

UDC 343.14 + 343.135

DOI <https://doi.org/10.32849/2663-5313/2024.3.17>**Alexandra Hryshchenko,***PhD in Law, Assistant Professor at the Department of Law, Philosophy and Political Science, T.H. Shevchenko National University "Chernihiv Colehium", Hetman Polubotko Street, 53, Chernihiv, Ukraine, postal code 14013, pravo3000@bigmir.net***ORCID:** orcid.org/0000-0002-3725-8094

Hryshchenko, Alexandra (2024). Documents as sources of forensic information. *Entrepreneurship, Economy and Law*, 3, 95–100, doi <https://doi.org/10.32849/2663-5313/2024.3.17>

DOCUMENTS AS SOURCES OF FORENSIC INFORMATION

Abstract. Purpose. The purpose of the article is to give comprehensive characteristics of documents as sources of forensically significant information. **Results.** The scientific article is devoted to the study of the use of documents as independent sources of evidence in criminal proceedings. It is proved that documents are considered sources of forensically significant information. It is indicated that an electronic document will be recognized as evidence in a criminal case. In addition, the author proves that it is necessary to distinguish between documents – material evidence and documents – sources of evidence. It is noted that the source of evidence of a document is the author of the document. In addition, it is substantiated that documents as sources of evidence in criminal proceedings can be classified by the nature of the origin of the documents as official or personal. **Conclusions.** It is stated that documents as independent sources of evidence are important precisely for their content. It is proved that documents are considered sources of forensically significant information. It is emphasized that an electronic document will be recognized as evidence in a criminal case if: it served as an instrument of a crime; retained traces of a crime; is the subject of a crime; is property, securities or other valuables obtained as a result of criminal acts or acquired by criminal means; may serve as a means for detecting a crime and establishing circumstances in a criminal case; if the information set forth in it is important for establishing circumstances that are subject to proof in a criminal case. It has been proven that it is necessary to distinguish between documents – material evidence and documents – sources of evidence. After all, the evidentiary value in documents – sources of evidence, has only content, however, documents – material evidence are also significant in the case in terms of their appearance, time, place, and their discovery. It has been analyzed that documents – sources of evidence can be replaced, documents - material evidence cannot be replaced by others, since they are unique. However, documents as sources of evidence can be copied with subsequent procedural processing. It has been established that the source of evidence of a document is the author of the document. It has been characterized that documents as sources of evidence in criminal proceedings can be classified by the nature of the origin of the documents (official and personal); According to the method of recording information, documents can be (written, graphic documents, photo documents, video recording (video libraries), sound recording).

Key words: documents as sources of evidence, documents – material evidence, documents – sources of evidence, electronic document, criminal proceedings, means of detecting a crime.

1. Introduction

A document that is considered a source of evidence in a criminal trial is a material object that is in a fixed form and directly reflects information about facts and events that have criminal procedural significance and are expressed using signs and allow for reproduction in the form of images or oral language, transmission and interpretation of human thought. A document is drawn up by a certain person, enterprise, institution, organization or received in accordance with the established procedure by investigative bodies or a court and can be attached to the materials of criminal proceed-

ings. Today, electronic documents are also used as sources of evidence. Nowadays, domestic regulatory and legal documents are aimed at choosing a democratic course for the development of norms in all branches of law. The Criminal Procedure Code of Ukraine (dated April 13, 2012) in paragraph 4 (articles 98–100) (Kryminalnyi protsesualnyi kodeks Ukrainy, 2012) fixed the concepts and features of documents and material evidence. Domestic lawyers substantiated that with this code the legislator regulated such a norm as the recording of information. It was stated that the material carriers of information that are recorded are documents.

N. Onishchenko emphasizes the need for the interconnection of the legal activity of members of civil society and their awareness of the law, as well as legal education and prognostic research of the potential of legal awareness (Onishchenko, 2024).

S. Hrytsai notes that the goal of law as a science is to put new knowledge at the service of humanity. The scientist considers the basis of this knowledge to be the identification of patterns, laws as stable, recurring phenomena that entail certain consequences (Hrytsai, 2024).

We must state that law enforcement activities in the investigation and resolution of criminal proceedings are directly related to the collection, verification and evaluation of evidence (or procedural sources). Most of this evidence is documents. The Criminal Procedure Code of Ukraine (dated April 13, 2012) considers documents to be an independent source of evidence. Documents, like other procedural sources, are subject to evaluation, verification and use in the process of proving on general grounds. Documents are created by a person and, at the same time, represent elements of social relations, as is customary in the legal field of Ukraine. Scientists state that documents contain some specific information, and are also material objects. That is, they are tangible carriers of information in forensics.

The theoretical foundations of this study are scientific research by domestic scientists who analyze the problems of using documents as procedural sources of evidence in criminal proceedings. These are the works of the following scientists: V. Goncharenko, Yu. Groshevy, V. Zelenetsky, A. Ishchenko, V. Ishchenko, N. Karpov, E. Kovalenko, V. Kolmakov, G. Matusovsky, M. Mykheenko, V. Nora, M. Pohoretsky, M. Sirohi, L. Udalova, V. Shepitko, M. Shumyla, O. Shylo, S. Stakhivsky, V. Tertyshnyk and others.

The purpose of the article is a comprehensive characterization of documents as sources of forensically significant information.

2. The concept of a document as a source of evidence in criminal proceedings

For this study, it is necessary to consider the concept of a document as a source of evidence in criminal proceedings. Law enforcement experts justify that documents in criminal proceedings are used subject to compliance with the requirements of the criminal procedural law. Documents must have the necessary form and content in order to be admissible for use in criminal proceedings.

Distinguishing the concept of a document allowed for use in criminal proceedings, we must emphasize the definition of the concept of «document». The Large Explanatory Dic-

tionary of the Modern Ukrainian Language defines «the concept of «document» as, firstly, a business paper that certifies a certain legal fact and confirms the right to something and serves as proof of anything; secondly, a written work, a document, an account as evidence of something historical or important; thirdly, a special meaning – a formatted paper data carrier that is filled in manually or automatically; fourthly, a written certificate that officially confirms a person» (Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy, 2002, pp. 236). We note that such a definition is not normative.

V. Demianchuk provides a definition that is formulated as follows: «A document as a source of evidence in a criminal trial is understood as a material object that is in a fixed form and directly reflects information about facts and events that have criminal procedural significance and are expressed using signs and allow for the reproduction in the form of images or oral speech, transmission and interpretation of human thought. A document can be drawn up by a certain person, enterprise, institution, organization or received in accordance with the established procedure by investigative bodies or a court and attached to the case files» (Demianchuk, 2008, pp. 63–67).

Domestic researcher N. Rohatynska highlights some features of the criminal procedural concept of a document as a source of evidence: «a document is always a material object; a document is a source of evidentiary information when it records information about events and facts that are important for the correct resolution of a criminal case; the content of the document must meet the requirements of: legality, reasonableness, fairness, consistency; the information is certified or described by the bodies or persons from whom the document originates, within the limits of their official competence or, if the document originates from a citizen, within the limits of their authority and actual information; the document must be obtained in accordance with the established criminal procedural procedure by the investigative bodies or the court and attached to the case materials» (Rohatynska, 2012, pp. 349–354).

We agree with these highlighted features and rely on such reasoning in our study of the document as a source of evidence in criminal proceedings.

When substantiating documents as sources of forensically significant information, we must state that the source of evidence is the author of the document. According to A. Slobodzian, it is precisely «the legal status of the source of evidence in this case is determined by the competence of the author of the document, which is limited to the boundaries of his functions»

(Slobodzian, 2014, pp. 185). Documents are considered official if they come from state bodies and organizations (audit reports, documentary checks, etc.). The scientist notes that agreements, receipts, and other acts related to the exercise of rights and obligations are also considered documents if their authorship belongs to citizens (Slobodzian, 2014, pp. 185).

Documents are considered not only those written in letters and numbers, but also those written in telegraph font, shorthand signs, conventional images, drawings, schemes, projects, models, plans, maps, drawings, tables, graphs, etc. As for the technology by which information can be recorded in documents, it can be diverse. As an example, computer equipment that displays information on a hard disk or hard drive, memory cards, etc. Researchers of this problem justify that the use of computer technologies changes the recording of documents. Today, many new types of documents appear (as a rule, on non-traditional material carriers).

3. Classification of documents as sources of evidence in forensics

Let us briefly consider the classification of documents as sources of evidence in forensics. Let us analyze the features by which documents are classified as sources of evidence in criminal proceedings. We have two groups of such documents. The first group includes official documents received from enterprises, organizations and institutions, local governments, officials of state authorities and others. The most important of them are audit reports, specifications, certificates and others. The requirements for official documents are as follows: the form of the document must contain the necessary mandatory details (surname, name and patronymic of the official or official who prepared it, date and place of preparation, the list of information established for this document, special forms, registration number, signatures, seals, stamps, covering letters and others) their content is determined by the competence of the official or official of the relevant body, who acts within the limits of the powers granted to him. The second group is considered by scientists to be personal documents. These are those received from individuals: telegrams, notes, letters and others. Documents of this group can be both anonymous and contain an indication of the author and his personal data (Kovalenko, Udalo, 2013, pp. 136).

There is also a group of documents classified by the method of recording information. They are divided into five subgroups (A. Slobodzian): «1. Written documents (certificates, specifications) – all handwritten and typewritten documents produced using office equipment. 2. Graphic (diagrams, graphs, drawings) – doc-

uments in which the image of objects is transmitted using lines, strokes, chiaroscuro. 3. Photographic documents (photo cards); film documents (films). 4. Video recording (video libraries). 5. Sound recording – phonograms as such, which are created using any sound recording system and reproduce sound information, for example, recorded during meetings, sessions and other» (Slobodzian, 2014, pp. 186).

According to the reasoning of V. Kovalenko, L. Udalo, D. Pysmenny, documents that constitute evidence are sufficient when «in their totality they enable the investigator, prosecutor, investigating judge, court to establish all the circumstances of the criminal proceedings provided for by law at the level of knowledge about them that is necessary for making a lawful and justified procedural decision» (Kovalenko, Udalo, 2013, pp. 127).

We agree with the opinion of domestic scientists Yu. Hroshevy, S. Stakhivskyi that the ratio of documents that are recognized as sources of evidence and documents that are material evidence in the procedural regime of recording their appearance, storage and decision of fate (as documents) «essentially differs from the procedural regime established by law for material evidence». That is why it is necessary in each specific case to determine «which source of evidence is present – a document or material evidence». Yu. Hroshevy, S. Stakhivskyi emphasize the distinction between documents and material evidence. Researchers proceed from the list of features that individual types of material evidence may have in this particular criminal proceeding. These scientists emphasize that documents become material evidence. This, in their opinion, is established when they can be a means of establishing the circumstances of the case, and also have one of the features of material evidence, which must be taken into account in criminal proceedings (Hroshevyi, Stakhivskyi, 2006, pp. 134).

In this case, it is necessary to introduce a distinction between documents. These can be independent sources of evidence, as well as documents that belong to material evidence by the nature of their formation, by content, by the method of their procedural registration in a criminal case. It is important to rely on the set of such features that are inherent in documents (which are independent sources of evidence). Forensic science emphasizes the following features: officiality, validity, the conditionality of their evidentiary force exclusively by the meaning of the content, thanks to which the thing becomes a document-evidence. We agree with the statement that the distinction between documents as an independent type of sources of evidence

and documents that are material evidence should be made not by any single feature, but by the set of their characteristic properties.

Domestic scientist S. Hongalo also distinguishes documents (as documents – sources of evidence from documents – material evidence). The scientist substantiated that: first, «the information recorded in documents – material evidence differs from the information contained in «other documents» in terms of their procedural status»; second, «documents – sources of evidence can be replaced, while documents – material evidence cannot be replaced by others, due to the fact that the changes that occurred to them, related to the event of the crime and the traces reflected in them – are unique»; third, «the evidentiary value in documents – sources of evidence has only content, and their form has an auxiliary meaning»; we also emphasize that, in our opinion, documents – material evidence are significant in the case by the place, time of their discovery and their appearance. Fourthly, «a document – a source of evidence contains information consisting of a description of the event of a crime or the facts of its commission using writing or other conventional symbolic codes, and a document – material evidence fixes not a description of the material traces of a crime or the fact of its commission, but the traces of the crime themselves that were preserved on it»; the ratio of documents – evidence and material evidence proves that documents as sources of evidence can be copied with subsequent procedural processing, however, material evidence is almost always unique and unrepeatable and plays a much greater role in criminal prosecution (Honhalo, 2010, pp. 579–581). In any document as an independent source of evidence, its content at the time of criminal proceedings is important. Therefore, it is necessary to distinguish between documents as sources of evidence and documents as material evidence.

For our study, it is necessary to analyze the procedural procedure for providing and storing documents as sources of evidence. Let us characterize the features of providing documents (according to V. Pavlyuk) (Pavlyuk, 2013, pp. 284–287).

According to Part 3 of Article 99 of the Criminal Procedure Code of Ukraine, a party to criminal proceedings, a victim, a representative of a legal entity, in respect of which proceedings are being conducted, «are obliged to provide the court with the original document. The original document is the document itself, and the original of an electronic document is its reflection, which is given the same meaning as the document. In the absence of the original document, its duplicate is submitted. A dupli-

cate of a document (a document produced in the same way as its original) may be recognized by the court as the original document». It is worth noting that other information may be recognized as admissible to confirm the content of a document if: «the original document is lost or destroyed, except for cases where it is lost or destroyed through the fault of the victim or the party providing it; the original document is in the possession of one of the parties to criminal proceedings, and it does not provide it at the request of the other party; the original document cannot be obtained through available legal procedures» (Kryminalnyi protsesualnyi kodeks Ukrainy, 2012).

The question of special confiscation and the fate of documents that have been submitted to the court often arises. This issue is resolved by the court when adopting a court decision that ends criminal proceedings. The legislator notes that such documents must be stored until the decision enters into legal force. In the event of the closure of criminal proceedings by an investigator or prosecutor, the question of special confiscation and the fate of documents is resolved by a court decision on the basis of a relevant petition, which is considered in accordance with Articles 171-174 of the Criminal Procedure Code of Ukraine. It is necessary to rely on the thesis that «in this case, documents that are material evidence remain in the criminal proceedings materials throughout the entire period of their storage» (Yashenko, 2013, pp. 293).

4. Conclusions

It is stated that documents as independent sources of evidence are important precisely because of their content. It is indicated that documents are considered sources of forensically significant information. It is emphasized that an electronic document will be recognized as evidence in a criminal case if: it served as an instrument of crime; retained traces of a crime; is the subject of a crime; is property, securities or other valuables obtained as a result of criminal acts or acquired by criminal means; can serve as a means for detecting a crime and establishing circumstances in a criminal case; if the information set forth in it is important for establishing circumstances subject to proof in a criminal case. It is proved that it is necessary to distinguish between documents – material evidence and documents – sources of evidence. After all, the evidentiary value in documents – sources of evidence has only content, however, documents – material evidence are also significant in the case in terms of their appearance, time, place, and their discovery. It is analyzed that documents – sources of evidence can be replaced, documents – physical evidence cannot be replaced by others, since they are unique.

However, documents as sources of evidence can be copied with subsequent procedural registration. It is stated that the source of evidence of a document is the author of the document. It is characterized that documents as sources of evidence in criminal proceedings can be classified by the nature of the origin of documents (official and personal); by the method of recording information, documents can be (written, graphic documents, photo documents, video recording (video libraries), sound recording).

We consider the study of procedural possibilities in pre-trial investigation and in court proceedings when resolving the case on the merits to be a prospect for further scientific research.

References

- Demianchuk, V.A.** (2008). Zastosuvannya poniatia «dokument» u kryminalnomu protsesi. [Application of the concept of «document» in criminal proceedings]. *Pravova informatyka*, 2 (18), 63–67 [In Ukrainian].
- Honhalo, S.I.** (2010). Pro spivvidnoshennia dokumentiv-dokaziv ta rechovykh dokaziv. [On the relationship between documentary evidence and physical evidence]. Zbirnyk naukovykh statei [Collection of scientific articles]. za mat. VII Mizhnarodnoi naukovo-praktychnoi konferentsii, «Aktualni pytannia reformuvannia pravovoi systemy Ukrainy», (4-5 chervnia 2010 r.). Luts'k: Volynska oblasna drukarnia, 579–581 [In Ukrainian].
- Hroshevyi, Yu.M., Stakhivskiy, S.M.** (2006). Dokazy i dokazuvannia u kryminalnomu protsesi: [Evidence and substantiation in criminal proceedings]: naukovo-praktychnyi posibnyk. [scientific and practical guide]. Kyiv: KNT, Vydavets Fursa S.Ia. [In Ukrainian].
- Hrytsai, S.O.** (2024). Obiekt i predmet yurydychnoi nauky: sutnist, zmist, vyznachennia, spivvidnoshennia. [Object and subject of legal science: essence, content, definition, correlation]. Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy. / Redkol.: V. Zhuravel ta in. Kharkiv: Pravo, 31, 4, 27–45. DOI: 10.31359/1993-0909-2024-31-4-27. URL: https://pravo-izdat.com.ua/index.php?route=product/product/download&product_id=5459&download_id=1916&srsId=AfmBOootqNn2GLxZX-r0EEDoJ4aprR4r5nYx6MiRbxNDsK8cI0-waMzp8 [In Ukrainian].
- Onishchenko, N.M.** (2024). Pravovy rozvytok ta pravoznavchi zapyty suspilstva. [Legal development and legal demands of society]. Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy. / Redkol.: V. Zhuravel ta in. Kharkiv: Pravo, 31, 4, 15–26. DOI: 10.31359/1993-0909-2024-31-4-15. URL: https://pravo-izdat.com.ua/index.php?route=product/product/download&product_id=5459&download_id=1916&srsId=AfmBOootqNn2GLxZX-r0EEDoJ4aprR4r5nYx6MiRbxNDsK8cI0-waMzp8 [In Ukrainian].
- Pavliuk, V.V.** (2013). Dokumenty v kryminalnomu provadzhenni. [Documents in criminal proceedings]. Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav, 2, 284–287 [In Ukrainian].
- Rohatynska, N.Z.** (2012). Znachennia dokumenta yak dzherela dokaziv u kryminalnomu sudochynstvi. [The value of a document as a source of evidence in criminal proceedings]. *Universytetski naukovyi zapysky*, 3, 349–354 [In Ukrainian].
- Slobodzhian, A.** (2014). Dokument yak dzherelo dokaziv u kryminalnomu provadzhenni. [Document as a source of evidence in criminal proceedings]. Naukovyi visnyk Natsionalnoi akademii prokuratury Ukrainy, 1, 184–190 [In Ukrainian].
- Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy.** [Large Explanatory Dictionary of the Modern Ukrainian Language]. (2002). / Uklad. i holov. red. V.T. Busel. Kyiv, Irpin: VTF «Perun» [In Ukrainian].
- Yashenko, A.M.** (2013). Spetsialna konfiskatsiia: deiaki aspekty zastosuvannia. [Special confiscation: some aspects of application]. *Chasopys Kyivskoho universytetu prava*, 4, 291–294 [In Ukrainian].

Олександра Грищенко,

кандидат юридичних наук, старший викладач кафедри права, філософії та політології, Національний університет «Чернігівський колегіум» імені Т. Г. Шевченка, вулиця Гетьмана Полуботка, 53, Чернігів, Україна, індекс 14013, pravo3000@bigmir.net

ORCID: orcid.org/0000-0002-3725-8094

ДОКУМЕНТИ ЯК ДЖЕРЕЛА КРИМІНАЛІСТИЧНО ЗНАЧИМОЇ ІНФОРМАЦІЇ

Анотація. Метою статті є комплексна характеристика документів як джерел криміналістично значимої інформації. **Результати.** Наукова стаття присвячена дослідженню використання документів як самостійних джерел доказів у кримінальному провадженні. Доведено, що документи вважаються джерелами криміналістично значимої інформації. Вказано, що електронний документ буде визнаватися доказом у кримінальній справі. Крім того, доведено, що необхідно розрізняти докумен-

ти – речові докази, та документи – джерела доказів. Зауважено, що джерелом доказу документа є автор документа. Крім того, обґрунтовано, що документи як джерела доказів у кримінальному судочинстві можна класифікувати за характером виникнення документів як офіційні або особисті.

Висновки. Констатовано, що документи як самостійні джерела доказів важливі саме своїм змістом. Доведено, що документи вважаються джерелами криміналістично значимої інформації. Наголошено, що електронний документ буде визнаватися доказом у кримінальній справі у випадку: якщо він виступав знаряддям злочину; зберіг на собі сліди злочину; є предметом злочину; є майном, цінним папером чи іншою цінністю, отриманою в результаті злочинних дій або нажитою злочинним шляхом; може виступати засобом для виявлення злочину та встановлення обставин по кримінальній справі; якщо викладені в ньому відомості мають значення для встановлення обставин, що підлягають доказуванню по кримінальній справі. Доведено, що необхідно розрізняти документи – речові докази, та документи – джерела доказів. Адже, доказове значення у документах – джерелах доказів має лише зміст, проте, документи – речові докази значимі у справі також за своїм зовнішнім виглядом, часом, місцем, їх виявлення. Проаналізовано, що документи – джерела доказів можуть бути заміінними, документи – речові докази не можуть бути замінені на інші, оскільки є унікальними. Проте, документи як джерела доказів можуть копіюватися із наступним процесуальним оформленням. Констатовано, що джерелом доказу документа є автор документа. Схарактеризовано, що документи як джерела доказів у кримінальному судочинстві можна класифікувати за характером виникнення документів (офіційні та особисті); за способом фіксації відомостей документи можуть бути (письмові, графічні документи, фотодокументи, відеозапис (відеотеки), звукозапис).

Ключові слова: документи як джерела доказів, документи – речові докази, документи – джерела доказів, електронний документ, кримінальне провадження, засіб для виявлення злочину.

The article was submitted 13.11.2024

The article was revised 04.12.2024

The article was accepted 24.12.2024