

DOI: <https://doi.org/10.32353/khrife.1.2019.08>

UDC: 343.98

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## **IMPROVEMENT OF FORENSIC SUPPORT FOR JUSTICE: THEORETICAL, LEGAL AND ORGANIZATIONAL ASPECTS**

*The article purpose is to determine conceptual foundations and directions of the formation of the modern paradigm of forensic justice.*

*The problems affecting the quality and effectiveness of forensic examinations include the following: untimely arrival of forensic experts at the scene that subsequently often leads to unsuitability of research objects; lack of an adequate arsenal of forensic methods; lack of high-tech equipment that can be used to perform certain types of forensic researches; insufficient generalizations of international positive and negative experience for organizing forensic activities; imperfection of legal acts regulating forensic activities, etc.*

*In order to solve the problems of timely receipt of research objects by a forensic expert, in addition to resolving issues of their prompt withdrawal and providing them for a forensic examination, it is necessary to update the development of theoretical and applied principles for the technology of performing certain types of traditional and innovative forensic researches; to develop a developed system of scientific and practical seminars (trainings) including at the appropriate training grounds in relevant areas of forensic science activity.*

*An important factor in improving the expert provision of justice in Ukraine is consideration of the requirements of European Commission for the Efficiency of Justice (CEPEJ Guidelines) and further cooperation with ENFSI.*

*As an important criterion for the effective development of expert support for justice, one can also single out the need for more precise legislative regulation of guarantees for the provision of forensic expert activity.*

*Implementation of the proposed measures will ensure the forensic expert independence, optimize forensic activities and significantly increase its effectiveness.*

*Keywords: legal proceedings, forensic science, standardization, paradigm, scientific revolution, expertology.*

**Formulation of Research Problem.** A study of the global experience on the effectiveness of justice indicates that one of the means

of creating a system of human rights and freedoms is to formulate a paradigm for the integrated effective use of traditional and new types of judicial expertise based on the active use of the Council of Europe's international legal instruments on justice.

This is not possible without comprehensive research on the basis of a systematic approach to forensic activities.

**Analysis of recent researches and publications.**

First of all, issue relevance proposed for consideration is determined by the need to clarify the contemporary content of the theoretical, legal and organizational paradigm of forensic activity. During the years of Ukrainian independence excluding separate publications<sup>1</sup> and publications, fundamental and applied scientific developments aimed at rethinking ideas about the content of the theoretical foundations of forensic expertise and the use of specific expertise in the legal proceedings were clearly insufficient. The above and requirements of the international community on the standardization of forensic expertise actualize the need to formulate the theoretical and legal foundations of the organizational paradigm of forensic justice.

The analysis of scientific researches in the field of theoretical and legal and organizational and methodical principles of judicial-expert support of justice shows that certain attention is paid to the problems of

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<sup>1</sup> Dyv., napryklad, okremi publikatsii u vypuskakh elektronnoho naukovoho periodychnoho vydannia «Ekspert: paradyhmy yurydychnykh nauk i derzhavnoho upravlinnia»; *Simakova-Yefremian E. B.* Do pytannia pro vzaiemozalezhnist yevropeiskykh intehtratsiinykh protsesiv i tendentsii intehtratsii spetsialnykh znan v Ukraini [On the Issue of interdependence of European integration processes and tendencies of integration of special knowledge in Ukraine]. *Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky*. Vyp. 17. Kharkiv : Pravo, 2017. S. 152–158; *Sopilnyk R. L.* Ekspertne zabezpechennia pravosuaddia u konteksti yevrointehratsiinykh protsesiv [Expert Justice in the Context of European integration Processes]: *Kryminalistychnyi visnyk*. №1 (23), 2015. S. 39–44; *Spitsyna H. O., Belevtsova S. O.* Shchodo pytannia formuvannia novitnoi paradyhmy teorii ta praktyky sudovoi ekspertyzy v Ukraini [On the Formation of the Newest Paradigm of Forensic Theory and Practice in Ukraine]. Aktualni pytannia sudovoi ekspertyzy i kryminalistyky : zb. materialiv mizhnarod. nauk.-prakt. konf., prysviachenoï 150-richchiu z dnia narodzhennia Zasl. prof. M. S. Bokariusa (Kharkiv, 18–19 kvit. 2019 r.). Kharkiv : KhNDiSE, 2019. S. 63–65; *Kliuiiev O. M.* Mizhnarodni standarty ta mizhnarodne spivrobitnytstvo u sferi sudovo-ekspertnoi diialnosti v Ukraini [international Standards and international Cooperation in the Field of Forensic Expertise in Ukraine]. Aktualni pytannia sudovoi ekspertyzy ta kryminalistyky : materialy mizhnarod. nauk.-prakt. konf., prysviachenoï 95-richchiu stvorennia Kharkivskoho naukovo-doslidnoho instytutu sudovykh ekspertyz im. Zasl. prof. M. S. Bokariusa (m. Kharkiv, 10–11 zhovtnia 2018 r.). Kharkiv : Pravo, 2018. S. 5–8 [in Ukrainian].

development of theoretical principles of forensic science, methods of conducting certain types of judicial examinations<sup>1</sup>. Creation of a model of forensic activity should be based on the study of historical experience and systematic approach to combating crime<sup>2</sup>. During the years of independence in Ukraine scientists published scientific works and protected dissertations for the degree of Doctor of Law, including the works of I. A. Aliyev (1990)<sup>3</sup>, F. M. Javadov (2001)<sup>4</sup>, A. V. Ishchenko (1995)<sup>5</sup>, S. V. Evdokimenko (2017)<sup>1</sup>, O. M. Moiseev (2011)<sup>2</sup>, I. A.

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<sup>1</sup> *Klymenko N. I. Zahalna teoriia sudovoi ekspertolohii: poniattia i mistse v systemi naukovooho znannia* [he General Theory of Forensic Expertology: Concept and Place in the System of Scientific Knowledge]. *Zb. nauk.prats irpinskoi finansovo-yurydychnoi akademii (ekonomika, pravo)*. Vyp. 2. 2013. S. 101–106 [in Ukrainian].

<sup>2</sup> *Shynkarenko I. R., Spitsyna H. O. istorychni vytoky ta perspektyvy rozvytku teorii ta praktyky sudovoi ekspertyzy* [Historical origins and prospects of the development of the theory and practice of forensic examination] Aktualni pytannia sudovoi ekspertyzy ta kryminalistyky : zb. materialiv mizhnarodnoi naukovo-praktychnoi konferentsii, prysviachenoï 95-richchiu stvorennia Kharkivskoho naukovo-doslidnoho instytutu sudovykh ekspertyz im. Zasl. prof. M. S. Bokariusia (10–11 zhovtnia 2018 r). Kharkiv : Pravo, 2018. S. 20–22; *Shynkarenko I. R., Spitsyna H. O. Shchodo zaprovadzhennia yevropeiskyykh standartiv zabezpechennia prav i svobod liudyny u sudovo-ekspertnii diialnosti* [On the introduction of European standards for the protection of human rights and freedoms in forensic activities]. Aktualni pytannia dosudovoho rozsliduvannia ta tendentsii rozvytku kryminalistychnoi metodyky : tezy dopovidei Vseukrainskoi mizhnarod. nauk.-prakt. konf., 21 lystopada 2018 r. Kharkiv : KhNUVS, 2018. S. 211–213.; *Yevdokimenko S. V. Stanovlennia nauky pro sudovu ekspertyzu: istorychnyi aspekt* [Formation of the science of forensic science: historical aspect] : *Forum prava*. 2009. №2. S. 145–149. URL : [http://www.irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.exe?Z21iD=&i21DBN=UJRN&P21DBN=UJRN&S21STN=1&S21REF=10&S21FMT=njuu\\_all&C21CO M=S&S21CNR=20&S21P01=0&S21P02=0&S21COLORTERMS=0&S21P03=i=&S21STR=EJ000026%2F2009%2F2](http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?Z21iD=&i21DBN=UJRN&P21DBN=UJRN&S21STN=1&S21REF=10&S21FMT=njuu_all&C21CO M=S&S21CNR=20&S21P01=0&S21P02=0&S21COLORTERMS=0&S21P03=i=&S21STR=EJ000026%2F2009%2F2) (data zvernennia 20.08.2018.); *Stolitnii shliakh sudovoi ekspertyzy v Ukraini (1918–2018 rr.)* [Hundred Years of Forensic Examination in Ukraine (1918–2018)] : monohrafiia / avt.-ukl. : O. M. Kliuiev, O. P. Uhrovetskyi, E. B. Simakova-Yefremian ta in.; za red. O. M. Kliuieva. Kharkiv : Zoloti storinky. 2018. S. 7 [in Ukrainian].

<sup>3</sup> *Aliev Ydrys Aly Ohly. Problemy sudebno-ekspertnoi profylaktyky* [Problems of forensic prevention] : avtoref. dys. ... d-ra yuryd. nauk : 12.00.09. Kyev. hos. un-t ym. T. H. Shevchenko. Kyev, 1990. 32 s. [in Russian].

<sup>4</sup> *Dzhavadov Fuad Musa Ogly. Konceptual'nye osnovy razvitiia sudebnoj jekspertizy v sovremennykh usloviyakh* [Conceptual basis for the development of forensic examination in modern conditions]: dis. ... d-ra jurid. nauk : 12.00.09. Kiïv : NAVS Ukraïni, 2000. 373 s. [in Russian].

<sup>5</sup> *Ishchenko A. V. Metodolohichni ta orhanizatsiini problemy rozvytku kryminalistychnykh naukovykh doslidzhen* [Methodological and organizational problems of development of forensic scientific researches]: dys. ... d-ra yuryd.

Petrova (2012)<sup>3</sup>, I. V. Pyrih (2015)<sup>4</sup>, E. B. Simakova-Efremyan (2017)<sup>5</sup>, M. G. Shcherbakovskiy (2016)<sup>6</sup> and other scientists. In addition to the aforementioned works, theoretical and applied questions of the use of special knowledge in the detection and investigation of crimes on the facts of their offenses were considered in 60% of dissertations of forensic science. In the last two years, dissertations have appeared in the field of civil and economic orientation, which deal with the problematic issues of conducting judicial examinations in the framework of these proceedings.

At the same time, the mentioned works do not reveal the whole spectrum of theoretical and procedural and organizational problems in the specified field.

The **Article Purpose** is to determine the directions of formation of the modern paradigm of forensic justice, to identify the problems that need to be solved to ensure the formation of an effective model of judicial expertise based on deepening existing approaches to the complex solution of problems of proceedings and the formation of a modern traditional term

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nauk: 12.00.09. Kyiv : Ukrainska akademiia vnutrishnikh sprav, 1996. 415 s. [in Ukrainian].

<sup>1</sup> *Yevdokimenko S. V.* Sudovo-ekonomichna ekspertyza: teoretyko-metodolohichni zasady i praktyka realizatsii [Forensic and economic expertise: theoretical and methodological foundations and practice of implementation] : avtoref. dys. ... d-ra yuryd. nauk: 12.00.09. Kharkiv : KhNUVS, 2017. 44 s. [in Ukrainian].

<sup>2</sup> *Moisieiev O. M.* Ekspertni tekhnolohii: teoriia formuvannia i praktyka zastosuvannia [Expert Technologies: Formation Theory and Application Practice] : monohrafiia, Kharkiv : Apostyl, 2011. 424 s. [in Ukrainian].

<sup>3</sup> *Petrova I. A.* Teoretyko-pravovi ta orhanizatsiino-metodolohichni zasady rehuliuвання sudovo-tovarnavchyykh ekspertyz spozhyvchyykh tovariv [Theoretical-legal and organizational-methodological principles of regulation of forensic examination of consumer goods] : dys. ... d-ra yuryd. nauk: 12.00.09. Kharkiv : KhNUVS, 2012. 541 s. [in Ukrainian].

<sup>4</sup> *Pyrih I. V.* Teoretyko-prykladni problemy ekspertnoho zabezpechennia dosudovoho rozsliduvannia [Theoretical and applied problems of expert support of pre-trial investigation]: monohrafiia, Dnipropetr. derzh. un-t vnutr. sprav. Dnipropetrovsk : Lira, 2015. 430 s. [in Ukrainian].

<sup>5</sup> *Simakova-Yefremian E. B.* Teoretyko-pravovi ta metodolohichni zasady kompleksnykh sudovo-ekspertnykh doslidzhen [Theoretical and methodological foundations of complex forensic research]: dys. ... d-ra yuryd. nauk: 12.00.09. Kharkiv; Nats. yuryd. un-t imeni Yaroslava Mudroho, 2017. 503 s. [in Ukrainian].

<sup>6</sup> *Shcherbakovskiy M. H.* Teoretyko-metodolohichni ta prakseolohichni zasady sudovykh ekspertyz u kryminalnomu protsesi [Theoretical-methodological and praxeological foundations of judicial expertise in criminal proceedings]: avtoref. dys. ... d-ra yuryd. nauk: 12.00.09. Kharkiv : KhNUVS, 2016. 40 s. [in Ukrainian].

system according to traditional and innovative provisions of forensic theory and practice.

**Main Content Presentation.** Studying the current legislation<sup>1</sup> of the results of previous scientific studies obtained by scientists allows us to state a number of existing problems of theoretical and legal and organizational content regarding the formation of a modern paradigm of forensic expertise in accordance with the standards of the European Union and the creation of a system of forensic justice.

First of all, these are the problems that affect the qualitative and temporal characteristics of the examinations, namely:

- not the timely arrival of specialists and experts at the scene;
- unsuitability of objects for research;
- lack of techniques for conducting forensic researches;
- lack of equipment that can be used for conducting certain types of forensic researches;
- lack of specialized knowledge and professional skills of the staff of the relevant forensic institution on the work on certain types of equipment;
- lack of international reviews of positive and negative experience in the organization of forensic activities;
- lack of normative documents, etc<sup>2</sup>.

The problem, in our opinion, is the problem of access of experts to the scene.

The reasons for this situation are the lack of theoretical and applied developments and measures of a particular focus, namely:

- methodological foundations of technology of conducting certain types of traditional and innovative expert researches;

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<sup>1</sup> Kryminalnyi protsesualnyi kodeks Ukrainy [Criminal procedural code of Ukraine]. Vidomosti Verkhovnoi Rady Ukrainy. 2012. № 3–4. St. 21. URL : [http://search.ligazakon.ua/\\_doc2.nsf/link1/T124651.html](http://search.ligazakon.ua/_doc2.nsf/link1/T124651.html) (data zvernennia 27.05.2019); Pro sudovu ekspertyzu : Zakon Ukrainy. Vidomosti Verkhovnoi Rady Ukrainy (VVR). 1994. № 28. St. 232. URL : <http://zakon2.rada.gov.ua/laws/show/4038-12> (data zvernennia 27.05.2019) [in Ukrainian].

<sup>2</sup> Sviderskyi O. O. Shliakhy podolannia problem provedennia sudovykh ekspertyz (za materialamy uzahalnennia ekspertnoi praktyky) [Ways of overcoming problems of carrying out judicial examinations (according to the materials of generalization of expert practice)]. Aktualni pytannia sudovoi ekspertyzy i kryminalistyky : zb. materialiv mizhnarod. nauk.-prakt. konf., prysviachenoi 150-richchiu vid dnia narodzhennia Zasl. prof. M. S. Bokariusa (Kharkiv, 18–19 kvit. 2019 r.). Kharkiv : KhNDiSE, 2019. S. 93–96, S. 94 [in Ukrainian].

- definition of modern theoretical principles, perspectives and tendencies of the development of forensic theory;
- relatively advanced system of training and training that would be used both in the preparation of a future forensic expert and in the training of practitioners; interdepartmental scientific and practical seminars on relevant areas of forensic expertise, which are conducted in order to establish interaction between judicial experts and law enforcement investigators.

Please note that some work is being done in these areas. In particular, as a positive experience of using polygons and conducting trainings can be called the practice of educational activities at the Yaroslav Mudryi National Law University where the Department of Forensics opened a unique forensic training ground, which is used by the department to ensure the acquisition of future jurists skills in the tsarina videography, trace evidence, forensic ballistics and explosives, other fields of forensic technology, tactics of conducting individual investigators (search) operations, investigating crimes of various kinds etc.

In terms of the organization of scientific and practical seminars it is possible to give examples of conducting by Hon. Prof. M. S. Bokarius Kharkiv Research Institute of Forensic Examinations Interagency Scientific and Practical Seminar for Criminal Police Employees *Problematic Issues of Appointment and Conducting of Forensic examinations* (January 16, 2019) or Interagency Scientific and Practical Seminar *Problematic Issues for Appointment and Conducting of Forensic examinations in Criminal Proceedings for Corruption* (July 12, 2019) etc.

According to the results of the workshop, an appropriate collection of materials was published<sup>1</sup>.

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<sup>1</sup> Dyv.: Osoblyvosti pidhotovky materialiv dlia pryznachennia sudovykh ekspertyz [Features of preparation of materials for the purpose of forensic examinations] : navch. nauchn. posibn. dlia pratsivnykiv pravookhoronnykh orhaniv / uklad. : O. P. Uhrovetyskyi, V. V. Abroskin ta in. / MiuU ; Kharkivskyi naukovo-doslidnyi instytut sudovykh ekspertyz im. Zasl. prof. M. S. Bokarius. Kharkiv : KhNDiSE ; Promin, 2019. 180 s.; Osoblyvosti pidhotovky materialiv dlia pryznachennia ta provedennia sudovykh ekspertyz u kryminalnykh provadzhenniakh za koruptsiinymy zlochynamy [Peculiarities of preparation of materials for appointment and carrying out of judicial expertise in criminal proceedings on corruption offenses] : materialy mizhvidom. nauk.-prakt. seminaru «Problemnii pytannia pryznachennia ta provedennia sudovykh espertyz u kryminalnykh provadzhenniakh za koruptsiinymy zlochynamy» (Kharkiv, 12 lypnia 2019 r.). Kharkiv : KhNDiSE ; Konstanta, 2019, 260 s. [in Ukrainian].

According to the practice and analysis of the opinions of scientists<sup>1</sup>, the next group of problematic issues of forensic examinations is compliance with international standards of expert activity, which are defined by the following European normative acts:

1. Guidelines of the European Commission on the Effectiveness of Justice (hereinafter – CEPEJ Guidelines) on the role of court-appointed experts in the proceedings of Council of Europe member states (adopted at the Commission's 24th plenary session, Strasbourg, 11-12 December 2014)<sup>2</sup>. In Art. 138 of the CEPEJ Guidelines provide that, in accordance with the principles set out in this document, each member state of the Council of Europe must either introduce the proposed legislative rules regarding the rights and responsibilities of experts in litigation, or monitor or check for compliance with existing governing CEPEJ principles set minimum standards for the rules of conduct of experts in this country.

2. Conclusions of the Council and the Plan of future activities, taking into account the developed conclusions of the Council of the European forensic science.

3. Guide to good practices in civil judicial expertise in the European Union: published in October 2015.

The recommendations state that they are the result of more than ten years of research, debate and discussion between stakeholders across Europe for the sake of litigation and increasing the confidence of citizens and businesses in the justice sector, both in EU Member States and in living or working in another country while dealing with cross-border issues. For nearly two years, with the financial support of the European Justice Department (EGLE : Guide to good practices in civil judicial expertise in the European Union), leading judges, lawyers, forensic experts, scholars and legal students regularly held discussions on the main aspects of forensic examinations in the civil process with the aim of

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<sup>1</sup> Dyv., napr.: *Stepanova S. V. Yevropeyski standarty prava na spravedlyvyi sud ta yikh implementatsiia u natsionalne zakonodavstvo Ukrainy: konstytutsiino-pravove doslidzhennia* [European standards for the right to a fair trial and their implementation in Ukrainian national law: a constitutional legal study] : dys. ... kand. yuryd. nauk : 12.00.02. DVNZ «Uzhhorodskiy natsionalnyi universytet», Uzhhorod, 2018. 264 s. [in Ukrainian].

<sup>2</sup> Yevropeyski ta mizhnarodni standarty u sferi sudochynstva, Kyiv, 2015.708 c. Basic Principles on the independence of the Judiciary. United Nations Human Rights. Office of the High Commissioner. URL : <http://www.ohchr.org/EN/ProfessionalInterest/Pages/independenceJudiciary.aspx> (data zvernennia 19.06.2019). [in Ukrainian].

improving the various existing systems and providing a working basis for best practices in Europe<sup>1</sup>.

This requirement becomes relevant in connection with the accreditation of KhRIFE laboratories according to the international standard ISO 17025: *General requirements for the competence of testing and calibration laboratories* and the planning for the current year of accreditation of three more laboratories to this standard, as well as three laboratories to ISO 17020: *Conformity assessment. Requirements for the operation of various types of bodies performing inspection* in the field of crime scene investigation<sup>2</sup>.

According to the specified international normative acts and normative acts of Ukraine, the Research Institute of the Ministry of Justice of Ukraine conducts research in more than 90 forensic area of specializations<sup>3</sup>.

Taking into account the needs of expert practice and in order to expand the types of forensic area of specializations, KhRIFE experts submitted proposals and introduced in accordance with the legislation 6 new types of forensic examinations and 10 forensic area of specializations :

*explosive-technical examination* – area of specialization: research on circumstances and mechanism of anthropogenic explosions; Forensic examination of materials, products, and goods – area of specialization.

Researches on harmful substances pesticides in the environment;

*electrical engineering transport examination* – area of specialization urban electric transport research; *examination of the technical condition of elevators* – area of specialization Research on technical condition of elevators and conditions of their safe operation;

*Gemological examination* – areas of specialization: gemstone

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<sup>1</sup> Chechil Yu. Mizhnarodni standarty sudovo-ekspertnoi praktyky u svitli hlobalizatsiinykh protsesiv [international standards of forensic practice in the light of globalization processes]. Vyp. 2. 2019. URL : [http://vjhr.sk/archive/2019\\_2/part\\_2/28.pdf](http://vjhr.sk/archive/2019_2/part_2/28.pdf) (data zvernennia 19.06.2019) [in Ukrainian].

<sup>2</sup> Navodytsia za: Poltavskiy A. O. Do pytannia shchodo tekhnologii v kryminalistyky skriz pryzmu mizhnarodnoi standartyzatsii [To the Issue of technologies in forensics everywhere through the lens of international standardization]. Aktualni pytannia sudovoï ekspertyzy i kryminalistyky : zb. materialiv mizhnarod. nauk.-prakt. konf., prysviachenoi 150-richchiu vid dnia narodzhennia Zasl. prof. M. S. Bokariusa (Kharkiv, 18–19 kvit. 2019 r.). Kharkiv : KhNDiSE, 2019. S. 133–137 [in Ukrainian].

<sup>3</sup> Dodatok 6 do Polozhennia pro ekspertno-kvalifikatsiini komisii ta atestatsiui sudovykh ekspertiv [Subclause 6 to the Regulation on expert-qualification commissions and certification of ship's experts]: zatv. nakazom Ministerstva yustytzii Ukrainy vid 04.03.2015 № 301/5 (iz zminamy ta dopovnenniamy) [in Ukrainian].



research; diamond research; research on gemstones of organogenic origin; research on semi-precious stones; research of decorative stones; *Forensic veterinary examination* – area of specialization; Forensic veterinary;

Prospective ways of improving the efficiency of forensic justice are the use of innovative technologies developed by scientific institutions of the National Academy of Sciences on scientific, scientific, technical, expert and information and analytical activities.

To this end, the following measures should be implemented based on the use of national scientific and technical potential:

- develop the domestic instrument and technology for human DNA research; equipment for the search for bodies of missing persons under the surface of the earth and in the aquatic environment;

- methods of searching for living persons in different landscape, temperature and weather conditions;

- development of geophysical device for searching buried objects of origin.

Considering the experience of European countries and other countries of the world, one of the areas of joint development of research judicial institutions of the Ministry of Science of Ukraine and research institutions of NASUe may be «Development of innovative technologies for identification of personality and individual characteristics of a person based on the study of gene pools of regions of Ukraine».

This activity should be carried out in cooperation with ENFSI (European Network of Forensic Expertise Network), established in 1995 to improve the exchange of information in the field of forensic expertise and to improve the quality of forensic expertise in the world. There are 17 expert working groups within the ENFSI on different fields and types of forensic examinations. Recently, ENFSI has been recognized by the European Commission as one of the leading forensic organizations.

Membership in the European Network of Forensic Science Institutes (ENFSI) gives new opportunities for international cooperation and communication of forensic experts, as well as allows the use of the experience of the expert institutions of other countries in the development of the expert research system in accordance with the modern achievements of science.

Hon. Prof. M. S. Bokarius Kharkiv Research Institute of Forensic Examinations has been a member of this organization since 2017.

Participation in ENFSI gives prospects for access to European databases, which is essential to improve the efficiency of forensic experts.

Mutual training and advanced training of experts are quite promising in terms of ENFSI membership.

At the annual meeting of the European Network of Forensic Science Institutions (ENFSI) held on May 29-31, 2019 in Rome (Italy), topical issues of fingerprint research were discussed; problems of globalization and internationalization of crime; issues of harmonization of scientific inventions in the field of forensic science and forensic science; the issue of improving the effectiveness of investigations into specific categories and types of crimes; tactical and technical techniques and means of forensic examination; special knowledge as a tool for implementation of modern science achievements in the pre-trial investigation and trial of crimes; discussion questions about conducting various expert studies, etc<sup>1</sup>. Thus, the emergence of new types of expertise and, consequently, the expansion of expert specialties requires the implementation of scientific research in order to formulate a methodology and scientifically sound algorithms for the use of expertise in the relevant proceedings. These studies should be related to the delimitation of the functions and powers of the forensic units of law enforcement agencies and research institutions of judicial examinations with the adaptation of the international standard ISO 21043 on Detection, recording (fixing), collecting (removing), transporting and storage of objects which have potential legal significance). According to the world practice of forensic expert activity, as an important direction of development of expert support of justice, it is possible to emphasize the need for clearer legislative regulation of guarantees for ensuring the activity of a forensic expert.

At present, although a legal expert has legal safeguards to carry out forensic expert activity, they are clearly insufficient to fulfill all of its functions provided for by law.

At the same time, the findings of forensic experts in the vast majority of criminal proceedings and other types of litigation play the role of the most important evidence without which it is practically impossible to resolve a particular case. Instead while performing the functions assigned by law to a forensic expert, as well as the results of a forensic expert's research, he or she is pressured and other unlawful actions in order to persuade the forensic expert to deliver a deliberately false opinion or testimony, refusal to give a conclusion or testimony, etc. There are frequent cases when a forensic expert during the study of the location of the object is subjected to unlawful acts by the parties to the case, the bodies (persons) who appointed the forensic expertise or hired a forensic expert. At the same time, the remedies for the protection of a forensic expert against

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<sup>1</sup> ENFSi Annual Meeting in Rome 29–31 May 2019. Roma: Stampa a cura della Tipografia dell, 2019. 8 p.

unlawful acts and their security are not fully enshrined in the legislation.

So, forensic expert is often summoned as a witness in proceedings in connection with the issues of his forensic examination in violation of the current legislation; during the interrogation, they are pressed against him in cases where the results of the forensic examination do not suit the prosecution or defense party; require a forensic expert to obtain his opinion, which he has provided in other proceedings or in the form of legal proceedings; repeated cases and the use of physical and moral violence, threats against him, his family members.

At the same time, as far as security is concerned, for example, a lawyer (advocate), the Law of Ukraine *On the Bar and Legal Practice* provides a large arsenal of measures to guarantee the performance of advocacy.

In view of the above, we propose to amend the legislation of Ukraine in order to clarify the rules on guarantees of activity of a forensic expert, namely:

I. Amend the Law of Ukraine On Judicial Examination with a new Article 3<sup>1</sup>, with the following wording:

«Article 3 1. Guarantees of activity of forensic expert

1. The professional rights, honor and dignity of a court expert are guaranteed and protected by the Constitution of Ukraine, this Law and other normative legal acts of Ukraine, in particular:

1) any interference and obstacles to the performance of a forensic expert are prohibited;

2) it is forbidden to require from the court expert, as well as from the person for whom the right to engage in forensic activity has been terminated or suspended, to provide information that became known to her during the course of forensic activity.

3) conducting of investigative measures or investigative actions in criminal proceedings concerning the unlawful acts of an expert in the performance of his/her functional duties, which may be performed solely with the permission of the court, shall be carried out on the basis of a court decision made at the request of the Prosecutor General, his deputies, the prosecutor of the Autonomous Republic of Crimea, the region, the city of Kiev and the city of Sevastopol;

4) it is prohibited to inspect, divulge, demand or remove documents related to carrying out forensic expert activity, except in cases provided by law;

5) forensic expert involved in the defense, the prosecution party, investigating judge, court or the participant of the case shall be guaranteed equality of rights, observance of the principles of independence of forensic

activity, principles of competitiveness and freedom in presenting evidence and proving their persuasiveness in any type of justice;

6) the life, health, honor and dignity of the forensic expert and his family members, their property is protected by the state, and encroachment upon them entails the responsibility stipulated by law;

7) forensic expert is guaranteed the right to security while participating in criminal and other types of justice in the manner prescribed by law;

8) it is forbidden to involve a forensic expert in confidential cooperation during the conduct of investigative measures or investigative actions, if such cooperation will be connected or may lead to the disclosure of information that became known to the forensic expert while carrying out forensic activity;

9) interference with the forensic expert communication with the client of forensic examination, carried out in accordance with the procedure established by law is prohibited;

10) it is forbidden to submit the submission to the investigator, the prosecutor, as well as the issuance of a separate court decision regarding the court expert, unless it is proved in the procedure established by law that his conclusion is false, unsubstantiated and goes beyond the competence of forensic expert;

11) it is forbidden to interfere with the position of a forensic expert in providing them with an opinion;

12) a body or officials who have detained a forensic expert who is an employee of a state specialized institution or have applied a preventive measure to it, who are obliged to immediately notify the head of that institution; and in the case of detention of a court expert who is not an employee of a state specialized institution, or the application of a preventive measure to him, shall be obliged to immediately inform the representative of the regional branch of the All-Ukrainian Public Association of Forensic Experts of which he is a member;

13) the notification of suspicion of a court expert in committing a criminal offense committed in the performance of his / her functional duties may be made exclusively by the Prosecutor General, his / her deputy, the prosecutor of the Autonomous Republic of Crimea, the region, the city of Kiev and the city of Sevastopol;

14) it is forbidden to bring to court criminal or other legal responsibility of a court expert (the person in respect of which the right to carry out forensic expert activity has been terminated or suspended) or to threaten the use of liability in connection with the forensic expert activity according to the law;

15) they cannot be grounds for bringing a court expert to legal account of his public statements, statements in the media, unless the professional duties of the court expert are violated;

16) it is forbidden to identify a forensic expert with the client of forensic examination;

17) disciplinary proceedings against a court expert are carried out in a special manner.

The peculiarities of conducting individual investigative and criminal proceedings in relation to a court expert are set out in Part Two of this Article.

2. In the case of a search or inspection of a dwelling, other possession of a forensic expert, premises where he carries out forensic activities, temporary access to things or documents belonging to a forensic expert, or related to the forensic expert's activity, investigating judge, court in its decision without fail specifies the list of things, documents, which are to be found, identified or removed during the investigation or application of the measure of criminal proceedings, and also takes into account the requirements of paragraphs 2-4 parts of the first of this article.

During the search or inspection of the dwelling, other possession of the forensic expert, premises where he carries out forensic activities, temporary access to things and documents belonging to the forensic expert or related to the forensic expert activity, a representative should be present of state specialized institution where a court expert works, or a representative of a regional branch of the All-Ukrainian public association (public organization) of forensic experts, a member of which, is a court expert who does not work except in the cases provided for in the fourth paragraph of this part. In order to ensure the participation of the said representative, an official who will conduct the relevant investigative action or apply a measure of criminal proceedings shall inform in advance the relevant state specialized institution or regional branch of the All-Ukrainian public association (public organization) of judicial experts at the place of such procedural action.

In order to ensure compliance with the requirements of this Law on non-disclosure of information that became known to a court expert during the process of judicial examination during the conduct of the said procedural actions to a representative of a state specialized institution or a representative of a regional branch of an all-Ukrainian public association (public organization) of forensic experts which is a forensic expert is given the right to ask questions, submit observations and objections to the procedure; it shall be indicated in the minutes.

Failure of a representative of a state specialized agency or a representative of a regional branch of the All-Ukrainian public association (public organization) of judicial experts, of which a court expert is a member, subject to early notification of a state specialized institution or regional branch of the All-Ukrainian public association (public organization) of judicial experts impedes appropriate procedural action.

3. Subjects of forensic expertise on a voluntary basis are united in public organizations to protect their rights and professional interests.

4. State authorities, local self-government bodies, their officials and officials in relations with judicial experts are obliged to comply with the requirements of the Constitution of Ukraine and the laws of Ukraine, European Convention on Human Rights (ECHR) on 1950 and the protocols thereto, the consent of which is binding. provided by the Verkhovna Rada of Ukraine, European Court of Human Rights.

In our opinion, it is also necessary to strengthen in the Criminal Code of Ukraine criminal liability for any pressure on a court expert from the prosecution, defense or other persons in order to persuade him to deliver a deliberately false conclusion and to testify or refuse to give his opinion or testimony.

In order to correspond with the norms of the Criminal Procedural Code of Ukraine with the rules of the Law of Ukraine *On Judicial Examination* it is necessary to make corresponding amendments to Art. 69 of the Law of Ukraine *On Judicial Examination*.

### **Conclusions.**

On the basis of the above, the following provisions can be distinguished in order to formulate the newest paradigm of expert support of justice in Ukraine.

First of all, these are the problems that affect the qualitative and temporal characteristics of the examinations, namely:

- not the timely arrival of specialists and experts at the scene;
- unsuitability of objects for research;
- lack of techniques for conducting forensic researches;
- lack of equipment that can be used for conducting certain types of expert studies;
- lack of specialized knowledge and professional skills of the staff of the relevant forensic institution on the work on certain types of equipment;
- lack of international reviews of positive and negative experience in the organization of forensic activities;
- lack of normative documents, etc.

In order to solve problems of timely receipt of objects of research by a forensic expert, in addition to resolving the issues of their timely removal and providing for forensic examination, it is necessary to update: development of theoretical and applied provisions on the methodological foundations of technology for conducting certain types of traditional and innovative expert studies; definition of modern principles, perspectives and tendencies of the development of forensic theory; the formation of an advanced system of conducting scientific and practical seminars (trainings), including on the corresponding training grounds.

Important factors for improving the judicial expertise in Ukraine are the compliance with the requirements of the European Commission for Justice Effectiveness Guidelines (CEPEJ Guidelines) and further cooperation with ENFSI.

According to the world practice of forensic expert activity, as an important direction of development of expert support of justice, it is possible to emphasize the need for clearer legislative regulation of guarantees for ensuring the activity of a forensic expert.

Implementation of the proposed measures will allow to ensure the independence of the court expert, to optimize forensic activity and to significantly improve its efficiency.

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**О. М. Ключев**

**УДОСКОНАЛЕННЯ ЕКСПЕРТНОГО ЗАБЕЗПЕЧЕННЯ  
ПРАВОСУДДЯ: ТЕОРЕТИЧНІ, ПРАВОВІ ТА ОРГАНІЗАЦІЙНІ  
АСПЕКТИ**

*Вимоги світового співтовариства щодо стандартизації судово-експертної діяльності актуалізують необхідність формування її теоретико-правових засад та створюють передумови реформування експертного забезпечення правосуддя. У статті на підставі аналізу наявних наукових досліджень та сучасного стану експертного забезпечення правосуддя виокремлено основні елементи його парадигми, у тому числі – адаптація до міжнародних стандартів (зокрема, в аспекті найшвидшого вилучення, транспортування та збереження об'єктів судової експертизи); функціональне розмежування напрямків діяльності спеціалізованих установ різних відомств; проведення взаємних стажувань, тренінгів експертів тощо.*

*Ключові слова:* судово-експертне забезпечення правосуддя, кримінальне судочинство, судова експертиза, стандартизація, наукова революція, експертологія.

*Received by the Editorial Board: 22.07.2019*