

# Specific expertise use while investigation of crimes related to drug trafficking

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*Some issues of specific expertise application while investigation of crimes related to drug trafficking are considered. Scientific literature and legal regulations devoted to the issues of specific expertise application, research on narcotic drugs, psychotropic substances and precursors are analyzed. Statistics on the level of drug crime in Ukraine published by the Prosecutor General's Office are presented. Increase in the number of drug crimes has led to increase in the requirements for specific expertise use requiring an urgent legislative solution to a number of problematic issues. This article purpose is to identify methodological and organizational and legal problems that arise while applying specific expertise while investigation of crimes related to drug trafficking.*

*Attention is drawn to the activities of “EU-ACT Project: EU measures to combat drugs and organized crime. Intensive cooperation and capacity building to combat organized crime in the field of drug trafficking along the heroin route”. For this project realization, the Ukrainian Drug Research Working Group (hereinafter referred to as UDR WG) was formed, one of the main goals of which is to improve the quality of forensic science services in Ukraine. Among the main forms of work of UDR WG is carrying out interlaboratory collaborative exercises (hereinafter referred to as CE). Results of participation in CE indicate either laboratory effectiveness, or potential problems that have arisen in. For forensic examination of*

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*narcotic drugs, psychotropic substances and precursors, professionals need comparative (standard) samples, which receipt by relevant forensic science institutions is very difficult due to a large number of different factors.*

**Keywords:** *specific expertise; forensic expert; forensic examination; research on narcotic drugs; psychotropic substances and precursors; crimes; illicit drug trafficking; EU-ACT.*

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## Research Problem Formulation

One of the priority areas and tasks of applying specific expertise is their use for investigation of crimes and offenses. Modern technologies in any field of public life are constantly evolving. According to V. M. Shevchuk, currently in Ukraine for effective solution of issues facing criminalistics, active innovative activity is carried out, latest information technologies, various intelligent systems, nanotechnologies are successfully developed, introduced and applied (In particular, innovative forensic products are created and put into practice, which use is aimed primarily at optimizing law enforcement activities) <sup>1</sup>. Specific expertise used by professionals while crime investigation, in particular related to drug trafficking, should contain latest technologies, meet the realities and requirements of the time.

Illicit drug trafficking in Ukraine is an urgent issue that needs to be addressed as a matter of priority. Specific expertise use while investigation of drug-related crimes is an important source of evidence to establish the degree of guilt of suspects.

Thus, according to the statistics of the Prosecutor General's Office that O. V. Lashchuk provides in his research, bodies and units of the National Police of Ukraine in 2019 alone registered 28.0 thousand criminal offenses related to illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors (Articles 305-320 of the Criminal Code of Ukraine<sup>2</sup>). 4.7 tons of narcotic drugs and psychotropic substances (including: 127 kg of heroin, 9.8 kg of cocaine and 20.3 kg of amphetamines) were seized, 103 underground drug laboratories and 506 drug houses were liquidated. Due to the high level of drug and psychotropic substance use, drug offenders are expanding their drug and psychotropic drug distribution networks to attract new victims. In 2019, 6.1 thousands criminal proceedings related to the sale of narcotic drugs and psychotropic substances were exposed and sent to court (Article 307 of the Criminal Code of Ukraine). During this period, drug crime units across the country exposed more than 300 criminal offenses of trafficking in narcotic drugs and psychotropic substances using the Internet <sup>3</sup>.

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- 1 Шевчук В. М. Інноваційні засади криміналістичного забезпечення правозастосовної діяльності: проблеми формування концепції. *Теорія та практика судової експертизи і криміналістики*. Вип. 23. С. 7–23. DOI: 10.32353/khrife.1.2021.01 (date accessed: 08.09.2021).
  - 2 Кримінальний кодекс України: Закон України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (Date accessed: 03.06.2020).
  - 3 Лащук О. В. Типові слідчі ситуації під час збуту наркотичних засобів та психотропних речовин із використанням інтернет-мережі. *Вісник Луганського державного університету внутрішніх справ ім. Е. О. Дідоренка* : наук. журн. 2020. Вип. 3 (91). С. 276–278. DOI: 10.33766/2524-0323.90.267-278 (date accessed: 08.09.2021) ; Про зареєстровані кримінальні

As of August 2021, 22 thousand criminal offenses related to illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors were registered, 11 thousands criminal proceedings were detected and sent to court<sup>4</sup>.

While investigating drug-related crimes, for the fullest possible collection of evidence and examination of all factual data, the authorities and persons shall involve professionals and forensic experts who are well versed in the field of specific expertise as for comprehensive investigation of seized drugs.

I. R. Shynkarenko draws attention to the Strategy of State Policy on Drugs for the period up to 2020 which states that factors complicating the situation in the field of illicit trafficking in these substances are: increasing the volume of illegal drug production and smuggling; combining drug trafficking, corruption, terrorism and other forms of organized crime. In addition, the author emphasizes that law enforcement effectiveness in this area should increase primarily through formation of a system of scientific support aimed at detecting

signs of criminal activity in the field of drug trafficking and through formation of effective investigative, forensic and expert support of pre-trial and judicial investigation<sup>5</sup>.

As can be seen from the above, there is a need for effective methods of combating crimes in the field of drug trafficking. Specific expertise use is part of the mechanism, methods of investigating crimes and offenses. An important aspect in the investigation of this type of offense is the compliance of existing theoretical developments and strategies with the practical needs and current requirements.

#### Analysis of Essential Researches and Publications

At different times, such outstanding Soviet and Ukrainian scholars as T. V. Averyanova, R. S. Belkin, A. I. Winberg, O. O. Eisman, H. H. Zuikov, V. Ya. Koldin, Yu. G. Korukhov, A. V. Ishchenko, N. I. Klimenko, B. S. Kuzmichev, V. H. Lukashevich, O. R. Rossinskaya, M. V. Saltevsykyi, M. Ya. Segai, E. B. Simakova-Yefremian, V. Yu. Shepitko and many others<sup>6</sup>

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правопорушення та результати їх досудового розслідування. Статистична інформація. 2019 рік // Офіс Генерального прокурора : сайт. URL: <https://www.gp.gov.ua/ua/1stat> (date accessed: 20.09.2021).

- 4 Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування. Статистична інформація. 2021 рік // Офіс Генерального прокурора : сайт. URL: <https://www.gp.gov.ua/ua/1stat> (date accessed: 29.09.2021).
- 5 Шинкаренко І. Р. Проблеми наукового забезпечення державної політики у сфері протидії незаконному обігу наркотичних засобів, психотропних речовин і прекурсорів. *Науковий вісник Дніпропетровського державного університету внутрішніх справ* : наук. журн. 2018. Спецвип. № 1 (91) «Протидія наркозлочинності в Україні та у світі: проблеми та шляхи їх вирішення». С. 190–198.
- 6 Аверьянова Т. В., Белкин Р. С., Корухов Ю. Г., Россинская Е. Р. Энциклопедия судебной экспертизы. Москва, 1999. 552 с. ; Винберг А. И., Малаховская Н. Т. Судебная экспертология (общетеоретические и методологические проблемы судебных экспертиз) : учеб. пособ. Волгоград, 1979. 183 с. ; Эйсман А. А. Заключение эксперта (структура и научное обоснование). Москва, 1967. 152 с. ; Клименко Н. І. Інтеграційна функція експертології [Integration Function of Expertology]. *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2006. Вип. 6. С. 117–124 ; Сімакова-Єфреман Е. Б. До питання про введення у кримінальне процесуальне законодавство поняття «висновок спеціаліста». *Ibid.* 2019. Вип. 20. С. 110–120. DOI: 10.32353/khrife.2.2019.08 (date accessed: 20.09.2021).

dedicated their research papers to the problems of specific expertise use in litigation.

Researchers from CIS and foreign countries have been conducting active scientific research in the field of combating drug crime and ensuring control over drug addiction for more than a decade. In Ukraine in recent years, the legal, organizational and criminological foundations of prevention and counteraction to crime in general and drug crime in particular have been developed by: L. M. Anisimov, A. Yu. Babiy, O. M. Bandurka, S. A. Butkevych, A. A. Venediktov, V. V. Golina, I. M. Grinenko, O. M. Dzhuzha, V. O. Konovalova, O. M. Litvak, A. A. Muzyka, O. V. Oderiy, V. M. Smitienko, O. M. Shevchuk, Yu. M. Yubko and others <sup>7</sup>.

Foreign researchers pay attention to regional features of drug trafficking, taking into account the specifics of the legislation of their own countries: T. Nefau, S. Karolak, L. Castillo, V. Boireau, J.-D. Berset, A. Solgadi, T. Gunnar, A. Arponen, A. Al-Matrouk, M. Al-Hasan, H. Naqi and others <sup>8</sup>.

The primary source of methods and algorithms for research on drugs, psychotropic substances and precursors are methods and algorithms of chemistry and biology, so certain technical, technological and methodological recommendations used in these sciences will be useful for forensic examination of drugs, psychotropic substances and precursors.

### Article Purpose

To identify methodological and organizational and legal issues that arise while applying specific expertise while investigation of crimes related to drug trafficking.

### Main Content Presentation

In criminalistics specific expertise means scientific, technical and practical knowledge acquired as a result of professional training or work in a certain specialization by a person involved as a professional or forensic expert to assist an investigator or court in clarifying

- 7 Голіна В. В. Теоретико-прикладні засади стратегії скорочення злочинності: сучасний досвід і перспективи. *Проблеми законності* : зб. наук. пр. 2020. Вип. 150. С. 141–149 ; Музика А. А. Злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів. *Вісник Асоціації кримінального права України* : електрон. наук. вид. 2016. Вип. 2 (7). С. 297–303. URL: <http://vakp.nlu.edu.ua/issue/view/9584> (date accessed: 20.09.2021) ; Шинкаренко І. Р. *Op. cit.*
- 8 Nefau T., Karolak S., Castillo L., Boireau V., Levi Y. Presence of illicit drugs and metabolites in influents and effluents of 25 sewage water treatment plants and map of drug consumption in France. *Science of the Total Environment*. 2013. Vol. 461–462. Pp. 712–722. DOI: 10.1016/j.scitotenv.2013.05.038 (date accessed: 20.09.2021) ; Souchier M., Benali-Raclot D., Benanou D., Boireau V., Gomez E., Casellas C., Chiron S. Screening triclocarban and its transformation products in river sediment using liquid chromatography and high resolution mass spectrometry. *Ibid.* 2015. Vol. 502. Pp. 199–205. DOI: 10.1016/j.scitotenv.2014.08.108 (date accessed: 20.09.2021) ; Ort C., van Nuijs A. L. N., Berset J.-D., Bijlsma L. etc. Spatial differences and temporal changes in illicit drug use in Europe quantified by wastewater analysis. *Addiction*. 2014. Vol. 109. Is. 8. Pp. 1338–1352. DOI: 10.1111/add.12570 (date accessed: 20.09.2021) ; Al-Matrouk A., Al-Hasan M., Naqi H., Al-Abkal N., Mohammed H., Haider M., Al-Shammeri D., Bojbarah H. Snapshot of narcotic drugs and psychoactive substances in Kuwait: analysis of illicit drugs use in Kuwait from 2015 to 2018. *BMC Public Health*. 2021. Vol. 21. Article number: 671. DOI: 10.1186/s12889-021-10705-z (date accessed: 20.09.2021).

circumstances relevant to criminal proceedings, or providing conclusion on issues requiring the expertise use<sup>9</sup>.

The main forms of specific expertise application include involvement of an expert to provide an opinion on issues arising while criminal proceedings and relating to the scope of his knowledge (Art. 69 of the Criminal Procedural Code of Ukraine) and a specialist for consulting while pre-trial investigation and trial on issues requiring relevant specific expertise and skills (Art. 71 of the Criminal Procedural Code of Ukraine)<sup>10</sup>.

An important sign of specific expertise in criminal procedure sense is the purpose of its use. They are used to prove what is happening in the manner prescribed by law, as well as for non-procedural purposes while investigative measures. The purpose of specific expertise application is also to facilitate collection of evidence and indicative information for investigation of crime and its prevention, as well as for the development of tactical and technical means and methods of collecting such information. Not only expert witnesses (forensic experts, professionals) but also persons carrying out investigative measures and investigators have the right to use specific expertise, although the results of such application specific expertise will have different procedural significance<sup>11</sup>.

First of all, it is necessary to define the *specific expertise* concept. Scholars usually offer authorial definitions of special

knowledge used in criminal proceedings. I. V. Pyrih and H. S. Bidniak having analyzed the opinions of scientists which to some extent reveal the essence, purpose and directions of the use of specific expertise, formulated the main criteria for defining the *specific expertise* concept. Defining the *specific expertise* term, it should be borne in mind that: 1) specific expertise is non-legal, except as noted above, i.e. it is knowledge that is not professional for investigator, operative staff, prosecutor, judge; 2) specific expertise should be based on achievements of science, not be well known; 3) specific expertise can be acquired in the process of either theoretical mastery of certain information, or periodic practical classes in a particular type of work; 4) purpose of specific expertise use is to assist in solving tasks of criminal proceedings<sup>12</sup>.

In other words, as noted by I. V. Pyrih and Ha. S. Bidniak, *specific expertise* is a set of theoretical knowledge and practical skills in the field of science, technology, art or craft, acquired as a result of professional training or professional experience used for crime prevention and investigation.

One of the most important forms of specific expertise application in criminal proceedings is forensic science, due to which investigator and court receive new information that has probative value for criminal proceedings and cannot be obtained by other procedural means. The Law of Ukraine: *On Judicial Examination* (Art. 1)<sup>13</sup> defines forensic examination as

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9 Ольховенко С. І. Сучасний стан судової експертизи та можливості її використання у розслідуванні злочинів. *Криміналістичний вісник* : зб. наук. пр. 2015. № 1 (23). С. 86. URL: [http://nbuv.gov.ua/UJRN/krvs\\_2015\\_1\\_14](http://nbuv.gov.ua/UJRN/krvs_2015_1_14) (date accessed: 20.09.2021).

10 Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 08.09.2021).

11 Пиріг І. В., Бідняк Г. С. Використання спеціальних знань на досудовому розслідуванні : навч. посіб. Дніпро, 2019. С. 14.

12 Ibid.

13 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=4038-12> (date accessed: 20.09.2021).

research based on specific expertise in the field of science, technology, art, craft, etc. of objects, phenomena and processes in order to provide a conclusion on issues that are or will be the trial subject.

In our country, involvement of forensic expert and carrying out forensic examination while criminal proceedings is regulated by the Law of Ukraine: *On Judicial Examination*<sup>14</sup>, the *Criminal Procedural Code of Ukraine*<sup>15</sup>, *Instruction on appointment and conducting forensic examinations and researches (hereinafter referred to as the Instruction)*<sup>16</sup> and other regulations. According to the current legislation of Ukraine, forensic examination is conducted by forensic expert who has specific expertise to clarify the circumstances relevant to criminal proceedings<sup>17</sup>.

According to Part 1 of Art. 242 of Criminal Procedural Code of Ukraine, forensic examination is carried out by forensic science institution, forensic expert or forensic experts involved by the parties to the criminal proceedings or the investigating judge at the request of the defense, if specific expertise is required to clarify the circumstances relevant to criminal proceedings<sup>18</sup>. Forensic examination as one of means of gathering

evidence contributes to a comprehensive, complete and objective investigation of the circumstances of relevant to criminal proceedings, adoption of lawful and reasonable court decisions<sup>19</sup>.

According to Part 1 and 2 of Art. 69 of Criminal Procedural Code of Ukraine:

*“1. Forensic expert in criminal proceedings is a person who has scientific, technical or other specific expertise, has the right to conduct an examination in accordance with the Law of Ukraine “On Judicial Examination” and who is instructed to study objects, phenomena and processes containing information about the circumstances criminal offense and give a conclusion on issues arising while criminal proceedings and relate to the scope of its knowledge.*

*2. Persons who are in official or other dependence on the parties to the criminal proceedings or the victim may not be experts”<sup>20</sup>.*

Parts 3-7 of the same article outline the rights and duties of forensic expert<sup>21</sup>.

With increase in the number of crimes in the field of drug trafficking, researches on narcotic drugs, psychotropic substances and precursors are quite relevant, which are now carried out using highly effective analytical techniques (due to admission to the study of semi-synthetic (heroin,

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14 Ibid.

15 Кримінальний процесуальний кодекс України ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.09.2021).

16 Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказом Міністерства юстиції України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 20.09.2021).

17 Калиновська О. І. Використання спеціальних знань під час розслідування злочинів, пов'язаних із незаконним збутом наркотичних засобів. *Науковий вісник Національної академії внутрішніх справ*. 2018. № 2 (107). С. 185. URL: [http://nbuv.gov.ua/UJRN/Nvknvvs\\_2018\\_2\\_18](http://nbuv.gov.ua/UJRN/Nvknvvs_2018_2_18) (date accessed: 20.09.2021).

18 Кримінальний процесуальний кодекс України ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.09.2021).

19 Ольховенко С. І. *Op. cit.* С. 87. URL: [http://nbuv.gov.ua/UJRN/krvis\\_2015\\_1\\_14](http://nbuv.gov.ua/UJRN/krvis_2015_1_14) (date accessed: 20.09.2021).

20 Кримінальний процесуальний кодекс України ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.09.2021).

21 Ibid ; Пиріг І. В., Бідняк Г. С. *Op. cit.* С. 17.

cocaine) and synthetic drugs, (LSD, amphetamine)<sup>22</sup>.

For detecting illicit drug trafficking, it is necessary to analyze the sources and channels of their receipt:

- narcotic drugs used in domestic medicine (papaveretum, trimeperidine, codeine, glutethimide, etc. and their derivatives);
- narcotics smuggled into Ukraine (cocaine, heroin, etc.);
- synthetic narcotics produced in underground drug laboratories using chemical reagents and special equipment, as well as drugs made by hand from some drugs;
- plants containing narcotics, or parts of such plants and substances from which drugs are produced by hand (hemp, marijuana (cannabis), hashish (hash), cannabis extract (hash oil), opium poppy, opium (black tar heroin), poppy straw (poppy husk), poppy straw tincture, etc.)<sup>23</sup>.

Illicit drug trafficking is schematically considered as a set of several technologically interdependent stages. O. I. Kalinovska, analyzing the opinions of scientists on the drug trafficking chains, notes that

some researchers divide drug trafficking into the following stages: cultivation – production – trade for profit. For example, V. A. Tymoshenko, V. B. Ivashenko, M. S. Krupp distinguish the following stages: production – transportation (delivery) – narcotic drug sale<sup>24</sup>.

In criminal proceedings related to drug trafficking, appointment of forensic examination is mandatory and the most informative form of specific expertise application.

Forensic examination is appointed and conducted in order to establish affiliation of studied objects and materials to a certain group of drugs according to the List of narcotic drugs, psychotropic substances and precursors, compiled in accordance with domestic legislation and international obligations of Ukraine and approved by the Cabinet of Ministers of Ukraine (hereinafter referred to as *CabMin Resolution*)<sup>25</sup> that is important for criminal offense investigation.

As noted, for example, O. A. Rivchachenko, O. I. Kalinovskaya and M. S. Khrupp, forensic examinations should be carried out at the initial stage, as some drugs of synthetic origin have ability to change if they are not stored in proper conditions<sup>26</sup>.

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22 Ольховенко С. І. Оп. cit. URL: [http://nbuv.gov.ua/UJRN/krvis\\_2015\\_1\\_14](http://nbuv.gov.ua/UJRN/krvis_2015_1_14) (date accessed: 20.09.2021).

23 Грень Р. Виявлення ознак злочинів у сфері обігу наркотичних засобів. *Національний юридический журнал: теорія і практика*. 2016. № 5 (21). С. 152–153.

24 Калиновська О. І. Оп. cit. С. 187. URL: [http://nbuv.gov.ua/UJRN/Nvknvvs\\_2018\\_2\\_18](http://nbuv.gov.ua/UJRN/Nvknvvs_2018_2_18) (date accessed: 20.09.2021); Тимошенко В. А. Наркобізнес: національна та міжнародна протидія новим викликам : монографія. Київ, 2006. 440 с. ; Хруппа М. С., Вінс О. Кримінологічне поняття наркобізнесу [Criminological concept of drug trafficking]. *Право України*. 1993. № 4. С. 25–27.

25 Перелік наркотичних засобів, психотропних речовин і прекурсорів : затв. Постановою КМУ від 06.05.2000 р. № 770 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/770-2000-%D0%BF#Text> (date accessed: 20.09.2021).

26 Калиновська О. І. Оп. cit. С. 189. URL: [http://nbuv.gov.ua/UJRN/Nvknvvs\\_2018\\_2\\_18](http://nbuv.gov.ua/UJRN/Nvknvvs_2018_2_18) (date accessed: 20.09.2021); Рівчаченко О. А. Розслідування незаконних дій з обладнанням для виготовлення наркотичних засобів, психотропних речовин та їх аналогів : дис. ... канд. юрид. наук. Київ, 2016. 261 с. URL: <http://elar.naiu.kiev.ua/jspui/handle/123456789/1438> (date

In order to help investigate crimes related to illicit drug trafficking, researchers offer a fairly large list of different types of forensic examinations that should be assigned in each separate case.

However, directions and exhaustive list of such examinations in modern criminalistics have not yet been finalized. Thus, O. I. Kalinovskaya cites proposals of scientists to conduct certain species (subspecies) of forensic examinations while crime investigation of illicit narcotic drug trafficking, psychotropic substances and precursors: N. A. Zaporoshenko: forensic chemical, forensic narcology, forensic psychiatric, psychological and psychiatric (in some cases: forensic: trace evidence, fingerprinting, handwriting examinations)<sup>27</sup>; M. V. Saltevsyky: forensic, forensic medical, chemical, forensic pharmacological, agrotechnical, psychiatric examinations<sup>28</sup>; O. A. Rivchachenko: forensic (materials, substances and products); fingerprinting; forensic handwriting analysis; medical forensic immunological; trace evidence; computer hardware and software products; materials and means of sound recording; regarding to person: forensic narcological and forensic psychiatric examinations<sup>29</sup> etc.<sup>30</sup>.

Certainly, primary forensic examination is forensic examination of materials, substances and products and more specifically drugs, psychotropic substances, their analogues and precursors (research of plants (their parts) in order to establish the affiliation to objects containing narcotic substances is competence of biological examination).

*Narcotic drugs* is a group of pharmacologically active substances of plant and synthetic origin that can selectively affect the central nervous system, leading to complete loss of consciousness, loss of all sensations and relaxation of skeletal muscles (general anesthesia) or to a specific psychological and physiological state of the body there is no usual poison for (narcotic) causes unpleasant sensations; it requires periodic use of this poison (narcotic).

This reaction is due to the fact that narcotic drugs quickly join the metabolic system and become vital. In addition, they are called poison for a reason, because they physically weaken the body and, ultimately, inevitably cause death. Drugs are addictive both mentally (in their default, addict feels emotional discomfort) and physical (there is pain due to dysfunction of some systems until the fatal end)<sup>31</sup>.

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accessed: 20.09.2021) ; Хруппа М. С., Никифорчук Д. Й., Семенюк В. А. та ін. Діяльність підрозділів по боротьбі з незаконним обігом наркотиків з виявлення та ліквідації підпільних нарколабораторій : посібник / за заг. ред. М. С. Хруппи. Київ, 2004. 192 с.

27 Запорощенко Н. А. Розслідування організації або утримання місць для незаконного вживання, виробництва чи виготовлення наркотичних засобів, психотропних речовин або їх аналогів : дис. ... канд. юрид. наук. Київ, 2011. С. 178—183.

28 Салтевський М. В. Криміналістика : підручник. У 2 ч. Ч. 1. Харків, 2000—2001. С. 372.

29 Рівчаченко О. А. Оп. cit. URL: <http://elar.naiu.kiev.ua/jspui/handle/123456789/1438> (date accessed: 20.09.2021).

30 Калиновська О. І. Оп. cit. С. 190. URL: [http://nbuv.gov.ua/UJRN/Nvknvvs\\_2018\\_2\\_18](http://nbuv.gov.ua/UJRN/Nvknvvs_2018_2_18) (date accessed: 20.09.2021).

31 Кофанов А. В., Кобилянський О. Л., Давидова О. О. Криміналістичні дослідження наркотичних засобів : метод. рек. Київ, 2010. С. 23.

Narcotic effect is characteristic of many substances, including such common ones as nicotine and alcohols. The most pharmacologically active of these substances in the Single Convention on Narcotic Drugs, 1961<sup>32</sup> is called *Drug*. At one time, Ukraine ratified amendments to the Single Convention, made in accordance with the 1972 Protocol, the Convention on Psychotropic Substances (1971)<sup>33</sup> and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)<sup>34</sup>. Drug abuse, despite the active development of international cooperation in the fight against drug addiction is gaining catastrophic proportions almost worldwide.

Subject of forensic examination of drugs is to find out (using specific expertise) the facts and crime circumstances for which professional should perform the following tasks :

- detect traces of drugs on various objects-carriers, except for organs and tissues of body of humans and animals, as well as products of life of living organisms that are objects of forensic (toxicological) examination;

- determine affiliation of substances to narcotic drugs with the indication of their name;
- establish a common group affiliation of homogeneous drugs on the basis of raw materials, technology of their treatment, storage conditions, etc.;
- find out common source of drugs according to place and method of their production;
- identify specific masses of drugs by their separate parts;
- determine the method, technologies and characteristics of drug production<sup>35</sup>.

Instruction offers an indicative list of questions that the expert is asked and issues that he should solve:

*“Are there any traces of narcotic drugs, psychotropic substances, their analogues or precursors on the carrier object (it is indicated on which one)? If so, which ones?*

*Is this drug a narcotic drug, psychotropic substance, their analogue or precursor and which one exactly?*

*Do these drugs, psychotropic substances, their analogues or precursors have a common generic (group) affiliation?*

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32 Единая конвенция о наркотических средствах 1961 года с поправками, внесенными в нее в соответствии с Протоколом 1972 года о поправках к Единой конвенции о наркотических средствах 1961 года : принята 30.03.1961 г. (Нью-Йорк) ; вступ. в силу для Украины 13.12.1964 г. (с изм. и доп.). URL: [https://zakon.rada.gov.ua/laws/show/995\\_177#Text](https://zakon.rada.gov.ua/laws/show/995_177#Text) (date accessed: 20.09.2021).

33 Конвенция о психотропных веществах : принята 21.02.1971 г. (Вена) ; ратиф. 27.10.1978 г. ; вступ. в силу для Украины 18.02.1979 г. URL: [https://zakon.rada.gov.ua/laws/show/995\\_176#Text](https://zakon.rada.gov.ua/laws/show/995_176#Text) (date accessed: 20.09.2021).

34 Конвенція Організації Об'єднаних Націй про боротьбу проти незаконного обігу наркотичних засобів і психотропних речовин : ратифік. Постановою ВР України від 25.04.1991 р. № 1000-XII ; набула чин. для України 27.11.1991 р. URL: [https://zakon.rada.gov.ua/laws/show/995\\_096#Text](https://zakon.rada.gov.ua/laws/show/995_096#Text) (date accessed: 20.09.2021).

35 Кофанов А. В., Кобилянський О. Л., Давидова О. О. Оп. cit. С. 24.

*Do these narcotic drugs and psychotropic substances have a common source of origin in terms of quality and relative quantity?*"<sup>36</sup>.

Illicit drug trafficking as an objective reality is carried out at different levels: international, national, regional, etc. In this regard, both general and special criminological measures to combat drug crime are carried out at different levels: nationwide, differentiated within the region or district, as well as taking into account specifics of different age and occupational groups and at the individual level.

The fight against crimes in the field of drug trafficking is one of the top priorities for Ukraine and the world community as a whole. One of the mechanisms for influencing the international level is the EU-ACT aimed at building capacity to expand regional and interregional cooperation between law enforcement agencies and coordinate the fight against organized crime and heroin trafficking, as well as to support the development of effective drug counteraction policy and measures to reduce drug demand<sup>37</sup>.

In Ukraine, within the framework of "EU-ACT Project: EU measures to combat drugs and organized crime. Intensive cooperation and capacity building for the fight against organized crime in the field of drug trafficking along the heroin route"<sup>38</sup>. UDR WG was formed under the auspices of the project. One of its main goals is to

improve the quality of forensic services in Ukraine<sup>39</sup>.

Many forensic laboratories in Ukraine operate in isolation from each other without constant access to a single comparative database, as without this there is a risk that the professionals of such laboratories can make an unfortunate mistake and/or the results of their researches and similar foreign laboratories will differ.

One of the forms of UDR WG work is conducting CEs. Results of participation in the CE indicate either laboratory effectiveness, or potential issues that have arisen in.

Participation in CE is anonymous, researches should be performed according to the usual method used by the laboratory for each type of sample, so such samples cannot be used for any purpose other than this exercise. Therefore, positive CF results are the best lever to convince stakeholders of the laboratory competence.

Other potential benefits that may be available to UDR WG member institutions include staff training, increased trust in the work of management and management by external users of laboratory services, providing laboratories with additional risk management capabilities, and meeting the requirements of regulators and accreditation bodies. Therefore, participation of UDR WG members and other providers of forensic services in

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36 Інструкція про призначення та проведення судових експертиз ... URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 20.09.2021).

37 What is EU-ACT? // EU Action Against Drugs and Organised Crime : website. URL: <https://eu-act.info/en/page/what-is-eu-act> (date accessed: 20.09.2021).

38 Проект «ДІЯ — ЄС: Заходи ЄС з питань протидії наркотикам та організованій злочинності. Інтенсивне співробітництво та нарощування потенціалу для боротьби з організованою злочинністю у сфері наркоторгівлі вздовж героїнового маршруту» // Державна судова адміністрація України : сайт. URL: <https://dsa.court.gov.ua/dsa/pokazniki-diyalnosti/234/lkjhgj> (date accessed: 20.09.2021).

39 Посібник з проведення міжлабораторних вправ в рамках Української Робочої Групи з дослідження психоактивних речовин : внутріш. док. EU-ACT. 75 с.

Ukraine in CE is an important step for the development of this sector <sup>40</sup>.

For conducting forensic examination of narcotic drugs, psychotropic substances and precursors, professionals need comparative (standard) samples which receipt by relevant forensic science institutions is very difficult due to a large number of different factors.

At the 4th UDR WG meeting, provisions of the normative act on exchange of standard samples containing controlled substances between state laboratories conducting their forensic examination were proposed. Forensic experts agreed that act would apply to narcotic drugs, analogues and precursors and the list of substances specified in this regulation. During the meeting, it was proposed to appoint a body (for example, a coordinator of the sample exchange system) which could accept orders from other government agencies for their participation in sample exchange procedure. Forensic experts agreed that this normative act will cover two types of reference materials, namely: the first – standards imported from outside the territory of Ukraine, and the second – *internal* standards, prepared, in particular, in Ukrainian state laboratories. It is also taken into account that import of drugs is regulated by another normative act developed by the Ministry of Healthcare. Participants decided to review the legal act related to the work with samples in forensic laboratories: with their removal and selection for further transportation to laboratories. Participants of the meeting emphasized that a certificate indicating not only the indicator of a specific

characteristic (for example, concentration), but information on uncertainty and confirmation of metrological traceability should be attached to each reference sample, as this information is required by quality system auditors. The normative draft act covers various aspects of the activity including storage, transportation, acquisition, provision and import of standard samples. Therefore, the issue of consistency of protocols used in different types of laboratories was discussed with a view to finding procedures that could be applied in each institution involved in such procedures <sup>41</sup>.

Forensic experts stressed that the production of a standard sample must comply with ISO 17034 on the general qualification requirements for manufacturers of reference materials. Qualifications of the persons authorized to process standard samples, the equipment necessary for their storage, as well as conditions of environmental protection were discussed. Finally, the issues of registration of standard samples in laboratories and procedure application in case of defects were considered <sup>42</sup>.

For simplifying obtaining and exchanging comparative samples between forensic institutions, a draft resolution approving the procedure for exchanging standard samples has been prepared within the work of the UDR WG. The new regulation would allow all forensic laboratories (regardless of subordination and status) to freely exchange standard samples (primary and secondary) of controlled substances for qualification test, CE and other purposes <sup>43</sup>.

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40 Ibid.

41 Напрацювання (результати) 4-го засідання Української Робочої Групи з дослідження психоактивних речовин. 12–14.11.2019 р. Львів. 13 с.

42 Ibid.

43 Напрацювання (результати) 5-го засідання Української Робочої Групи з дослідження психоактивних речовин. 01–02.10.2020 р. Київ. 8 с.

EU-ACT Project sent a proposal to the Ministry of Justice of Ukraine (hereinafter referred to as the Minjust of Ukraine) to amend the legislation, taking into account UDR WG conclusions. The response of the Ministry of Justice contains, in particular, the following: “Given the second part of Article 9 of the Law of Ukraine: On Circulation of Drugs, Psychotropic Substances, their Analogs and Precursors in Ukraine”<sup>44</sup> [Emphasis added]. Legislative grounds for the development and adoption by the Cabinet of Ministers of Ukraine of the draft Procedure in other cases regarding the implementation of Articles 19, 20 of the Law of Ukraine: “On Circulation of Drugs, Psychotropic Substances, their Analogs and Precursors in Ukraine”<sup>45</sup> and Article 20 of the Law of Ukraine: “On Judicial Examination”<sup>46</sup> and educational purposes, no, as the Law does not establish and does not give the Cabinet of Ministers of Ukraine the authority to adopt appropriate procedures for other cases and purposes of trafficking in narcotic drugs and psychotropic substances, their analogues and precursors.

Given the above, settlement of circulation of narcotic drugs, psychotropic substances and precursors should be preceded by amendments to the Law of Ukraine “On Circulation of Drugs, Psychotropic Substances, their Analogs and Precursors in Ukraine” which will cover other cases of trafficking in these substances, in particular in the field of forensic science, and the powers of the Cabinet of Ministers of Ukraine to adopt the relevant procedure are fixed.

*At the same time, before the adoption of relevant legislative changes, the Ministry of Justice expresses its readiness to join the work on amendments to the Procedure for acquisition, transportation, storage and use of precursors for scientific and educational purposes approved by the Cabinet of Ministers of Ukraine № 529<sup>47</sup>, dated on 19.06.2019 for improving its provisions in order to ensure access to drug samples and the achievement of Ukrainian laboratories technical competence in conducting their research”<sup>48</sup>.*

In view of the above, UDR WG agreed to include changes in the legislation as one of the goals of the new Strategy of State Drug Policy until 2030.

## Conclusions

Given the above, it can be concluded that specific expertise use while investigation of crimes related to drug trafficking is an integral part of the evidence-gathering procedure. Scientific literature contains lists of forensic examinations that relevant authorities and individuals may appoint while crime investigation, for example: forensic (materials, substances and products); biological; trace evidence; hardware and software products; content and means of sound recording; fingerprinting; handwriting; forensic psychiatric; forensic narcology ones, etc. Forensic examinations are appointed at the initial stage of the investigation taking into account the specifics of some drugs and the

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44 Про наркотичні засоби, психотропні речовини і прекурсори : Закон України від 15.02.1995 р. № 60/95-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/60/95-%D0%B2%D1%80#Text> (date accessed: 20.09.2021).

45 Ibid.

46 Про судову експертизу : ... URL: <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=4038-12> (date accessed: 20.09.2021).

47 Про затвердження Порядку придбання, перевезення, зберігання і використання прекурсорів у наукових та навчальних цілях : Постанова КМУ від 19.06.2019 р. № 529. URL: <https://zakon.rada.gov.ua/laws/show/529-2019-%D0%BF#Text> (date accessed: 20.09.2021).

48 Напрацювання (результати) 5-го засідання ...

risk of changes in their chemical properties due to improper storage or transportation conditions.

There is an urgent need to develop an effective mechanism that will allow all laboratories (regardless of subordination and status) to exchange standard samples (primary and secondary) of controlled substances for qualification test, CE and for other purposes of forensic laboratories. As of today, research and draft law work is underway to develop such a normative legal act.

**Застосування спеціальних знань під час розслідування злочинів, пов'язаних із незаконним обігом наркотичних речовин**

*Хосе Мануель Колодрас,  
Катерина Силенок*

*Розглянуто деякі питання застосування спеціальних знань під час розслідування злочинів, пов'язаних із незаконним обігом наркотичних речовин. Проаналізовано наукову літературу й нормативно-правові акти, присвячені питанням застосування спеціальних знань, дослідженню наркотичних засобів, психотропних речовин і прекурсорів. Наведено статистичні дані рівня наркозлочинності в Україні, оприлюднені Офісом Генерального прокурора України. Збільшення кількості наркозлочинів зумовило зростання вимог до застосування спеціальних знань, що, зі свого боку, потребує нагального законодавчого розв'язання низки проблемних питань. Мета статті — визначити методологічні й організаційно-правові проблеми, які виникають у процесі застосування спеціальних знань під час розслідування злочинів, пов'язаних із незаконним обігом наркотичних засобів.*

*Звернено увагу на діяльність проєкту «ДІА — ЄС: Заходи ЄС з питань протидії наркотикам та організованій злочин-*

*ності. Інтенсивне співробітництво та нарощування потенціалу для боротьби з організованою злочинністю у сфері наркоторгівлі вздовж героїнового маршруту». Для реалізації цього проєкту сформовано Українську Робочу Групу з дослідження психоактивних речовин (далі — УРГ ДПАР), однією з головних цілей якої є вдосконалення якості судово-експертних послуг в Україні. Поміж основних форм роботи УРГ ДПАР — проведення міжлабораторних вправ (далі — МВ). Результати участі у МВ свідчать про ефективність роботи лабораторії або про потенційні проблеми, які в ній виникли. Для проведення експертизи наркотичних засобів, психотропних речовин і прекурсорів фахівцям необхідні порівняльні (стандартні) зразки, отримання яких відповідними експертними установами вельми ускладнено через значну кількість різноманітних чинників.*

*Ключові слова: спеціальні знання; експерт; експертиза; дослідження наркотичних засобів, психотропних речовин і прекурсорів; злочини; незаконний обіг наркотичних речовин; ДІА — ЄС.*

**Применение специальных знаний в ходе расследования преступлений, связанных с незаконным оборотом наркотических веществ**

*Хосе Мануэль Колодрас,  
Екатерина Силенок*

*Рассмотрены отдельные вопросы применения специальных знаний в ходе расследования преступлений, связанных с незаконным оборотом наркотических веществ. Проанализирована научная литература, нормативно-правовые акты, посвященные вопросам применения специальных знаний при исследовании наркотических средств, психотропных веществ и прекурсором. Приведены статистические данные Офиса Генерального*

прокурора Украины, свидетельствующие о значительном росте уровня наркопреступности в Украине. Увеличением количества наркопреступлений обусловлено возрастание потребности в применении специальных знаний при их расследовании. В процессе применения специальных знаний возникает ряд проблемных вопросов, требующих законодательного решения. Целью статьи является определение методологических и организационных проблем, возникающих в процессе применения специальных знаний при расследовании преступлений, связанных с незаконным оборотом наркотических веществ.

Обращено внимание на проект «Действие — ЕС: Мероприятия ЕС по вопросам противодействия наркотикам и организованной преступности. Интенсивное сотрудничество и наращивание потенциала для борьбы с организованной преступностью в сфере наркоторговли вдоль героинового маршрута». Под эгидой указанного проекта была сформирована Украинская Рабочая Группа по исследованию психоактивных веществ, одной из главных целей работы которой является совершенствование качества судебно-экспертных услуг в Украине, а одной из основных форм работы — проведение межлабораторных упражнений. Результаты участия в межлабораторных упражнениях предоставляют возможность подтвердить эффективность работы конкретной лаборатории либо свидетельствуют о существующих в такой лаборатории проблемах. Для проведения экспертизы наркотических средств, психотропных веществ и прекурсоров необходим доступ к сравнительным (стандартным) образцам, свободное получение которых (или обмен ими между учреждениями) осложнено многими факторами.

**Ключевые слова:** специальные знания; эксперт; экспертиза; исследование нар-

котических средств, психотропных веществ и прекурсоров; преступления; незаконный оборот наркотических веществ; Действие — ЕС.

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The authors declare that they have no conflict of interest.

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