

# Effective administrative and legal regulation of forensic activities in the context of European integration

Inessa Ovsianynkova \*

\* PhD Student, National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute», Kharkiv, Ukraine, ORCID: <https://orcid.org/0000-0002-3351-7781>, e-mail: [hniise@hniise.gov.ua](mailto:hniise@hniise.gov.ua)

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*Effective administrative and legal regulation of forensic activity depends on the goals and objectives. Ukrainian society began to radically restructure its national system of law, enshrining the principle of the rule of law in the Constitution in 1996 and ratifying in 1997 the Convention for the Protection of Human Rights and Fundamental Freedoms.*

*This article purpose is to define the main goals and objectives of the state to ensure effective forensic activities in the context of European integration.*

*Ukrainian obligations to European community to build a developed and sustainable democracy and market economy require it, first of all, to focus the entire national system of law on such European values as democracy, respect for people and fundamental rights and freedoms, the rule of law, etc. For our state, the principle of the rule of law is related to the practice of the European Union, therefore, the main strategic direction is European integration.*

*Within the framework of European cooperation, the field of justice in general and law enforcement and judicial authorities in particular are acquiring particular importance. Effective implementation of judicial reform and the fight against corruption are currently the priority areas of our state on the way to European integration.*

*An important part of implementation of this goal is creation of a modern system of forensic science support of justice that should function effectively through the timely and proper implementation of the goals and objectives set before the subjects of forensic science.*

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**Keywords:** efficiency; administrative and legal regulation; forensic science activity; goals; tasks; European integration.

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## Research Problem Formulation

Recently, the main and constant foreign policy priority of Ukraine is European integration. Prospect of Ukrainian membership in the European Union (hereinafter referred to as EU) sets the vector for strategic transformation in the country aimed at the European model of socio-economic and political development. Following the course of the EU membership enshrined in the Constitution, Ukraine is directing its legislative path in accordance with European requirements. Modern democracies in many European countries adhere to the basic principles of a liberal political system: constitutionalism, separation of powers, individual freedom, human rights, minority autonomy, etc. <sup>1</sup>Bringing the legislation of our country in line with the *acquis communautaire* (achieving European integration in political, legal and economic field based on European common values) is a necessary condition for full European integration and a basis for the growth of national economy and living standards of Ukrainians.

Reforming and adapting national legislation to European standards raises the issue of effectiveness of administrative and legal regulation of forensic science consisting

in correctness of defining the cornerstones, functions and tasks of regulation depending on the main State policies in this area. achievements in due time.

## Analysis of Essential Researches and Publications

Development of a modern democratic state governed by the rule of law is directly related to a comprehensive judicial reform requiring certain steps to be taken to increase efficiency of forensic science activity. Currently the justice system in Ukraine is in the process of reform, primarily due to the crisis of legitimacy. Given that this system is a determining element of the national mechanism of legal protection, the level of its legality is an indicator of the effectiveness of judiciary through the prism of Art. 3 of the Constitution of Ukraine, according to the establishment and protection of human rights and freedoms is the main duty of the State. According to <sup>2</sup>O. I. Zhrebko, the reform of the judicial system, approximation of Ukrainian legislation to international standards involves not only changes in all areas of legislation, but improvement of legislation regulating forensic activities <sup>3</sup>.

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- 1 Plakhotniuk N., Koruts U., Doroshenko E. Constitutional Restriction on Human Rights and Freedoms in the Development of Liberal Democracy in Europe. *Access to Justice in Eastern Europe*. 2021. Vol. 3. № 11. P. 131. DOI: 10.33327/AJEE-18-4.3-n000075 (date accessed: 29.09.2021).
  - 2 Stefanchuk M., Hladun O., Stefanchuk R. Establishing Trust in the Court in Ukraine as a Strategic Task for Judicial Reform. *Access to Justice in Eastern Europe*. 2021. Vol. 3. № 11. P. 102. DOI: 10.33327/AJEE-18-4.3-n000073 (date accessed: 29.09.2021).
  - 3 Жеребко О. І. Сутність й зміст судово-експертної діяльності: вітчизняний досвід. *Теорія та практика судово-експертної діяльності* : зб. мат-лів VIII міжвідом. наук.-практ. конф. (Київ, 27.11.2019). Київ, 2019. С. 152. URL: [http://elar.naiu.kiev.ua/bitstream/123456789/15401/1/zbirnyk\\_27\\_11\\_19.pdf](http://elar.naiu.kiev.ua/bitstream/123456789/15401/1/zbirnyk_27_11_19.pdf) (date accessed: 04.03.2021).

T. O. Kolomojets and P. A. Baranchyk note that the problem of the rule of law (in modern world trends of globalization) goes beyond state borders. Scholars note that significant prospects in modern Ukraine are possible in a combination of external and internal dimensions of awareness of the rule of law and focus on its theoretical and practical aspects in the state, in particular on its implementation in public administration<sup>4</sup>. Other scholars believe that international cooperation between forensic institutions is important for the implementation of the rule of law, which will improve judicial activity and the quality of forensic science as one of the main forms of using specific knowledge in modern justice<sup>5</sup>. E. B. Simakova-Yefremian has a similar opinion, arguing that globalization increases the interdependence of the countries of the world and turns them into a single global organism. Without avoiding development of law and jurisprudence, the processes of globalization have their own specifics in various fields including in the field of forensic science. The processes of globalization in this area should be implemented according to the scientist, primarily through the adaptation of national legislation governing forensic activities to European and through unification of all

forensic institutions of Ukraine methods of expert researches by accrediting in accordance with international quality standards<sup>6</sup>.

N. I. Klimenko and O. A. Kuprievich also note the impossibility of the existence of forensic examination within a separate state. They emphasize compliance of forensic activities of states not only with national principles, but with international legal and professional standards. Emphasize that forensic expert conclusion of one State should have probative value for foreign courts<sup>7</sup>.

According to Professor O. M. Kliuiev, one of the means of creating a system of human rights and freedoms is the effective introduction of traditional and new types of forensic examinations with active use of international legal instruments of the Council of Europe on justice that is impossible without comprehensive research based on systematic analysis of forensic activities<sup>8</sup>.

Analysis of scientific opinions demonstrates that most scholars consider forensic activity to be extremely important in every democratic state for the effective and high-quality protection of human and civil rights and freedoms without their violation<sup>9</sup>. Introduction of European

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4 Коломоець Т. О., Баранчик П. О. Принципи адміністративного права : монографія. Запоріжжя, 2012. С. 69.

5 Filipenko N., Spitsyna H., Shynkarenko I., Tsybalytyi V. Implementation of Preventive Activity; Foreign Experience in Criminological Work of Forensic Science Institutions. *Electronic Scientific Journal Socrates*. 2021. Vol. 1. № 19. P. 35. DOI: 10.25143/socr.19.2020.1.032-038 (date accessed: 29.09.2021).

6 Сімакова-Єфреміан Е. Б. До питання про взаємозалежність європейських інтеграційних процесів і тенденцій інтеграції спеціальних знань в Україні. *Теорія та практика судової експертизи і криміналістики*. 2017. Вип. 17. С. 152–158.

7 Клименко Н. І., Купрієвич О. А. Міжнародне співробітництво судово-експертних установ. *Вісник кримінального судочинства*. 2015. № 4. С. 131.

8 Ключев О. М. Удосконалення експертного забезпечення правосуддя: теоретичні, правові та організаційні аспекти. *Теорія та практика судової експертизи і криміналістики*. 2019. Вип. 19. С. 102–117. DOI: 10.32353/khrife.1.2019.08 (date accessed: 29.09.2021).

9 Див., напр.: Олійник О. О. Зарубіжний досвід адміністративно-правового регулювання судово-експертної діяльності. *Митна справа*. 2013. № 4 (88). С. 270 ; Русецький А. А. Про

standards for the protection of human rights and freedoms should direct the views of the scientific community to a more careful study of issues related to the development of theoretical foundations of forensic expertise, methods of conducting certain types of forensic examinations, administrative and legal support of forensic activities.

### Article Purpose

Identify the main goals and objectives of the state to ensure effective forensic activities in the context of European integration.

### Main Content Presentation

One of requirements for completing Ukrainian transition to an efficient market economy is the gradual integration of its administrative and legal norms into EU legislation. Accordingly, Ukrainian strategic goal is European integration and membership in the European Union, as this is the best way to realize national interests and build an economically developed and democratic state, as well as strengthen its position in the world system of international relations <sup>10</sup>. In order to speed up Ukraine European integration, citizens can vote for political

forces that clearly declare their support for European integration, actively express their position demanding that Verkhovna Rada of Ukraine adopt the necessary laws and the rest of the authorities (including local ones) their implementation. Analysis of statistical data shows that the majority of Ukrainians support the State strategy aimed at European integration (national level of support ranges from 60 to 70 %) <sup>11</sup>.

For achieving this goal (Ukrainian accession to the EU), our State as a candidate should go through several stages:

- fulfillment by a certain term of the terms of the Association Agreement between Ukraine, on the one hand, and European Union, European Atomic Energy Community and their Member States, on the other hand;
- achieving compliance with the conditions of EU membership (the so-called Copenhagen criteria), namely: ensuring the stability of democracy in the country, the rule of law, respect for human rights and protection of minority rights. It is also important to share the EU global policy and economic goals, in particular: adhere to the market economy principles

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організацію судово-експертної діяльності: міжнародний аспект. *Теорія та практика судової експертизи і криміналістики*. 2017. Вип. 17. С. 160 ; Олійник О. О., Галунько В. В., Єщук О. М. Адміністративно-правове регулювання судово-експертної діяльності : монографія. Херсон, 2015. С. 10 ; Скорик А. Л., Бірюков М. А. *Теорія і практика судової експертизи і криміналістики* : мат-ли III Всеукр. наук.-практ. конф. (Київ, 27.02.2020). Київ ; Маріуполь, 2020. С. 269.

10 Корнеев С. М. Сучасні проблеми розвитку судової експертизи в аспекті євроінтеграції України. *Судово-експертна діяльність: сучасний стан та перспективи розвитку* : зб. мат-лів круглого столу (Київ, 23.04.2015). Київ, 2015. С. 180–183. URL: <https://www.naiou.kiev.ua/news/sudovo-ekspertna-diyalnist-suchasnij-stan-ta-perspektivi-rozvitku.html> (date accessed: 04.03.2021).

11 Суспільно-політичні орієнтації населення України (за даними Київського міжнародного інституту соціології за квітень 2020 р.). URL: [https://www.kiis.com.ua/materials/pr/20200406\\_pressconf/politics\\_april%202020.pdf](https://www.kiis.com.ua/materials/pr/20200406_pressconf/politics_april%202020.pdf) (date accessed: 10.03.2021).

with a significant share of small business, to have a developed infrastructure, quality education and science<sup>12</sup>.

Important feature of European integration is also a clear definition of goals and a sequence of stages of convergence of political, legal and social and economic systems of member states<sup>13</sup>.

Following the bilateral summit of Ukraine and the EU, held on October 6, 2020 in Brussels (Belgium), the European Union recognized the significant progress of our country towards this goal and agreed on the need to further accelerate efforts to achieve European integration goals and further reforms. At the same time, the text of the *Joint Statement following the 22nd EU-Ukraine Summit* states: “providing strong and independent anti-corruption institutions”<sup>14</sup>. This position indicates the insufficiency of Ukraine efforts to achieve its goals and objectives related to judicial reform and the fight against corruption and the priority of this area. That is why one of the priorities in the relations between Ukraine and the EU is cooperation in the field of justice.

Currently, a comprehensive reform of justice continues in Ukraine. Legal cooperation between Ukraine and the

EU in this area is aimed at building trust in the Ukrainian judicial system within the country and among international partners. The aim of such cooperation is to expand the pan-European area of justice and security which would guarantee sustainable development of interpersonal relations and business relations between the citizens of Ukraine and the EU<sup>15</sup>.

One of the main international legal instruments aimed at establishing and developing international cooperation between Ukraine and the EU is the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, in Its preamble states that the political association and economic integration of our country with the EU will depend on Ukraine’s achievements in ensuring respect for common values and progress in approaching the EU in the political, economic and legal spheres, in particular in the field of justice<sup>16</sup>. The agreement also stipulates that cooperation in the field of justice will be based on the principles of fundamental freedoms and respect for human rights and within the framework of cooperation in the field of justice will be of particular importance strengthening the

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12 Коли Україна стане членом Європейського Союзу? (за даними Урядової кампанії ЕУКРАЇНА). URL: [https://association4u.in.ua/?utm\\_source=search&utm\\_medium=cpc&utm\\_campaign=association4u\\_search\\_mpb&utm\\_term=21.12.20&gclid=Cj0KCQiA1pyCBhCtARIsAHaY\\_5eATqpxz-0LNxNsKcLWlrPbqFS4f3imPdqqDRnD\\_a5ksTzBzEJ0SPwAaAhLHEALw\\_wcB#european\\_integration](https://association4u.in.ua/?utm_source=search&utm_medium=cpc&utm_campaign=association4u_search_mpb&utm_term=21.12.20&gclid=Cj0KCQiA1pyCBhCtARIsAHaY_5eATqpxz-0LNxNsKcLWlrPbqFS4f3imPdqqDRnD_a5ksTzBzEJ0SPwAaAhLHEALw_wcB#european_integration) (date accessed: 10.03.2021).

13 Яковюк І. В. Правові основи європейської інтеграції та її вплив на державно-правовий розвиток України : дис. ... д-ра юрид. наук. Харків, 2014. С. 44.

14 Проект плану дій між Україною та ЄС у сфері юстиції та внутрішніх справ: практичний результат до 2025 року. URL: <https://minjust.gov.ua/m/proekt-planu-diy-mij-ukrainouyta-es-u-sferi-yustitsii-ta-vnutrishnih-sprav-praktichniy-rezultat-do-2025-roku> (date accessed: 12.03.2021).

15 Ibid.

16 Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : ратифіковано із заявою Законом України від 16.09.2014 р. № 1678-VII (зі змін. та допов.). URL: [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text) (date accessed: 12.03.2021).

rule of law and strengthening institutions 14, section III) which corresponds to the constitutional principles of Ukraine. Reflecting the subordination of the state and its institutions (public authorities, officials and officials) to the law and its rule over, these principles become a priority in the rule of law.

At the same time, establishment of the rule of law and the strengthening of institutions at all levels in the field of governance in general and law enforcement and judicial bodies in particular is impossible without cooperation in the field of forensic science<sup>17</sup>.

The central executive body that implements the state legal policy on expert support of justice in Ukraine is the Ministry of Justice of Ukraine (hereinafter referred to as *Minjust*)<sup>18</sup>, according to the strategic plan of which one of its strategic goals is to create a modern system of expert justice. Effective solution of this strategic goal requires the following main tasks:

- ensuring the principle of independence of forensic activity while forensic examinations in criminal proceedings, cases of administrative offenses, as well as civil and commercial cases;
- application of uniform methodological approaches to forensic examinations<sup>19</sup>;

- comprehensive updating of the regulatory framework governing the implementation of forensic activities;
- equalization of powers of private and state forensic experts and increasing the level of competition between;
- implementation of international standards in forensic examinations (in particular, due to the provision of forensic research institutions with modern forensic equipment)<sup>20</sup>.

Identifier of achievements of the strategic program is the effectiveness of forensic science activity confirmed by the degree of achievement by the subjects of the set goals and objectives.

In accordance with current legislation governing forensic activities in the State, such activities are carried out by specialized state institutions of Ukraine and their territorial branches, forensic science institutions of communal ownership. Such activities can be carried out by forensic experts who are not employees of State forensic science institutions and other professionals (forensic experts) in the relevant fields of knowledge on the terms and in manner specified in Part 1 of Art. 7 of the Law of Ukraine: *On Judicial Examination*<sup>21</sup>. At the same time, this Law emphasizes the importance of conducting

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17 Овсянникова І. М. Судово-експертна діяльність як об'єкт адміністративно-правового регулювання. *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 21. С. 274. DOI: 10.32353/khrife.1.2020.017 (date accessed: 12.03.2021).

18 Положення про Міністерство юстиції України : Постанова КМУ від 02.07.2014 р. № 228 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/228-2014-%D0%BF>. (date accessed: 12.03.2021).

19 Стратегічний план діяльності Міністерства юстиції України на 2019–2022 роки (за даними Міністерства юстиції України). URL: [https://minjust.gov.ua/objectives\\_of\\_public\\_policy](https://minjust.gov.ua/objectives_of_public_policy) (date accessed: 12.03.2021).

20 План діяльності Міністерства юстиції України на 2021–2023 роки (за даними Міністерства юстиції України). URL: [https://minjust.gov.ua/objectives\\_of\\_public\\_policy](https://minjust.gov.ua/objectives_of_public_policy) (date accessed: 12.03.2021).

21 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 04.03.2021).

only forensic, forensic medical and forensic psychiatric examinations by state specialized institutions, which makes these institutions the main subjects of forensic activity.

Accordingly, Part 2 of Art. 7 of the mentioned Law, state specialized institutions include: research institutions of forensic examinations of the Ministry of Justice of Ukraine; research institutions of forensic examinations, forensic medical and forensic psychiatric institutions of the Ministry of Healthcare of Ukraine; expert services of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as *MIA of Ukraine*), Ministry of Defense of Ukraine, Security Service of Ukraine (hereinafter referred to as *SBU*) and the State Border Guard Service of Ukraine<sup>22</sup>.

Analysis of the current legislation of Ukraine indicates that purpose and objectives of state specialized institutions are determined by their statutes and/or regulations on , they should be consistent with the following core values administered by Minjust: rule of law; ensuring respect for human and civil rights and freedoms; legality; openness and transparency; responsibility and accountability; professionalism and continuous improvement<sup>23</sup>.

For example, the purpose of the National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» (hereinafter referred to as *NSC «Hon. Prof. M. S. Bokarius FSI»*) of the Ministry of Justice of Ukraine (according to its statute) is to meet the needs of pre-trial investigation bodies, judicial bodies, other

state bodies, as well as legal entities and individuals in ensuring their independent, qualified and effective expertise focused on the maximum use of the achievements of science and technology<sup>24</sup>. For achieving this goal, NSC «Hon. Prof. M. S. Bokarius FSI» carries out activities aimed at improving the effectiveness of research in the field of theory and practice of forensics and criminology, development and improvement of methodology and methods of forensic science to maximize its capabilities while pre-trial investigation and trial in criminal proceedings, hearing civil, commercial, administrative cases and cases of administrative offenses, enforcement proceedings, as well as in resolving issues that require the application of specific expertise outside legal proceedings<sup>25</sup>.

The main tasks of NSC «Hon. Prof. M. S. Bokarius FSI» include:

- 1) direct forensic examinations (in particular, related to the assessment of property rights and property, as well as the study of narcotic drugs and psychotropic substances, their analogues and precursors), appointed in criminal proceedings, commercial, civil, administrative cases, cases of administrative offenses and while enforcement proceedings;
- 2) conducting forensic researches (which results are formalized as forensic research conclusions) with the use of means and methods of forensic science, carried out at request of individuals or legal entities (in particular, assessment of property and property rights);

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22 Ibid.

23 Бачення, місія, цінності (за даними Міністерства юстиції України). URL: <https://minjust.gov.ua/pages/mission> (date accessed: 12.03.2021).

24 Статут Національного наукового центру «Інститут судових експертиз ім. Засл. проф. М. С. Бокаріуса» (за даними ННЦ «ІСЕ ім. Засл. проф. М. С. Бокаріуса»). URL: <https://www.hniise.gov.ua/14136-statut.html> (date accessed: 10.03.2021).

25 Ibid.

- 3) researches in the field of forensic science, criminalistics and practical implementation of obtained results in expert, investigative and legal proceedings;
- 4) ensuring functioning of the Ministry of Justice of Ukraine and other state bodies in the manner prescribed by law;
- 5) training of highly qualified staff in the field of forensic science, criminalistics and law;
- 6) training of professionals in the field of forensic science in order to assign (confirm) forensic expert qualification;
- 7) carrying out scientific and methodical and informational activities in the field of forensic science, law and criminalistics;
- 8) implementation of measures for international cooperation in the field of forensic science and criminalistics in accordance with the current legislation of Ukraine;
- 9) metrological support of research and forensic expert activities;
- 10) advanced training of forensic expert staff, in particular in the field of law, according to educational program on theoretical, organizational, procedural issues of forensic science <sup>26</sup>.

Similar are the tasks of the Scientific Research for Forensic on Intellectual Property in Kyiv (belonging to the Ministry of Justice of Ukraine) which purpose is to meet the needs of courts and pre-trial

investigation bodies, other state bodies, as well as legal and individuals in providing them with proper, qualified and objective expertise, forensic expert researches and evaluation using modern research in science and technology <sup>27</sup>.

Objectives of the Strategy for the Development of the System of the Ministry of Internal Affairs of Ukraine until 2020 (hereinafter referred to as *Strategy*) are to create a safe environment for free society, ensure high efficiency of the Ministry of Internal Affairs, strengthen public confidence in <sup>28</sup>. The Strategy states that the implementation of sustainable functioning, manageability and efficiency of the Ministry of Internal Affairs should be based on optimal solutions, taking into account the positive experience and best practices of leading countries. At the same time, higher education institutions with specific training conditions, health care institutions, enterprises, research forensic centers and research institutions belonging to the sphere of management of the Ministry of Internal Affairs provide adequate staffing of the Ministry of Internal Affairs.

The State Scientific Research Forensic Center (SSRFC) of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as *SSRFC*) and its territorial subdivisions (researchexpertforensiccenters, hereinafter referred to as the *SRFC*) constitute Expert Service of the Ministry of Internal Affairs <sup>29</sup>. According to the Regulations on the Expert Service of the Ministry of Internal Affairs of

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26 Ibid.

27 Буклет Центру 2021 р. (за даними Науково-дослідного центру судової експертизи з питань інтелектуальної власності Міністерства юстиції України). URL: [https://intellect.org.ua/wp-content/uploads/2020/12/buklet\\_czentru-2021.pdf](https://intellect.org.ua/wp-content/uploads/2020/12/buklet_czentru-2021.pdf) (date accessed: 12.03.2021).

28 Стратегія розвитку органів системи Міністерства внутрішніх справ на період до 2020 року : розпорядження КМУ від 15.11.2017 р. № 1023-р. URL: <https://zakon.rada.gov.ua/laws/show/1023-2017-%D1%80#Text> (date accessed: 12.03.2021).

29 Положення про документальне забезпечення записів у бухгалтерському обліку : затв. наказом МІА України від 24.05.1995 р. № 1343 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z1390-15#Text> (Date accessed: 25.06.2020).

Ukraine, the main tasks of the Expert Service of Ministry of Internal Affairs include: direct implementation of forensic activities; ensuring the involvement of employees of the Expert Service of the Ministry of Internal Affairs in the pre-trial investigation and trial; conducting certification and other tests, as well as conformity assessment of products, processes and services, performance of other works (within its competence); conducting forensic research on a contractual basis (within the competence) on issues of interest to legal entities and individuals, taking into account the restrictions provided by applicable law; conducting property appraisal, property rights and carrying out professional appraisal activities in accordance with the current legislation; ensuring the functioning of information retrieval systems, personal data processing, ensuring access to information (within the powers defined by law); ensuring functioning of the accounting of instruments of criminal offenses and other objects; carrying out special explosive works to search for and neutralize explosive objects, devices used for terrorist purposes; training, retraining and advanced training of employees of the Expert Service of the Ministry of Internal Affairs as forensic experts, explosives professionals and forensic experts<sup>30</sup>.

In order to improve forensic support, the order of the Central Department of the Security Service of Ukraine № 371 dated on 29.05.2015 approved the Instruction on appointment and conducting forensic examinations and researches in Security

Service of Ukraine, according to this Instruction the SBU forensic expert units include:

- Ukrainian Research Institute of Special Equipment and Forensic Science of the Security Service of Ukraine (*SBU FSISE*);
- separate forensic subdivisions (forensic departments and regional forensic departments) of SBU FSISE in regional bodies of SBU (*SBU FSISE SFS*)<sup>31</sup>.

SBU FSISE is a state specialized expert research institution that carries out forensic, scientific, organizational, and technical activities and performs the functions of the expert service of the SBU, provides the manufacture of specific technical means of covert information (hereinafter referred to as *STM*) and special equipment and participates in their implementation.

The main tasks of SBU FSISE: creation, manufacture and participation in the implementation of special equipment and STZ for the needs of units and bodies of the SBU, other entities of the security and defense sector of Ukraine; forensic support of the SBU units and bodies, other law enforcement agencies and the court; preliminary identification of goods in the field of state expert control; tests, special (thematic) researches, scientific and technical examination of STM and special equipment, assessment of conformity of technical means to the sphere of accreditation of ISTE SBU; implementation of technical regulation measures in the field of special technical means<sup>32</sup>.

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30 Ibid.

31 Інструкція про призначення та проведення судових експертиз та експертних досліджень в системі Служби безпеки України: затв. наказом Центр. упр. СБ України від 29.05.2015 р. № 371 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0738-15#Text> (date accessed: 12.03.2021).

32 Український науково-дослідний інститут спеціальної техніки та судових експертиз СБУ (за даними Служби безпеки України). URL: <https://ssu.gov.ua/naukovo-doslidnytskyi-institut> (date accessed: 12.03.2021).

In order to ensure forensic support of the State Border Guard Service of Ukraine, other law enforcement agencies to prevent, detect and investigate criminal and other offenses in the field of state border protection, the order of the State Border Guard Service of Ukraine dated 11.08.2010 № 617 approved the Regulations on the Main center of criminal expertise of the SBGS of Ukraine, according to which the Main Forensic Center of the State Border Guard Service of Ukraine (hereinafter referred to as *SBGS MFC*) is a state specialized institution that (according to Part 2 of Article 7 of Law of Ukraine: *On Judicial Examination*) is an expert service of the State Border Guard Service of Ukraine, which purpose of is to conduct forensic examination and forensic researches of passport documents that are used in accordance with the law when crossing the state border of Ukraine.

The main tasks of SBGS MFC are: direct forensic examination and expert research of passport documents for the State Border Guard Service of Ukraine, other law enforcement agencies to identify, prevent and investigate criminal and other offenses in the field of state border protection, as well as other work within the Center's competence; organization of scientific-methodical and information support of the activity of the bodies of the State Border Guard Service of Ukraine in the field of state border protection; implementation of methodical and organizational-legal management of the activity of expert subdivisions of SBGS MFC; forensic accounting; conducting exploratory research in the field of forensic support;

implementation of operational-technical and metrological support of technical-criminological means of the State Border Guard Service of Ukraine; experimental operation of technical means used during forensic examination and expert research and ensuring their use in practice<sup>33</sup>.

According to current legislation, the system of forensic medical service of Ukraine includes: State Specialized Institution Main Legal Medical Agency of the Ministry of Health of Ukraine (SSI MLMA MH Of Ukraine); Republican Bureau of Forensic Medical Examinations (Autonomous Republic of Crimea); Bureau of Forensic Medical Examinations of Healthcare Departments of Regional Executive Committees<sup>34</sup>.

The tasks of the Bureau of Forensic Medical Examination and the Republican Bureau (Autonomous Republic of Crimea) are: provide and conduct forensic medical examinations of corpses in case of suspicion of violence or violent death, as well as in other circumstances that necessitate examination to resolve questions asked by the person conducting inquiry, investigator, prosecutor, judge or court; providing and conducting forensic medical examination of victims, accused and other persons to determine the nature and severity of bodily injuries, sexual crimes, as well as to address other issues raised by the person conducting the inquiry, investigator, prosecutor, judge or court; providing and conducting forensic medical examination of physical evidence; providing and conducting forensic medical examination on the materials of criminal and civil cases; ensuring participation of

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33 Положення про документальне забезпечення записів у бухгалтерському обліку : затв. наказом Адміністр. Держприкордонслужби України України від 24.05.1995 р. № 617 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0770-10#Text> (date accessed: 25.06.2020).

34 Інструкція про проведення судово-медичної експертизи : затв. наказом МОЗ України від 17.01.1995 р. № 6. URL: <https://zakon.rada.gov.ua/laws/show/z0254-95#Text> (date accessed: 12.03.2021).

forensic experts as specialists in the field of forensic medicine during urgent and other investigative actions, as well as in court hearings; improving the quality of examination through the introduction into forensic practice of new research methods approved by the Ministry of Health of Ukraine and continuous improvement of forensic experts; ensuring the conduct of examinations in a timely manner; systematic informing of the heads of health care institutions about all defects and shortcomings in the provision of medical care to the population, identified during forensic examinations; ensuring the participation of forensic experts in clinical and clinical anatomical conferences; urgent notification of the relevant health services regarding the detected cases of acute infectious (in particular, especially dangerous) diseases; generalization and analysis of forensic material for health authorities to take measures to prevent industrial, street and domestic injuries, alcoholism, poisoning, drug addiction, substance abuse, sudden death and other issues that may contribute to improving medical care; Carrying out of actions for improvement of professional skill and specialization of forensic medical experts by means of periodic training in institutes of improvement of doctors and other corresponding establishments of public health services; systematic work

to improve business skills of bureau employees<sup>35</sup>.

Forensic mental state examination (hereinafter referred to as FMSE) are conducted by state specialized forensic psychiatric institutions of the Ministry of Healthcare of Ukraine in order to provide answers to questions posed by the person or body that (involved) the expert, or the investigating judge or court that commissioned the examination<sup>36</sup>.

In order to carry out scientific and scientific-pedagogical activities in the field of forensic psychiatric examination, a state research institution Ukrainian Research Institute of Social Psychiatry and Drug Abuse of Ministry of Healthcare of Ukraine was established, which main tasks (relating to forensic examination) include: mental state examination; participation in creation and implementation of innovative projects and programs in the field of forensic psychiatric examination; determination of directions of scientific activity in the field of forensic psychiatric examination (in particular, organization and participation in work of scientific and practical conferences, meetings, congresses, symposiums on the specified profile); publication of professional journals, methodical recommendations, information letters, textbooks, monographs, etc.<sup>37</sup>.

Regarding the activity of forensic services of the Ministry of Defense, we

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35 Положення про бюро судово-медичної експертизи управлінь охорони здоров'я обласних виконавчих комітетів та республіканське бюро (Автономної Республіки Крим) : затв. наказом МОЗ України від 17.01.1995 р. № 6. URL: <https://zakon.rada.gov.ua/laws/show/z0258-95#Text> (date accessed: 12.03.2021).

36 Порядок проведення судово-психіатричної експертизи : затв. наказом МОЗ України від 08.05.2018 р. № 865. URL: <https://zakon.rada.gov.ua/laws/show/z0719-18#Text> (date accessed: 12.03.2021).

37 Про зміну найменування та затвердження Статуту Державної установи «Науково-дослідний інститут психіатрії Міністерства охорони здоров'я України» (нова редакція) : затв. наказом МОЗ України від 07.08.2018 р. № 1462. URL: <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-07082018--1462-pro-zminu-najmenuvannja-ta-zatverdzhennja-statutu-derzhavnoi-ustanovi-naukovo-doslidnij-institut-psihiatrii-ministerstva-ohoroni-zdorovja-ukraini-nova-redakcija> (date accessed: 12.03.2021).

should note that at this stage of Ukraine's European integration direction, these services are being reformed. If earlier the expert service of the Ministry of Defense of Ukraine included the Center of Forensic Examinations of the Ministry of Defense of Ukraine (main institution performing scientific and methodological functions) and forensic laboratories under the operational command of the Armed Forces of Ukraine, since 2013 the Center of Forensic Examinations of the Ministry of Defense of Ukraine and all research for forensic investigators is directed to civilian expert institutions of the Ministry of Health of Ukraine. Although the current List of Health Care Institutions in the system of the Ministry of Defense of Ukraine retains the definition of such forensic services as the Center for Forensic Examinations and Forensic Laboratories (all names)<sup>38</sup>, neither the Regulations on the Ministry of Defense of Ukraine nor the Regulations on the General Staff of the Armed Forces of Ukraine are not currently envisaged to carry out forensic activities<sup>39</sup>.

## Conclusions

In view of the above, European integration is the main strategic direction of Ukraine on its way to strengthening democratic principles based on the rule of law, legality and subordination to human interests, protection of human rights and fundamental freedoms. Realization of this goal largely depends on the creation of a modern system of expert support of justice and the effective role of forensic

science in it. At the same time, the definition of ways to increase such efficiency is seen in clarifying the content and features of its main actors, especially forensic institutions that should function effectively through the timely and proper performance of their tasks.

## Ефективне адміністративно-правове регулювання судово-експертної діяльності в умовах євроінтеграції

Інеса Овсянникова

*Ефективне адміністративно-правове регулювання судово-експертної діяльності залежить від поставлених мети та завдань. Українське суспільство почало докорінно перебудовувати свою національну правову систему, закріпивши 1996 року в Конституції принцип верховенства права та ратифікувавши 1997 року Конвенцію про захист прав людини і основоположних свобод.*

*Мета статті полягає у визначенні основних цілей і завдань держави для забезпечення ефективної судово-експертної діяльності в умовах євроінтеграції.*

*Зобов'язання України перед європейською спільнотою розбудувати розвинуту та сталу демократію й ринкову економіку вимагають від неї передусім спрямування усієї національної системи права на такі європейські цінності, як демократія, повага до людини та її основоположних прав і свобод, верховенство права та ін. Для нашої держави принцип верховенства права пов'язаний із практикою Європейського Союзу, тому основним стратегічним напрямом є євроінтеграція.*

38 Про затвердження Переліку закладів охорони здоров'я в системі Міністерства оборони України : затв. наказом Міноборони України від 23.03.2017 р. № 168 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0511-17#Text> (date accessed: 12.03.2021).

39 Положення про Міністерство оборони України : затв. Постановою КМУ від 26.11.2014 р. № 671 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/671-2014-%D0%BF#Text> (date accessed: 12.03.2021) ; Положення про Генеральний штаб Збройних Сил України : затв. Указом Президента України від 30.01.2019 р. № 23/2019 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/23/2019#Text> (date accessed: 12.03.2021).

У межах європейського співробітництва особливого значення набувають сфера юстиції загалом і правоохоронні й судові органи зокрема. Ефективне проведення судової реформи й боротьба з корупцією сьогодні є пріоритетними напрямками розвитку нашої держави на шляху до євроінтеграції.

Важливою складовою реалізації поставленої мети є створення сучасної системи експертного забезпечення правосуддя, яка повинна ефективно функціювати завдяки вчасному та правильному виконанню поставлених суб'єктами судово-експертної діяльності цілей і завдань.

**Ключові слова:** ефективність; адміністративно-правове регулювання; судово-експертна діяльність; цілі; завдання; євроінтеграція.

**Эффективное  
административно-правовое  
регулирование судебно-экспертной  
деятельности в условиях  
евроинтеграции**

**Инееса Овсянникова**

Эффективное административно-правовое регулирование судебно-экспертной деятельности зависит от поставленных целей и задач. Украинское общество начало кардинально перестраивать свою национальную систему права, закрепив в 1996 году в Конституции принцип верховенства права и ратифицировав в 1997 году Конвенцию о защите прав человека и основополагающих свобод.

Цель статьи заключается в определении основных целей и задач государства для обеспечения эффективной судебно-экспертной деятельности в условиях евроинтеграции.

Обязательства Украины перед европейским сообществом выстраивать развитую и устойчивую демократию и рыночную экономику требуют от неё

прежде всего нацеленности всей национальной системы права на такие европейские ценности, как демократия, уважение к человеку и основополагающим правам и свободам, верховенство права и др. Для нашего государства принцип верховенства права связан с практикой Европейского Союза, поэтому основным стратегическим направлением является евроинтеграция.

В рамках европейского сотрудничества особое значение приобретают сфера юстиции в целом и правоохранительные и судебные органы в частности. Эффективное внедрение судебной реформы и борьба с коррупцией в настоящее время являются приоритетными направлениями нашего государства на пути к евроинтеграции.

Важной частью реализации поставленной цели является создание современной системы экспертного обеспечения правосудия, которая должна эффективно функционировать благодаря своевременному и правильному выполнению поставленных перед субъектами судебно-экспертной деятельности целей и задач.

**Ключевые слова:** эффективность; административно-правовое регулирование; судебно-экспертная деятельность; цели; задачи; евроинтеграция.

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The author declares that she has no conflict of interest.

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