, as well as the conclusions of the experts, testimony, are procedural sources of evidence. Consequently, the significance of the conclusions (act) of the audit in criminal proceedings has the same procedural evidentiary force, including, in particular, the conclusion of the relevant forensic economic expertise. In practice, as will be described in more detail in this section of the study, the evidence of the findings of the audit in criminal proceedings by the prosecution side is usually confirmed by the conclusion of the forensic economic expertise, which must confirm the objectivity and soundness of the

audit results, the testimonies of witness-auditors who participated in such an audit.

Other, with the exception of the audit, forms of use of special economic (accounting) knowledge in criminal proceedings are: (documentary, factual, commercial) tax inspection, conclusion of forensic economic expertise, participation of a specialist-economist (accountant) in procedural actions.

Like the audit findings – the act of tax inspection, in accordance with paragraph 4 part 2 Art. 99 CPC of Ukraine may belong to documents of evidence in criminal proceedings. However, the procedure for appointing, conducting, and drawing up the results of inspections of economic activities of taxpayers (natural persons, legal entities) is determined by the articles of Chapter 8 of the Tax Code of Ukraine [12] and other normative-legal acts. By the requirements of Art. 75 Tax Code of Ukraine – a commercial is considered to be an inspection carried out in the premises of the controlling authority solely on the basis of the data specified in the tax returns (calculations) of the taxpayer, data of the system of electronic administration of value added tax, data of the Unified Register of Excise Bills and data of the system of electronic fuel management. The documentary is an inspection, the subject of which is the timeliness, reliability, completeness of payment and payment of all taxes and fees provided for by this Tax Code of Ukraine, as well as observance of currency and other legislation, observance by the employer of the legislation on the conclusion of an employment contract, the fulfillment of requirements of other legislation, control over which compliance is entrusted to the controlling bodies, as well as received in accordance with the procedure established by the legislation by the controlling body of documents and tax information, including the results of inspections of other taxpayers. Actual is an inspection at the place of actual performance by the taxpayer of activities in respect of compliance with the legislation on the regulation of cash circulation, the procedure for paying tax payers, cash operations, the availability of licenses, certificates, compliance with employer legislation on the conclusion of an employment contract, the formulation of labor relations with employees (hired persons). According to the provisions of Art. 86 Tax Code of Ukraine – the results of inspection are issued in the form of an act or a certificate. In case of establishing during an

inspection of violations an act is drawn up, if there are no such violations – the certificate. The act of inspection indicates both the facts of understatement and the facts of overstatement of tax obligations of the payer.

As already noted – expert opinions are procedural sources of evidence in criminal proceedings.

Taking into account that, unlike audits, which are usually aimed at exposing deficiencies, embezzlement, appropriation or theft of funds and property – inspections of the economic activity of taxpayers in accordance with the aforementioned dispositions of the Tax Code of Ukraine, are usually directed at identifying possible facts understatement or overstatement of taxpayer's tax obligations – the results of such inspections, which are executed in the form of acts, are used in criminal proceedings in most cases in accordance with the pre-trial investigation units institutions exercising control over the observance of tax legislation, while audit findings (acts) are used in criminal cases in most cases under the authority of the investigating authorities of the National Police of Ukraine. It is worth noting that according to paragraph 1 part 11 Art. 78 of the Tax Code of Ukraine on the basis of a documentary unscheduled inspection, as well as for an unscheduled on-site audit, is a court decision (investigating judge) on the appointment of an inspection made by them in accordance with the law. In addition, there is a lack of a clearly defined CPC of Ukraine for the procedure of consideration by the investigating judge of the petition of the prosecutor, the investigator regarding the appointment of unscheduled on-site audits and documentary unscheduled inspections in criminal proceedings, which leads to ambiguous judicial practice in the consideration of such petitions, as already indicated by the author in his previous articles.

As already mentioned, the experts' conclusions are procedural sources of evidence in criminal proceedings.

It is worth noting that, unlike the official of the DASU unit – the auditor who participates in the audit and does not have procedural status – the expert is a participant in the criminal proceedings, which is stipulated by the requirements part 3 Art. 69 of the CPC of Ukraine. An expert – a person who possesses scientific, technical or other special knowledge, has the right, in accordance with the Law of Ukraine «On Forensic Expertise», to conduct an expertise and

entrusts to investigate objects, phenomena and processes containing information about the circumstances of the commission of a criminal offense, and give a conclusion on questions that arise during the criminal proceedings and relate to the field of its knowledge. The expert has the relevant procedural rights and obligations defined in Art. 69 of the CPC of Ukraine, and unlike the auditor, holds the criminal responsibility for the knowingly false expert opinion during the pre-trial investigation, provided for in Art. 384 of the Criminal Code of Ukraine [13]. In addition, the expert bears criminal responsibility for the expert's refusal, without good reason, from performing his assigned duties in court provided for in Art. 385 of the Criminal Code of Ukraine. Instead, an official of the DASU unit – the auditor who participates in conducting both scheduled and unscheduled on-site audit, the findings of which are contained in the materials of the criminal proceedings, is not held criminally liable for knowingly false conclusions of the audit. This fact is one of the subjective circumstances, which in practice leads to the fact that the expert's conclusion in assessing the totality of the evidence collected is more important for the court than the audit findings. However, as noted in previous articles, courts should not forget the conclusions of paragraph 3 of the Decree of the Supreme Court of Ukraine from May 30, 1997, No. 8, according to which the expert's opinion does not have a predetermined strength and advantages over other sources of evidence, is subject to verification and evaluation of the internal conviction of the court, which must be based on a comprehensive, complete and objective consideration of all the circumstances of the case in aggregate [14]. At the same time, according to part 10 Art. 101 of the CPC of Ukraine states that the disagreement of the court (the person or the body conducting the proceedings) with the expert's conclusion must be motivated in the relevant resolution, decision, sentence.

Unlike the audit, the procedure for appointing an expertise (including economic ones) and the procedure for drawing up an expert's conclusion are clearly defined by the Criminal Procedural Code of Ukraine. So part 1 Art. 101 of the CPC of Ukraine states that the expert's conclusion is a detailed description of the research conducted by the expert and the conclusions drawn from their results, the answers to the questions put forward by the person who attracted the expert, or the investigating judge or the court that

commissioned the expertise, were substantiated. Provisions of Art. 102 CPC of Ukraine determines the content of the expert's conclusion. Art. 242–244, 332 of the CPC of Ukraine determine the grounds, procedure and decision-making on involving an expert (expertise), and Art. 356 of the Criminal Procedure Code of Ukraine specifies a special procedure for interrogating an expert in court.

Point 1.2.3 of the Instruction on the appointment and conducting of forensic expertise, approved by the Order [15] of the Ministry of Justice of Ukraine from October 8, 1998, No. 53/5, includes the following types of expertise: accounting and tax accounting; financial and economic activity; financial and credit operations. Section «III. Economic expertise» of scientific and methodological recommendations on the preparation and appointment of forensic expertise and expert studies approved by Order No. 53/5 identifies the main tasks of the subspecies of economic expertise, an indicative list of issues to be resolved by economic expertise. Point 1.1. The section states that carrying out of audit actions (the definition by experts-economists of any economic indicators without preliminary conducting of documentary inspections of financial and economic activity by the subject of control) does not belong to the tasks of economic expertise. So obtaining the results of the relevant audit, checking up to the time of appointment experts, documents accounting, tax accounting and reporting is often mandatory in the criminal proceedings.

Point 3.3 the section specifies that together with the document on the appointment of an expertise (expert engagement), an expert must submit accounting and tax accounting documents containing the information – the initial data for solving the issues, such as, for example, the acts of audits. If the expertise is intended to verify the conclusions of the documentary audit, the document on the appointment of the expertise (involvement of an expert) indicates which conclusions and for what reasons cause doubts (contradict other materials of the case, unconvincingly substantiated by financial inspectors, etc.).

Thus, the audit materials can be both the subject of verification of forensic economic expertise and documents that, together with other materials of criminal proceedings, contribute to the court's decision on issues raised by the expert side of criminal proceedings.

According to Art. 71 of the CPC of Ukraine, a specialist in criminal proceedings is a person who possesses special knowledge and skills of using technical or other means. A specialist can provide advice during pre-trial investigation and trial on issues requiring appropriate specialist knowledge and skills can be involved in providing direct technical assistance (taking photographs, drawing up plans, plans, drawings, selecting samples for examination, etc.) by the parties to the criminal proceedings during the pre-trial investigation and trial during the trial. The specialist has certain rights, in particular, to draw the attention of the party to the criminal proceedings, which has attracted him or the court to the specific circumstances or peculiarities of the things and documents.

M. Kamlik notes that when deciding on the term, the scope of the audit may be useful consultation of a specialist in accounting and business analysis [3, p. 228], also N. Dondik indicates that the assistance of a specialist-accountant during the appointment of an initial documentary audit may be as follows:

- during the analysis of documents, he indicates to the investigator on the list of documents that must be taken from the company;

- having established the necessary list of documents, the specialist will also indicate the number of copies of the document to the place where these documents are located;

- in the absence of certain documents of interest to the investigator, the specialist can tell in which other documents the necessary data are displayed;

- the knowledge of the peculiarities of document circulation at a concrete enterprise is important, the specialist explains the investigative structure, scheme, system of movement of accounting documents;

- ways of displaying them in business operations;

- forms of accumulation of data on the movement of material assets;

- according to the materials of the investigator, the specialist helps to determine the volume of the primary audit, it is important to establish the procedure for carrying out audit activities;

- circles of persons who need to be called to provide explanations to the auditor, the possibility and the order of contacting counteragents for carrying out counter-inspections;

– a specialist has the opportunity to advise the investigator on the most appropriate methods of actual control (inventory, laboratory analysis, etc.);

– the specialist helps the investigator to formulate questions on the audit [4].

In addition, specialists in ministries, other central executive units, their territorial units, enterprises, institutions and organizations, as provided for in paragraph 10 of the Procedure for conducting inspections by the State Audit Office, its interregional territorial offices may be involved in participation in the audit in writing by the head of the state financial control unit.

Section 3 of the Procedure of interaction between the units of the State Control and Revision Service and the units of the Office of Public Prosecutor, the Ministry of Internal Affairs and the Security Service of Ukraine established a procedure according to which, according to the appeals of law enforcement units, the inspectors may participate in inspections carried out by law enforcement agencies in supervised institutions and others Controls – as specialists. Point 3.1 is indicated that the rights and duties of an official of the service (the unit of the State Audit Service of Ukraine – the author), which is involved as a specialist in participating in the investigation, are determined by the Criminal Procedural Code of Ukraine.

Thus, the participation of a specialist-economist can take place in the form of providing consultations to the investigator, the prosecutor during the pre-audit, as well as a specialist involved with the officials of the DASU unit in conducting and drawing up the audit results. In addition, the state financial inspectors (inspectors) of the DASU unit, if there is a need, may be involved by investigators, prosecutors in other procedural actions as specialists in criminal proceedings, in accordance with the procedure established by the joint Order No. 346/1025/685/53.

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