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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[1]. 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[2], 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[3]. 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[4], 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

1 Civilprocesa likums (1999). Latvijas Vēstnesis, 326/330, 03.11.1998.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 03.12.1998 [in Latvian].

2 Ibid.

3 Latvijas Republikas Satversmes tiesas sēdes stenogramma (2010). http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2010-08-01_Stenogramma.pdf [in Latvian].

4 Tiesu ekspertu likums. (2016). Latvijas Vēstnesis, 42, 01.03.2016 [in Latvian].

І. В. Кудейкіна

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 судового експерта, даний в досудовому порядку, оцінюється лише як письмовий доказ і по справі призначається нова, по суті повторна, судова експертиза.

Метою статті є аналіз правового регулювання ключових позицій судової експертизи і висновку судового експерта як докази, проведеної в рамках судового процесу і до нього, в взаємозв'язку з принципами цивільного судочинства, для того, щоб запропонує вирішення проблеми оцінки висновку експерта, як доказу в цивільному процесі.

Не дивлячись на те, що жоден із доказів заздалегідь не зобов'язує 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 надаючи доказової сили досудової експертизи як висновку судового експерта, зацікавлена сторона змушена проводити експертизу за тими-же обставинами вже в судовому процесі, щоб отримати висновок судового експерта. Обмеження прав сторони, яка не брала участі в призначенні експертизи на досудовій стадії, уявне, оскільки в разі незгоди з висновком експерта всі процесуальні недоліки незгодна сторона може усунути в судовому процесі, використовуючи такі правові інструменти як повторна, або додаткова експертиза, допит судового експерта в суді, або апеляційної скарга. Але визнання досудової експертизи в доказовому плані в повноцінному якості висновку судового експерта, а не письмового доказу, скоротило б терміни судочинства.

Ключові слова: судовий експерт, досудова експертиза, судова експертиза, 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 Procedure[5]. 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. Chentoricka 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 case[6]. 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 evidence[7]. The principle of evidence assessment is established by Article 97 of the Code of Civil Procedure[8], according to which the court evaluates evidence by relying

[5] Civilprocesa likums (1999). Latvijas Vēstnesis, 326/330, 03.11.1998; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 03.12.1998 [in Latvian].

[6] Čentoricka, M. (2018). Eksperta atzinums ir tikai daļa no lēmuma veidošanas gaitas. https://lvportals.lv/tiesas/299701-eksperta-atzinums-ir-tikai-dala-no-lemuma-veidosanas-gaitas-2018 [in Latvian].

[7] Bukovskis, V. (1933). Civilprocesa mācības grāmata. Rīga: Autora izdevums. 233.lpp. [in Latvian].

[8] Civilprocesa likums (1999). Latvijas Vēstnesis, 326/330, 03.11.1998; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 03.12.1998 [in Latvian].

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[9]. 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[10]. 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[11], 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.

[9] Latvijas Republikas Satversme (1922). Latvijas Vēstnesis, 43, 01.07.1993.; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 6, 31.03.1994.; Valdības Vēstnesis, 141, 30.06.1922.; Diena, 81, 29.04.1993 [in Latvian].

[10] Eiropas Padomes dalībvalstu vadlīnijas par tiesas norīkotu ekspertu lomu tiesvedībā (2014). Eiropas tiesu sistēmu efektivitātes komisija. https://www.echr.coe.int/Documents/Handbook_access_justice_LAV.pdf [in Latvian].

[11] Civilprocesa likums (1999). Latvijas Vēstnesis, 326/330, 03.11.1998; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 03.12.1998 [in Latvian].

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

Gemäß dem Artikel 121 des Zivilprozessrechtgesetzes von Lettland gilt das forensische Sachverständigengutachten als eines der Beweismittel. Bei der Bewertung der Beweise wird das im Rahmen des Vorverfahrens vorgelegte Sachverständigengutachten nur als schriftliches Beweismittel bewertet und zur Sache wird eine neue tätsächlich forensische Oberexpertise angeordnet.

Das Ziel der Abhandlung ist es, die Rechtsregelung von Schlüsselpositionen der forensischen Expertise und des forensischen Sachverständigengutachtens als Beweis zu analysieren, die in und vor dem Verfahren in Verbindung mit den Grundsätzen des Zivilgerichtsverfahrens durchgeführt wurden, um eine Lösung für das Problem der Bewertung des Sachverständigengutachtens als der Beweis im Zivilverfahren anzubieten.

Obwohl keiner der Beweise das Gericht im Voraus verpflichtet, kann das forensische Sachverständigengutachten dabei helfen, die Tatsachen zu beweisen, deren Feststellung spezielle Kenntnisse in Bereichen der Wissenschaft, Technologie, Kunst oder in einem anderen Bereich erfordern. Ohne die Beweiskraft der vorgerichtlichen Expertise als das forensische Sachverständigengutachten abzugeben, muss der Interessent die Expertise unter den gleichen Umständen schon im Gerichtsverfahren durchführen lassen, um das forensische Sachverständigengutachten zu bekommen.

Die Beeinträchtigung der Parteirechte, die im vorgerichtlichen Stadium an der Beziehung des Gutachtens nicht teilgenommen hat, ist imaginär, weil die mit dem Sachverständigengutachten nicht einverstandende Partei alle prozessuallen Mängel im Prozess beheben kann, wenn sie solche Rechtsinstrumente wie die Oberexpertise oder das zusätzliche Gutachten, das Verhör des Gutachters vor Gericht oder Berufung benutzt. Nicht den schriftlichen Beweis, sondern die vorgerichliche Expertise als vollwertig qualitatives forensisches Sachverständigengutachten im Beweisplan anzuerkennen, würde aber die Verfahrensdauer verkürzen.

Schlüsselwörter: Forensiker, vorgerichtliche Expertise, forensische Expertise, Bewertung des Sachverständigengutachtens als Beweis.

I. Kudeikina

CONCLUSION DE L'EXPERT DU PROCES COMME PREUVE DANS LA PROCEDURE CIVILE DE LETTONIE

Selon l'article 121 du Code de procédure civile letton, l'expertise est l'un des moyens de preuve. Lors de l'évaluation des preuves, l'avis de l'expert judiciaire, donné dans le cadre de la procédure préalable au procès, n'est évalué qu'en tant que preuve écrite et une nouvelle expertise judiciaire essentiellement répété est nommé dans l'affaire.

Le but de l'article est d'analyser la réglementation juridique des postes clés de l'expertise judiciaire et en tant que preuves faites pendant et avant le procès, conjointement avec les principes de la procédure civile, afin de proposer une solution au problème de l'évaluation de l'expertise en tant que preuve dans les procédures civiles.

Bien qu'aucune preuve ne n'engage pas l'avance le tribunal, la conclusion

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-318/2013[12] 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 decision[13].

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 Code[14].

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 decision[15]. Civil procedural principles are established by Articles 1-15 of the Civil Code[16].

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 remedies[17].

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

[12] Latvijas Republikas Augstākās tiesas spriedums (2013). https://tiesas.lv/nolemumi/pdf/133788.pdf [in Latvian].

[13] Bordāns, T. (2018). Ekspertīzes problemātika Civilprocesā. Jurista Vārds Nr. 39 (1045) [in Latvian].

[14] Civilprocesa likums (1999). Latvijas Vēstnesis, 326/330, 03.11.1998; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 03.12.1998 [in Latvian].

[15] Kronis, I. (2016). Civilprocesuālo tiesību principa izpratne: teorētiski filozofiskais problēmas apskats. https://www.rsu.lv/sites/default/files/imce/Zinātnes%20departaments/2016/VIII%20sekcija/civilprocesualo_tiesibu_princips.pdf.

[16] Civilprocesa likums (1999). Latvijas Vēstnesis, 326/330, 03.11.1998; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 23, 03.12.1998 [in Latvian].

[17] Latvijas Republikas Satversmes tiesas spriedums lietā Nr. 2012-06-01 (2012). http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2012-06-01_Spriedums.pdf [in Latvian].

[18] Baumbach, A., Lauterbach, W., Albers, J., Hartmann, P. (2020). Zivilprozessordnung: ZPO. 78 Auflage. München, Verlag C.H. Beck [in Deutsch].

the court in his/her rightness[19]. 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[20]. 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 no. 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

[19] Heintzmann, W. (1985). Zivilprobrecht. Munchen. Heidelberg [in Deutsch].

[20] Ose, D. (2019). Proccesuālās ekonomijas principa un tiesību uz taisnīgu tiesu mijiedarība. Jurista vārds Nr. 39 (1097) [in Latvian].

de l'expert judiciaire peut aider à prouver les faits qui nécessitent des connaissances particulières dans le domaine de la science, de la technologie, de l'art ou d'un autre domaine. Sans donner une valeur probante à l'expertise judiciaire au procès comme étant l'avis d'un expert judiciaire, l'intéressé est contraint de procéder à une expertise dans les mêmes circonstances que le procès pour obtenir la concussion d'un expert judiciaire. La restriction des droits d'une partie qui n'a pas participé à la nomination d'un expert lors de la phase préalable au procès est imaginaire, car en cas de désaccord avec l'avis de l'expert, toutes les lacunes procédurales peuvent être éliminées par la partie dissidente devant le tribunal, en utilisant ces instruments juridiques devant un tribunal ou un appel. Pourtant la reconnaissance de l'expertise préalable au procès en preuve comme une qualité à part entière de l'opinion d'un expert judiciaire, plutôt que comme une preuve écrite, raccourcirait la durée de la procédure.

Ключевые слова: судебный эксперт, досудебная экспертиза, судебная экспертиза, оценка заключения эксперта как доказательства.

И. В. Кудейкина

ЗАКЛЮЧЕНИЕ СУДЕБНОГО ЭКСПЕРТА КАК ДОКАЗАТЕЛЬСТВО В ГРАЖДАНСКОМ ПРОЦЕССЕ В ЛАТВИИ

В соответствии со статьей 121 Гражданско-процессуального закона Латвии заключение эксперта является одним из средств доказывания. При оценке доказательств, заключение судебного эксперта, данное в досудебном порядке, оценивается лишь как письменное доказательство и по делу назначается новая, по сути повторная судебная экспертиза.

Целью статьи является анализ правового регулирования ключевых позиций судебной экспертизы и заключения судебного эксперта как доказательства, проведенного в рамках судебного процесса и до него, во взаимосвязи с принципами

гражданского судопроизводства, для того, чтобы предложить решение проблемы оценки заключения эксперта в качестве доказательства в гражданском процессе.

Не смотря на то, что ни одно из доказательств заранее не обязывает суд, заключение судебного эксперта может помочь доказать те факты, по установлению которых необходимы специальные познания в области науки, техники, искусства или в другой области. Не придавая доказательственной силі досудебной экспертизе как заключению судебного эксперта, заинтересованная сторона вынуждена проводить экспертизу по тем-же обстоятельствам уже в судебном процессе, чтобы получить заключение судебного эксперта. Ущемление прав стороны, не участвовавшей при назначении экспертизы в досудебной стадии, мнимое, так как в случае несогласия с заключением эксперта все процессуальные недостатки несогласная сторона может устранить в судебном процессе, используя такие правовые инструменты как повторная, или дополнительная экспертиза, допрос судебного эксперта в суде, или апелляционная жалоба. Но признание досудебной экспертизы в доказательственном плане в полноценном качестве заключения судебного эксперта, а не письменного доказательства, сократило бы сроки судопроизводства.

Ключевые слова: судебный эксперт, досудебная экспертиза, судебная экспертиза, оценка заключения эксперта как доказательства.

principles of truth and optionality as opposed to the principle of procedural economy. Such a statement is not justified, since the hierarchy of civil procedure principles has not been established by regulatory acts, besides, both state and private forensic experts have the same legitimacy, the state delegated them the right to conduct forensic examinations both on the initiative of citizens (parties of the civil process), and on the initiative of the court and its appointment. The practice, on the basis of which a forensic expert opinion, carried out on the initiative of one of the parties of a civil dispute before initiation of a civil case in court, is not recognized by the court as a report of forensic examination, and can't be justified by written evidence only. The legal consequences of an expert report differ from the legal consequences of written evidence. Despite the fact that none of the evidence obliges the court in advance, a forensic expert report can help prove those facts, the establishment of which requires special knowledge in the field of science, technology, art or in any other field. Thus, the conclusion of a forensic expert is significant while the argumentation of the court decision. Therefore, the report of a forensic expert is important for the parties, since with its help it is possible to prove important facts related to the case. Without giving due evidential value to the pre-trial examination as the conclusion of a forensic expert, the interested party is forced to conduct an examination on the same circumstances already in court in order to obtain a forensic expert report. In this way, the length of the proceedings is extended. The infringement of the rights of the party that did not participate in the appointment of the pre-trial examination is imaginary, since in case of disagreement with the expert's report, the disagreeing party can eliminate all procedural deficiencies in court using such legal tools as re-examination or additional examination, interrogation of the forensic expert in court, or appeal. But recognition of the pre-trial examination in the evidence plan as a part of a forensic expert report, but not as written evidence, would reduce the time of the proceedings.

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