

Legal Status of Forensic Veterinarian as a Subject of Forensic Science Activity in Context of the Latest Legislation of Ukraine

Ivan Yatsenko *

* Doctor of Veterinary Medicine, Professor, Kharkiv State Biotechnological University, Kharkiv, Ukraine, ORCID: <https://orcid.org/0000-0001-8903-2129>, e-mail: yacenko-1971@ukr.net

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Legal status of a forensic expert as a subject of forensic science activity in the context of the latest legislation of Ukraine is studied. It has been proven that elements of legal status of forensic expert, provided for by civil, economic, administrative and criminal legislation of Ukraine, as well as by departmental regulatory legal acts, do not fully correlate with each other: they have different rights, obligations, prohibitions, restrictions and the legal responsibility of forensic expert, that can negatively affect implementation of the principles of forensic expert activity, in particular during forensic veterinary examination, as well as the provision of a substantiated, objective, reliable, correct and truthful expert conclusion. Amendments and additions to mentioned normative legal acts of Ukraine are proposed with the aim of unifying the legal status of forensic expert (regardless of type of legal proceedings and grounds for conducting a forensic examination) for more effective implementation of principles of forensic science activity. The research purpose: reveal the legal status of forensic veterinarian in the system of forensic expertise and to systematize his duties, rights, prohibitions and grounds for liability in the newest legal field of Ukraine. General and special scientific methods of research (analysis, synthesis, analogy; modeling; formal-logical; logical-grammatical; statistical; comparative-legal; legal analysis) were used to achieve the goal.

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Keywords: forensic veterinary examination; forensic veterinarian; forensic expert; legal status, rights, duties, prohibitions, restrictions, responsibility of forensic veterinarian; forensic science activity.

Research Problem Formulation

The main form of specific expertise application in any type of legal proceedings is forensic examination¹. One of the new types of forensic examination is forensic veterinary examination, an independent type of forensic examination, a special type of research; the field of practical activity in which special veterinary knowledge is used; means of proof; the field of knowledge and the latest scientific direction, which is actively developing both in Ukraine² and abroad³. Currently, forensic veterinary examination is one

of the important means of proving circumstances or facts concerning live animals under expert examination⁴ and animal corpses⁵ in criminal proceedings and civil, administrative and economic cases affecting effectiveness of legal proceedings and largely depends on the latest achievements of forensic examination. One of the subjects of forensic science activity in the modern system of expert provision of justice is a forensic expert who has a set of rights, duties are assigned to him, a system of prohibitions and restrictions is defined, and legal responsibility for violations

- 1 Шепітько В., Шепітько М. Доктрина криміналістики та судової експертизи: формування, сучасний стан і розвиток в Україні. *Право України*. 2021. № 8. С. 12–27. DOI: 10.33498/louu-2021-08-012 (date accessed: 01.12.2022).
- 2 Кравчук В. В., Кравчук О. В., Туровець Ю. М. Застосування судово-ветеринарної експертизи під час розкриття та розслідування кримінальних правопорушень. *Криміналістичний вісник*. 2015. № 2 (24). С. 109–114. URL: <https://visnyk.dndekc.mvs.gov.ua/index.php/visnyk/issue/view/27/ISSN%201992-4437%20%D0%9A%D1%80%D0%B8%D0%B-C%D1%96%D0%BD%D0%B0%D0%BB%D1%96%D1%81%D1%82%D0%B8%D1%87%D0%B-D%D0%B8%D0%B9%20%D0%B2%D1%96%D1%81%D0%BD%D0%B8%D0%BA%20%20%2824%29%202015> (date accessed: 01.12.2022).
- 3 Stern A. W., Ewen B. Mc., McDonough S. P., Viner T., Brooks J. W., Kagan R., Brower A. Veterinary forensic pathology standards. *Journal of Forensic Sciences*. 2021. Vol. 66. Is. 3. P. 1176. DOI: 10.1111/1556-4029.14683 (date accessed: 01.12.2022); Mazzante N. M. G., de Camargo B. W. D. F., de Sanctis P., Fogaca J. L., de Campos Vettorato M., Tremori T. M., Babbioni S. D., de Vasconcelos Machado V. M., Rocha N. S. Post-mortem analysis of injuries by incomplete hanging in dog (*Canis familiaris*) through radiographs and forensic necropsy. *Forensic Imaging*. 2020. Vol. 20. DOI: 10.1016/j.FRI.2019.100350 (date accessed: 01.12.2022); Cooper J. E., Cooper M. Veterinary involvement in forensic medicine. *Veterinary Record*. 2021. Vol. 189. Is. 6. Pp. 249–250. DOI: 10.1002/vetr.1004 (date accessed: 01.12.2022).
- 4 Watson E., Baucom K. J. Two case studies in veterinary forensic imaging and a brief literature review. *Forensic Imaging*. 2020. Vol. 21. DOI: 10.1016/j.fri.2020.200382 (date accessed: 01.12.2022).
- 5 Hill M. A., Pokines J. T. Comparative analysis of fetal pig decomposition processes in burials of variable depths and wrapping. *Journal of Forensic Sciences*. 2022. Vol. 67. Is. 6. Pp. 2192–2202. DOI: 10.1111/1556-4029.15120 (date accessed: 01.12.2022).

of the law is provided ⁶. Elaboration of the latest research papers on this issue indicates that researchers do not pay enough attention to.

The subject of forensic veterinary in Ukraine is a forensic veterinarian certified in forensic expert specialization: 18.1 *Veterinary researches*. Forensic science activity of such a professional is of great importance, since it is he who establishes and clarifies circumstances and facts during investigation of animal abuse offenses. Unfortunately, the issues of the legal and procedural status of a forensic veterinary expert (in particular, systematization of his duties, rights, prohibitions, restrictions and liability for violation of legislation) are not sufficiently covered in the regulatory legal acts of Ukraine and the scientific literature, therefore they require comprehensive research and classification.

Article Purpose

Disclosing legal status of forensic veterinarian in the system of forensic science activity and to systematize his duties, rights, prohibitions and grounds for liability in the newest legal field of Ukraine.

Research Methods

Methodological basis of this research is a systematic approach caused by the specifics of the topic and associated with the use of general and special scientific methods, in particular:

- *analysis, synthesis, analogy* made possible to determine essence

- of the categorical apparatus of a forensic veterinarian;
- *formal-logical method*, thanks to which the logic of duties, rights, prohibitions and responsibilities of a forensic veterinarian is organized;
- *comparative legal method* contributed to the research on the level of legal regulation of forensic science activity and compliance of regulatory legal acts with the current state of regulation of forensic science activity in Ukraine and abroad;
- *logical and grammatical method* made possible to compare certain categories and legal norms, to find out the etymological content of the legal status of a forensic veterinarian, identify gaps in the current legislation of Ukraine to provide proposals for its improvement;
- *method of legal analysis* was used to analyze relevant provisions of criminal, civil, economic and administrative legislation and departmental regulations of Ukraine on forensic science support to justice regarding the duties, rights, prohibitions and responsibilities of a forensic veterinarian in the newest legal field of Ukraine;
- *system-structural method* contributed to the systematization and structuring of the duties, rights, prohibitions and responsibilities

6 Biedermann A., Kotsoglou K. N. Decisional Dimensions in Expert Witness Testimony – A Structural Analysis. *Frontiers in Psychology*. 2018. Vol. 31. Is. 9. DOI: [10.3389/fpsyg.2018.02073](https://doi.org/10.3389/fpsyg.2018.02073) (date accessed: 01.12.2022) ; Gramond V. Quelle responsabilité pour l'expert? *Annales Medico-Psychologiques*. 2020. Vol. 178. Is. 2. Pp. 153–160. DOI: [10.1016/j.amp.2020.01.001](https://doi.org/10.1016/j.amp.2020.01.001) (date accessed: 01.12.2022) ; Satiani B. Expert witness testimony: rules of engagement. *Vascular and Endovascular Surgery*. 2006. Vol. 40. Is. 3. Pp. 223–227. DOI: [10.1177/153857440604000307](https://doi.org/10.1177/153857440604000307) (date accessed: 01.12.2022).

of forensic veterinarian in the newest legal field of Ukraine;

- *sociological method* made possible to expose the issues existing in the research area by interviewing judges, investigators, inquirers, animal defenders and lawyers based on developed questionnaires;
- *statistical method* is used to process survey results of respondents;
- *modeling method* contributed to the forecasting, development and determination of the legal status of forensic veterinarian regarding duties, rights, prohibitions and responsibilities while forensic science activity;
- *comparative legal method* was used to analyze and compare the norms of procedural and basic legislation of Ukraine, as well as by-laws

that regulate the duties, rights, prohibitions and responsibilities of forensic expert.

Analysis of Essential Researches and Publications

Legal status of forensic expert in general and a forensic veterinarian in particular is almost a crucial issue in forensic science and forensic science activity both in Ukraine⁷ and in foreign countries⁸, especially under current rapid new reforms of national and international legislation⁹.

Some legal status aspects of forensic experts of various expert specialization were studied by domestic scientists: Ye. Ye. Demydova, O. M. Domashenko, I. A. Kolesnikova and K. V. Latysh¹⁰ revealed the legal status of forensic expert as a subject of forensic science activity;

7 Михайлов В. О. Реформування судово-експертного забезпечення правосуддя в Україні. *Право і суспільство*. 2017. № 6. Ч. 2. С. 196–202. URL: http://pravoisuspilstvo.org.ua/archive/2017/6_2017/part_2/34.pdf (date accessed: 01.12.2022).

8 Lesting W. Das Delegationsverbot des gerichtlichen Sachverständigen. *Recht & Psychiatrie*. 2021. Vol. 39. Is. 1. Pp. 4–11. DOI: 10.1486/RP-2021-01_4 (date accessed: 01.12.2022) ; Eastwood J., Caldwell J. Educating Jurors about Forensic Evidence: Using an Expert Witness and Judicial Instructions to Mitigate the Impact of Invalid Forensic Science Testimony. *Journal of Forensic Sciences*. 2015. Vol. 60. Is. 6. Pp. 1523–1528. DOI: 10.1111/1556-4029.12832 (date accessed: 01.12.2022) ; Satiani B. Op. cit. DOI: 10.1177/153857440604000307 (date accessed: 01.12.2022).

9 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%20%D0%BD%D0%B0%20%D0%BF%D0%B5%D1%87%D0%B0%D1%82%D1%8C.pdf (date accessed: 01.12.2022) ; Сімакова-Єфремян Е. Б. Щодо необхідності реформування базового законодавства України про експертне забезпечення правосуддя. *Ibidem*. С. 12–15. URL: https://www.hniise.gov.ua/user_files/File/other/13%20%D0%BF%D0%BE%D1%81%D0%B%D0%B5%D0%B4%D0%BD%D1%8F%D1%8F%20%D0%BD%D0%B0%20%D0%BF%D0%B5%D1%87%D0%B0%D1%82%D1%8C.pdf (date accessed: 01.12.2022).

10 Демидова Є. Є., Домашенко О. М., Колеснікова І. А., Латиш К. В. Судовий експерт як суб'єкт судово-експертної діяльності: правовий статус. *Юридичний науковий електронний журнал*. 2022. № 5. С. 549–553. DOI: 10.32782/2524-0374/2022-5/132 (date accessed: 01.12.2022).

O. M. Kliuiev¹¹ and O. P. Uhrovetskyi¹² investigated the legal status of forensic expert in administrative proceedings; L. V. Maksymiv¹³ and A. V. Halushko¹⁴ provided a theoretical and legal characterization of forensic expert as a participant in criminal proceedings and formulated recommendations for improving the criminal procedural legislation of Ukraine and practice of its application in the field of forensic expert participation in criminal proceedings; O. Grabovska and M. Vilinskyi¹⁵, V. Shapiro¹⁶ summarized issue of peculiarities of the legal status of forensic expert in the system of subjects of civil procedural legal relations; O. Zaiats and R. Skrynkovskyi¹⁷ singled out problematic aspects of expert participation in civil proceedings of Ukraine and O. B. Verba-Sydor and V. I. Krupko¹⁸ substantiated proposals for improving the legal status of forensic experts in civil proceedings; I. A. Butyrska¹⁹ argued the legal status of an expert on legal issues in economic process; A. V. Shulzhenko²⁰ investigated the peculiarities of the procedural activity of forensic expert and a professional;

- 11 Ключев О. М. Процесуальні питання судової експертизи в адміністративному судочинстві. *Вісник Одеського науково-дослідного інституту судових експертиз*. 2018. Вип. 3. С. 109–113. URL: <http://ondise.od.ua/DOC/vipusk3/pitannyasudovoieksperizivadminsudo4instvi.pdf> (date accessed: 01.12.2022).
- 12 Угровецький О. П. Регламентация правового статусу судового експерта в адміністративному судочинстві. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2017. Вип. 43. Т. 3. С. 229–234. URL: <https://journals.indexcopernicus.com/api/file/viewByFileId/496424.pdf> (date accessed: 01.12.2022).
- 13 Максимів Л. В. Процесуальний статус експерта у кримінальному провадженні: окремі аспекти. *Порівняльно-аналітичне право*. 2020. № 2. С. 205–207. URL: <https://dspace.uzhnu.edu.ua/jspui/handle/lib/35561> (date accessed: 01.12.2022).
- 14 Галушко А. В. Експерт як учасник кримінального провадження: теоретичний аспект. *Право і суспільство*. 2017. № 5. С. 237–243. URL: http://pravoisuspilstvo.org.ua/archive/2017/5_2017/part_1/42.pdf (date accessed: 01.12.2022).
- 15 Грабовська О., Вілінський М. Експерт у цивільному судочинстві. *Підприємництво, господарство і право*. 2021. № 1. С. 5–10. DOI: 10.32849/2663-5313/2021.1.01 (date accessed: 01.12.2022).
- 16 Шапіро В. С. Проблемні аспекти участі експерта в цивільному процесі. *Правові горизонти*. 2018. Вип. 13 (26). С. 24–28. URL: <http://repository.sspu.edu.ua/handle/123456789/8356> (date accessed: 01.12.2022).
- 17 Заяць О., Скриньковський Р. Проблемні аспекти участі експерта у цивільному судочинстві України. *Trajectoriâ Nauki = Path of Science*. 2019. Vol. 5. No 9. Pp. 3001–3011. DOI: 10.22178/pos.50-3 (date accessed: 01.12.2022).
- 18 Верба-Сидор О. Б., Крупко В. І. Пропозиції щодо вдосконалення правового статусу експерта у цивільному судочинстві. *Науковий вісник Львівського державного університету внутрішніх справ. Серія юридична*. 2014. Вип. 3. С. 69–84. URL: http://nbuv.gov.ua/UJRN/Nvldu-vs_2014_3_10 (date accessed: 01.12.2022).
- 19 Бутирська І. А. Правовий статус експерта з питань права у господарському процесі. *Науковий вісник Ужгородського університету. Серія «Право»*. 2018. Вип. 48. Т. 1. С. 108–111. URL: https://lexadvance.com.ua/wp-content/uploads/2020/12/7-Butyrska_Legal_expert.pdf (date accessed: 01.12.2022).
- 20 Шульженко А. В. Процесуальний статус і особливості процесуальної діяльності експерта й спеціаліста. *Науковий вісник міжнародного гуманітарного університету. Серія: Юриспруденція*. 2016. Вип. 19. С. 132–134. URL: http://nbuv.gov.ua/UJRN/Nvmgu_jur_2016_19_36 (date accessed: 01.12.2022).

Ye. V. Kovalevska ²¹ outlined procedural requirements for the legal personality of a medical specialist and a forensic expert participating in criminal proceedings; L. O. Sydorenko ²² clarified the issue regarding forensic expert right to edit the questions put to him.

Separate issues of forensic science activity and the legal status of forensic expert in various types of legal proceedings were devoted to dissertation and monographic research: A. V. Ivanov ²³, M. G. Shcherbakovskiy ²⁴, E. B. Simakova-Yefremian ²⁵, S. V. Yevdokimenko ²⁶, N. M. Tkachenko ²⁷, A. V. Dudych ²⁸,

O. M. Dufeniuk ²⁹, D. V. Shcherbaniuk ³⁰, O. Yu. Grosheva ³¹ et al.

Main Content Presentation

Currently, the issue of forensic expert status is especially relevant in the context of reforming forensic expert activity in Ukraine in view of the proposed draft laws (on forensic science activity in Ukraine ³² and on forensic examination and self-government of forensic experts, ³³ etc.). In scientific community, there is a discussion about legal and procedural status of forensic expert. Thus, in research papers

- 21 Ковалевська Є. В. Використання спеціальних медичних знань під час розслідування злочинів : дис. ... канд. юрид. наук. Київ, 2018. 298 с.
- 22 Сидоренко Л. О. Щодо права експерта на редагування поставлених йому запитань. *Криміналістичний вісник*. 2015. № 2 (24). С. 83–91. URL: <http://elar.naiu.kiev.ua/bitstream/123456789/1900/1/%D0%A1%D0%B8%D0%B4%D0%BE%D1%80%D0%B5%D0%BD%D0%BA%D0%BE%20%D0%9B.%D0%9E..pdf> (date accessed: 01.12.2022).
- 23 Іванов А. В. Експерт у провадженні у справах про адміністративні правопорушення : автореф. дис. ... канд. юрид. наук. Харків, 2009. С. 10–11.
- 24 Щербаківський М. Г. Проведення та використання судових експертиз у кримінальному провадженні : монографія. Харків, 2015. 560 с.
- 25 Сімакова-Єфремян Е. Б. Комплексні судово-експертні дослідження: теорія та практика : монографія. Харків, 2016. 456 с.
- 26 Євдокименко С. В. Судово-економічна експертиза: теоретико-методологічні засади і практика реалізації : автореф. дис. ... д-ра юрид. наук. Харків, 2016. 44 с.
- 27 Ткаченко Н. М. Суб'єкти судово-експертної діяльності в сучасній системі експертного забезпечення кримінального провадження : автореф. дис. ... канд. юрид. наук. Харків, 2017. 20 с.
- 28 Дудич А. В. Експерт як учасник кримінального провадження : автореф. дис. ... канд. юрид. наук. Одеса, 2017. 20 с.
- 29 Дуфенюк О. М. Експертиза у кримінальному провадженні за законодавством України та Польщі: порівняльне дослідження : монографія. Львів, 2018. 272 с. URL: <http://dspace.lvduvs.edu.ua/bitstream/1234567890/3601/1/%D0%9C%D0%BE%D0%BD%D0%BE%D0%B3%D1%80%D0%B0%D1%84%D1%96%D1%8F%20%D0%94%D1%83%D1%84%D0%B5%D0%BD%D1%8E%D0%BA%20%D0%BC%D0%B0%D0%BA%D0%B5%D1%82%20%D0%925-28.10.pdf> (date accessed: 01.12.2022).
- 30 Щербанюк Д. В. Теорія та практика реалізації експертної ініціативи у кримінальному провадженні : автореф. дис. ... канд. юрид. наук. Харків, 2019. 20 с.
- 31 Грошева О. Ю. Організаційно-правові, загально-методичні засади комплексної судової біолого-трасологічної експертизи та її оцінка судом : дис. ... д-ра філос. Харків, 2021. 341 с.
- 32 Проект закону про судово-експертну діяльність в Україні від 30.03.2017 р. № 6264. URL: <https://ips.ligazakon.net/document/JH4U000I> (date accessed: 01.12.2022).
- 33 Проект закону про судову експертизу та самоврядування судових експертів від 03.04.2018 р. № 8223. URL: <https://ips.ligazakon.net/document/JH6CF00A> (date accessed: 01.12.2022).

of A. V. Panchyshyn³⁴, N. M. Tkachenko³⁵, S. D. Nesterenko and O. O. Stulov³⁶ and other authors, common and distinctive features of these concepts are investigated and proposals for regulating the legal status of forensic expert (therefore, forensic veterinarian) are presented.

Applying the systematic method of research, it is possible to define the broad concept of *legal status* as a complex legal phenomenon that determines the status (position) of the subject, in particular forensic expert, in the relevant system, which is reflected in his relations with society. The procedural status of forensic expert, according to S. D. Nesterenko and O. O. Stulov, consists in determining the position of a court expert from among other participants in a criminal procedure or trial case in another type of legal proceedings and substantiating his independence and independence, delineating rights and obligations responsibilities during a forensic examination in a specific type of legal proceedings. The authors came to the conclusion that described in Sect. II of the Law of Ukraine: *On Judicial Examination*³⁷

(hereinafter referred to as *Specialized Law*), general legal status of forensic expert, supplemented by elements, the list of which is given in the relevant articles of procedural legislation, “at the end” should ensure the legal status of a forensic expert in a certain type of legal proceedings³⁸.

The author of this publication believes that separation of the legal and procedural statuses of forensic expert is of theoretical importance.

Secondly, separate provisions of the status of forensic expert, regulated by Specialized Law (legal status) and procedural codes of Ukraine (procedural status), as well as the Instruction on the appointment and conduct of forensic examinations and forensic research (hereinafter referred to as *Instruction №1*)³⁹ and the Instruction on the peculiarities of carrying out of forensic science activity by certified forensic experts who do not work in state specialized expert institutions (hereinafter referred to as *Instruction № 2*)⁴⁰ are somewhat duplicated, for example: “*get acquainted with the materials of criminal proceedings related to the subject*

34 Панчишин А. В. Поняття, ознаки та структура категорії «правовий статус». *Часопис Київського університету права*. 2010. № 2. С. 95–98. URL: <http://dspace.nbuv.gov.ua/handle/123456789/23529> (date accessed: 01.12.2022).

35 Ткаченко Н. Н. Правовой статус субъектов судебно-экспертной деятельности в уголовном производстве. *Верховенство права : міжнар. наук.-практ. журн.* 2016. № 3. С. 123–127. URL: http://sd-vp.info/wp-content/uploads/2020/11/vp_2016_3-2.pdf (date accessed: 01.12.2022).

36 Нестеренко С. Д., Стулов О. О. Правовой статус судебного эксперта: актуальные проблемы регламентации. *Криміналістика і судова експертиза*. 2020. Вип. 65. С. 82–89. DOI: [10.33994/kndise.2020.65.08](https://doi.org/10.33994/kndise.2020.65.08) (date accessed: 01.12.2022).

37 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: 01.12.2022).

38 Нестеренко С. Д., Стулов О. О. Ор. cit. DOI: [10.33994/kndise.2020.65.08](https://doi.org/10.33994/kndise.2020.65.08) (date accessed: 01.12.2022).

39 Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказом Мін'юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 01.12.2022).

40 Інструкція про особливості здійснення судово-експертної діяльності атестованими судовими експертами, що не працюють у державних спеціалізованих експертних установах : затв. наказом Мін'юсту України від 12.12.2011 р. № 3505/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z1431-11#Text> (date accessed: 01.12.2022).

of research” (clause 1, part 3, art. 69 of the Criminal Procedural Code of Ukraine ⁴¹), “get acquainted with the materials of the case” (clause 1 part 6 of Article 72 of the Civil Procedural Code of Ukraine ⁴²), “get acquainted with the materials of the case relating to the subject of the examination” (par. 2 clause 2.1 of Instruction №1) or “submit a request to provide additional materials and samples and take other actions related to conducting an examination” (Para. 2 p. 3 Art 69 of the Code of Civil Procedure), “submit a request for the provision of additional materials and samples, if the examination is ordered by the court” (clause 2, part 6 of Article 72 of Civil Procedural Code of Ukraine) and “in accordance with the procedural legislation, submit a request for the provision of additional materials and samples and take other actions, related to the examination” (par. 3, clause 2.1 of Instruction № 1).

Thirdly, in the theory of law as a holistic science of law, substantive and procedural law are distinguished, therefore, concept of *procedural status* is a component of the concept of *legal status* of forensic expert.

Fourthly, there are no clear criteria for distinguishing between the concepts of *legal status* and *procedural status* of forensic expert that follows from analysis of the list of rights, obligations and prohibitions determined by the legislation of Ukraine on forensic expert and forensic science activity.

Therefore, in theory and practice of forensic science, it is expedient and legally

justified to use the term: *forensic expert legal status*. Therefore, in our opinion, Section. II of Specialized Law *Forensic Expert* should be renamed to *Legal Status of Forensic Expert*.

Specialized Law defines the legal, organizational and financial foundations of forensic science activity in order to ensure justice of Ukraine with an independent, qualified and objective expertise focused on the maximum use of the achievements of science and technology. Section II of which regulates the provisions regarding persons who may (Article 10) or cannot (Article 11) be forensic experts, stipulates obligations (Article 12), rights (Article 13) and prohibition (Part 4 of Article 10), as well as indicates the liability (Article 14) of forensic expert on the grounds and in the manner prescribed by law (regardless of the type of proceedings and the grounds for conducting forensic examination) ⁴³.

Legal structure of Section II of Specialized Law is based on the use of blanket norms: for example, in Part 2 of Art. 11 states that other circumstances prohibiting the participation of a person as an expert in court proceedings are provided for by procedural legislation ⁴⁴. In part 2 of Art. 12 it is regulated that (in addition to the list of duties of forensic expert, grouped in three clauses of part 1 of this article) other duties of forensic expert are provided for by procedural legislation ⁴⁵. After all, in part 2 of Art. 13 it is stated that (in addition to the list of rights of a court expert set out in six points of part 1 of this article) other rights of forensic expert are provided for

41 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та доп.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.12.2022).

42 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та доп.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 01.12.2020).

43 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.12.2022).

44 Ibidem.

45 Ibidem.

by procedural legislation ⁴⁶. Thus, in our opinion, applied in Section II. the legal construction of profile Law (when some lists of rights, obligations and prohibitions are concentrated in this Law and other lists of rights, obligations and prohibitions are contained in the corresponding procedural legislation, which, moreover, often duplicate each other in various regulatory and legal acts) creates inconveniences associated with the need to simultaneously use various laws related to substantive and branch procedural law, as well as subordinate regulatory legal acts (for example, instructions № 1 and 2).

In addition, we should note that the lists of rights, obligations, prohibitions and restrictions of forensic expert are much wider in Instructions № 1 and 2 compared to Specialized Law, for example: clause 2.1 of Instruction № 1 contains 11 points on rights, and Article 13 of Specialized Law — 6 points; in clause 2.2 of Instruction № 1 — 8 points of duties, and in Article 12 of the profile Law — 3 similar points ⁴⁷.

Instead, paragraph 10 of paragraph 2.1 of Instruction № 1 regulates the right of forensic expert “ensure security if there are relevant grounds” ⁴⁸, and Article 13 *Forensic Expert Rights* does not contain such a provision. Thus, we are unanimous with the opinion of S. D. Nesterenko

and O. O. Stulov that list of rights, obligations, prohibitions and restrictions of the forensic expert in instructions № 1 and 2 is stated editorially differently than in the profile Law, which may have caused their ambiguous interpretation, at the same time we deny their assertion that this list is expanded groundlessly ⁴⁹. On the contrary: the more detailed the legal status of a forensic expert on paper, the more accurate it is to be able to implement it in practice.

It should be noted that most of the regulatory legal acts of foreign countries contain a list of the duties and rights of forensic expert, but the content and scope are somewhat different. In our opinion, the most complete legal status of a forensic expert is regulated in the laws of the Kyrgyz Republic: *On Forensic Expert Activity* ⁵⁰ and the Republic of Tajikistan: *On State Forensic Science* ⁵¹. In the list of rights of a forensic expert of the Kyrgyz Republic and the Republic of Tajikistan, it is worth paying attention to the following: request to the head of the corresponding forensic expert organization to involve other forensic experts in conducting the forensic examination; express a personal opinion in the conclusion of the forensic examination; refuse to conduct a forensic examination, if there is a threat to the life and health of

46 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.12.2022).

47 Ibidem ; Інструкція про призначення та проведення URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 01.12.2022).

48 Інструкція про призначення та проведення URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 01.12.2022).

49 Нестеренко С. Д., Стулов О. О. Ор. cit. DOI: 10.33994/kndise.2020.65.08 (date accessed: 01.12.2022).

50 О судебно-экспертной деятельности : Закон Кыргызской Республики от 24.06.2013 г. № 100. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/203908> (date accessed: 01.12.2022).

51 О государственной судебной экспертизе : Закон Республики Таджикистан от 25.06.2005 г. № 102 (с изм. и доп.). URL: https://base.spinform.ru/show_doc.fwx?rgn=9038 (date accessed: 01.12.2022).

forensic expert due to the lack of necessary conditions for conducting research, and the issue of forensic expert independence is raised.

Among forensic expert rights of the Republic of Tajikistan, *the following should be noted: "Refuse to conduct a state forensic examination if the procedural procedure for appointing a state forensic examination is violated and this significantly complicates or makes it impossible to conduct it; objects of examination and case materials are unsuitable or insufficient to provide an opinion and the forensic expert is refused to supplement them; there are no conditions, methodological means and equipment necessary to conduct an examination and provide an opinion; there is a real threat to the life and health of forensic expert"*⁵².

Among prohibitions for forensic expert provided for by the Law of the Kyrgyz Republic: *On Forensic Expert Activity*⁵³, it is advisable to single out a special prohibition to independently involve other forensic experts or persons in the conduct of the commissioned forensic examination.

We conclude that rights and obligations of forensic experts in Turkmenistan⁵⁴ and Uzbekistan are⁵⁵ not very different from the

rights and obligations of forensic experts in Ukraine. However, prohibition provided for forensic experts in the Republic of Uzbekistan (in comparison with the prohibitions regulated by legislation of Ukraine and other countries) can be considered special: *"Conduct forensic examination as an employee of another organization or other individual"*⁵⁶.

Instead, there is no law on forensic science in the Republic of Armenia: the legal status of forensic expert is set out in the Criminal Procedural Code of the Republic⁵⁷. Thus, among the duties of forensic expert of Armenia there is a refusal to conduct forensic examination (if the issues raised go beyond his special knowledge) and a prohibition to leave the place of the said action without permission of the person who performs it, and the courtrooms; without permission of the chairman. In Georgia, forensic expert has the right to refuse to conduct a forensic examination if the questions put to him are beyond his competence (Article 52 of the Criminal Procedural Code of Georgia, where the term: *specific expertise* is missing and the list of rights and obligations of a forensic expert is quite limited)⁵⁸.

52 О государственной судебной экспертизе : Закон Республики Таджикистан URL: https://base.spinform.ru/show_doc.fwx?rgn=9038 (date accessed: 01.12.2022).

53 О судебно-экспертной деятельности : Закон Кыргызской Республики URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/203908> (date accessed: 01.12.2022).

54 О судебно-экспертной деятельности : Закон Туркменистана от 08.11.2014 г. № 137-V (с изм.). URL: <http://www.turkmenbusiness.org/content/zakon-turkmenistana-o-sudebnoekspertnoi-deyatelnosti> (date accessed: 01.12.2022).

55 О судебной экспертизе : Закон Республики Узбекистан от 01.06.2010 г. № ЗРУ-249 (с изм. и доп.). URL: <https://lex.uz/ru/docs/1633100> (date accessed: 01.12.2022).

56 О судебной экспертизе : Закон Республики Узбекистан URL: <https://lex.uz/ru/docs/1633100> (date accessed: 01.12.2022).

57 Уголовно-процессуальный кодекс Республики Армения от 27.07.2021 г. № ЗР-306 (с изм. и доп.). URL: https://base.spinform.ru/show_doc.fwx?rgn=143021 (date accessed: 01.12.2022).

58 Уголовно-процессуальный кодекс Грузии от 09.10.2009 г. № 1772. URL: <https://matsne.gov.ge/ru/document/view/90034?publication=144> (date accessed: 01.12.2022).

Legal status of forensic expert of Moldova⁵⁹ is similar to the Ukrainian one, except for the right of forensic expert to petition for appointment of a commission or multidisciplinary forensic examination.

The Law of the Republic of Kazakhstan: *On Forensic Expert Activity in the Republic of Kazakhstan*⁶⁰ contains a list of restrictions provided for forensic expert, but does not have a list of his rights, obligations and prohibitions.

It should be noted that legal status of forensic veterinarian (as well as a forensic expert of any other expert specialization) is a set of rights, obligations, prohibitions, restrictions, scope of liability that distinguish it from procedural functions of other participants in legal proceedings, in particular a witness, investigator, inquirer. These elements of legal status of forensic veterinarian are a guarantee of its independence and independence, as well as the completeness and objectivity of conclusion as a source of evidence in criminal proceedings or a case in another type of proceedings.

We state that forensic expert legal status (therefore, forensic veterinarian) is regulated by Specialized Law, instructions № 1 and 2 and legislation of Ukraine, in particular:

- in *Criminal Procedural Code* concepts of *forensic expert* (Article 69), *responsibility of forensic expert* (Article 70), the grounds for conducting an examination (Article 242), the procedure for

attracting an expert (Article 243), consideration by an investigating judge of a petition for an examination (Article 244), examination by a court decision (Article 332)⁶¹;

- in *Civil Procedural Code* the concept of *forensic expert* (Art. 72), *requirements for forensic expert conclusion* (Art. 102), appointment of forensic examination by court (Art. 103), decision on the appointment of expert examination (Art. 104), examination commissioned by participants of the case (Art. 106), collection of materials for forensic examination (Art. 107), *forensic examination* (Art. 108), consequences of evasion from participation in forensic examination (Art. 109), assessment of forensic expert conclusion by court (Art. 110), commission examination (Art. 111), multidisciplinary forensic examination (Art. 112), additional and repeated examination (Art. 113)⁶²;
- in *Commercial and Procedural Code*, concept of *forensic expert* (Article 69), requirements for forensic expert conclusion (Article 98), appointment of expert examination by the court (Article 99), decision on appointment of forensic examination (Article 100),

59 О судебной экспертизе : Закон Республики Молдова от 23.06.2000 г. № 1086 (с изм. и доп.). URL: https://www.legis.md/cautare/getResults?doc_id=65630&lang=ru (date accessed: 01.12.2022).

60 О судебно-экспертной деятельности : Закон Республики Казахстан от 10.02.2017 г. № 44-VI (с изм. и доп.). URL: <https://adilet.zan.kz/rus/docs/Z1700000044> (date accessed: 01.08.2022).

61 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.12.2022).

62 Цивільний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 01.12.2020).

examination commissioned by participants of the case (Article 101), collection of materials for forensic examination (Article 102), conducting forensic examination (Article 103), assessment of forensic expert conclusion by court (Article 104), commission examination (Article 105), the comprehensive examination (Article 106), additional or repeated examination (Article 107) ⁶³;

- in Code of Administrative Proceedings of Ukraine the concept of *forensic expert* (Article 68), requirements for forensic expert conclusion (Article 101), appointment of forensic examination by court (Article 102), decision on appointment of forensic examination (Article 103), examination commissioned by the participants in the case (Article 104), collection of materials for forensic research (Article 105), conducting forensic examination (Article 106), assessment of forensic expert conclusion (Article 108), commissioned examination (Article 109), multidisciplinary forensic examination (Article 110), additional and repeated examination (Article 111) ⁶⁴.

Forensic expert legal status, in particular forensic veterinarian, is an independent legal category and has the following specifics:

- 1) universal, since it applies to forensic experts regardless of forensic expert specialization;

- 2) reflects peculiarities of forensic expert as a participant in forensic science activity, as well as the degree and nature of his interaction with other participants in forensic science activity, law enforcement agencies, the court, public authorities;

- 3) elements of structure of forensic expert legal status of a (list of rights, duties, prohibitions, restrictions and responsibilities) are dependent on each other and mutually affect each other;

- 4) relative stability and dynamism.

Important element of the legal status of forensic veterinarian (as well as a forensic expert of any other forensic expert specialization) is his rights: a set of freedoms and opportunities due to his professional activity characterized by normativity, formal certainty in official sources and the provision of legal opportunities by state coercion.

Basic rights of forensic expert in any forensic expert specialization, in particular forensic veterinarian, are enshrined in the relevant articles of the Criminal Procedural Code of Ukraine, Civil Procedural Code of Ukraine, Commercial and Procedural Code of Ukraine, Code of Administrative Proceedings of Ukraine, Specialized Law and instructions № 1 and 2. Therefore (regardless of type of proceedings and grounds for conducting forensic examination), forensic expert of any forensic expert specialization (in particular, forensic veterinary medicine) has the *rights*, the list of which is given in Table 1.

63 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та доп.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 01.12.2022).

64 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та доп.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 01.12.2022).

Table 1

Forensic Expert Rights in Accordance with the Legislation of Ukraine

Forensic expert rights	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
Familiarize with the case files related to the topic of forensic examination	Clause 1 Part 3 of Art. 69	Clause 1 Part 6 of Art. 72	Clause 1 Part 6 of Art. 69	Clause 1 Part 6 of Art. 68	Clause 1 Part 1 of Art. 13	Paragraph 2, clause 2.1, section II	Sub-item 1, item 1, section II
Apply for the provision of additional materials and samples and perform other actions related to the forensic examination	Clause 2 Part 3 of Art. 69	Clause 2 Part 6 of Art. 72	Clause 2 Part 6 of Art. 69	Clause 2 Part 6 of Art. 68	Clause 1 Part 1 of Art. 13	Paragraph 3, clause 2.1, section II	Sub-item 2, item 1, section II
Submit a request to the body (person) that appointed a forensic examination or engaged a forensic expert to clarify the issues raised	— *	—	—	—	—	Paragraph 4, clause 2.1, section II	Sub-item 4, item 1, section II
Be present while execution of procedural actions relating to the subjects and objects of research **	Clause 3 Part 3 of Art. 69	Clause 4 Part 6 of Art. 72	Clause 4 Part 6 of Art. 69	Clause 4 Part 6 of Art. 68	Clause 3 Part 1 of Art. 13	Paragraph 5, clause 2.1, section II	Sub-item 3, item 1, section II
Submit a request to interview participants in the legal process and witnesses (ask questions to persons participating in criminal proceedings) related to the subject or object of the forensic examination, and conduct separate research in their presence	Clause 5 Part 3 of Art. 69	Clause 5 Part 6 of Art. 72	Clause 5 Part 6 of Art. 69	Clause 5 Part 6 of Art. 68	—	Paragraph 5, clause 2.1, section II	Sub-item 3, item 1, section II
Present in the conclusion information found during the forensic examination that is relevant to the case and for which no questions were raised, and the circumstances that contributed or could contribute to the commission of the offense	Clause 4 Part 3 of Art. 69	Clause 3 Part 6 of Art. 72	Clause 3 Part 6 of Art. 69	Clause 3 Part 6 of Art. 68	Clause 2 Part 1 of Art. 13	Paragraph 6, clause 2.1, section II	Sub-item 5, item 1, section II
Draw up a separate conclusion in case of disagreement with the position of other members of forensic expert commission	—	—	—	—	—	Paragraph 7, clause 2.1, section II	—

Forensic expert rights	Criminal Proce- dural Code of Ukraine	Civil Proce- dural Code of Ukraine	Commer- cial and Proce- dural Code of Ukraine	Code of Admin- istrative Procee- dings of Ukraine	Spe- cialized Law	Instruction	
						№ 1	№ 2
Request the involvement of other experts	—	—	—	—	—	—	—
Ensure unhindered access to the research object and proper working conditions	—	—	—	—	Art. 6	Clause. 3.9 section III	—
Provide answers to questions, in particular in writing, that are asked to the forensic expert during explanations or testimony regarding the conclusion drawn up by him	Art. 356	Part 4 of Art. 239	Art. 215	Part 3 of Art. 221	—	Paragraph 8, clause 2.1, sec- tion II	Sub-item 6, item 1, section II
Indicate in the conclusion about the information found during the examination, which is important for the proceedings and for which he was not asked questions	Part 3 of Art. 102	Part 8 of Art. 102	Part 8 of Art. 98	Part 8 of Art. 101	—	Paragraph 6, clause 2.1, sec- tion II	Sub-item 5, item 1, section II
In cases determined by law, to use the free help of an interpreter, to object to him	—	—	—	—	—	—	—
Challenge actions and decisions of forensic examination customer and other participants in the trial, violating rights of the forensic expert or the procedure for conducting forensic examination	—	—	—	—	—	Paragraph 9, clause 2.1, sec- tion II	Sub-item 7, item 1, section II
Apply for security in cases provided for by law	Clause 7 Part 3 of Art. 69	—	—	—	—	Paragraph 10, clause 2.1, sec- tion II	Sub-item 8, item 1, section II
Receive remuneration for performed work and reimbursement of expenses related to conducting forensic examination, if its conducting is not the official duty of the person involved as forensic expert	Clause 6 Part 3 of Art. 69	Part 7 of Art. 72	Part 7 of Art. 69	Part 7 of Art. 68	Clause 5 Part 1 of Art. 13	Paragraph 11, clause 2.1, sec- tion II	Sub-item 9, item 1, section II
Participate in court session in the mode of video conference, if there are no objections of participants in the case	Art. 336	Part 4 of Art. 72	Part 4 of Art. 69	Part 4 of Art. 68	—	—	—

Forensic expert rights	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
Refuse to conduct forensic examination ***	—	Part 8 of Art. 72	Part 8 of Art. 69	Part 8 of Art. 68	—	—	Clause 2 section II
Use other rights provided by legislation of Ukraine	Clause 8 Part 3 of Art. 69	Clause 6 Part 6 of Art. 72	Clause 6 Part 6 of Art. 69	Clause 6 Part 6 of Art. 68	Part 2 of Art. 13	—	—

Notes.

* Here and further, there is no sign;

** With permission of the body (person) who appointed forensic examination or engaged forensic expert.

*** If there is a threat to the life and health of the forensic expert; there are no necessary conditions for conducting research; principle of forensic expert independence is violated; objects of forensic examination and case files are unsuitable or insufficient to provide a conclusion and forensic expert was refused to supplement them; there are no conditions, methodological tools and equipment necessary for conducting a forensic examination and providing a conclusion; current level of scientific development does not allow us to answer the questions. Application for refusal should be motivated.

Certified forensic veterinarian carrying out forensic science activity, but does not work in a state specialized forensic institution, while control of organization of his activity by checking compliance with requirements of normative legal acts on forensic science activity and methods of conducting forensic examinations, shall (in accordance with Clause 15 of Chapter IV of Instruction № 2), in particular, the following rights:

- demand that commission members present official certificate;
- be present while inspection;
- demand from commission members not to disclose information that became known to them during inspection;
- apply to commission with a substantiated statement regarding the analysis of conclusions in another FSI;
- receive a copy of the act based on inspection results;

- sign the act with comments or refuse to sign;
- provide in writing their explanations, comments or objections to the act and the documents attached to”⁶⁵.

One of important elements of procedural status of forensic veterinarian (as well as a forensic expert of any other forensic expert specialization) are his duties set forth in the Criminal Procedural Code, Civil Procedural Code, Commercial and Procedural Code, Code of Administrative Proceedings of Ukraine, Specialized Law and instructions № 1 and 2.

Duties of forensic veterinarian outline his obligations (both to the state and to other participants in forensic science activity), which should be fulfilled without fail in accordance with legislation requirements, as well as according to his own conscience. Regardless of the type of legal proceedings and the basis of forensic examination, the forensic expert of any forensic expert specialization is assigned duties which list is given in the table. 2.

65 Інструкція про особливості здійснення ... URL: <https://zakon.rada.gov.ua/laws/show/z1431-11#Text> (date accessed: 01.12.2022).

Table 2

Forensic Expert Rights in Accordance with the Legislation of Ukraine

Forensic Expert Duties	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
Adhere to the oath and rules of professional ethics of a forensic expert	Part 1 of Art. 356	Part 1—3, 5 of Art. 225	—	Art. 207	—	—	—
Declare self-recusal if there are grounds provided for by legislation	Clause 5 Part 5 of Art. 69	—	—	—	Clause 3 Part 1 of Art. 12	Paragraph 2, clause 2.1, section II	Sub-item 1, item 3, section II
Accept commissioned forensic examination	—	—	—	—	—	Paragraph 3, clause 2.1, section II	—
Adhere to forensic examination deadlines	—	—	—	—	—	Clause 1.13 section II	—
Personally conduct full research on material and materialized objects	Clause 1 Part 5 of Art. 69	—	—	—	Clause 1 Part 1 of Art. 12	Paragraph 4, clause 2.1, section II	Sub-item 3, item 3, section II
Provide a substantiated and objective written forensic expert conclusion and if necessary, clarify it	Clause 1 Part 5 of Art. 69	Part 3, 4 of Art. 72	Part 3 of Art. 69	Part 3 of Art. 68	Clause 1 Part 2 of Art. 12	Paragraph 4, clause 2.1, section II	Sub-item 3, item 3, section II
Submit a request to the person or court that appointed forensic examination to clarify the content and scope of the assignment or to inform about impossibility of conducting it according to the question posed or without involvement of other persons	Part 7 of Art. 69	Part 6 of Art. 104	—	—	—	—	—
Arrive at the summons of the body or person who ordered forensic examination or engaged forensic expert to provide explanations, testimony or additions regarding conducted forensic examination or the reasons for its impossibility	Clause 2 Part 5 of Art. 69	Part 4 of Art. 72	Part 4 of Art. 69	Part 4 of Art. 68	—	Paragraph 6, clause 2.1, section II	Sub-item 2, item 2, section II
Ensure preservation of objects and materials provided for research	Clause 3 Part 5 of Art. 69	Part 3 of Art. 108	Part 3 of Art. 103	—	—	Paragraph 7, clause 2.1, section II	—

Forensic Expert Duties	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
Obtain permission from forensic examination customer for complete or partial destruction of the forensic examination object of or change of its properties, if it is impossible to apply other research methods	Clause 3 Part 5 of Art. 69	Part 4 of Art. 108	Part 4 of Art. 103	Part 3 of Art. 104	—	Paragraph 7, clause 2.1, section II	—
Not to inform anyone, except forensic examination customer, about the course and results of its conduct (except for cases provided for by law)	Clause 4 Part 5 of Art. 69	Clause 1 Part 2 of Art. 107	Part 2 of Art. 102	Part 2 of Art. 105	—	Paragraph 8, clause 2.1, section II	Sub-item 7, item 3, section II
Indicate in forensic expert conclusion that forensic expert is aware of responsibility for a knowingly false conclusion and refusal without valid reasons to fulfill the duties assigned to him	Part 2 of Art. 102	Part 7 of Art. 102	Part 7 of Art. 98	Part 7 of Art. 101	—	Paragraph 14, clause 2.1, section IV	—
It should be noted in forensic expert conclusion that conclusion has been prepared for submission to the court and forensic expert is aware of the criminal responsibility for a knowingly false conclusion, if forensic examination is carried out at the request of the parties to the case	—	Part 5 of Art. 106	Part 5 of Art. 101	Part 6 of Art. 104	—	Paragraph 15, clause 2.1, section IV	—
Notify relevant case participant about consequences of forensic expert research and obtain written permission for its conducting *	—	Clause 2 Part 4 of Art. 108	Clause 2 Part 4 of Art. 103	Clause 2 Part 4 of Art. 106	—	—	—
Notify the body or person who ordered forensic examination or engaged forensic expert about impossibility of conducting it and return case files and other documents **	Clause 5 Part 5 of Art. 69	Part 8 of Art. 72	Part 8 of Art. 69	Part 8 of Art. 68	—	Paragraph 5, clause 2.1, section II	Sub-item 4, item 3, section II
Immediately return case files and other documents provided for forensic examination in case of:							
• its completion;	—	—	—	—	—	—	—

Forensic Expert Duties	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
• receipt of a procedural document or a request from forensic examination customer (if forensic expert is engaged on a contractual basis) to terminate its conducting;	—	—	—	—	—	—	—
• disapproval by forensic examination customer of the extension of its conducting terms;	—	—	—	—	—	Paragraph 4, clause 1.13, section I	—
• refusals of forensic examination customer to give consent to the complete or partial destruction or damage of the object of forensic examination, if it is impossible to conduct research using other non-destructive methods;	—	—	—	—	—	—	—
• cancellation by court of decision on forensic examination appointment	—	Part 4 of Art. 107	Part 5 of Art. 102	Part 4 of Art. 105	—	Paragraph 9, clause 2.1, section II	—

Notes.

* If forensic research is related to complete or partial destruction of forensic examination object or change of its properties.

** Due to the lack of necessary knowledge, or insufficient materials for forensic examination, or their failure to submit within the time stipulated by legislation, or failure to submit additional materials, or due to impossibility of conducting forensic examination without involvement of other experts. The application for refusal should be motivated.

Legislation provides for control over organization of activities of certified forensic veterinarians who do not work in State specialized expert institutions, carried out by checking their compliance requirements of normative legal acts on forensic science activity and methods of conducting forensic examinations. According to Clause 16 of Chap. IV of Instruction No. 2, additional duties are assigned to the forensic expert during such an inspection, in particular:

- *allow the commission to his workplace;*
- *provide copies of other specimens of conclusions for their analysis, as well as other materials and explanations on issues arising during inspection;*
- *comply with elimination requirements for identified deficiencies”* ⁶⁶.

In addition to duties and rights, the legal status of a forensic veterinarian includes a system of prohibitions during the performance of his professional activities,

⁶⁶ Інструкція про особливості здійснення ... URL: <https://zakon.rada.gov.ua/laws/show/z1431-11#Text> (date accessed: 01.12.2022).

provided for in Part 4 of Art. 69 Criminal Procedural Code of Ukraine, Part 5 of Art. 69 of Commercial and Procedural Code of Ukraine, Part 4 of Art. 10 of Specialized Law, clause 2.3, Ch. II Instructions №. 1, Clause 4, Chap. II Instructions №. 2. We systematized the list of prohibitions in the table. 3.

Table 3

Forensic Expert Rights in Accordance with the Legislation of Ukraine

Prohibitions for Forensic Expert	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
Conduct a forensic examination without a written authorization from superior, *	—	—	—	—	Clause 2 of Part 3 of Art. 14**	Paragraph 2, clause 2.1, section II	—
Reassign forensic examination to another person	—	Part 5 of Art. 72	Part 5 of Art. 69	Part 5 of Art. 68	Clause 3 of Part 3 of Art. 14**	Paragraph 3, clause 2.1, section II	—
Independently collect materials that are subject to forensic research, as well as select initial data for conducting forensic examination, if they are ambiguously reflected in provided materials	Part 4 of Art. 69	Clause 1 Part 2 of Art. 107	Part 2 of Art. 102	Clause 1 Part 2 of Art. 105	Clause 1 of Part 3 of Art. 14**	Paragraph 4, clause 2.1, section II	Sub-item 2, item 4, section II
Solve issues that go beyond the scope of forensic examination, specific expertise or qualification of forensic expert in the relevant forensic expert specialization	—	—	—	—	Clause 5 of Part 3 of Art. 14**	Paragraph 5, clause 2.1, section II	Sub-item 3, item 4, section II
Find out legal issues and provide assessments of legality of procedures regulated by legal regulations	Part 1 of Art. 242	Part 2 of Art. 102	Clause 2 Part 2 of Art. 98	Clause 2 Part 2 of Art. 101	Clause 5 of Part 3 of Art. 14**	Paragraph 5, clause 2.1, section II	Sub-item 3, item 4, section II
Independently involve other forensic experts or persons in carrying out forensic examination entrusted to him	—	—	—	—	—	—	—

Prohibitions for Forensic Expert	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Instruction	
						№ 1	№ 2
Without consent of the body (person) who appointed forensic examination to communicate with hearing participants outside the court session ***	—	Clause 2 Part 2 of Art. 107	Part 2 of Art. 102	Clause 2 Part 2 of Art. 105	—	Paragraph 6, clause 2.1, section II	Sub-item 4, item 4, section II
Store case (proceedings) files and objects of forensic examination outside the workplace or outside a specially designated storage place	—	—	—	—	—	Paragraph 7, clause 2.3, section II	Sub-item 5, item 4, section II
Disclose information that has become known to forensic expert in connection with forensic examination, or notify anyone, except court and the party to the case, on whose order the forensic examination was conducted, about its performing and obtained results	Clause 4 Part 5 of Art. 69	Clause 1 Part 2 of Art. 107	Part 2 of Art. 102	Part 2 of Art. 105	—	Paragraph 8, clause 2.1, section II	Sub-item 7, item 3, section II
Apply destructive research methods or significantly change the properties of research objects without permission of the body (person) who appointed forensic examination or engaged forensic expert	Clause 3 Part 5 of Art. 69	Part 3, 4 of Art. 108	Part 3, 4 of Art. 103	Part 3, 4 of Art. 106	Clause 9 of Part 3 of Art. 14**	Paragraph 7, clause 2.1, section II	Sub-item 6, item 3, section II
Conduct forensic examination, if the right of forensic expert to conduct a forensic examination is temporarily suspended in the relevant forensic expert specialization or the certificate of qualification of a forensic expert is canceled	—	—	—	—	—	—	—
Interrogate forensic expert before he issues a conclusion	—	—	—	—	—	—	—
Comply with other restrictions provided by legislation	—	—	—	—	Clause 6 Part 1 of Art. 13	—	—

Notes.

* In particular, in the case of its appointment (order) to forensic expert institution which employee is a forensic expert, or to accept the execution of forensic examination by a certified forensic

expert who does not work in a State specialized expert institution, if it is not personally entrusted to him.

** Is a disciplinary offense.

*** If this calls into question the disinterestedness of forensic expert in the result or if such persons are directly or indirectly interested in the results of forensic examination.

Let us sum up intermediate results. The lists of rights, duties, and prohibitions of forensic expert (in particular, a forensic veterinarian), given in procedural legislation of Ukraine, Specialized Law and instructions № 1 and 2, differ somewhat in scope and content, that can negatively affect effectiveness of their application in the legal field and forensic expert practice (in particular, forensic veterinary), as well as the validity, objectivity, reliability and veracity of forensic expert conclusion. In addition, analyzed rights, duties, and prohibitions of the forensic expert are included in various articles of the above-mentioned documents which to some extent complicates their practical application for the purpose of implementing the tasks of legal proceedings and forensic science activity.

Our generalization (E.g., Tables 1–3) indicates: system of rights, obligations and prohibitions of forensic expert determined by the mentioned normative legal acts needs unification with the aim of the same scope of their application regardless of the type of legal proceedings, grounds for conducting a forensic examination, and for effective implementation of forensic expert activity principles.

According to the tab. 1–3, we come to the conclusion that procedural legislation, Specialized Law, instructions № 1 and 2 do not contain clearly formulated and grouped norms regarding the rights, duties and prohibitions of the forensic expert. In our opinion, the status of a judicial expert

in the legislation of Ukraine (regardless of the type of legal proceedings) needs to be improved: systematize and concentrate the list of his rights, duties and prohibitions in the relevant Law with reference to this Law as a blanket norm in the Criminal Procedural Code of Ukraine, Civil Procedural Code of Ukraine, Commercial and Procedural Code of Ukraine and Code of Administrative Proceedings of Ukraine which will contribute to clarity of interpretation, ease of perception and effective application of these rights, obligations and prohibitions. In this regard, regulate in the legislation of Ukraine the rights, obligations and prohibitions provided for a court expert, we suggest using their complex, grouped in the table. 1–3 of research paper (regardless of species of legal proceedings).

Forensic veterinarian is one of the substitute participants in a proceeding or legal procedure (regardless of type of legal proceedings), so he can be removed from participation in the case by granting a motion for recusal or as a result of self-recusal. Comprehensive, complete and objective investigation of circumstances of the case assumes the lack of direct or indirect interest of the forensic veterinary expert in its results. In this regard, procedural legislation provides for the removal of forensic expert in existence of such interest or other circumstances that raise doubts about the impartiality of the expert. We systematized the conditions under which a person cannot be forensic expert in the table. 4.

Table 4

Restrictions Provided by Legislation of Ukraine for forensic expert

Conditions Under which Professional Cannot be Forensic Expert?	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Provisions on CEQC
Is an applicant, victim, civil plaintiff or defendant, a family member or close relative of a party, applicant, victim, civil plaintiff or defendant or was (is) in an official or other dependence on participants in the case	Art. 79 & 80	Art. 38 & 39	Art. 37 & 38	Art. 38 & 39	—	—
Participated in the case as an examining magistrate, judge, defense attorney or representative, witness, forensic expert, professional, translator, secretary of court session, representative of the staff of probation authority	Art. 79 & 80	Art. 38 & 39	Art. 37 & 38	Art. 38 & 39	—	—
Directly or indirectly personally (or his close relatives or family members) interested in the outcome of the case	Art. 79 & 80	Art. 38 & 39	Art. 37 & 38	Art. 38 & 39	—	—
Was (is) in an official, family or other dependence on the parties to proceedings; or there are other circumstances that raise reasonable doubts about impartiality of forensic expert	Part 2 of Art. 69	Clause 1 Part 2 of Art. 38	Part 2 of Art. 37	Clause 1 Part 2 of Art. 38	—	—
Took part in the departmental investigation and acts in it as a witness, representative, lawyer	—	—	—	Part 1 of Art. 38	—	—
Participated in audits, inspections, etc., materials that were used in the case	Part 2 of Art. 79	—	—	Clause 2 Part 2 of Art. 38	—	—
Finding out circumstances relevant to the case is beyond his specific expertise	Part 6 of Art. 69	Clause 2 Part 2 of Art. 38	Part 6 of Art. 99	Clause 3 Part 2 of Art. 38	—	—
Person with limited legal capacity or an incapacitated person	—	—	—	—	Part 1 of Art. 11	—
Has an unexpunged or unexpired criminal record	—	—	—	—	Part 1 of Art. 11	—

Conditions Under which Professional Cannot be Forensic Expert?	Criminal Procedural Code of Ukraine	Civil Procedural Code of Ukraine	Commercial and Procedural Code of Ukraine	Code of Administrative Proceedings of Ukraine	Specialized Law	Provisions on CEQC
During the last year, had (had) an administrative penalty for committing offense related to corruption, or disciplinary penalty in the form of deprivation forensic expert qualification	—	—	—	—	Part 1 of Art. 11	Clause 12, 16 section VI
In conducting forensic re-examination, if he provided expert conclusion based on the results of the initial examination for the same case or criminal proceedings	=	=	=	=	=	=
Other circumstances that raise doubts about impartiality or objectivity of the forensic expert and exclude possibility of instructing him to conduct a forensic examination	Clause 3 Part 1 of Art. 77	Art. 38	Clause 5 Part 1 of Art. 35	Part 1 of Art. 39	—	—
Other circumstances prohibiting participation in legal proceedings	—	—	—	—	Part 2 of Art. 11	—

Notes.

* Regulations on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the certification of forensic experts⁶⁷ (hereinafter referred to as *Regulations on CEQC*).

According to the table 4, we come to the conclusion that procedural legislation does not contain clearly formulated and grouped norms-limitations and grounds for disqualification of a court expert. Thus, the norm of Part 1 of Art. 79 of Criminal Procedural Code of Ukraine: *Grounds for impeachment of a specialist, representative of the staff of the probation authority, translator, expert, secretary of the court session* is strong; it states that the named persons *do not have the right to participate in criminal proceedings and are impeached on the grounds provided for in the first part of Article 77 of this Code*, entitled *Grounds for disqualification of the prosecutor,*

investigator (therefore, Article 77 of Criminal Procedural Code of Ukraine does not refer to forensic expert). In our opinion, such legal substantiation of the grounds for disqualification of a forensic expert causes inconvenience in the use of these norms in the practice of criminal justice.

We are convinced that posting a list of grounds for disqualification of forensic expert (regardless of the type legal proceeding) in Specialized Law (with reference to this Law in Article 79 of Criminal Procedural Code of Ukraine, Article 38 of Civil Procedural Code of Ukraine, Article 37 of Commercial and Procedural Code of

⁶⁷ Положення про Центральну експертно-кваліфікаційну комісію при Міністерстві юстиції України та атестацію судових експертів : затв. наказом Мін'юсту України від 03.03.2015 р. № 301/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0249-15#Text> (date accessed: 01.12.2022).

Ukraine and Article 38 of Code of Administrative Proceedings of Ukraine as a blanket norm) will contribute to clarity and ease of their use in any type of legal proceedings. Therefore, for filing a recusal and self-recusal of forensic expert (regardless of species of legal proceedings), we suggest using a set of grounds grouped in the table. 4.

We reasonably assert that participation of forensic expert as a specialist in a case at a previous stage cannot be grounds for his disqualification as an expert in the same case (Part 1 of Article 79 of Criminal Procedural Code of Ukraine, Part 3 of Article 38 Civil Procedural Code of Ukraine, Part 3 of Article 37 of Commercial and Procedural Code of Ukraine, Part 3 of Article 38 of the Code of Administrative Proceedings of Ukraine). Based on the experience of our own forensic veterinary expert practice during 2010–2022, we should state that such a transfer of powers (from specialist to forensic expert) is more effective and promising than when in the pre-expert period a single specialist works with research objects and after appointing a forensic examination is another. In particular, forensic veterinarian, together with police officers, visits the scene of the incident, inspects the animal corpse and makes a corresponding description directly at the place of discovery, and then conducts a detailed external and internal examination of the animal corpse in the morgue of a specialized expert institution according to the necessary methods, according to needs, applies additional laboratory and instrumental research methods, which together will make it possible to establish a justified forensic veterinary diagnosis (argue the cause and age of the animal's death, find out the localization, nature and degree of severity of individual injuries, etc.), integrating the information obtained during the examination of this corpse at the place of discovery and its detailed examination in morgue.

Issue of forensic veterinarian disqualification is decided by composition of court considering the case (Part 10 of Article 40 of Civil Procedural Code of Ukraine, Part 10 of Article 39 of Commercial and Procedural Code of Ukraine, Part 9 of Article 40 of Code of Administrative Proceedings of Ukraine). If forensic expert challenge to criminal proceedings is satisfied, another forensic expert should be involved within the time limits determined by examining magistrate or the court (Part 2, Article 83 of the Criminal Procedure Code). At the same time, Code of Civil Procedure, the Code of Civil Procedure and the Civil Code of Civil Procedure do not contain such a norm. To the deep conviction of the author of this research, in forensic veterinary examination, this approach is ineffective or ineffective in general with respect to individual objects of forensic veterinary examination and under certain conditions of these objects (for example, if an animal carcass is subjected to the initial examination, then during its forensic veterinary autopsy, which is a mandatory stage of forensic veterinary examination, destructive research methods are used). As a result of application of a full set of forensic veterinary manipulations to a sub-expert corpse of an animal, wound openings and wound passages are destroyed, as well as (partially or completely) the primary structure of organs. Therefore, if at the stage of the judicial review of the case in criminal proceedings, forensic expert who provided the opinion, based on the results of the forensic veterinary examination, is challenged and the investigating judge or the court involves another forensic veterinary expert (Part 2, Article 83 of Criminal Procedural Code of Ukraine), effectiveness research and the informativeness of obtained results will be significantly reduced due to the complete or partial destruction of the corpse during initial examination. Similarly, efficiency, informativeness and

effectiveness will decrease or even make it impossible to carry out a repeated forensic veterinary examination of such a research object or cause expert errors. However, in each specific case, the expert capabilities and informativeness of the research results should be evaluated individually, taking into account many factors: for example, fractures, cracks and other pathologies of the bones of the skeleton retain informativeness for a long time after the death of animal (including the exhumation of the corpse) to establish factual data, in the case of researching decayed remains or skeletonization of a corpse (this helps to determine the place of application of force to cause injuries, their localization, nature and even the mechanism of injury).

Therefore, the list of grounds for which a person cannot be a forensic expert, in particular a forensic veterinary expert, given in the Code of Criminal Procedure,

Code of Criminal Procedure, Code of Criminal Procedure, Civil Code of Ukraine, instructions № 1 and 2 is different, which can negatively affect the process of appointing a forensic expert in general and judicially veterinary examination, in particular, for its impartial conduct, as well as the provision of a substantiated, objective, reliable opinion by a forensic expert (see Table 5), therefore mentioned documents need unification (regardless of the type of legal proceedings and/or grounds for conducting forensic examination) with the aim of implementation of the principles of forensic science activity, necessarily taking into account peculiarities of legal proceedings.

Results of the survey of respondents (judges, investigators, inquirers, lawyers, forensic veterinarians) regarding the rights, duties, prohibitions and restrictions provided by law for forensic expert are set out in table. 5.

Table 5

Results of statistical processing of respondent questionnaires *

Questions	Answers										
	Judges		Investigators		Investigating officers		Lawyers		Forensic veterinarians		
	Quantity	%	Quantity	%	Quantity	%	Quantity	%	Quantity	%	
1. Is it necessary to develop a doctrine on legal status of a forensic expert in Ukraine, taking into account specifics of national legislation?											
Yes	58	96.7	82	89.1	45	90	43	86	2	100	
No	—	—	—	—	—	—	—	—	—	—	
No answer	2	3.3	10	10.9	5	10	7	14	—	—	
2. In your practice, have you come across information about influencing forensic expert with the purpose of providing false conclusion (refusal without valid reasons to perform assigned duties)?											
Yes	—	—	—	—	—	—	—	—	—	—	
No	—	—	80	87.0	44	88.0	50	100	2	100	
No answer	2	3.3	2	2.0	1	2.0	—	—	—	—	

Questions	Answers										
	Judges		Investigators		Investigating officers		Lawyers		Forensic veterinarians		
	Quantity	%	Quantity	%	Quantity	%	Quantity	%	Quantity	%	
3. Does the separation of his legal and procedural status affect forensic expert practical activity?											
Yes	10	16.7	12	13.0	8	16.0	12	24.0	—	—	
No	45	75.0	75	81.5	39	78.0	32	64.0	2	100	
No answer	5	8.3	5	5.5	3	6.0	6	12.0	—	—	
4. Are there any inconveniences associated with the need to simultaneously refer to various legislative and regulatory acts related to substantive and branch procedural law when using them in practice, when one list of rights, obligations, and prohibitions of forensic expert is concentrated in the Specialized Law and the other list in relevant procedural legislation?											
Yes	38	63.3	55	59.8	32	64.0	29	58.0	2	100	
No	16	26.7	28	30.4	11	22.0	10	20.0	—	—	
No answer	6	10.0	9	9.8	7	14.0	11	22.0	—	—	
5. What is your attitude to the fact that list of rights, obligations, prohibitions and restrictions provided for by Specialized Law is partially inconsistent with the list of rights, obligations, prohibitions and restrictions of forensic expert provided for by instructions that are hierarchically subordinate to this Law?											
Negative	27	45.0	45	48.9	26	52.0	26	52.0	2	100	
This does not affect appointment and conducting forensic examinations	30	50.0	39	42.4	22	44.0	21	42.0	—	—	
No answer	3	5.0	8	8.7	2	4.0	3	6.0	—	—	
6. Do you consider it expedient to improve the legislation of Ukraine regarding the status of a judicial expert during his professional activity, regardless of the type of judicial proceedings, by placing a systematized list of norms in the relevant Law with reference to this Law as a blanket norm in Art. 69 of Civil Procedural Code of Ukraine, Art. 69 of Commercial and Procedural Code of Ukraine, Art. 68 of Code of Administrative Proceedings of Ukraine, what will make it possible to ensure clarity and convenience of their perception, as well as effective application?											
Yes	50	83.3	82	89.1	37	74.0	41	82.0	2	100	
No	7	11.7	—	—	7	14.0	7	14.0	—	—	
No answer	3	5.0	10	10.9	6	12.0	2	4.0	—	—	

Questions	Answers									
	Judges		Investiga- tors		Investigating officers		Lawyers		Forensic veter- inarians	
	Quan- tity	%	Quan- tity	%	Quan- tity	%	Quan- tity	%	Quan- tity	%
7. Submit a request to the body (person) that appointed a forensic examination or engaged forensic expert to clarify raised issues?										
<i>Appropriate</i>	52	86.7	81	88.0	46	92.0	45	90.0	2	100
<i>Impractical</i>	—	—	—	—	—	—	—	—	—	—
<i>No answer</i>	8	13.3	11	12.0	4	8.0	5	10.0	—	—
8. What is your attitude to the right of a forensic expert to draw up a separate conclusion while commissioned forensic examination in case of disagreement with position of other forensic experts?										
<i>Appropriate</i>	52	86.7	81	88.0	46	92.0	45	90.0	2	100
<i>Impractical</i>	—	—	—	—	—	—	—	—	—	—
<i>No answer</i>	8	13.3	11	12.0	4	8.0	5	10.0	—	—
9. Challenge actions and decisions of the customer of forensic examination and other participants in the trial, violating rights of forensic expert or the procedure for conducting forensic examination?										
<i>Appropriate</i>	52	86.7	81	88.0	46	92.0	45	90.0	2	100
<i>Impractical</i>	—	—	—	—	—	—	—	—	—	—
<i>No answer</i>	8	13.3	11	12.0	4	8.0	5	10.0	—	—
10. Should the list of duties of forensic expert be supplemented with the following item: <i>Observe the deadlines for conducting a forensic examination?</i>										
<i>Yes</i>	58	96.7	85	93.4	48	96.0	45	90.0	2	100
<i>No</i>	—	—	—	—	—	—	—	—	—	—
<i>No answer</i>	2	3.3	7	7.6	8	16.0	5	10.0	—	—
11. Is it expedient to oblige the forensic expert to immediately return case files and other documents used for the forensic examination in case of:										
• receipt of a procedural document or a request from forensic examination customer (if forensic expert is engaged on a contractual basis) to terminate its conducting;										
• disapproval by forensic examination customer of extension of its conducting terms;										
• refusal of forensic examination customer to give consent to the complete or partial destruction or damage of the object of forensic examination, if it is impossible to conduct research using other non-destructive methods;										
• cancellation by court of decision on appointment of forensic examination?										
<i>Appropriate</i>	58	96.7	85	93.4	48	96.0	45	90.0	2	100
<i>Impractical</i>	—	—	—	—	—	—	—	—	—	—
<i>No answer</i>	2	3.3	7	7.6	8	16.0	5	10.0	—	—

Questions	Answers										
	Judges		Investiga-tors		Investigating officers		Lawyers		Forensic veter-inarians		
	Quan-tity	%	Quan-tity	%	Quan-tity	%	Quan-tity	%	Quan-tity	%	
12. Should the list of prohibitions for forensic expert be supplemented with prohibition to conduct a forensic examination without a written authorization from the head of the forensic institution which employs this forensic expert?											
Yes	59	98.3	89	96.7	43	86.0	45	90.0	2	100	
No	—	—	—	—	—	—	—	—	—	—	
No answer	1	1.7	3	3.3	7	14.0	5	10.0	—	—	
13. Should the list of prohibitions for forensic expert be supplemented with a prohibition to contact persons directly or indirectly interested in the results of forensic examination?											
Yes	59	98.3	89	96.7	43	86.0	45	90.0	2	100	
No	—	—	—	—	—	—	—	—	—	—	
No answer	1	1.7	3	3.3	7	14.0	5	10.0	—	—	
14. Should the list of prohibitions for a court expert be supplemented with a prohibition to interrogate forensic expert in court before he provides a conclusion?											
Yes	57	95.0	85	92.4	49	98.0	48	96.0	2	100	
No	—	—	—	—	—	—	—	—	—	—	
No answer	3	5.0	7	7.6	1	2.0	2	4.0	—	—	
15. Can the participation of forensic expert in proceedings as a specialist preclude his participation as a forensic expert in the same proceedings?											
Yes	—	—	—	—	—	—	—	—	—	—	
No	59	98.3	87	94.6	49	9.8	48	96.0	2	100	
No answer	1	1.7	5	5.4	1	2.0	2	4.0	—	—	

Notes.

* Total respondents: judges: 60, investigators: 92, Investigating officers: 50, lawyers: 50, forensic veterinarians: 2.

Thus, analysis of questionnaires of interviewees confirmed our statement about the existence in Ukraine of the need to develop a doctrine on the legal status of a forensic expert in view of specifics of national legislation in the context of the latest reforms, in particular regarding forensic science activity.

Note that legal responsibility of forensic veterinarian is a component of his legal status. In legal responsibility, one of the methods of State management of society is reproduced, which consists in coercive, State-authority influence on behavior of persons committed offenses.

Legal responsibility of forensic veterinarian is a type of state coercion and a specific type of legal relationship. The basis of legal responsibility of a forensic veterinary expert is his commission of an offense in forensic science activity. The purpose of the expert's legal responsibility is the formation of his lawful behavior. The responsibility of the forensic expert

is based on the principles of legality, inevitability, reasonableness, justice, and appropriateness of punishment⁶⁸. Art. 14 of Specialized Law states that this responsibility is carried out on the grounds and in the manner prescribed by law. We believe that this article of the relevant Law does not at all specify the responsibility of the forensic expert and has rather generalized features, which is why it cannot satisfy the requirements of forensic expertise, because legal responsibility is a central category in forensic expertise and forensic expert and one of the principles of forensic expertise, to which such scientists as: E. B. Simakova-Yefremian⁶⁹, V. M. Sherstjuk⁷⁰, A. V. Ostropilets⁷¹, B. P. Surzhan⁷², O. A. Kravchenko⁷³ and others pay attention.

For violation of legislation, forensic veterinarian bears criminal, administrative, disciplinary and material responsibility which we systematized and illustrated in the table. 6.

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Table 6

Forensic Expert Responsibility for Legislation Violation

Type of Responsibility and Offense	Legislative Norm
I. Criminal Responsibility	
1. Misleading a court or other authorized body; providing a knowingly false conclusion of a forensic expert drawn up for a body conducting a pre-trial investigation, a court, etc.	Criminal Code of Ukraine ⁷⁴
2. Refusal of forensic expert without valid reasons from performing assigned duties in court or during the pre-trial investigation	Art. 385 of Criminal Code of Ukraine
3. Obstructing appearance of forensic expert in court, pre-trial investigation bodies, forcing him to refuse to provide a conclusion, as well as to give a knowingly false conclusion by means of threats of murder, violence, destruction of the property of a forensic expert or his relatives, or disclosure of shameful information, or bribing forensic expert with the same purpose, as well as a threat to carry out these actions in retaliation for a previously given testimony or conclusion	Art. 386 of Criminal Code of Ukraine
4. Data disclosure of crime detection and investigation of pre-trial investigation	Art. 387 of Criminal Code of Ukraine
5. Abuse of authority by persons who provide public services, in particular forensic expert services	Art. 365 ² of Criminal Code of Ukraine
II. Administrative responsibility	
1. Showing disrespect to the court or the Constitutional Court of Ukraine, malicious evasion of forensic expert from appearing in court	Art. 185 ³ Code on Administrative Offenses ⁷⁵ (hereinafter referred to as <i>Code on Administrative Offenses</i>)
2. Malicious evasion of forensic expert from appearing before pre-trial investigation bodies or prosecutor during pre-trial investigation	Art. 185 ⁴ of Code on Administrative Offenses
3. Violation of legal restrictions on receiving gifts	Art. 172 ⁵ of Code on Administrative Offenses
4. Violation of requirements prevention and settlement of conflicts of interest	Art. 172 ⁷ of Code on Administrative Offenses

74 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 01.12.2022).

75 Кодекс України про адміністративні правопорушення від 07.12.1984 р. № 8073-X (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text> (date accessed: 01.12.2022).

	Type of Responsibility and Offense	Legislative Norm
Reasons	Unscrupulous attitude towards one's official duties, which do not entail criminal or administrative responsibility, and/or violation of methodological requirements during the conduct of forensic investigations	Art. 147–152 Labor Code of Ukraine ⁷⁶
Species	Violation of general labor discipline	
	Offense ⁷⁷	Section. VI Provisions on CEQC ⁷⁸ , Art. 14 of Specialized Law ⁷⁹
Penalty	Warning, suspension of the validity period of the Certificate for relevant forensic expert specialization, deprivation of forensic expert qualification	
IV. Material responsibility		
Reasons	Assignment of property damage	Art. 1166–1177of Civil Code of Ukraine ⁸⁰
Species	Damage caused to the enterprise, institution, organization	Chapter IX of Labor Code of Ukraine ⁸¹
	Damage caused to an individual or legal entity	Art. 1166 **, 1172 ***, 1192 **** of Civil Code of Ukraine ⁸²

Notes.

* In accordance with clause 13 of section VI of Provisions on the CEQC, when choosing the type of disciplinary penalty, disciplinary chamber of the CEQC takes into account: severity of consequences of the committed disciplinary offense; circumstances of its commission; fact that disciplinary sanctions have been applied to the forensic expert in the past; other information characterizing him as a forensic expert.

** General grounds for liability for property damage.

*** Compensation by a legal entity or an individual for damage caused by their employee or another person.

**** Methods of compensation for damage caused to victim's property.

76 Кодекс законів про працю України від 10.12.1971 р. № 322-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (date accessed: 01.12.2022).

77 Алексеева Н. Ю. Кримінальна відповідальність за злочини проти правосуддя, що вчиняються свідками, експертами, перекладачами або щодо них : дис. ... канд. юрид. наук. Київ, 2017. 223 с. URL: https://dspace.lvduvs.edu.ua/bitstream/1234567890/3501/1/alekseeva_d.pdf (date accessed: 01.12.2022).

78 Положення про Центральну експертно-кваліфікаційну комісію URL: <https://zakon.rada.gov.ua/laws/show/z0249-15#Text> (date accessed: 01.12.2022).

79 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.12.2022).

80 Цивільний кодекс України від 16.01.2003 р. № 435-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text> (date accessed: 01.12.2022).

81 Кодекс законів про працю URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (date accessed: 01.12.2022).

82 Цивільний кодекс URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text> (date accessed: 01.12.2022).

We will give an example of possible compensation for damage caused by a forensic veterinarian. During initial forensic veterinary examination in civil procedure, the forensic veterinary expert determined the cause of animal death in the veterinary clinic, which occurred during surgery. Forensic expert inadvertently made a mistake during the analysis of the clinical situation, which led to a false conclusion. During repeated forensic veterinary examination, this error was discovered by another forensic expert. In such a case, the person who paid for the initial forensic examination may apply to the court for compensation for material damage in the amount paid for initial examination, as well as moral damage.

At the same time, we note that neither criminal nor administrative liability has been established for obstructing the examination of the object of expert research by forensic expert. There is no provision for liability for insulting a forensic expert during performance of his professional duties. In this regard, we share the opinion of O. P. Uhrovetskyi⁸³ about the need for detailed research of this issue and introduction of additions to legislation.

According to the results of scientific investigations, own experience of forensic expert activity during 2010–2022, taking into account research results by authoritative scientists in the field of criminalistics and forensic expertology, with the aim of unifying the procedural rights, duties, prohibitions and restrictions of the forensic expert (in particular, forensic veterinarian), regulated by procedural legislation (taking into account the peculiarities of judicial proceedings, the norms of Specialized Law, instructions № 1 and 2), we offer a blanket method of applying the procedural status

of a forensic expert by setting out his procedural rights, duties, prohibitions and restrictions in the relevant Law and in the relevant articles of procedural legislation only refer to the mentioned Law.

Therefore, we propose the following changes.

1. In the theory and practice of forensic science, it is legally justified to use the term: *legal status of a forensic expert*. The title of Section II: *Forensic Expert* of Law of Ukraine: *On Judicial Examination* shall be rewritten as follows: Section II. *Forensic Expert Legal Status*.
2. Article 11 of Law of Ukraine: *On Judicial Examination* shall be amended as follows:

“Article 11. Persons who cannot be court experts

Regardless of species of legal proceedings, a person may not be involved in conducting forensic examination and performing forensic expert duties during professional activity, if:

1) *he (she) is an applicant, victim, civil plaintiff, civil defendant, family member or close relative of a party, applicant, victim, civil plaintiff or civil defendant;*

2) *he (she) participated in the same proceedings as an examining magistrate, judge, defense attorney or representative, witness, expert, specialist, representative of the staff of probation authority, translator;*

3) *he (she) or her close relatives or family members are directly or indirectly interested in the case outcome;*

4) *he (she) was or is in an official, family or other relationship with the parties to the proceedings of the accused, suspect, victim, plaintiff or defendant in civil cases or there are other circumstances that cause reasonable doubts about her impartiality;*

5) *he (she) participated in the departmental investigation and is a witness, representative, lawyer in;*

83 Угровецкий О. П. *Op. cit.* URL: <https://journals.indexcopernicus.com/api/file/viewByFile-Id/496424.pdf> (date accessed: 12.12.2022).

6) he (she) participated in audits, inspections, etc., materials that were used in the case;

7) finding out circumstances relevant to the case is beyond his specific expertise;

8) he (she) is limited in civil capacity or incapacitated;

9) he (she) has an unexpunged or unexpired criminal record for committing criminal offenses;

10) within the last year, he (she) has been subject to administrative penalty for committing a corruption offense or a violation related to corruption, or to disciplinary penalty in the form of termination of the right to conduct forensic examination in the relevant forensic expert specializations;

11) he (she) participated in the re-examination; provided forensic expert conclusion based on the results of primary forensic examination of the same case or criminal proceedings;

12) other circumstances that raise doubts about impartiality or objectivity of the forensic expert and exclude possibility of instructing him to conduct a forensic examination”.

3. Article 12 of Law of Ukraine: On Judicial Examination shall be amended as follows:

“Article 12. Forensic Expert Duties

Regardless of the type of legal proceedings and the basis for conducting a forensic examination, during professional activity, forensic expert is obliged to:

1) adhere to the oath and rules of professional ethics of forensic expert;

2) declare self-recusal in availability of circumstances provided for by law that make impossible for forensic expert to conduct forensic examination;

3) accept commissioned forensic examination;

4) adhere to forensic examination deadlines;

5) personally conduct full research on material and materialized objects;

6) provide a substantiated and objective written conclusion on raised issues and if necessary, clarify it;

7) submit a request to the person who appointed forensic examination, or the court that commissioned it, clarify the content and scope of the assigned task, or to inform about impossibility of conducting a forensic examination on the issue or without the involvement of other persons;

8) arrive at the summons of the body or person who appointed a forensic examination or engaged a forensic expert to provide explanations, testimony or additions regarding the conducted forensic examination or the reasons for notification of its impossibility carrying out;

9) ensure the maximum possible preservation of objects and materials of the proceedings or case provided for research;

10) obtain permission from forensic examination customer for research related to complete or partial destruction of the object of examination or a change in its properties, if there are reasonable grounds for asserting impossibility of applying other methods;

11) not to inform anyone, except the forensic examination customer, about its conducting and results, except for cases provided for by legislation;

12) state in forensic expert conclusion that forensic expert has been warned (aware) of responsibility for a knowingly false conclusion, and in the case of the appointment of a forensic examination by the court, of responsibility for refusing without valid reasons to perform the duties assigned to;

13) indicate in the conclusion that it has been prepared for submission to the court and the forensic expert is aware of criminal responsibility for a knowingly false conclusion

(if forensic examination is conducted at request of the parties to the case);

14) notify the relevant party to the case about consequences of forensic research and obtain written permission for its conducting (if forensic expert is involved as a party to the case);

15) notify in writing the body or person who appointed forensic examination or involved forensic expert about impossibility of conducting it and return the provided case materials and other documents, if the question is beyond the scope of competence and specific expertise of forensic expert, if forensic examination requires involvement of other forensic experts, and/or if the provided materials are not sufficient to solve the expert task, and the requested additional materials are not provided within the time limit stipulated by the law;

16) immediately return the case files and other documents used to conduct forensic examination, in the event of its completion, receipt of a procedural document or the request of the forensic examination customer (if forensic expert was engaged on the contract basis) to terminate its conduct, if the customer of the forensic examination does not agree extension of the terms of its conduct, refusal of forensic examination customer to give consent to the complete or partial destruction or damage of the object of forensic examination (if it is impossible to conduct research using other non-destructive methods), cancellation by the court of the decision on the appointment of forensic examination;

17) perform other duties provided for by law.”

4. Article 13 of Law of Ukraine: On Judicial Examination put in the new edition:

“Article 13. Forensic expert rights

Regardless of the type of legal proceedings and the basis for conducting forensic

examination, during professional activity, forensic expert is obliged to:

1) get acquainted with the materials of the case (proceedings) that relate to forensic examination topic;

2) submit a request for provision of additional materials and samples and take other actions related to conducting forensic examination;

3) submit a request to the body (person) that appointed forensic examination or engaged forensic expert to clarify the content and scope of the task and the issues raised;

4) be present during procedural, executive actions related to the subject and objects of research with the permission of the body (person) who appointed forensic examination or engaged a forensic expert;

5) submit a request to interview the participants in legal procedure and witnesses regarding the topic or object of the forensic examination, and conduct separate investigations in their presence;

6) indicate in conclusion the facts discovered during forensic examination that are important for the case, but about which the question was not raised and circumstances that contributed or could contribute to the offense commission;

7) provide separate conclusion during forensic examination as part of commission in case of disagreement with the position of other commission members;

8) request involvement of other forensic experts in forensic examination, if it is necessary to conduct research and provide an expert conclusion;

9) ensure unhindered access to the research object and proper working conditions;

10) provide answers to questions, in particular in writing, that are asked to the forensic expert during explanations or testimony regarding the conclusion drawn up by him;

11) add to conclusion his considerations about circumstances that he found out during preparation of the conclusion and which are important for criminal proceedings or a case in another type of legal proceedings, about which he was not asked any questions;

12) in cases determined by law, to use the free help of an interpreter, to object to him;

13) challenge actions and decisions of the customer of forensic examination and other participants in the trial, violating rights of the forensic expert or the procedure for conducting forensic examination;

14) submit petitions for providing for oneself and one's loved ones in cases provided for by law;

15) receive compensation (reimbursement) for the expenses incurred during examination and remuneration for work performed related to forensic examination, if it is not an official duty of forensic expert;

16) participate in court session in the mode of video conference, if there are no objections of the participants in the case;

17) refuse to conduct forensic examination (if: there is a threat to the life and health of forensic expert; there are no necessary conditions for conducting an investigation; principle of independence of a forensic expert is violated; the objects of forensic examination and case files are unsuitable or they are insufficient to provide a conclusion, and forensic expert was refused their provision and/or addition; there are no conditions, methodological tools and equipment necessary for conducting an examination and providing a conclusion; current level of scientific development does not allow answering the questions;

18) use other rights provided by the legislation of Ukraine”.

5. Supplement Law of Ukraine: On Judicial Examination with Article 13¹ of the following content:

“Article 13¹. Prohibitions for forensic expert

Regardless of the type of legal proceedings and the basis for conducting forensic examination, during professional activity, forensic expert is obliged to:

1) conduct forensic examination without a written authorization from the head in the case of its appointment (order) to forensic institution, whose employee is a forensic expert (to accept the execution of a forensic examination by a certified forensic expert who does not work in a state specialized forensic science institution, if its conducting is not entrusted to him personally);

2) reassign forensic examination to another person;

3) independently collect materials that are subject to forensic research, as well as select initial data for conducting forensic examination, if they are ambiguously reflected in provided materials;

4) solve issues that go beyond the scope of forensic examination, specific expertise or qualification of forensic expert in relevant forensic expert specialization;

5) find out legal issues and provide assessments of legality of procedures regulated by legal regulations;

6) independently involve other forensic experts or persons in carrying out forensic examination entrusted to him;

7) have any personal contacts with procedure participants that are not provided for by regulatory legal acts and without the consent of the body (person) that appointed the forensic examination, if this calls into question disinterest of forensic expert as a result of the study or if such persons are directly or indirectly interested in forensic examination results;

8) store case (proceedings) files and objects of forensic examination outside the workplace or outside a specially designated storage place;

9) disclose information that has become known to forensic expert in connection with forensic examination, or notify anyone, except court and the party to the case, on whose order the forensic examination was conducted, about its performing and obtained results;

10) communicate with hearing participants outside the court session, except in cases of committing actions directly related to forensic examination conducting;

11) apply destructive research methods or significantly change the properties of research objects without permission of the body (person) who appointed forensic examination or engaged forensic expert;

12) conduct forensic examination, if the right of forensic expert to conduct a forensic examination is temporarily suspended in relevant forensic expert specialization or the qualification certificate of forensic expert is canceled;

13) interrogate forensic expert before he issues a conclusion;

14) comply with other restrictions provided by legislation”.

6. Article 14 of Law of Ukraine: On Judicial Examination put in the new edition:

“Article 14. Forensic expert responsibility

Regardless of species of legal proceedings, forensic expert can be held liable in the course of professional activity on the grounds and in the manner prescribed by law, namely:

1) criminal one: for misleading the court or other authorized body; providing a deliberately false conclusion of a forensic expert drawn up for the body conducting the pre-trial investigation; refusal of forensic expert to perform assigned duties in court or during the pre-trial investigation; disclosure of data of operational and investigative activities, pre-trial investigation; abuse of authority;

2) administrative one: for showing disrespect to the court or the Constitutional Court of Ukraine, malicious evasion from appearing in court; malicious evasion from appearing to the pre-trial investigation bodies or the prosecutor while pre-trial investigation; violation of restrictions on receiving gifts provided for by law; violation of requirements for the prevention and settlement of conflicts of interest;

3) disciplinary one: for violation of general labor discipline; for violation of labor discipline;

4) material one: for property and/or moral damage caused to an institution, enterprise, organization, individual or legal entity.

7. Replace parts 2–7 of Article 69 of Criminal Procedural Code of Ukraine and parts 3-8 (Articles 72 of the Civil Procedure Code of Ukraine, Article 69 of the Commercial and Procedural Code of Ukraine and Article 68 of the Code of Administrative Proceedings of Ukraine) with parts 2 and 3, respectively, as follows:

“While professional activity, forensic expert has procedural rights, performs duties, observes prohibitions and restrictions and bears legal responsibility provided for by Law of Ukraine Law of Ukraine on Judicial Examination”.

Conclusions

In theory and practice of forensic science, it is legally justified to use the term: *legal status of a forensic expert*. The title of Chapter II: *Forensic Expert* of Law of Ukraine: *On Judicial Examination* shall be rewritten as follows: Chapter II. *Forensic Expert Legal Status*.

The separation of the concepts of *legal one* and *procedural one* in the status of a forensic expert, *firstly*, has an exclusively

theoretical significance and does not affect the practical activities of the expert in any way, *secondly*, certain provisions of the status of a forensic expert (which are regulated by the profile Law (legal status), procedural codes of Ukraine (procedural status), instructions No. 1 and 2) are to a certain extent duplicated, *thirdly*, the concept of *procedural status of a forensic expert* is a component of the concept of *forensic expert legal status*, *fourthly*, there are no clear criteria for distinguishing these concepts, as proved by our study of the list of rights, obligations and prohibitions (which are stipulated in the material and procedural legislation

Forensic expert legal status, in particular a forensic veterinarian, is an independent legal category, therefore, characterized by the following features: it is universal (since it applies to forensic experts regardless of forensic expert specialization); reflects specifics of forensic expert as a participant in forensic science activity, as well as the degree and nature of his interaction with other participants in forensic science activity, law enforcement agencies, the court, state authorities; elements of the structure of the legal status of forensic expert (a list of rights, obligations, prohibitions, restrictions and responsibilities) are interdependent and affect each other; has relative stability and dynamism.

Legal status of forensic veterinarian, as well as forensic expert of any other expert specialization is a set of procedural rights, obligations, prohibitions, restrictions, liability that distinguish it from legal status of other participants in criminal proceedings or judicial proceedings in another species of legal proceedings, in particular a witness, investigator, inquirer and other subjects. These elements of the legal status of a forensic veterinary expert

are a guarantee of his independence and independence, as well as the completeness and objectivity of the conclusion provided by him as a source of evidence.

Elements of legal status of forensic expert, provided for by the procedural legislation of Ukraine, the profile Law, the Regulation on the CEQC, as well as instructions № 1 and 2, are a tool for implementing the system of principles of forensic science activity.

Based on the of theoretical research results, on our own experience in conducting forensic veterinary examinations during 2010–2022, taking into account the achievements of authoritative scientists in the field of criminalistics and forensic expertology, we propose amendments and additions to the legislative framework and regulatory legal acts that regulate the implementation of forensic examination in Ukraine, in order to unify the legal status of forensic expert regarding his rights, duties, prohibitions, restrictions and legal liability.

**Правовий статус
судово-ветеринарного експерта як
суб'єкта судово-експертної діяльності
у контексті новітнього законодавства
України**

Іван Яценко

Досліджено правовий статус судового експерта як суб'єкта судово-експертної діяльності в контексті новітнього законодавства України. Доведено, що елементи правового статусу судового експерта, передбачені цивільним, господарським, адміністративним і кримінальним законодавством України, а також відомчими нормативно-правовими актами, не цілком корелюють між собою: у них по-різному визначено права, обов'язки, заборони, обмеження та юридичну відповідальність судового експерта, що

може негативно позначатися на реалізації принципів судово-експертної діяльності, зокрема під час проведення судово-ветеринарної експертизи, а також на наданні обґрунтованого, об'єктивного, достовірного, правильного і правдивого висновку експерта. Запропоновано зміни й доповнення до згаданих нормативно-правових актів України із метою уніфікувати правовий статус судового експерта (незалежно від виду судочинства і підстав проведення судової експертизи) для більш ефективної реалізації принципів судово-експертної діяльності. Мета дослідження: розкрити правовий статус судово-ветеринарного експерта в системі судово-експертної діяльності та систематизувати його обов'язки, права, заборони й підстави для відповідальності в новітньому правовому полі України. Для досягнення поставленої мети використано загальні та спеціальні наукові методи дослідження (аналіз, синтез, аналогію; моделювання; формально-логічний; логіко-граматичний; статистичний; порівняльно-правовий; юридичного аналізу).

Ключові слова: судово-ветеринарна експертиза; судово-ветеринарний експерт; судовий експерт; правовий статус, права, обов'язки, заборони, обмеження, відповідальність судово-ветеринарного експерта; судово-експертна діяльність.

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Participants

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Declaration of Competing Interest

Author declare no conflict of interest.

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