

THE ROLE AND IMPORTANCE OF LEGAL ASPECTS REGARDING ACCOUNTING EXPERTISE

Nicolae MĂGDAȘ¹ ORCID 0000-0001-6595-468X
Gabriel RAITA² ORCID 0000-0003-0647-5771

Abstract: *This paper takes an integrated approach to accounting expertise from several perspectives, starting from general approaches to accounting expertise and moving on to the legal aspects of accounting expertise. Most of the time we focus only on the accounting aspects and not on the legal aspects. Legal aspects in the case of accounting expertise and especially in the case of judicial expertise should not be neglected. This paper addresses the legal aspects of accounting expertise and presents both civil and criminal aspects. Following the analysis of the legal aspects regarding accounting expertise as a means of evidence in the civil process and in the criminal process, a series of findings and conclusions are presented. Like any research, the present research presents some limits by only addressing the legal aspects and not the accounting ones, so there is a chance for future research that treats the two sides of the accounting expertise together.*

Keywords: *accounting, legal, accounting expertise*

JEL Classification: M40, K4

Introduction

The activity of the professional accountant is, by its very nature, an activity with increased complexity due to the confluence of areas of interest and specialization necessary for its good performance. In order to be able to approach the chosen topic and reach its finality, the way in which the accounting professional is responsible for the acts committed during the exercise of the profession or related activities, an analysis of the obligations that two important categories of accounting professionals have is imperative, because they do not liability can be discussed abstractly without reference to the duties that professional accountants have (Chychyla et al., 2019).

Basically, accounting expertise involves an investigation, a research of supporting documents, information and accounting records. The accounting expertise is carried out by a specialist who has acquired the quality of accounting expert and has as its final goal the elucidation of the economic reality and the resolution of disputes. The performance of judicial accounting expertise contributes to the speedy, clear and fair execution of the judicial act or, in the case of extrajudicial accounting expertise, to the clarification of some economic aspects.

The ability of accounting expertise to elucidate not only facts that refer to the present, but also to the present clarification of some events from the past by capturing their substrates and analyzing them from an accounting point of view should not be neglected either. Based on the principle that accounting records are made in chronological order, looking from the future to the past, accounting expertise transforms a multitude of isolated sequences from the accounting history of an entity into an overall picture that is much easier to understand for the users of this information from expert report (Gurin, 2019).

¹ Lecturer, Department of Accounting and Audit, Faculty of Economics and Business Administration, Babes Bolyai University. Corresponding author: nicolae.mgadas@econ.ubbcluj.ro

² Lecturer, Department of Accounting and Audit, Faculty of Economics and Business Administration, Babes Bolyai University.

The accounting expertise, different from the point of view of the result of control, review or verification, has as a particularity the point of view or the individual opinion of the expert regarding the investigated facts and the reasons that were the basis of this research. Thus, following the verification of the facts through the prism of their accuracy in terms of form and content, the accounting expert freely expresses his opinion regarding the objectives of the expertise performed or regarding the facts for which it was performed.

Summarizing, the paper aims to present the importance of accounting expertise and to highlight the role of expertise both in the economic sphere and outside it within the legal universe and beyond. Thus, due to its widespread use, the role of the expert is also highlighted, which involves a person with vast theoretical knowledge and practical experience gained by applying that knowledge. The problems that may arise in economic, social or legal life may be among the most complex or inaccessible to the understanding of people without specialized training in the field. As a result of this reality, it also becomes normal to consult the expert who comes to help the applicants for the expertise, among them are the actors from the economic sphere as well as the criminal investigation bodies or the courts. Judicial bodies can use accounting expertise to find out the truth in certain circumstances and for a correct resolution of the case and establishing the damage if necessary, while managers use the information provided by means of financial statements by virtue of making decisions about the steps to follow next.

Accounting expertise – evidence in the civil process

Expertise in general, and accounting in particular, is a very useful means of evidence in the conduct of a civil process, as it provides an approved opinion of a specialized person in the field in which clarifications are needed. For this reason, and because this means of proof is often used, there is also a thorough regulation regarding the method of realization (Suddaby et al., 2015; Chychyla et al., 2019, Fodor,2019).

Regulatory perspective

The normative and legislative part that regulates the expertise is contained in the Code of Civil Procedure (Fodor,2019). The reason why this action is regulated in the procedural code, is because the expertise can represent either an extension of the court's actions, or a means of evidence introduced by the parties, and thus compliance with certain formal conditions regarding its realization is required. All these conditions are transposed into well-defined procedures whose regulation must be carried out by the Code of Civil Procedure (Power & Laughlin, 1996; Suddaby et al., 2015).

The first fact that is referred to by the New Code of Civil Procedure is related to the need for expertise and the identification of the moments when its request is required. "When, in order to elucidate some factual situations, the court considers it indispensable to discern the opinion of specialists, it will assign, at the request of the parties or ex officio, 1 or 3 experts. The time limit will be set so that the submission of the expert report to the court takes place according to the provisions of art.336." (The New Civil Procedure Code, Book II, Title I, Chapter II, Section 2, Subsection 3, Expertise, art. 330, paragraph 1), which regulates the expert's report, correspondingly at least 10 days previously the deadline fixed for judgment. It is worth noting that the parties are given the right to request expertise to support their arguments. Thus, the legislator not only offers the parties the opportunity to bring evidence, to support their point of view with arguments, but also offers the opportunity for these arguments to be doubled by the opinion of a person with special training in a certain field, the accounting expert in this case. The choice of the person of the court expert will be made according to the circumstances, the field in which the fact that needs to be clarified through expertise is based, and the training of the specialized people in the field. "(2) When necessary, the court will request the performance of the expertise of a specialized laboratory or institute. (3) In strictly specialized fields, where there are no authorized experts, ex officio or at

the request of any of the parties, the judge may request the point of view of one or more personalities or specialists in the respective field." (The New Civil Procedure Code, Book II, Title I, Chapter II, Section 2, Subsection 3, Expertise, art. 330, para. 2 and 3).

Also, in the case of ordering an expert opinion by the court, the parties have the right to choose one expert each to participate in the expert opinion and to offer them a better representation in the process, as well as a translation, for a better understanding, in usual terms of the information revealed by the expertise. Art. 330 provides that "When carrying out the expertise in the conditions provided for in para. (1) and (2) may take part experts selected by the parties and accepted by the court, having the capacity of advisors of the parties, except the law provides otherwise. In this case, they can provide reports, express questions and observations and, if needed, draw up a distinct report on the objectives of the expertise." (The New Civil Procedure Code, Book II, Title I, Chapter II, Section 2, Subsection 3, Expertise, art. 330, para. 2 and 3).

Cases in which expertise is mandatory

In the event of litigation, in principle, the use of expertise as a means of evidence is optional and depends on the approval of the court (Wynne, 2008; Gurin, 2019). In cases that do not concern civil processes, accounting expertise appears as a mandatory element in undertaking certain actions in the life of a company, for example. In the following, the situations provided by the Commercial Companies Law no. 31/1990 updated, in which the performance of accounting expertise is required:

One of the most common cases in active economic life is the one related to particular formalities for the establishment of a joint stock company through public subscription. Thus, in the case of limited liability companies (SRL) and joint-stock companies (SA), an accounting expertise is required to be able to carry out the public subscription, while for the other categories of companies, the expertise is only optional. The law mentioned above provides that "(1) If there are contributions in kind, benefits granted to any person who took part in the company's establishment or in the transactions determining the granting of the authorization, actions concluded by the founders in the name of the company that is being established and which it is going to take them upon himself, the founders will solicit the judge-delegate to nominate one or more experts. (2) The expert's or experts' report will be made accessible to the subscribers, at the meeting place of the constituent assembly." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 26, para. 1 and 2). The purpose of the requested expertise is to evaluate the contributions in kind of the shareholders or associates in order to establish the conformity between the value promised and subscribed as contribution, and the value actually paid into the subscription account. The expertise also contributes to complying with some minimum criteria imposed by the law regarding the establishment of commercial companies as follows: "If the worth of contributions in kind, recognized by the experts, is lesser by one fifth of that delivered by the founders in the issue prospectus, any acceptor may possibly withdraw, informing the founders, up until the date established for the constituent assembly." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 27, para. 2).

If the first case is related to the establishment of a company, the second refers to an action that takes place during the operation of a company, namely, the reduction or rise of the share capital. It is required by law that if the contributions by which the increase is made are in kind, they should be subject to an expertise. "If the growth of the social capital is done by way of in-kind contributions, the general meeting that pronounced on it will suggest to the judge-delegate the nomination of one or more experts for the assessment of these contributions." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 27, para. 2). Depending on the reason why the share capital increase is carried out, the law provides that in order to carry out a merger or division and to make cash outflows to the shareholders or associates in the absorbed or divided commercial company, it is not necessary to carry out an expertise under the conditions provided for in the article of above on the condition that the merger or division project was examined by an

independent expert. The mandatory nature of the expertise is captured by paragraph 3 of article 215: "Afterwards the submission of the expertise report, the extraordinary general meeting assembled again, with regards to the conclusions of the experts, may agree to increase the share capital." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 215, para. 3).

In the case of withdrawal of the associate from the company in collective name, in simple limited partnership or in the limited liability company, after the meeting of one of the conditions stipulated in the constitutive act or with the consent of all the associates, it is necessary to evaluate the rights due to him at that time in order to performing the operation (Țirlea, 2018). "The rights of the withdrawn associate, due to his social shares, are determined by the consensus of the associates or by an expert selected by them or, in case of divergence, by the court. The evaluation expenses will be endured by the company." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 215, para. 3).

With regard to mergers and divisions of companies, operations of great complexity, the intervention of an expert is indispensable who, through the report he will draw up, will examine the merger or division report and give the shareholders both an approved opinion on future operations, as well as an assurance regarding the correctness of the information contained in the analyzed report. The judge-delegate will appoint "one or more experts, natural or legal persons, acting in the name of each of the companies partaking in the merger or division, but autonomously of them" (Commercial companies Law no. 31/1990 updated, Chapter II, art. 243, para. 1) to assemble the written report and provide it to the shareholders. The report prepared by the expert or experts is of particular importance because it provides all the information that is the basis of the operations to be carried out on the occasion of the merger or division. This report is going to state if the shares exchange rate or shares is fair and equitable. The report should also point out the method or methods utilized to define the proposed exchange rate, state if the method or methods used are suitable for the specific case, indicate the values attained by applying each of these methods and enclose the opinion of the experts on the weight allocated the methods in question to get the value retained at the end. The report should also describe any precise difficulties in executing the assessment." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 243, para. 2). In other words, the expert who makes the report is one of the guarantees that ensure the correctness of the merger or division operations. In order to carry out this analysis and draw up the report, the law empowers the expert or experts with "the right to obtain from any of the companies participating in the merger or division all relevant information and documents and to make all necessary investigations." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 243, para. 2). Also, the merger or division report, drawn up by the administrators of the companies that are to participate in the respective operations, must include "any exceptional advantage allowed to the experts mentioned in art. 243 and members of the administrative or control bodies of the companies implicated in the merger or division;" (Commercial companies Law no. 31/1990 updated, Chapter II, art. 243, para. 2). Even if the work that the experts perform in the process of drawing up the report is not carried out by them as direct participants or with direct interests in the merger or division, they are not exempt from responsibility for the quality and correctness of their work. Thus, "Experts who prepare the report provided for in art. 243, in the name of the absorbed or divided company, are civilly liable towards the shareholders or associates of these companies for the irregularities done in the performance of their responsibilities." (Commercial companies Law no. 31/1990 updated, Chapter II, art. 243, para. 2).

Experts are also needed in the case of the liquidation of companies in order to correctly determine which operations will be carried out. Thus, "The expense paid by the company to the person making use of the right of withdrawal will be determined by an independent authorized expert, represented by an average value determined as a resultant of applying at least two valuation methods acknowledged by the legislation in force at the valuation date. The expert is selected by the judge-delegate... The evaluation costs will be borne by the company" (Commercial companies Law

no. 31/1990 updated, Chapter II, art. 270, para. 4). It can be observed that the legislation also imposes the method of carrying out the evaluation and not only its necessity, having as a minimum condition the application of two or more methods in determining the value.

There are also conditions of incompatibility regarding the expert or experts appointed in one of the aforementioned cases (Țîrlea, 2018). The Companies Act provides that experts cannot be appointed:

- ✓ "relatives or relatives up to the 4th degree inclusive or the spouses of the ones who made contributions in kind or of the founders;
- ✓ persons who get, independent of the form, for the tasks they perform, except that of an expert, a salary or a remuneration either from the founders or from the ones who established contributions in kind;
- ✓ any person who, correspondingly to his business, either work or family relationships, absences the independence to provide an objective valuation of contributions in kind, in accordance to the exceptional rules that regulate the profession." (Commercial companies Law no. 31/1990 updated, Chapter III, art. 39).

Accounting expertise in commercial law (Valuation expertise)

In the area of commercial law, expertises appear as mandatory in different situations, they are also called evaluation expertise (Wynne, 2008; Constantin, 2020; Succurro, 2022). The reason for this term is the fact that they appear, mandatory or optional, in cases where a damage must be assessed. There are a multitude of situations of this kind, a more common part of them being.

Disputes between the merchant and a natural person regarding operations of a commercial nature, in which case the merchant will fall under the Commercial Code, and the natural person under the Civil Code. If there is prejudice, regardless of which party, it will be assessed by an expert selected by the court (Constantin, 2020).

There is also a situation in which the presence of an expert in company matters is necessary to determine the share of assets that would belong to the associate withdrawn or excluded from the company (Gurin, 2019).

In the case of companies where the manager carries out acts that meet the legal conditions of fraudulent management, the expert has the duty to establish the value of the damage when civil liability is incurred (Succurro, 2022).

The expert is also called to collaborate on insurance matters at the time of occurrence of the foreseen risks (calamities, work accidents, etc.) to evaluate the value of the goods destroyed at that time and which must be compensated according to the contract.

In the event of the bankruptcy of a company, the expert must evaluate the material situation of the company in question, establishing in fact the situation of assets and liabilities and the final situation net of debts.

Accounting expertise – means of evidence in the criminal process

Expertises in general, and accounting expertise in this case, are often used in the criminal process to clarify specific problematic aspects of the litigation and to contribute to discovering the truth, one of the most important objectives of the criminal process. During the course of the criminal process, the accounting expertise in the case will be used mainly in those disputes that are based on crimes committed that have a predominantly economic character.

Regulatory perspective

Being a procedural act in the criminal process, the expertise is rigorously regulated under the New Code of Criminal Procedure.

The first regulated aspect refers to the moment when it is required to request and carry out an expertise. Thus, "The performance of an expert opinion is ordered when the opinion of an expert

is also indispensable for the ascertainment, clarification or valuation of facts or circumstances that are significant for discovering the truth in question." (The new Criminal Procedure Code, General Part, Title IV, Chapter VII. Expertise and finding, art. 172, para. (1)). It is worth noting that the moment when an expertise can be requested as well as the role it plays is also highlighted. Expertise contributes to the smooth running of the process, to the observance of the principle of speed by clarifying some problems more quickly, and to the ultimate goal of the criminal process on a social level, finding out the truth.

There are certain situations in which expertise appears as mandatory during the criminal process, accounting not being in this category. For example, a psychiatric examination is mandatory in the case of particularly serious murder.

The expertise procedure is regulated in article 172 para. (2). Thus, "The expertise is well-ordered, under the settings of art. 100, upon demand or ex officio, by the criminal investigation body, by reasoned ordinance, and throughout the trial it is ordered by the court, by reasoned conclusion." (The new Criminal Procedure Code, General Part, Title IV, Chapter VII. Expertise and finding, art. 172, para. (2)). The research area of the expertise is also indicated, as well as the duties of the expert who draws up the expertise report. In this sense, "The ordinance of the criminal investigation body or the court decision ordering the expert's performance must specify the facts or circumstances that the expert needs to ascertain, clarify and evaluate, the objectives to which he must respond, the term in that the expertise must be carried out, as well as the institution or designated experts." (The new Criminal Procedure Code, General Part, Title IV, Chapter VII. Expertise and finding, art. 172, para. (6)). Moreover, the legislator distinctly regulates the situation of some specialized fields. This aspect is highlighted in the following paragraph which specifies the fact that "In rigorously specialized fields, if certain precise knowledge or other knowledge as such is compulsory to understand the evidence, the court or the criminal prosecution body can request the opinion of specialists. The provisions regarding the hearing of the witness are applicable accordingly." (The new Criminal Procedure Code, General Part, Title IV, Chapter VII. Expertise and finding, art. 172, para. (7)). Article 181 refers to the object of the finding and the finding report. Thus, "The criminal investigation body establishes by ordinance the object of the finding, the questions to which the specialist must answer and the term in which the work is to be carried out." (The new Criminal Procedure Code, General Part, Title IV, Chapter VII. Expertise and finding, art. 181, para. (1)). It is necessary to have a collaborative relationship between the criminal investigation body and the expert, in order to find out the truth in a timely and efficient manner.

Types of expertise in criminal matters and the classification of accounting expertise in a category

Expertises in the criminal process can be classified according to the issues that must be clarified within them. Thus, they can be:

- ✓ Accounting expertise;
- ✓ Forensic expertise;
- ✓ Accounting expertise;
- ✓ Technical expertise;
- ✓ Psychological expertise.

If we refer to the execution procedure, we distinguish between the following two categories of expertise:

A. Apparently non-contradictory expertise

This hypothesis is found in the case of forensic and medico-legal expertise. In their case, the criminal investigation body or the court that orders the expertise to be carried out, either by ordinance or by conclusion, communicates to the specialized institute by address the act of disposition that also includes the formulation of the objectives and the deadline, together with the case file. The appointment of the expert is made by the management of the specialized institute and

each of the parties has the right to request that an expert recommended by it participate in the performance of the expertise.

B. Contradictory expertise

This assumption is found in the case of accounting and technical expertise. In this case, the criminal investigation body or the court, when it orders the conduct of an expert opinion, sets a deadline to which all the parties, as well as the expert, are summoned.

At the fixed term, the parties as well as the expert are informed regarding the object of the expertise and the questions that must be answered by the expert, and they are told that they have the option to make comments on these questions and that they can ask for their modification or completion. The parties are also informed of the fact that they have the possibility to solicit the appointment of an expert suggested by each of them, who will take part in the conduct of the expertise.

After investigating the objections and requests completed by the parties and the expert, the criminal prosecution body or the court of law will notify the expert of the time span in which the expertise is to be carried out, notifying him at the same time if the parties are to participate in its performance.

Offenses likely to require accounting expertise in solving the case

There are certain facts provided as crimes by the Criminal Code, in the investigation and judgment of which, the incidence of accounting expertise is higher. The reason why these crimes are likely to require accounting expertise in order to solve them is the fact that they fall under the category of crimes against patrimony, so they have a pronounced economic character.

A. Fraudulent management

Fraudulent management is defined by the New Criminal Code as "causing damage to a person, throughout the administration or preservation of his assets, by the one who has or must take care of the administration or preservation of those assets" (The new Criminal Code, Special Part, Title II, Chapter III. Offenses against patrimony through breach of trust, art. 242, para. (1)). The penalty applied for committing the crime is also regulated, which is imprisonment from 6 months to 3 years or a fine. The material object of this crime is represented by any kind of assets or patrimonial values, movable or immovable, corporeal or incorporeal, that enter into a person's patrimony. The particularity element is that the agent has in administration or preservation a universality of goods or a part of a universality and not goods *ut singuli*. This universality of goods must be in the possession of the active subject. The objective side consists in causing damage both through an action and through an omission produced during administration.

The deed also has two aggravated forms, namely: "When the deed provided for in para. (1) was committed by the judicial administrator, by the liquidator of the debtor's assets or by their representative or deputy, the penalty is imprisonment from one to 5 years." (The new Criminal Code, Special Part, Title II, Chapter III. Offenses against patrimony through breach of trust, art. 242, para. (2)), and paragraph 3 provides that "The facts provided for in paragraph (1) and para. (2) committed in order to acquire a patrimonial benefit are punishable by imprisonment from 2 to 7 years" The new Criminal Code, Special Part, Title II, Chapter III. Offenses against patrimony through breach of trust, art. 242, para. (3)). The criminal action is initiated upon the prior complaint of the injured person.

B. Deception in Basic Form

Art. 215 of the Criminal Code criminalizes "Misleading a person by presenting a false fact as true or a true fact as false, in order to obtain an unjust patrimonial benefit for oneself or for another and if damage has been caused " (The new Criminal Code, Special Part, Title II, Chapter III. Offenses against patrimony through breach of trust, art. 244, para. (1)), noting at the same time

that it is punishable by imprisonment from 6 months to 3 years. There are thus a series of conditions that must be met in order to meet the constituent elements of this crime:

- ✓ there must be a misrepresentation, materialized in an action that has the effect of creating a distorted image of reality in the mind of the deceived, a premise that causes him to act injuriously for himself;
- ✓ the misleading action is carried out with the aim of the agent acquiring an unfair patrimonial benefit;
- ✓ to cause damage. Practically, in the case of fraud, the victim is determined to cause damage to himself, by remitting an asset, by unjustified payment of a service, renouncing a right, etc.).

The aggravated form exists when the fraud is "committed by using false names or qualities or by other fraudulent means, it is punishable by imprisonment from one to 5 years. If the fraudulent means constitutes a crime by itself, the rules on the concurrence of crimes shall apply." (The new Criminal Code, Special Part, Title II, Chapter III. Offenses against patrimony through breach of trust, art. 244, para. (2)). It is also provided that the reconciliation of the parties removes the criminal liability.

C. Embezzlement

Art. 295 of the New Criminal Code criminalizes "The appropriation, use or trafficking by a public official, in his own interest or for another, of money, valuables or other assets that he manages or administers is punishable by imprisonment from 2 to 7 years and the ban of exercising the right to hold a public office." (The new Criminal Code, Special Part, Title V, Chapter II. Offenses at work, art. 295, para. (1)). The active subject is a special one, namely the civil servant or any other person who exercises a task for the benefit of a natural person provided for in art. 175 para. (2) NCP or for the benefit of any other legal entity.

There are several ways in which the act can be committed, these being:

- ✓ Appropriation - consists in stealing that good or by disposing of that good;
- ✓ Use - involves the use of an asset in personal interest without the agent pursuing its appropriation;
- ✓ Trafficking - consists in temporarily removing the asset from management and using it for illicit speculative purposes.

In order to achieve typicality, it is necessary to produce a damage. This consists in the value of the property appropriated or the difference between the value of the property before use or trafficking and the value after the cessation of use or trafficking. The act is consummated at the time of the damage, the attempt being criminalized. The crime of embezzlement has an aggravated form when it produced particularly serious consequences.

Conclusions

Next, we will present a series of conclusions regarding the most important points of this paper. I believe that the presentation of the conclusions brings more clarity regarding the chosen topic to the extent that they are presented in relation to the two categories of accounting professionals analyzed under the spectrum of ethical criteria and the obligations arising from their status.

Accounting expertise is of particular importance in economic and social life due to the frequency with which it is used. Extrajudicial accounting expertise is often used by economic actors in order to clarify certain situations regarding certain operations or the economic and financial status of the company. Thus, extrajudicial accounting expertise contributes to decision-making and the internal organization of companies, doing so based on well-documented findings made by accounting experts. As for forensic accounting expertise, they have a high frequency as a means of evidence in civil and criminal trials because they offer a better view of the case and help the courts to achieve their goals, the correct resolution of the trial. The reasons why the courts have particular

confidence in the accounting expertise are that they have an objective character, relying only on supporting documents interpreted using the legislation in force.

Accounting expertise, in order to be used and have a positive effect on economic and legal activity, must be correctly drawn up and be based only on real data that the expert must fully understand and take into account at the time formulating conclusions. It is important that the accounting expert does not abuse the trust that economic actors and judges have, but nevertheless, the extent to which the expertise will be useful is also closely related to the way in which its objectives are formulated and the limits that the expert has during its performance.

With regard to the objectives of the judicial accounting expertise, it is to provide information of an economic-financial nature with the aim of establishing the truth necessary for the thorough and legal solution of the cases regarding the investigated and investigated or judged facts, confirm or deny the findings of the control regarding damages, deviations, deficiencies, lacks and intervenes as evidence administered by the criminal investigation and court bodies, in order to convince the reality and the conditions of the appearance of the damage, deficiency, deviation. The success with which the accounting expertise fulfills these objectives depends to a large extent on the respect by the accounting expert of the principles regarding his personal qualities. Thus, the accounting expertise must be carried out with independence and objectivity on the part of the expert, in compliance with the technical and professional norms, and during its preparation the expert must demonstrate a professional and deontological behavior appropriate to the norms in force.

The importance of expertise is also revealed by its recipients. The criminal investigation bodies and the Prosecutor's Office, as well as the courts, are recipients who request exigency and give the measure of its importance through the prism of the cases to which the requested expertise contributes. The problems that may arise in economic, social or legal life may be among the most complex or inaccessible to the understanding of people without specialized training in the field. As a result of this reality, it also becomes normal to consult the expert who comes to help the applicants for the expertise, among them are the actors from the economic sphere as well as the criminal investigation bodies or the courts. Judicial bodies can use accounting expertise to find out the truth in certain circumstances and for a correct resolution of the case and establishing the damage if necessary, while managers use the information provided by means of financial statements by virtue of making decisions about the steps to follow next.

The use of expertise as evidence in court has both undeniable advantages and some disadvantages. Disadvantages of using expertise as evidence include:

- Accounting experts are accomplished professionals who have in-depth and well-grounded knowledge in this field;

- In order to reduce the risk of misrepresentation of expertise carried out in exchange for material benefits additional to the fee received or claimed by experts, they can be accused of bribery, a fact that positively influenced the number of these situations actually encountered;

- For the deviations that experts commit regarding the performance of their professional activity, they can be sanctioned depending on the type of deviations they commit, being liable for disciplinary, civil and even criminal charges;

- The quality of the expertise is related to the level of professional training of the experts which, thanks to the training courses and the periodic checks carried out by CECCAR, is ensured to be at the highest level;

- Considering the ethical and professional conduct of the experts, they must be fair, honest, sincere in the execution of the works, have an impartial behavior, express themselves freely against any interest incompatible with their integrity and objectivity, keep professional secrecy, to comply with the technical and professional norms in the performance of the works, to maintain and develop his level of professional competence, to know accounting and commercial law well, to refrain from any immoral conduct that may harm the profession and last but not least to bring together qualities

such as: probity, impartiality, patience, prudence, serious judgment, intelligence and to answer only the questions that fall within his competence;

- The method of carrying out the accounting expertise and drawing up the expert report is thoroughly regulated by the legal norms that thus ensure a high quality of the expertise and assure their recipients regarding the correctness of their preparation.

It is inevitable that accounting expertise as a means of evidence in court does not present disadvantages or risks, among which are:

- There is a risk that due to the freedom that the courts grant to expertise in terms of its objectives, the possibility of formulating new objectives and as a result of the fact that other experts can be appointed and order additional expertise, the courts can make subjective decisions based on on the expertise chosen by them;

- In the case of delegation of experts, when it is done by the courts, it can be done subjectively and according to preferences;

- Since it is an activity with a onerous title through which the expert is remunerated for the work and the activity he carries out in order to draw up the expertise, there is the possibility that they may request or receive economic benefits higher than those established as a fee and thus, implicitly, the risk that the expertise drawn up distorts the truth and influences the smooth running of justice.

References

1. Chychyla, R., Leone, A. J., & Minutti-Meza, M. (2019). Complexity of financial reporting standards and accounting expertise. *Journal of Accounting and Economics*, 67(1), 226-253.
2. Commercial companies Law no. 31/1990 updated <https://lege5.ro/Gratuit/gy4diobx/legea-nr-31-1990-privind-societatile-comerciale>
3. Constantin, S. B. (2020). Studii de caz privind expertizele contabile în cauze comerciale. *CECCAR Business Review*, 1(07), 56-63.
4. Fodor, M. (2019). Proba prin rapoartele de expertiză în procesul civil (I). *Revista „Dreptul”*, (12), 77-117.
5. Gurin, V. (2019). Aspecte metodologice în expertiza judiciar-contabilă. sarcinile, obiectivele și metodele de cercetari aplicate la efectuarea expertizei contabile. *Legea și Viața*, 328(4), 19-24.
6. Power, M., & Laughlin, R. (1996). Habermas, law and accounting. *Accounting, Organizations and Society*, 21(5), 441-465.
7. Succurro, F. E. (2022). Expertiza contabilă judiciară–atribut al profesiei contabile. *CECCAR Business Review*, 3(4), 61-65.
8. Suddaby, R., Saxton, G. D., & Gunz, S. (2015). Twittering change: The institutional work of domain change in accounting expertise. *Accounting, Organizations and Society*, 45, 52-68.
9. The New Civil Procedure Code, <https://lege5.ro/gratuit/gyztaojtgy/codul-de-procedura-civila-din-2010>
10. Țirlea, M. R. (2018). Din practica economică: Ecpertiza contabilă judiciară. *Revista Univers Strategic*, 9(35), 125-139.
11. Wynne, B. (2008). Elephants in the rooms where publics encounter “science”? A response to Darrin Durant, “Accounting for expertise: Wynne and the autonomy of the lay public”. *Public understanding of science*, 17(1), 21-33.