

Comparative characteristics of bills on forensic science

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Since adoption of the Law of Ukraine: On Judicial Examination in 1994, the provision of justice by forensic experts has changed significantly, there is an urgent need to update regulations governing the issue of forensic science. That is why the deputies of the 6th session of the IX convocation as subjects of the legislative initiative submitted to the Verkhovna Rada of Ukraine a number of bills on the reform of judicial expertise in our country, a comparative review of which is presented here. The main terminological and legal features of the regulation of forensic activity, its content and status of its participants are also considered. The main criteria of reform and directions of development of the legislation on forensic activity abroad are singled out. A brief overview of the historical development of the legislation on forensic expertise in Ukraine is given. The main ways of forming definitions in the normative regulation of forensic activity and its subjects are outlined. Substantiated proposals for the settlement of forensic legal relations are provided. It is proposed to eliminate the identified shortcomings of the bills. The purpose of the article is based on a comparative analysis of regulations on judicial reform submitted to the Verkhovna Rada of Ukraine during September 2021 – January 2022 (6th session of the IX convocation) by the subjects of legislative initiative, and taking into account the current state scientific discussion, to formulate practically sound

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proposals to determine the optimal construction in Ukraine of the system and structure of institutions and officials who have the right to carry out forensic science activity.

Keywords: *forensic expert; forensic examination; legislative regulation of forensic expert activity; subjects of forensic expert activity; draft normative acts on forensic expert activity.*

Research Problem Formulation

One of forensic expert independence guarantees and correctness of his conclusion (paragraph 5 of Article 4 of the Law of Ukraine: On Judicial Examination ¹, hereinafter referred to as core Law) is creation of necessary conditions for forensic expert. Since the core Law adoption in 1994 (despite numerous amendments and additions to it), provision of justice by forensic experts has evolved (changed the sources of funding for such activities, departmental affiliation of forensic institutions, etc.), there is an urgent need to reform regulations of forensic science activity.

In addition, forensic expert does not function separately from the system of bodies and officials involved in the field of forensic science, so comprehensive

reform of these legal relations has become particularly relevant when considering bills on the basic principles of forensic science in Ukraine. Solving the issues raised by the authors of this article is not only theoretical but applied one.

Analysis of Essential Researches and Publications

Some issues of reforming normative acts on forensic science activity of the last twenty years were considered: H. Avdieieva, L. Holovchenko, V. Vasyliiev, O. Kliuiev, D. Kurylenko, O. Naranovych, I. Ovsianynkova, S. Onopriienko, A. Polianskyi, E. Popovich, E. Simakova-Yefremian, O. Snigerov, I. Spasenko, H. Strilets, V. Shepitko, M. Shcherbakovskiy, G. Juodkaitė-Granskienė, V. Yurchyshyn and others. ²

1 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).

2 Ключев О. М. До питання міжнародного співробітництва в галузі судової експертизи. *Теорія та практика судової експертизи і криміналістики*. 2018. Вип. 18. С. 154–162. DOI: 10.32353/khrife.2.2018.17 (date accessed: 12.02.2022) ; Снігер'єв О. П., Андренко С. О. До питання з визначення поняття судової експертизи в адміністративному провадженні (*оглядова стаття*). *Ibid.* С. 231–240. DOI: 10.32353/khrife.2018.25 (date accessed: 12.02.2022) ; Попович Є. М. Принципи організації та функціонування автоматизованих систем у судово-експертній діяльності. *Ibid.* С. 248–256. DOI: 10.32353/khrife.2018.27 (date accessed: 12.02.2022) ; Шепітько М. В. Проблеми виявлення та розслідування злочинів проти правосуддя, що вчиняються професійними учасниками судочинства (провадження). *Ibid.* 2019. Вип. 19. С. 48–57. DOI: 10.32353/khrife.1.2019.04 (date accessed: 12.02.2022) ; Ключев О. М.

Article purpose

This article purpose is on the basis of a detailed comparative analysis of legal acts on judicial reform submitted to the Verkhovna Rada of Ukraine during September 2021—January 2022 (6th session of the IX convocation) by the subjects of the legislative initiative (people's deputies and the Cabinet of Ministers of Ukraine) and taking into account the current state of the scientific discussion — to formulate practical proposals for determining the optimal construction in Ukraine of the

system and structure of institutions and officials authorized to carry out forensic science activity.

Main Content Presentation

At the present stage of state-building, among other important tasks, it is relevant to confidently direct Ukraine towards integration into the European Union (in particular, by adapting as lawsuit in general as out-of-court proceedings (criminal, executive, etc.³), in particular, for example, in terms of organization, appointment,

Удосконалення експертного забезпечення правосуддя: теоретичні, правові та організаційні аспекти. *Ibid.* С. 102—117. DOI: 10.32353/khrife.1.2019.08 (date accessed: 12.02.2022) ; Сімакова-Єфремян Е. Б. Про необхідність удосконалення законодавства щодо здійснення судово-експертної діяльності в Україні. *Ibid.* С. 118—129. DOI: 10.32353/khrife.1.2019.09 (date accessed: 12.02.2022) ; Щербаковський М. Г., Куриленко Д. В. Обізнані особи в судочинстві України (*оглядова стаття*). *Ibid.* С. 142—157. DOI: 10.32353/khrife.1.2019.011 (date accessed: 12.02.2022) ; Попович Є. М. Єдність науки та практики в судово-експертній діяльності. *Ibid.* С. 158—172. DOI: 10.32353/khrife.1.2019.012 (date accessed: 12.02.2022) ; Шепітько В. Ю., Авдеева Г. К. Проблеми застосування науково-технічних засобів та інноваційних продуктів у діяльності органів правопорядку. *Ibid.* 2019. Вип. 20. С. 11—26. DOI: 10.32353/khrife.2.2019.01 (date accessed: 12.02.2022) ; Сімакова-Єфремян Е. Б. До питання про введення у кримінальне процесуальне законодавство поняття «висновок спеціаліста». *Ibid.* С. 110—120. DOI: 10.32353/khrife.2.2019.07 (date accessed: 12.02.2022) ; Онопрієнко С. А., Наранович О. В., Спасенко І. О. Щодо питання проведення міжлабораторних порівнянь під час судово-експертної діяльності. *Ibid.* С. 162—174. DOI: 10.32353/khrife.2.2019.12 (date accessed: 12.02.2022) ; Овсянникова І. М. Основні засади визначення ефективності судово-експертної діяльності: адміністративно-правовий аспект. *Ibid.* С. 215—229. DOI: 10.32353/khrife.2.2019.16 (date accessed: 12.02.2022) ; Васильєв В. М. Судова експертиза у цивільному та господарському провадженні як окрема форма застосування спеціальних знань. *Ibid.* 2020. Вип. 21. С. 120—132. DOI: 10.32353/khrife.1.2020.08 (date accessed: 12.02.2022) ; Щербаковський М. Г. Співвідношення та структура криміналістичної техніки й судової експертології. *Ibid.* С. 133—147. DOI: 10.32353/khrife.1.2020.09 (date accessed: 12.02.2022) ; Пиріг І. В. Інформаційне забезпечення експертної діяльності. *Ibid.* С. 179—193. DOI: 10.32353/khrife.1.2020.12 (date accessed: 12.02.2022) ; Овсянникова І. М. Судово-експертна діяльність як об'єкт адміністративно-правового регулювання. *Ibid.* С. 267—280. DOI: 10.32353/khrife.1.2020.17 (date accessed: 12.02.2022) ; Шепітько В. Ю. Формування криміналістики та криміналістичної дидактики в Україні. *Ibid.* Вип. 22. С. 7—19. DOI: 10.32353/khrife.2.2020.01 (date accessed: 12.02.2022) ; Полянський А. О., Юодкайте-Гранскієне Г. Щодо класифікації завдань загальної теорії судової експертизи і практичної судово-експертної діяльності (*оглядова стаття*). *Ibid.* С. 179—192. DOI: 10.32353/khrife.2.2020.13 (date accessed: 12.02.2022).

- 3 Про Загальнодержавну програму адаптації законодавства України до законодавства Європейського Союзу: Закон України від 18.03.2004 р. № 1629-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1629-15#Text> (date accessed: 12.02.2022).

execution and registration of studies that require specific expertise in various fields of science, technology, art or other spheres of human activity).

In 1994, Ukraine was the first of the post-Soviet countries to adopt a specialized Law on Forensic Examination⁴. However, since then, 28 years have passed, which to some extent detracted the profile Law from the realities of the present, and also radical changes in the economic model of Ukraine and the reception of EU legislation have led to the scientific relevance of the problem, which faced not only lawmakers and legal scientists⁵, but also practical experts of the forensic expert community, the need for regulatory regulation of social relations that were objectively formed during this time both in the field of forensic examination in particular, and while organizing activities for conducting forensic research in general⁶.

Ukrainian scientists emphasized immediate updating of national legislation taking into account the best practices of the European Union back in 2010s⁷.

At the same time, only in 2019, the authorities recognized the need for a draft law on the creation of a system of self-government of forensic experts, the introduction of a review of the conclusion of a forensic expert and the definition of deadlines for conducting forensic examinations (as provided for in paragraph 4 of sub-paragraph “b” of paragraph 3 of Art. 1 of the Decree of the President of Ukraine No. 837/2019: *On urgent measures to implement reforms and strengthen the state dated on November 8, 2019*⁸ in terms of implementing measures in the areas of legal policy, ensuring human and civil rights and freedoms).

Only in 2020, the rights holder approached implementation of conditions for regulatory regulation of self-government of forensic experts and expanding access of persons to the services of forensic experts as a component of access to justice (in particular, by balancing the powers of private and state forensic experts and promoting competition between them) in accordance with the Program of Activities of the Cabinet of Ministers of Ukraine,

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

5 Ключев О. М. Реформування базового законодавства України з питань експертного забезпечення правосуддя — нагальна потреба часу. *Проблеми реформування базового законодавства України з питань експертного забезпечення правосуддя* : мат-ли кругл. столу (Харків, 06—07.02.2020). Харків, 2020. С. 6—11. URL: https://www.hniise.gov.ua/user_files/File/other/13%20%D0%BF%D0%BE%D1%81%D0%BB%D0%B5%D0%B4%D0%BD%D1%8F%D1%8F%D0%BD%D0%B0%20%D0%BF%D0%B5%D1%87%D0%B0%D1%82%D1%8C.pdf (date accessed: 12.02.2022).

6 Ключев О. М. Міжнародне наукове співробітництво — ефективний механізм удосконалення судово-експертної діяльності. *Актуальні питання судової експертизи і криміналістики* : зб. мат-лів міжнар. наук.-практ. конф.-полілогу (Харків, 15—16.04.2021). Харків, 2021. С. 37. URL: https://www.hniise.gov.ua/uploads/files/public-folder/2021_tezy_konferentsiya%20in%20print5.pdf (date accessed: 12.02.2022).

7 Е.г.: Сімакова-Єфремян Е. Б. До питання про взаємозалежність європейських інтеграційних процесів і тенденцій інтеграції спеціальних знань в Україні. *Теорія та практика судової експертизи і криміналістики* : зб. наук. пр. 2017. Вип. 17. С. 152—158. DOI: 10.32353/khrife.2017.18 (date accessed: 19.11.2021).

8 Про невідкладні заходи з проведення реформ та зміцнення держави : Указ Президента України від 08.11.2019 р. № 837/2019. URL: <https://www.president.gov.ua/documents/8372019-30389> (date accessed: 20.02.2022).

approved by the Resolution of the Cabinet of Ministers of Ukraine dated June 12, 2020 No. 471⁹: The Government of Ukraine saw fit to integrate expert institutions into the newly created judicial system as integral part¹⁰.

In addition, in pursuance of the provisions of the Decrees of the President of Ukraine dated on 30.09.2019 № 722/2019 *On the Sustainable Development Goals of Ukraine until 2030*¹¹ and on 08.11.2019 № 837/2019 *On urgent measures to carry out reforms and strengthening of the state*¹² scientific and practical measures were taken, as a result of which 4 bills on forensic examination and forensic expertise were prepared and adopted for consideration, namely: 1) the bill on forensic science (dated 05.11.2021 № 6284 the subject of the right of legislative initiative: the Cabinet of Ministers of Ukraine, hereinafter referred to as the bill 6284)¹³; 2) bill on forensic science (dated

on 19.11.2021 № 6284-1; the subject of the right of legislative initiative: the People's Deputy of Ukraine; hereinafter referred to as the bill 6284-1)¹⁴; 3) bill on forensic science activity and Self-Government of forensic experts (dated on November 22, 2021 № 6284-2; the subject of the right of legislative initiative: the People's Deputy of Ukraine; hereinafter referred to as the bill 6284-2)¹⁵; 4) the bill on Amendments to the Law of Ukraine: *On Judicial Examination* (dated on November 22, 2021 № 6284-3; the subject of the right of legislative initiative: the People's Deputy of Ukraine; hereinafter referred to as the bill 6284-3)¹⁶.

Therefore, after the formulation of the essence of the legal problem of this study, it is advisable to determine its epistemological basis. We share the opinion that the study of the mechanism for the implementation of the rule of law in legal terms contributes to a deep disclosure of the nature of the law, the legal understanding of reality¹⁷.

- 9 Програма діяльності Кабінету Міністрів України [Activity program of the cabinet of ministers of Ukraine]: затв. Постановою КМУ від 12.06.2020 р. № 471. URL: <https://zakon.rada.gov.ua/laws/file/text/81/f495727n7.pdf> (date accessed: 20.02.2022).
- 10 Банчук О. Схвалення Урядом законопроект про судово-експертну діяльність дозволить вирішити головні проблеми у цій сфері / Новини Міністерства. 03-11-2021 // Офіц. сайт Мін'юсту України. URL: <https://minjust.gov.ua/news/ministry/oleksandr-banchuk-shvaleniy-uryadom-zakonoproekt-pro-sudovo-ekspertnu-diyalnist-dozvolit-virishiti-golovni-problemi-u-tsiy-sferi> (date accessed: 12.02.2022).
- 11 Про Цілі сталого розвитку України на період до 2030 року : Указ Президента України від 30.09.2019 р. № 722/2019. URL: <https://www.president.gov.ua/documents/7222019-29825> (date accessed: 12.02.2022).
- 12 Про невідкладні заходи з проведення реформ та зміцнення держави : Указ Президента України від 08.11.2019 р. № 837/2019. URL: <https://www.president.gov.ua/documents/8372019-30389> (date accessed: 20.02.2022).
- 13 Проект Закону про судово-експертну діяльність від 05.11.2021 р. № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).
- 14 Проект Закону про судово-експертну діяльність від 19.11.2021 р. № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).
- 15 Проект Закону про судово-експертну діяльність та самоврядування судових експертів від 22.11.2021 р. № 6284-2. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73258 (date accessed: 12.02.2022).
- 16 Проект Закону про внесення змін до Закону України «Про судову експертизу» від 22.11.2021 р. № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73261 (date accessed: 12.02.2022).
- 17 Халфина Р. О. Общее учение о правоотношении : монография. Москва, 1974. С. 6.

It is a well-known statement: “Only with the emergence of the legal profession is the nature of the systematic presentation of legal norms understood, their constructive connection is realized, and science develops legal constructions that become an important reference point, a method of learning law. Based on the achievements of science, the legislator begins to consciously use legal constructions as a means of constructing normative material. Then the normative constructions and the constructions of legal science go hand in hand, enriching each other. Legal science not only comprehends the constructions that are expressed in law. Analyzing these constructions, it identifies their shortcomings, makes proposals to improve them, as well as develops new constructions that more adequately reflect the legal relations, better meet the interests of the state at a certain stage of society. The use of perfect legal constructions by the legislator, in turn, leads to the improvement of legislation”¹⁸.

In addition, the ontological, that is, the value aspect (in terms of values as the main ideas to be protected and protected by legal means) of a comprehensive study of the problems of regulating forensic expert activity under the drafts of new regulatory legal acts also deserves attention. An act of law (in a broad sense) acquires an objective meaning at the time of its occurrence¹⁹. It is possible and expedient to analyze the legislation primarily through the study of objective factors that accompany or condition the occurrence of a specific legal phenomenon, in this case, normalization of forensic science activity.

We can conclude that as of nowadays, the legislation on forensic science (both at the ontological and practical levels) does not fully reflect the objective reality: formation of a new Ukrainian statehood and the formation of appropriate legal matter due, in particular, to the implementation of the rules of law of the European Union. The purpose of the adaptation of *the domestic law to the EU acquis communautaire* is the accession of Ukraine to the European Union — subject to the requirements imposed by the EU on states intending to join it²⁰.

In addition, the subjects of the legislative initiative have identified problematic aspects that require improvement, namely: legislative consolidation of the conceptual apparatus of forensic expert activity in order to ensure a unified approach to their use in law enforcement activities (*expert initiative, forensic expert qualification, methodology for conducting forensic examination, forensic science activity*, etc.) and the basic principles of forensic expert activity; more clearly defining the status, rights and obligations of forensic experts, forensic expert institutions and their heads.

The issue of disciplinary responsibility of forensic experts (determination of the range of such acts and their responsibility) needs urgent solution at the legislative level.

Analytical part of our study considers it expedient to start with definition of the main predicate: forensic examination: a multi-digit concept that in practical terms means forensic science activity, in scientific: field of knowledge, in procedural one: source of evidence, in evidence: means of proof, in epistemological one: a special

18 Черданцев А. Ф. Юридические конструкции, их роль в науке и практике. *Известия вузов. Правоведение*. 1972. № 3. С. 12—19.

19 Ibid. С. 14.

20 Грицак С. В. Адаптація інформаційного законодавства України до норм Європейського Союзу : автореф. дис. ... канд. юрид. наук. Запоріжжя, 2013. 16 с.

type of research, in law enforcement: procedure and results of the specific expertise application ²¹.

At the level of scientific abstraction, the above definition is seen as complete, at the same time (given the high level of scientific generalization), it is difficult to apply such a definition in normative technology to create a modern legislative act on forensic examination and forensic science activity that meets the purpose of government standard-setting, aspirations of scientists and the expectations of practitioners. At the legislative level, the following definitions are proposed:

- forensic examination is research by the subject of forensic examination on the basis of specific expertise in accordance with legislation of material (materialized) objects that contain information about facts and circumstances that are relevant to the case (proceedings) or are of interest to the customer of forensic examination (the bill: 6284 ²²);
- forensic research is a process of cognitive activity of a forensic expert in order to establish on the basis of specific expertise on factual data and circumstances of proceedings in any type of proceedings, outside the proceedings in cases provided

for by law and enforcement proceedings (the bill: 6284-1 ²³);

- forensic examination is a research by an expert on the basis of specific expertise in the field of science, technology, art, craft, etc. of tangible and intangible (information) objects, phenomena and processes that contain information about the actual data and circumstances of the case that are or will be the subject of legal proceedings and through the subject of such examination (the bill 6284-2 ²⁴);
- forensic examination is a research based on specific expertise in the field of science, technology, art, craft, etc., objects, phenomena and processes in order to provide an opinion on issues that are or will be the hearing subject (the bill: 6284-3 ²⁵).

In our opinion, the most successful is the formulation of the concept of *forensic examination* in the bill 6284 implemented at the suggestion of E. B. Simakova-Yefremian ²⁶.

At the same time, consciously or involuntarily but at the legislative level, several draft legislative acts were adopted for consideration, in which the concept of *forensic examination* was applied. This state does not promote certainty both in

21 Щербаковський М. Г. Проведення та використання судових експертиз у кримінальному провадженні : монографія. Харків, 2015. 560 с.

22 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

23 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

24 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

25 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

26 Сімакова-Єфремян Е. Б. До питання про необхідність внесення змін до статті 1 Закону України про судову експертизу. *Судова експертиза: сучасність та майбутнє* : мат-ли кругл. столу (Львів, 25–26.01.2019) ; за заг. ред. д-ра техн. наук. М. О. Кузіна. Львів, 2019. С. 124.

the legal system and within individual legal and procedural institutions.

We consider it advisable to additionally dwell on special knowledge as a component of the competence of the subject of forensic examination. Current legislation (Laws of Ukraine dated on 04.07.2014 No. 1590-VII *On Amendments to Certain Laws of Ukraine on Certain Issues of Medical and Social Expertise* ²⁷, dated on 24.05.2012, № 4845-VI *On Amendments to the Law of Ukraine On Energy Saving on Payment for State Expertise on Energy Saving* ²⁸, dated 17.06.2004 No. 1808-IV *“On State Expertise of Land Management Documentation”* ²⁹, dated 10.02.1995 № 51/95-BP *On Scientific and Scientific Technical Expertise* ³⁰, dated on 09.02.1995 № 45/95-BP *On Ecological Examination*, etc.) ³¹ and the above draft laws contain (contained) provisions on the need to apply specific expertise while conducting forensic researches.

Thus, the established definitions of *forensic expert* and *forensic examination*”, although they do not reflect the entire

essence of the formed legal phenomenon, make it possible to distinguish a group of persons who conduct research that require the specific expertise application in various fields and for whose activities the legislation is being updated.

Perhaps (for the purpose of further species definition), it is advisable to pay additional attention to the fact that the subjects mentioned in the above-mentioned laws of Ukraine conduct research but not in a manner or on the grounds stipulated by the core Law and the above-mentioned draft laws on this issue³².

Scientific discussions have already taken place on ³³, but unanimous recommendations on the names of persons whose activities are currently regulated by the core Law and other subjects of forensic research have not yet been finalized. Although the authors of the bill 6284 proposed to change some articles of the procedural codes of Ukraine (to separate a forensic expert from specialist, rename the expert in law to a legal adviser), namely:

27 Про внесення змін до деяких законів України щодо окремих питань проведення медико-соціальної експертизи : Закон України від 04.07.2014 р. № 1590-VII. URL: <https://zakon.rada.gov.ua/laws/show/1590-18#Text> (date accessed: 12.02.2022).

28 Про внесення змін до Закону України «Про енергозбереження» щодо оплати державної експертизи з енергозбереження : Закон України від 24.05.2012 р. № 4845-VI. URL: <https://zakon.rada.gov.ua/laws/show/4845-17#Text> (date accessed: 12.02.2022).

29 Про державну експертизу земельпорядної документації: Закон України від 17.06.2004 р. № 1808-IV (утрат. чин.). URL: <https://zakon.rada.gov.ua/laws/show/1808-15#Text> (date accessed: 12.02.2022).

30 Про наукову і науково-технічну експертизу : Закон України від 10.02.1995 р. № 51/95-BP (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/51/95-%D0%B2%D1%80#Text> (date accessed: 12.02.2022).

31 Про екологічну експертизу : Закон України від 09.02.1995 р. № 45/95-BP (утрат. чин.). URL: <https://zakon.rada.gov.ua/laws/show/45/95-%D0%B2%D1%80#Text> (date accessed: 12.02.2022).

32 Шепітько В. Ю. Проблеми нормативно-правового регулювання судово-експертної діяльності в Україні. *Проблеми реформування базового законодавства України з питань експертного забезпечення правосуддя* : мат-ли кругл. столу (Харків, 06—07.02.2020). Харків, 2020. С. 26.

33 Угровецький О. П., Свідерський О. О. Напрямки формування сучасного теоретичного підґрунтя судово-експертної діяльності в Україні. *Судова експертиза: сучасність та майбутнє* : мат-ли кругл. столу (Львів, 25—26.01.2019) ; за заг. ред. д-ра техн. наук. М. О. Кузіна. Львів, 2019. С. 135.

Art. 70 of the Commercial Procedural Code of Ukraine³⁴ Art. 73 of the Civil Procedural Code of Ukraine³⁵, Art. 69 of the Code of Code of Administrative Proceedings of Ukraine because now and Art. 70 of the Code of Civil Procedure of Ukraine³⁶ and Art. 73 Commercial and Procedural Code of Ukraine and Art. 69 Code of Administrative Proceedings of Ukraine of Ukraine are called: *Expert in Law*.

We see this approach as appropriate: *firstly*, according to Part 2 of Art. 102 of the Civil Procedural Code of Ukraine, the subject of the expert's conclusion cannot be legal issues (therefore, within the framework of one normative act (Civil Procedural Code of Ukraine), there are contradictions that do not describe the legal phenomenon of forensic examination on the merits), *secondly*, the definition of *legal consultant* is not consistent with terminology of the Criminal Procedure Code of Ukraine³⁷ in terms of the name of the participant in the process who possesses specific expertise and skills and “*can provide advice, explanations, references and conclusions during the pre-trial investigation and trial on issues requiring relevant specific expertise and skills*” (Part 1 of Art. 71 of the Criminal Procedure Code of Ukraine)³⁸.

To unify the procedural terminology and prevent misinterpretation or complications of judicial practice, we propose to use in the current legislation and draft regulations the name of the participant in the process who is involved

in the case to provide advice on legal issues: *specialist (professional) on legal issues*.

Perhaps, the differentiation of these persons and the relevant legal institutions needs some refinement in view of the conceptual place of the subjects of expert research in the judiciary, so we suggest using the designations: *forensic expert* and *forensic examination* to distinguish the subjects of forensic examination from the rest of the experts whose activities are not subject to regulation by the relevant Law as persons providing expert conclusion in the sense of the draft Law 6284 and do not belong to the circle of persons whose activities are planned to be regulated in the event of the entry into force of one of the above-mentioned bills.

The concepts of *forensic expert* and *forensic examination* are conditioned by a certain form of both the appointment of an examination and its conduct. Since one of the guarantees of effective protection of the rights and freedoms of citizens is the establishment and observance of the procedural form, and the judicial form is the most regulated (its violation causes negative consequences for both the judge and the parties to the process), so the availability of the *forensic* word in the subject designation conducting such research, and in the designation of the activity carried out by him can indicate that this activity (and therefore the qualification of forensic expert) meets the requirements of the procedural form, its results are

34 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 12.02.2022).

35 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 12.02.2022).

36 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 12.02.2022).

37 Кримінальний процесуальний кодекс 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: 12.02.2022).

38 Ibid.

allowed to be used in the trial as a means of proof.

Accordingly, the concept of *forensic examination* can be used only in unconditional connection with the subject performing such research: a forensic expert. The bill 6284 uses the phrase *forensic expert* 42 times, in particular, in Art. 15 *Forensic expert*: “1. The forensic expert carries out activities on conducting forensic examinations on a professional basis. A forensic expert may be a citizen of Ukraine who has a second-level higher education in the relevant field of knowledge, has received professional training, received a qualification of a forensic expert in accordance with this Law, and the information about which is included in the Register of Forensic Experts”³⁹.

Such an addition corresponds to the current trends of scientific substantiation of the theory of forensic research, in particular, to the praxeological approach to determining the nature of the activity of a forensic expert, because “*forensic expert activity is carried out by an expert — a knowledgeable person endowed with special knowledge. The coloring of “special” is not in the very knowledge, but in the person who is trained.*”⁴⁰

The bill 6284-1 in Art. 24 proposes a slightly different definition of the status of the subject of forensic examination, namely: forensic expert:

“1. Forensic expert may be a person who has an educational and qualification level not lower than a master’s degree in a certain specialization or in a certain field of knowledge has scientific, technical or other special knowledge, has qualification of a forensic expert and has received the right to conduct

a forensic examination in a certain expert specialty, in accordance with the procedure established by this Law.

2. State forensic experts may be persons who meet the requirements of part 1 of this article and the qualification requirements established by state bodies, whose sphere of management includes state specialized forensic expert institutions, have received appropriate training in a state specialized forensic expert institution or in a subject of educational activity and have passed a qualification examination for the right to conduct a forensic examination in a certain forensic specialization in the manner prescribed by this Law.

3. Private forensic experts may be persons who meet the requirements of Part 1 of this Article and the qualification requirements established by state bodies, the management of which includes state specialized forensic expert institutions, trained (internship): according to the program of training a forensic expert in theoretical, organizational and procedural issues of forensic science at the Institute of Law and Postgraduate Education of the Ministry of Justice of Ukraine or the state research institution of forensic examinations, which have the appropriate license to carry out educational activities in the field of advanced training; according to the programs of training a forensic expert in the relevant expert specialties in the state specialized forensic expert institution and passed the qualification exam for the right to conduct a forensic examination in a certain expert specialization, in the manner prescribed by this Law”⁴¹.

We believe that the concept of determining the legal personality of

39 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

40 Каминский М. К. Специальные знания — сила? Криміналіст першодрукований. 2011. № 3. С. 71.

41 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

a forensic expert proposed by the authors of the bill: 6284-1 contains provisions that need to be improved. *Firstly*, clause 1 of this article does not meet the requirements of the legislation on higher education (for example, it does not take into account standard of educational qualification, according to which the master's degree was issued). *Secondly*, the dichotomy: *public* – *private* clauses 2 and 3 regarding the status of a forensic expert is not very successful, since it concerns the forensic expert's belonging to the public or private sector: in our opinion, this is unacceptable.

If a dichotomy at the legislative level is necessary, we propose to distinguish forensic experts depending on the place of work (for example: a forensic expert of a public or private expert institution or private practice) and to refuse to distinguish such persons by belonging to a certain institution, leaving, if necessary, a difference in the substantive criterion, that is, according to the range of expert studies that are authorized to be performed by forensic experts.

The bill: 6284-2 ⁴² also does not define the subjectivity of forensic expert due to the praxeological aspect of his activities, instead it makes requirements for the status of a forensic expert. In other words, a forensic expert may be a person who has acquired this status, but does not carry out such activities. Such a definition also has certain disadvantages at the level of generalization of the legal phenomenon.

The bill: 6284-3 actually proposes to state in a different wording the current specialized Law: in particular, removing from Art. 10 the requirements for the qualification of an expert, as well as

information about the very fact of the professional activity of a forensic expert⁴³.

Taking into account the normative definition of the legal personality of the forensic expert, we consider the designs of draft laws 6284 and 6284-1 to be the most successful; they correspond to modern scientific and practical recommendations and tasks of regulatory regulation (taking into account our proposed clarification).

At the same time, given the need to distinguish between forensic experts and private forensic experts, it should be noted that the bill: 6284, despite most of the positive aspects, still has some shortcomings in the normative definition of legal personality of a forensic expert. For example, in Art. 14 defines the list of persons - subjects of forensic examination, which include forensic experts and other persons - specialists in the relevant field of knowledge, involved in forensic examinations in the absence of a forensic expert in this field or involved in a comprehensive or commission examination. This definition seems quite reasonable, while Art. 55 of the bill: 6284 requires requirements for the opinion – but not of a forensic expert, but of an ordinary expert that does not correspond to the concept of updating the legislation providing for examination only by forensic experts.

Therefore (to develop the provision on the peculiarities of the subjective status of a forensic expert), we propose to apply the *expert's conclusion* phrase (in the sense of Art. 55 of the draft Law 6284) to an exceptional forensic expert (in order to prevent divergent interpretations of this norm by the parties in controversy).

42 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

43 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

The next element of the comparative research on scientific and practical significance of the draft laws on forensic expert activity is the definition of the essence of forensic expert activity and the methods of such determination in the relevant draft laws, so we should briefly outline the state of the scientific discussion on this issue and the main aspects that require regulatory settlement.

According to H. O. Strilets, *“forensic expert activity is the activity of forensic expert institutions regulated by law, aimed at conducting independent forensic examinations by means of objective, comprehensive and complete research in compliance with modern achievements of science and technology, organization of the work of forensic expert institutions in general and their structural units, their scientific, methodological and information support, selection and training of forensic expert personnel”*⁴⁴.

M. Ya. Sehai identifies four structural blocks that make up an integral system of forensic expert activity (hereinafter referred to as FEA):

- “1) activities of the state on legal support of the FEA at the legislative and departmental normative and legal levels;*
- 2) activities of state executive bodies, which carry out the function of managing FEA;*
- 3) activities of the main FEA entities that ensure organizing and conducting forensic examinations in state FSI;*
- 4) activity of participants in proceedings involved in the conducting forensic examinations.”*⁴⁵

In this regard, according to M. Ya. Sehai, *“forensic expert activity as an object of knowledge of forensic expertise can be defined as the activity of the state, legal entities and individuals to provide justice with an independent, objective and qualified examination carried out by professional (certified) forensic experts. <...> The legal basis of forensic expert activity corresponds to the law enforcement function of forensic expertology and an independent section of its cognitive structure, which reveals the “legal field” of FEA as a system of its regulatory framework and legal relations of its participants”*⁴⁶.

It is also believed that forensic expert activity should not be limited to specialized forensic science institutions, although most of the examinations are carried out in them: that is, both employees of forensic expert institutions and knowledgeable persons, for whom conducting forensic examination is not mandatory can be involved in conducting forensic examinations⁴⁷.

Summing up the state of scientific discussion on the issue raised, we note that forensic expert activity should be considered not from the standpoint of the organization of the work of the forensic expert or the rest of investigation participants, but from the standpoint of the cognitive and practical activities of the forensic expert.

Draft Law 6284 in paragraph 12 of Art. 1 defines that *“forensic science activity is a systemic activity carried out by the subjects defined by this Law, related to organizing, conducting forensic examinations, their*

44 Стрілець Г. О. Генезис системи судово-експертних установ в Україні та напрямки їх діяльності : автореф. дис. ... канд. юрид. наук. Київ, 2009. С. 14.

45 Сегай М. Я. Судебная экспертология: объект, предмет, природа и система науки. *Теорія та практика судової експертизи і криміналістики*. 2003. Вип. 3. С. 28–32.

46 Ibid. С. 29.

47 Аленин Ю. П. и др. Уголовно-процессуальный кодекс Украины : науч.-практ. коммент. / под общ. ред. В. Т. Маляренко, Ю. П. Аленина. Харьков, 2005. С. 479.

scientific and methodological, information and staffing”⁴⁸.

At the same time, the rest of the draft laws contain formulations of forensic science activity, different from those set out in the bill: 6284.

Thus, clause 20 of Art. 1 of the bill 6284-1 states: *“Forensic expert activity is a special type of activity related to the organization and conduct of forensic examinations, expert research aimed at providing authorized persons (bodies), legal entities and individuals with independent, qualified and objective conclusions focused on the maximum use of the achievements of science and technology, the creation and improvement of the scientific and methodological base in the field of forensic science and forensic examination, as well as public administration and local government in this field.”*⁴⁹ Art. 3 of the bill: 6284-1 Content of forensic science activity states:

“1. Forensic science activity

- 1) conducting forensic examination*
- 2) conducting forensic researches in order to provide opinions outside the proceedings;*
- 3) scientific research related to creation of a theoretical basis and methods for conducting forensic examinations (planning, conducting scientific works, approbation and implementation of their results in expert practice);*
- 4) scientific, methodological and information support in the field of forensic science;*
- 5) organizational and managerial support in the field of forensic science;*
- 6) selection, professional training and advanced training of forensic experts;*

*7) training of scientific personnel of higher qualification for the purpose of expert provision of justice”*⁵⁰.

In our opinion, such a list of activities contributes to the certainty and regularity of forensic expert activity for several reasons: *first* (and most importantly), content of such activity is the conducting forensic examinations (as determined by the scientists whose theses are mentioned above) and remaining elements are closely related to this; *secondly*, expansion of the list of types of forensic expert activity contributes to an effective settlement at both the normative and practical levels.

For its part, the draft Law 6284-2 proposes to define forensic expert activity as *“activity of the state, legal entities and individuals in order to provide justice in Ukraine with an independent, qualified and objective examination focused on the maximum use of the achievements of science, technology, art and crafts”* (clause 19 of Art. 1)⁵¹, and discloses forensic expert activity components:

- “1) conducting forensic examination*
- 2) conducting research and generalizations in the field of forensic science (planning, conducting, approbation of scientific works and implementation of their results in expert practice);*
 - 3) scientific, methodological and information support;*
 - 4) organizational and managerial support*
 - 5) selection, training and procedures for the provision, promotion and in-service training of forensic experts (para. 1 of Art.3)*⁵².

48 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

49 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

50 Ibid.

51 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

52 Ibid.

We can also agree with the above, since the definition of the subject uses the *justice* term for its ensuring such activities are carried out. At the same time, justice in Ukraine is an exclusively monopoly right of the state. Justice is carried out by state-authorized officials: judges who, in accordance with the procedure established by law, decide on the conduct of the examination. Forensic examination provides justice in Ukraine, as it is a separate source of evidence, which, by the way, are used in almost every trial (in addition, the examination has the right to appoint and conduct under non-judicial proceedings).

The bill: 6284-3 in general avoids the normative definition of forensic expert activity, noting only what is forensic examination and what are the principles of its implementation: “*forensic expert activity is carried out on the principles of legality, independence, objectivity and completeness of research*”⁵³. This approach to determining the essence of forensic expert activity is not considered reasonable: *firstly*, due to the fact that the draft law 6284-3 itself is not a comprehensive normative act designed to regulate social relations at a new level; *secondly*, it does not distinguish the characteristic and essential features of the activity planned for settlement.

Based on the definitions of forensic expert activity of the bills: 6284 and 6284-1, we propose to amend paragraph 12 of Art. 1 of draft Law 6284 to read as follows: “12) *forensic expert activity is a systemic activity for conducting forensic expert studies, provided by authorized state bodies and officials*

by providing organizational, scientific, methodological, information and other services, carried out by the subjects defined by this Law, related to the organization, conduct of forensic examinations, their scientific, methodological, information and personnel support” [Emphasis added.— Ed.], supplementing with elements of the FEA, given in Art. 3 of the bill: 6284-1⁵⁴.

The next element of our deconstruction is a system of bodies, institutions and persons conducting forensic science activity and whose legal relations are supposed to be regulated by adoption of one of the analyzed bills.

According to the current version of Part 1 of Art. 7 of the relevant Law, “*forensic expert activity is carried out by state specialized institutions, <...> as well as forensic experts who are not employees of these institutions, and other specialists (experts) from the relevant fields of knowledge <...>*”⁵⁵. Forensic science activity related to forensic, forensic medical and forensic psychiatric examinations is carried out exclusively by state specialized institutions⁵⁶.

Therefore, it can be argued that in the regulation of forensic expert activity in Ukraine, the legislator prefers state specialized institutions that constitute a single system including:

- “forensic science institutions of the Ministry of Justice of Ukraine;
- forensic science institutions, forensic medical and forensic psychiatric institutions of the Ministry of Healthcare of Ukraine;
- expert services of the Ministry of Internal Affairs of Ukraine, Ministry

53 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

54 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

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

56 Ibid ; Халфина Р. О. Op. cit.

*of Defense of Ukraine, Security Service of Ukraine, State Border Guard Service of Ukraine”*⁵⁷.

In the Republic of Moldova, there is a similar system of public forensic science institutions to Ukraine including specialized institutions of the Ministry of Justice and the Ministry of Healthcare, operational technical and forensic and forensic units of the Ministry of Internal Affairs and the National Center for Combating Corruption. In addition, the state may form other public forensic institutions⁵⁸.

As we can see from the materials of scientific discussion, determining the optimal structure and system of institutions and persons authorized for forensic science activity is an important task of legislative support of such activity (E.g.: L. M. Holovchenko, G. O. Strilets, A. A. Manzhula⁵⁹).

Conceptual vision of the system of persons authorized to conduct forensic examination indicates that eventually all bodies and institutions of forensic examination of departmental and national subordination, are more likely to be concentrated under the leadership of the

Ministry of Justice of Ukraine. At the same time, expert scientists note that today in the world there is a tendency to ensure the independence of the expert, focusing not on his departmental affiliation, but on the availability of specialist special knowledge necessary to solve of justice issues; introduction of competition of experts involved by various parties in the proceedings, obtain a truly independent, objective and qualified forensic examination⁶⁰.

Therefore, in order to optimize budget expenditures, it makes sense to conduct additional research as organizational as financial and economic nature on feasibility of a branched structure of departmental forensic science institutions (perhaps more appropriate to form a single scientific and practical forensic institutions on the basis of existing as leaders in the system of forensic science in Ukraine taking into account international best practices).

World organizing practice of forensic science activity and its management knows various approaches to building a system of bodies conducting forensic research. A meaningful research on this issue is set out in 2015 in a scientific and practical review⁶¹.

57 Про судову експертизу : Закон України ... URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 20.02.2022) ; Овсянникова І. М. Організація діяльності судово-експертних установ в Україні як складна система. *Судова експертиза: сучасність та майбутнє* : мат-ли кругл. столу (Львів, 25—26.01.2019) ; за заг. ред. д-ра техн. наук. М. О. Кузіна. Львів, 2019. С. 98.

58 Катарара О., Петкович П. Система судебной экспертизы в республике Молдова. *Проблематика. Ibid.* С. 62—63.

59 Головченко Л. Н. Реформирование системы экспертного обеспечения правосудия в Украине. *Теорія та практика судової експертизи і криміналістики* : мат-ли міжнар. наук.-практ. конф. (Харків, 19—20.06.2002). 2002. Вип. 2. С. 5—9 ; Стрілець Г. О. *Ор. cit.* 16 с. ; Манжула А. А. Проблеми організації діяльності науково-дослідних установ в Україні : монографія. Харків, 2015. 468 с.

60 Авдеева Г. К. Проблеми гармонізації законодавства України у галузі судової експертизи із законодавством країн Європейського Союзу. *Актуальні питання досудового розслідування та сучасні тенденції розвитку криміналістики* : мат-ли міжнар. наук.-практ. конф. (Харків, 05.12.2014). Харків, 2014. С. 335.

61 Любченко С. О., Нізовцев Ю. Ю., Парфило О. А. Система забезпечення судово-експертної діяльності в державах — членах НАТО : наук.-практ. огляд / за заг. ред. О. А. Парфило. Київ, 2015. 56 с.

Currently, sectoral affiliation of some expert institutions in Ukraine looks like this. The largest in terms of number and tasks is the Expert Service of the Ministry of Internal Affairs of Ukraine, which includes the State Scientific Research Forensic Center (SSRFC) of the Ministry of Internal Affairs of Ukraine, the main institution of this Service, which providing organizational and managerial Territorial Research Forensic Centers (hereinafter referred to as SRFC) stationed in the regions of Ukraine ⁶².

The next group of subjects of forensic science activity is the state specialized forensic science and forensic psychiatric institutions of the Ministry of Health of Ukraine. The network of forensic medical institutions consists of the Main Bureau of Forensic Medical Examination of the Ministry of Healthcare, Bureau of Forensic Medical Examination of Health Departments of Regional State Administrations. The regional bureaus also include city (cities of regional subordination) and district (inter-district) branches ⁶³.

The system of forensic science institutions of the Security Service of Ukraine includes: Expert Forensic Service of the Central Office of the Security Service of Ukraine and forensic groups in regional bodies ⁶⁴.

The analysis of the receipts of tasks to the SBU expert institutions shows a significant increase in recent requests

for technical (computer-technical, phonoscopic, ballistic, explosive), chemical and linguistic examinations. For example, in 2014 (compared to 2012) the number of explosive studies increased: 9 times, photo portraits: 8.5 times, linguistic and ballistic: 5 times, phonoscopic: 2.3 times. At the same time, during the same period, the number of studies of special technical means of covert information decreased: 5 times, handwriting: 3 times, cold steel: 2 times, drugs by 40 %, technical examination of documents by 20 % ⁶⁵.

One of the main tasks of the expert subdivisions of the State Border Guard Service is to conduct forensic examinations of passport documents when crossing the state border of Ukraine. Such examinations became especially relevant after the annexation of Crimea and the occupation of part of the Donetsk and Luhansk regions and the introduction in 2017 of a visa-free regime with the European Union and other countries ⁶⁶.

Thus, today the expert services structurally belong to four ministries and a state body of special purpose with law enforcement functions, the Security Service of Ukraine, contrary to the conceptual vision of the system of forensic institutions within the judiciary.

However, neither the current relevant Law nor the draft laws on forensic science we have studied offer a modern definition of the system of forensic expert institutions that hinders regulation of legal relations in this area.

62 Міністерство внутрішніх справ України / Офіц. сайт. URL: <https://mvs.gov.ua/> (date accessed: 12.02.2022).

63 Ibid. URL: <https://mvs.gov.ua/> (date accessed: 12.02.2022).

64 Служба безпеки України/ Офіц. сайт. URL: <https://ssu.gov.ua/> (date accessed: 12.02.2022).

65 Некраха Д. О., Охріменко О. І. Стан та перспективи експертних досліджень в СБУ, окремі проблемні питання. *Криміналістика и судебная экспертиза*. 2015. Вип. 60. С. 49. URL: <https://kndise.gov.ua/activity/metodics> (date accessed: 12.02.2022).

66 Міністерство внутрішніх справ України URL: <https://mvs.gov.ua/> (date accessed: 12.02.2022).

The next element of comparative legal research of draft regulations on judicial and expert activities is the notions of subjects of forensic science activity proposed by lawmakers. Let's take a look at the scientific discussion surrounding this issue. According to one opinion, the range of subjects of expert research should not go beyond performance of expert research and therefore belonging to the circle of subjects of anyone other than the experts themselves is inappropriate⁶⁷. The second opinion is a broader and more comprehensive approach to the definition of subjects of forensic expertise and the expansion of such activities beyond the actual expert research⁶⁸. The third group of scholars argues that the existence of forensic institutions in the list of subjects of expert activity is inexpedient given depersonalization of legal liability of legal entities (in particular, in the case of deliberately false opinion or refusal to provide conclusion)⁶⁹.

Draft regulations on this issue (as well as on many others) do not contain a single opinion on the definition of persons who are subjects of forensic expertise. At the same time, Bills 6284 and 6284-1 most

successfully outline all participants in forensic activities and further distinguish between participants in forensic activities of the subjects of forensic examination, proposing to legally determine the content of forensic activities in seven areas of various interconnected activities.

This approach of lawmakers seems quite appropriate, especially compared to other proposals for regulatory regulation of these issues in projects 6284-2⁷⁰ and 6283-3⁷¹.

The content of forensic expert activity is defined somewhat differently in the draft Law 6284-2: in addition to the list of types of such activity, in Art. 3 components of its content are also called scientific and methodological, informational and organizational and managerial support, "*selection, training and procedures for providing, improving and disqualifying forensic experts*"⁷².

The bill: 6284-3 generally avoids the normative definition of the content of forensic expertise, although it sets out its principles in Art. 3, as well as several times mentions the means of providing forensic expertise in Art. 8⁷³.

67 Черноус Ю. М., Лопата О. А. Поняття та завдання судово-експертної діяльності у сучасних реаліях. *Криміналістика і судова експертиза*. 2016. Вип. 61. С. 6. URL: https://nbuv.gov.ua/UJRN/krise_2016_61_3 (date accessed: 12.02.2022).

68 Сімакова-Єфремян Е. Б. Теоретико-правові та методологічні засади комплексних судово-експертних досліджень : автореф. дис. ... д-ра юрид. наук. Харків, 2017. С. 24 ; Дудич А. В. Експерт як учасник кримінального провадження : автореф. дис. ... канд. юрид. наук. Одеса, 2017. С. 8.

69 Головченко Л. М. Змістовна роль науково-практичних коментарів до Закону України «Про судову експертизу». *Актуальні питання судової експертизи та криміналістики* : зб. мат-лів засід. «кругл. столу», присвяч. 85-річ. створ. ХНДІСЕ ім. Засл. проф. М. С. Бокаріуса (Харків, 11–12.11.2008). Харків, 2008. С. 19.

70 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

71 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

72 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

73 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

We propose to consider the requirements for acquisition, suspension and termination of the status of a forensic expert, proposed by bills 6284, 6284-1, 6284-2, 6284-3.

Art. 15 of the bill: 6284 stipulates that *“forensic expert may be a citizen of Ukraine who has a second level of higher education with a master’s degree in the relevant field of knowledge, professional training, qualified as a forensic expert in accordance with this Law, and information about which is entered in the Register of Forensic experts”*⁷⁴.

Art. 24 of the bill: 6284-1 stipulates that *“forensic expert may be a person who has an educational qualification level not lower than a master’s degree in a certain specialty or in a certain field of knowledge, has scientific, technical or other special knowledge, qualifies as a forensic expert and has the right conducting forensic examination in a certain expert specialty, in the manner prescribed by this Law”*⁷⁵.

Art. 19 of the bill: 6284-2 stipulates: *“forensic expert who carries out forensic activities on a professional basis may be a person who has a complete higher education in the relevant field of knowledge, has undergone appropriate training, passed a qualifying examination, sworn a forensic expert, received digital signature with a certificate of qualification of a forensic expert in a certain specialization and included in the State Register of Certified Forensic*

*Experts of Ukraine”*⁷⁶, that terminologically does not meet the requirements of current legislation.

The wording of Art. 10: *Persons who may be forensic experts* of the draft Law 6284-3 also do not comply with the provisions of current legislation in terms of determining the level of higher education as a qualification requirement for obtaining the status of a forensic expert⁷⁷. In addition, the whole meaning of the normative regulation of this status is nullified if those who want to acquire such a status have obtained higher education outside of Ukraine. Given that some universities do not train specialists in some specialties, a hypothetical situation is quite possible: when a diploma of higher education abroad does not meet the requirements of current domestic legislation on higher education or the provisions of the above draft laws on the status of forensic expert.

As the compared bills provide for forensic examinations only to persons who have the appropriate permission granted by the authorized state body for attestation of forensic experts, the requirements for the education of a forensic expert are not considered appropriate because in criminology there is already a criterion for determining / lack of forensic expert’s ability to conduct certain examinations – competencies⁷⁸.

74 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

75 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

76 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

77 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

78 Ковалевська Є. В. Процесуальні та кваліфікаційні вимоги до правосуб’єктності спеціаліста-медика та судового експерта, які беруть участь у кримінальному провадженні. *Юридичний часопис Національної академії внутрішніх справ*. 2017. № 2 (14). С. 267–280. URL: <https://elar.naiu.kiev.ua/jspui/handle/123456789/5186> (date accessed: 12.02.2022) ; Антонюк П. Є. Щодо професійної компетентності судово-медичного

Thus, imperative requirement of the mentioned bills for the education of an expert will make it impossible, in particular, to involve persons who have studied abroad (or will complicate the examination in other atypical situations).

The next important element in the standardization of forensic science is the procedure for training and certification of staff to give them permission to conduct forensic examination.

Art. 20-23 of the bill: 6284 sets out the requirements for professional training, qualification and certification of a forensic expert, as well as sets out the conditions and features of the work of expert qualification commissions of forensic experts. However, with regard to subordination of such a commission, it is mentioned only that it is formed *“under the state regulatory bodies which head of approves its composition (Article 22)”*⁷⁹.

Draft Law 6284-1 in Art. 32 provides for establishment of expert-qualification commissions, but *“in state specialized forensic institutions <...> state bodies to whose sphere of management these institutions belong”*⁸⁰. In other words,, this project leaves unchanged the practice of the existence of various bodies of different departmental subordination, which will determine the qualification of a forensic expert.

In addition, Art. 37 contains provisions according to which the qualification class of a forensic expert is not provided to servicemen and those who have the rank of rank and file and senior staff⁸¹.

According to Art. 7 of the draft Law 6284-2, state regulation of forensic activities (for conducting forensic activities by state and non-state forensic institutions, as well as private forensic experts) should be carried out by the National Expert Service of Ukraine⁸². The National Expert Service of Ukraine, for its part, forms expert-qualification commissions of forensic experts consisting of permanent and alternate members (Article 16)⁸³. It is the expert-qualification commissions of forensic experts that are empowered to determine the level of knowledge of persons seeking the status of forensic expert, and the level of qualification of forensic experts and other issues of admission of forensic experts to conduct their forensic science activity.

To some extent, the authors of the draft Law 6284-3, Art. 17 provides for the establishment of expert qualification commissions *“under ministries and other central executive bodies which management includes state specialized institutions engaged in forensic activity”*⁸⁴. However, even more surprising is the proposal to

експерта. *Криміналістичний вісник*. 2016. № 1 (25). С. 36–41. URL: <https://elar.naiu.kiev.ua/jspui/handle/123456789/1827> (date accessed: 12.02.2022) ; Щербаковский М. Г., Щербаковская Л. П. Компетенция и компетентность судебного эксперта. *Криминалистика и судебная экспертиза*. 2013. Вып. 58. Ч. 2. С. 95–104. URL: https://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/1381/kompetenciya_i_kompetentnost_sudebnogo_e.pdf?sequence=2&isAllowed=y (date accessed: 12.02.2022).

79 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

80 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

81 Ibid.

82 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

83 Ibid.

84 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

establish such commissions at public organizations in order to assess the qualification level of experts or to grant permission to carry out expert activities on a private basis⁸⁵.

Next we will consider the proposals of lawmakers on guarantees of judicial expertise, namely: a special procedure for obtaining the status of forensic expert, immunity from interference in professional activities, the nuances of disciplinary liability.

The bill: 6284 in Art. 26 connects the activity beginning of forensic expert with the date of “entering information about him in the Register of forensic experts”⁸⁶. According to Art. 27 of the same draft “information that according to this Law is subject to entry in the Register of Forensic Experts, shall be included in it no later than three calendar days from the date of receipt by the holder of this register of relevant information”⁸⁷.

Art. 34 of the bill: 6284-1 provides:

“Certificate of qualification of a forensic expert with the right to conduct forensic examinations in a particular expert specialty (hereinafter referred to as Certificate) is issued to a person within three working days from the date of the decision of the relevant commission.

The certificate can be issued in paper or electronic form, in compliance with the law.

The right to perform forensic examinations in a certain science specialization is granted for five years”⁸⁸.

Accordingly, this bill connects the actual possibility of conducting forensic examinations with the issuance moment of the certificate by the relevant Expert Qualification Commission.

A similar procedure for obtaining the status of a forensic expert is proposed in the bill: 6284-2.

The bill: 6284-3 does not provide for the procedure for acquiring the status of a forensic expert instead the *forensic expert certification* term is used⁸⁹. The result of successful certification, according to the logic of the authors of the bill, is the qualification of a forensic expert by the relevant expert qualification commission with subsequent receipt of the certificate and registration of the latter in one of the Registers of Certified Forensic Experts.

In our opinion, acquisition of the status of a forensic expert is most fully set out in Bills 6284 and 6284-1.

Let's consider what the proposed bills on the remuneration of forensic experts. Scientists have repeatedly noted that in practice there are no single criteria for approaching its size⁹⁰.

According to Art. 58 of the draft Law 6284 some components of the salary of a forensic expert must be determined

85 Дудич А. В. Вимоги, які пред'являють до особи судового експерта як учасника кримінального провадження. *Наше право*. 2015. № 1. С. 96—102. URL: https://nbuv.gov.ua/UJRN/Nashp_2015_1_19 (date accessed: 12.02.2022).

86 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

87 Ibid.

88 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

89 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

90 Шум С. С. Деякі процесуальні аспекти проведення судово-психіатричної експертизи. *Форум права*. 2013. № 1. С. 1212—1218. URL: https://nbuv.gov.ua/UJRN/FP_index.htm_2013_1_201 (date accessed: 12.02.2022).

by the Cabinet of Ministers of Ukraine, therefore, they are not regulated at the level of the legislative act ⁹¹.

Bill 6284-1, in determining remuneration of forensic experts, leaves the distribution of part of the funds to the government. Instead, Part 2 of Art. 58 of this bill proposes to determine the salary of a forensic expert *“in the amount of not less than 10 times the subsistence level established for able-bodied persons on January 1 of the calendar year”* ⁹². It should be noted that the same amount of the salary of a forensic expert has long been enshrined in Part 2 of Art. 18 of the core Law ⁹³, but from 2018 until today the next Law on the State Budget of Ukraine legislator annually suspends this rule ⁹⁴.

Regarding the remuneration of employees (employees) of state forensic institutions, Art. 53 of the bill 6284-2 literally repeats Art. 58 of the draft Law 6284 ⁹⁵.

The proposal on the size of the salary of a forensic expert not less than 10 subsistence minimums established for able-bodied persons on January 1 of the calendar year, similar to that laid down in Part 2 of Art. 58 of the bill 6284-1, also contains part 2 of Art. 18 of the bill 6284-3 ⁹⁶.

Conclusions

Summing up the comparative legal research on the bills regulating forensic science, we should note that the most fully advanced achievements in forensic science and recommendations of practitioners correspond to the draft Law 6284. Certainly, other proposals also have a right to exist (at least some components) but the point in this discussion should put the Verkhovna Rada of Ukraine.

Порівняльна характеристика законопроектів про судово-експертну діяльність

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Оскільки з моменту прийняття 1994 р. Закону України «Про судову експертизу» забезпечення правосуддя висновками експертів зазнало суттєвих змін, то виникла нагальна потреба оновити нормативні акти, якими врегульовано питання судово-експертної діяльності. Саме тому народні депутати 6-ї сесії IX скликання як суб'єкти законодавчої ініціативи подали до Верховної Ради України низку законопроектів щодо реформування судово-експертної діяльності в нашій державі, порівняльний огляд яких тут презентовано. Також розглянуто основні

91 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

92 Проект Закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

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

94 E.g.: Про Державний бюджет України на 2018 рік : Закон України від 07.12.2017 р. № 2246-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2246-19#Text> (date accessed: 20.02.2022) ; Про Державний бюджет України на 2019 рік : Закон України від 23.11.2018 р. № 2629-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1928-20#Text> (date accessed: 23.02.2022) та ін.

95 Проект Закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 12.02.2022).

96 Проект Закону ... № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 12.02.2022).

термінологічні та правові особливості регламентування судово-експертної діяльності, її змісту і статусу її учасників. Виокремлено основні критерії реформування й напрями розвитку законодавства про судово-експертну діяльність закордоном. Наведено стислий огляд історичного розвитку законодавства про судово-експертну діяльність в Україні. Окреслено основні способи формування дефініцій у нормативному регулюванні судово-експертної діяльності та її суб'єктів. Надамо обґрунтовані пропозиції щодо врегулювання судово-експертних правовідносин. Запропоновано усунути виявлені недоліки законопроектів.

Мета статті — на підставі порівняльного аналізу нормативно-правових актів з питань судової реформи, поданих до Верховної Ради України впродовж вересня 2021 р.— січня 2022 р. (6-та сесія IX скликання) суб'єктами законодавчої ініціативи, і зважаючи на сучасний стан наукової дискусії — сформулювати практично обґрунтовані пропозиції для визначення оптимальної побудови в Україні системи та структури установ і посадових осіб, які мають право здійснювати судово-експертну діяльність.

Ключові слова: судовий експерт; судова експертиза; законодавче регулювання судово-експертної діяльності; суб'єкти судово-експертної діяльності; проекти нормативних актів про судово-експертну діяльність.

Сравнительная характеристика законопроектов о судебно-экспертной деятельности

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Поскольку с момента принятия в 1994 г. Закона Украины «О судебной экспертизе» обеспечение правосудия заключениями экспертов претерпело существенные изменения, возникла

наущная необходимость обновить нормативные акты, регулирующие вопросы судебно-экспертной деятельности. Именно поэтому народные депутаты 6-й сессии IX созыва как субъекты законодательной инициативы подали в Верховную Раду Украины ряд законопроектов относительно реформирования судебно-экспертной деятельности в нашем государстве, сравнительный обзор которых здесь представлен. Также рассмотрены основные терминологические и правовые особенности регламентирования судебно-экспертной деятельности, её содержания и статуса её участников. Выделены основные критерии реформирования и направления развития законодательства о судебно-экспертной деятельности за рубежом. Приведён краткий обзор исторического развития законодательства о судебно-экспертной деятельности в Украине. Очерчены основные способы формирования дефиниций в нормативном регулировании судебно-экспертной деятельности и её субъектов. Представлены обоснованные предложения по урегулированию судебно-экспертных правоотношений. Предложено устранить выявленные недостатки законопроектов.

Цель статьи — на основании сравнительного анализа нормативно-правовых актов по вопросам судебной реформы, поданных в Верховную Раду Украины в течение сентября 2021 г.— января 2022 г. (6-я сессия IX созыва) субъектами законодательной инициативы, и с учётом современного состояния научной дискуссии — сформулировать практически обоснованные предложения для определения оптимального построения в Украине системы и структуры учреждений и должностных лиц, имеющих право осуществлять судебно-экспертную деятельность.

Ключевые слова: судебный эксперт; судебная экспертиза; законодательное

регулирование судебно-экспертной деятельности; субъекты судебно-экспертной деятельности; проекты нормативных актов о судебно-экспертной деятельности.

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