

Legal Responsibility Issue of Forensic Expert in the Field of Law

Kateryna Dziubak *

* PhD in Economics, Odessa Scientific Research Institute of Judicial Expertise, Odessa, Ukraine,
ORCID: <https://orcid.org/0000-0001-9227-6538>, e-mail: ekaterina.dzubak@gmail.com

DOI: 10.32353/khrife.4.2023.07 UDC [347.9:346:340.69](477)

Submitted: 19.11.2023 / Reviewed: 27.11.2023 / Approved for Print: 18.12.2023 /

Avialable online: 29.12.2023



Changes to procedural legislation of Ukraine in 2017 added a new participant in lawsuit, namely: legal expert. Such an expert can be a person who has an academic degree and is a specialist in the field of law. Legislator did not put forward any other requirements for the new participant in lawsuit, that caused lively discussions, in particular, on the question of whether an expert in the field of law bears legal responsibility in general and what exactly. In view of the above, the purpose of this article is to determine the legal responsibility of forensic expert in the field of law. The methodological basis of the article is separate scientific methods of cognition, in particular: logical-semantic, systemic-functional, comparative-legal, structural-logical (reveals the issue of legal responsibility of an expert in the field of law) and methods of mathematical statistics (for quantitative comparative assessment and qualitative analysis of the obtained results). The article describes the rights and duties of an expert in the field of law, provided for by procedural legislation of Ukraine. Comparison of the procedural status of a forensic expert conclusion in the field of law with the conclusion of forensic research was made. Possible types of offenses by an expert in the field of law are proposed to be systematized into three groups: civil, organizational, and procedural ones. Four types of legal responsibility of forensic expert in the field of law are characterized: disciplinary, civil, administrative and criminal ones.

This article is translation of the original Ukrainian content, which source is available at the link: <https://khrife-journal.org/index.php/journal> (translated by Andriy Bublikov). The author acknowledges translation as corresponding to the original.

© 2023 The Author(s). Published by National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» & Yaroslav Mudryi National Law University.

This is an open access article distributed under Creative Commons Attribution License (CC_BY_4.0.0) allowing unlimited use, distribution and reproduction on any medium, subject to reference to the Author and original sources.

Keywords: forensic expert in field of law; legal responsibility; conclusion of forensic expert in field of law; offense of forensic expert in field of law; duties of forensic expert in field of law; Regulations on Central Expert Qualification Commission; participant in procedural legal relations.

Research Problem Formulation

Law of Ukraine № 2147-VIII: *On Amendments to the Economic Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts* dated on 03.10.2017 introduced a new participant in lawsuit, namely: *legal expert*¹. This legislative act in Art. 73 of Civil Procedural Code of Ukraine², Art. 70 of Commercial and Procedural Code of Ukraine³ and Art. 69 of the Code of Administrative Proceedings of Ukraine⁴ introduced: “provision that a person who has a scientific degree and is a recognized specialist in the field of law can be involved as an expert on legal issues. Additional requirements and detailing of the legal status of an expert in the field of law, his rights and obligations,

drafting and execution of the relevant document by an expert in the field of law, methods and techniques he uses when providing answers to the questions posed, the procedure for appointing and conducting expert examinations in the field rights and many other aspects of the activity of an expert in the field of law are not defined by the above-mentioned codes and other legislative and regulatory acts”⁵.

Similarly, the legislation does not contain reservations about bringing an expert in the field of law to justice⁶. Relevance of researched issue lies in the fact that to this day there are ongoing discussions around the question “does forensic expert in the field of law bear any responsibility at all and for which offenses; on the basis of which laws it is possible to bring him to justice if necessary; can the

- 1 Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України, Кодексу адміністративного судочинства України та інших законодавчих актів : Закон України від 03.10.2017 р. № 2147-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2147-19#Text> (date accessed: 02.11.2023).
- 2 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 02.11.2023).
- 3 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 02.11.2023).
- 4 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15> (date accessed: 02.11.2023).
- 5 Дзюбак К. М. Відповідальність експерта у галузі права: чи передбачена вона процесуальним законодавством? *Теоретичні питання юриспруденції і проблеми правозастосування: виклики XXI століття* : тези доп. учасн. III Всеукр. наук.-практ. конф. (Харків, 19.06.2020). Харків, 2020. С. 9—12. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> (date accessed: 02.11.2023).
- 6 Ibidem.

conclusions of the expert in the field of law be considered reliable without prior warning of the expert in the field of law about criminal liability for a knowingly false conclusion or for refusing without valid reasons to perform one's duties" ⁷ etc.

Article Purpose

Legal responsibility issue of forensic expert in the field of law.

Research Methods

Methodological basis of the article is separate scientific cognition methods, in particular: logical-semantic; system-functional; comparative legal ones. Using the structural-logical method, the issue of legal responsibility of an expert in the field of law is revealed. The methods of mathematical statistics are used for quantitative compar-

ative assessment and qualitative analysis of the obtained results.

Analysis of Recent Researches and Publications

The analysis of legal literature "proved the lack of scientific research on the above issues. Scientists and practicing lawyers focused more attention on defining the legal nature of the institute of an expert in the field of law, on the legal personality of an expert in the field of law as a participant in civil, economic, administrative procedural legal relations" ⁸, such as O. Bortman ⁹, N. Zozulia ¹⁰, O. Karmaza ¹¹, H. Kebernyk ¹². The following outstanding domestic scientists who deeply research the problems of expertise in the field of law also presented their research papers on the topic: L. Mamchur ¹³, I. Ozerskyi ¹⁴, M. Shcherbakovskyi ¹⁵ et al. "This is understandable, because the

7 Дзюбак К. М. Оп. cit. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> (date accessed: 02.11.2023).

8 Ibidem.

9 Бортман О. Експерт у галузі права: суддя на фрілансі? *Юрист і Закон*. 2017. № 47. URL: https://vkr.ua/publication/ekspert_u_galuzi_prava_suddya_na_frilansi (date accessed: 05.11.2023).

10 Зозуля Н. Експерт з питань права: проблема процесуального статусу / *Українське право*. 14.12.2017. URL: https://ukrainepravo.com/scientific-thought/legal_analyst/ekspert-z-pitan-prava-problema-protsesualnogo-statusu/ (date accessed: 05.11.2023).

11 Кармаза О. Експерт у галузі права в судовому процесі: теорія та судова практика. *Право і суспільство*. 2019. № 5. С. 89–94. DOI: 10.32842/2078-3736-2019-5-1-14 (date accessed: 05.11.2023).

12 Кеберник Г. В. Наукова експертиза в адміністративно-юрисдикційній діяльності: основи організаційно-правового регулювання в європейських країнах. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція*. 2014. Вип. 8. С. 87–92. URL: http://nbuv.gov.ua/UJRN/Nvmgu_jur_2014_8_24 (date accessed: 05.11.2023).

13 Мамчур Л. В., Мельніков М. О. Висновок як процесуальна форма використання фахових знань експерта з питань права в цивільному процесі України. *Прикарпатський юридичний вісник*. 2019. Вип. 4 (29). Т. 2. С. 66–69. DOI: 10.32837/pyuv.v2i4(29).436 (date accessed: 05.11.2023).

14 Озерський І. В. Експертиза в галузі права як нова форма застосування спеціальних знань юридичного психолога. *Юридичний науковий електронний журнал*. 2019. № 5. С. 313–316. DOI: 10.32782/2524-0374/2019-5/75 (date accessed: 11.11.2023).

15 Щербаківський М. Г. Фахівець з питань права: експерт чи консультант? *Актуальні проблеми криміналістики та судової експертології* : мат-ли міжвідом. наук.-практ. конф. (Київ, 22.11.2018). Київ, 2018. С. 479–482. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/d8a68738-7911-4f10-b203-9a18b4aalc28/content> (date accessed: 12.11.2023).

judicial reform “engineered” overnight to receive another tranche from the IMF turned out to be unable to resolve the legal conflicts of the already imperfect legislation of our country. On the contrary, each further innovation, as it is fashionable to say, “reform”, sinks the country into an ever-widening institutional abyss. This time she touched the institution of an expert in the field of law”¹⁶.

Main Content Presentation

“Scope and content of the rights and duties of expert in the field of law are set out in three clauses of the procedural codes. Yes, an expert in the field of law has the right to:

- *know the purpose of summons to the court;*
- *refuse to participate in the legal process if he does not have the relevant knowledge;*
- *for payment of services and compensation for expenses related to a summons to court.*

Among the duties of expert in the field of law, it is determined that a legal expert must appear before the court upon its summons, answer the questions posed by the court, and provide explanations. In default of objections from the parties to the case, legal expert may participate in the court session via video conference.

The decision on admitting legal expert to participate in the case and attaching his conclusion to the case file is adopted by the court.

The above norms are comprehensive in terms of their consolidation by procedural legislation that gives rise to various “flights of fantasy” of law stakeholders and the ambiguity of the interpretation of the status of an expert in the field of law during his participation in the legal process. If we turn to the same legislation, namely Art. 115 of Civil Procedural Code of Ukraine, it turns out that the opinion of an expert in the field of law is not evidence, has an auxiliary (advisory) nature and is not binding on the court; the court may refer in the decision to the opinion of an expert in the field of law as a source of the information contained therein, and shall make independent conclusions on the relevant issues.

This gives us grounds to draw an analogy between the conclusion of an expert in the field of law and the conclusion of forensic research. The content of the concept of “forensic research conclusion” is fixed in clause 1.3 of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Investigations, approved by the Order of the Ministry of Justice of Ukraine № 53/5 dated on 08.10.1998 (hereinafter referred to as Instructions on Forensic Examination)¹⁷ which stipulates that “ in accordance with the current legislation, for legal entities and individuals on a contractual basis, expert studies are conducted by experts, which require special knowledge and the use of criminology and forensic methods.” The basis for expert research is a written statement (letter) from the customer (a legal entity or an individual) with a list of issues to be resolved, as well as objects provided for research. The conclusion of an expert study is not considered by the court

16 Дзюбак К. М. Оп. cit. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> (date accessed: 02.11.2023).

17 Про затвердження Інструкції про призначення та проведення судових експертиз та Науково-методичних рекомендацій з питань підготовки та призначення судових експертиз та експертних досліджень : наказ 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: 01.11.2023).

as evidence, since the legislator did not grant this document legal recognition.”¹⁸.

Moreover, in clause 4.21, Ch. IV of Instructions on forensic examination it is stated that “expert studies are performed in the order provided for conducting examinations”. *Forensic expert conclusion is based on the structure and content of the expert’s conclusion, with the following exceptions:*

- *in introductory part of the conclusion, it is indicated who and when applied to the institution or directly to the expert with the order to conduct the research;*
- *the entry concerning responsibility of the person conducting the research for providing a known false conclusion is omitted.*

It should be noted that criminal liability of expert for providing a knowingly false conclusion is defined in Art. 384 of the Criminal Code of Ukraine¹⁹. In other words, in the case of drawing up a conclusion of an expert study, the expert is not warned of criminal liability. Under such conditions, an expert in the field of law is exempted from criminal liability²⁰.

“However, <...> if we consider the figure of an expert in the field of law as an expert who possesses special knowledge, namely legal knowledge, it is likely that in this case he is covered by sectoral Law of Ukraine: *On Judicial Examination* № 4038-XII ²¹ dated on 25.02.1994. Article 7 of this Law establishes that forensic expert activity is carried out by state specialized institutions, as well as

forensic experts who are not employees of the specified institutions, and other specialists (experts) from the relevant fields of knowledge in the manner and under the conditions determined by this Law.” This Law, in particular Article 14, provides for the possibility of a forensic expert to be held legally liable on the grounds and in the manner prescribed by law. Until October 3, 2017, this article provided for the possibility of bringing a forensic expert to disciplinary, material, administrative or criminal liability.²²

In addition, among the requirements for forensic expert conclusion opinion, there is a provision on warning (awareness) of expert about criminal liability for providing a knowingly false conclusion under Article 384 of Criminal Code of Ukraine or for refusing to provide an opinion under Article 385 of the Criminal Code of Ukraine.

Based on the approach proposed by legislator to determine the legal status of an expert in the field of law, we consider it necessary and justified to include in the opinion of an expert in the field of law a record of the knowledge of the expert in the field of law about criminal liability under Article 384 of the Criminal Code of Ukraine and in cases of impossibility of providing answers to the question is under Article 385 of the Criminal Code of Ukraine”²³.

Our opinion about whether forensic examination in the field of law should be

18 Дзюбак К. М. Op. cit. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> (date accessed: 02.11.2023).

19 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: 01.11.2023).

20 Дзюбак К. М. Op. cit. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> (date accessed: 02.11.2023).

21 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.11.2023).

22 Ibidem.

23 Дзюбак К. М. Op. cit. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> (date accessed: 02.11.2023).

considered scientific and legal (discussed in previous publications by the author of this article) was supported by the legislator in Part 10 of Art. 21 of the Law of Ukraine: *On Scientific and Scientific and Technical Expertise* № 51/95-BP dated on 10.02.1995 (hereinafter referred to as Law № 51/95-BP): “The expert of scientific and scientific and technical expertise is responsible for untimely, low-quality and illegal conduct of scientific and scientific-technical expertise, non-fulfillment of the terms of the contract for its conduct”²⁴. In Art. 35 of Law № 51/95-BP lists offenses in the field of scientific and scientific and technical expertise. For a more convenient perception of information, we investigated the possible types of offenses of forensic expert in the field of law and systematized them according to three groups, that is discussed below.

The *first group* is civil law containing possible offenses related to performance by forensic expert in the field of law of the duties of conducting an examination, agreed between him and the client of forensic examination under the terms of the contract.

The *second group* is managerial, it lists the types of offenses caused by improper involvement of forensic expert in the field of law in the conduct of scientific and legal examination.

The *third group* is procedural, it contains types of offenses that may arise as a result of external interference in workflow of forensic expert in the field of law or the bias and bias of his conclusions.

Visual information on groups of possible types of offenses of forensic expert in the field of law is provided in the table 1.

Table 1

Possible types of offenses by forensic expert in the field of law

Group of offenses	Types of offenses
Civil law one	Non-fulfillment of requirements of normative legal acts on forensic science and the terms of agreement on scientific and legal examination conducting a scientific and legal examination contrary to its main purpose, defined in the contract for conducting forensic examination non-fulfillment of the contract terms or mandate to conduct a scientific and legal examination
Managerial one	Making decisions without conducting a scientific and legal examination in the case when legislation stipulates mandatory conducting such examination taking actions that hinder management and conducting scientific and legal examination, or illegal refusal to provide forensic science institutions, organizations and temporary expert teams with necessary information and content provision of paid services in the field of scientific and legal examination by enterprises, institutions, organizations, temporary expert teams, which statutes do not provide for such activity

24 Про наукову і науково-технічну експертизу : Закон України від 10.02.1995 р. № 51/95-BP (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/51/95-вп#Text> (date accessed: 15.11.2023).

Group of offenses	Types of offenses
Procedural one	Involvement of officials and specialists who are their authors or directly interested persons in conducting scientific and legal examination of R&D and scientific and technical pilot projects deliberate coercion or creation of circumstances for experts and expert commissions that lead to the illegal or biased conduct of scientific and legal examination or preparation of unfounded or deliberately unreliable conclusions discrediting or persecuting forensic experts based on their prepared conclusions unfavorable to the person or institution discrediting or persecuting them violation by the examination subject of copyright and rights to industrial property objects in relation to the examination object, examination results, violation of conditions of information confidentiality obtained by forensic expert while expert work falsification of conclusions of scientific and legal examination

As stated earlier, disciplinary, civil, administrative and criminal liability is possible for experts in the field of law mentioned in the table of offenses in the field of scientific and legal examination.

Let us consider in detail such type of legal responsibility of forensic expert in the field of law as disciplinary. We will try to find out mechanism and terms of bringing the expert to such responsibility and which subjects the legislator has foreseen application of disciplinary sanctions.

Disciplinary responsibility is a violation of labor discipline by an employee with application of reprimand or dismissal. We emphasize that this issue is clearly formulated in the current labor legislation, providing for two types of disciplinary responsibility: general and special ones. Each of these types has its own characteristic features concerning the types, procedure of application and appeal of disciplinary sanctions. Visually, main types of disciplinary responsibility are given in the table 2.

Table 2

Types of disciplinary responsibility of employees

General one	Special one
1. Provided by the Code of Labor Laws and internal regulations. 2. The ground is a disciplinary fault traditionally containing subject, subjective side, object, and objective side. 3. The subject is always a person who has an employment relationship with the owner or a body authorized by him	1. It is carried out: a) in order of subordination; b) according to the statutes on discipline; c) according to separate normative acts. 2. Penalties may be applied by bodies that have the right to hire (select, approve and appoint an employee). 3. The subject is always a person who has an employment relationship with the owner or a body authorized by.

General disciplinary responsibility is applied in accordance with the requirements of the Labor Code of Ukraine²⁵ and the rules of the internal labor procedure. In addition, the Labor Code of Ukraine and the rules of the Labor Code are provided for all categories of employees, except for those whose labor activities are regulated by special legislation of Ukraine or departmental acts (statutes, regulations, disciplinary orders). It should be noted that reprimand and dismissal as punishment for violation of labor discipline are applied to the employee according to the general rule within the scope of general disciplinary responsibility.

Special disciplinary responsibility provides for possibility of applying to the violator of labor discipline other measures of disciplinary sanctions and influence, such as: “demotion in class rank, demotion in position, badge deprivation, dismissal with deprivation of class rank, warning of incomplete official compliance, delay to one year in the assignment of another rank or in appointment to higher position, verbal remark, remark, severe reprimand, demotion in a special rank by one degree”²⁶ etc.

Therefore, bringing specific violator of labor discipline to disciplinary responsibility involves taking into account his legal status. The fact that, in accordance with Part 1 of Art. 1471 of the Labor Code of Ukraine, “disciplinary sanctions are applied by the body that has been granted the right to hire (elect, approve and appoint) a given

employee”²⁷. It is worth emphasizing that disciplinary sanctions have the right to be imposed by higher authorities as well, if employees bear disciplinary responsibility according to statutes, regulations and other acts of legislation on discipline.

For example, according to Art. 13 of the Disciplinary Statute of the Internal Affairs Bodies of Ukraine “The Minister of Internal Affairs of Ukraine has the right to impose disciplinary sanctions provided for in this Statute on all rank-and-file and senior officers”²⁸. Example of the dismissal of employees holding elected positions is interesting. The legislation stipulates that such employees can be dismissed only by the decision of the body that elected them, and only on the grounds stipulated by legislation.

As for the legal basis for the application of disciplinary responsibility of forensic expert in the field of law, current labor legislation does not provide specific definitions, does not define a clear composition of offenses due to which the employee (forensic expert in the field of law) is subject to disciplinary responsibility. The question immediately arises: is an expert in the field of law always an employee and who is his employer? After all, in many cases, by forensic expert in the field of law, we understand a person who works independently, more precisely, we refer to a specific scientist who may not work in State institution, but be an individual entrepreneur, or a private entrepreneur, or have another status. Or, on the contrary,

25 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: 12.11.2023).

26 Види, підстави та порядок накладення дисциплінарних стягнень / Мін'юст України : офіц. сайт. URL: https://minjust.gov.ua/m/str_23358 (date accessed: 12.11.2023).

27 Кодекс законів про працю URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (date accessed: 12.11.2023).

28 Про Дисциплінарний статут органів внутрішніх справ України : Закон України від 22.02.2006 р. № 3460-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/3460-15#Text> (date accessed: 14.11.2023).

forensic expert in the field of law may have an employment relationship with the relevant body, but his performance of his official duties does not concern expert activity. Then provision of a scientific and legal expert opinion will be outside the scope of employment relationship between. In this case, who is the subject of applying disciplinary sanctions, if disciplinary sanctions can be applied to an employee only by the body that has disciplinary power over the latter? There are many questions, to none of which the legislator does not give answers.

In particular, Art. 35 of Law № 51/95-BP²⁹ contains only one reference to the laws, which deal with prosecution of persons guilty of committing offenses specified in the table 1, offenses in the field of scientific and scientific and technical expertise. There is no other information that would contain the specified types of disciplinary liability, disciplinary offenses, disciplinary penalties, etc., in Law № 51/95-BP. Analysis of Art. 14 of the branch Law³⁰ defining legal, managerial and financial foundations of forensic expert activity, as well as the Regulation on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the attestation of forensic experts hereinafter referred to as the Regulation on CEQC), which in Sec. VI defines, in particular, the procedure for consideration of issues of disciplinary responsibility of forensic experts, indicates that “certified forensic

experts may be subject to disciplinary liability for violating the requirements of the legislation of Ukraine on forensic expertise and/or methodological requirements during the conduct of research”³¹.

In clause 12 of the chapter VI of the Provisions on CEQC stipulates that “following disciplinary sanctions may be applied to forensic experts:

- 1) warning;
- 2) temporary (up to one year) suspension of validity of the Certificate for relevant expert specialization;
- 3) qualification deprivation of forensic expert in the relevant expert specialization”³².

Among those listed in the table 1 types of disciplinary sanctions cannot be applied to forensic expert in the field of law as follows:

- suspension of certificate validity, since the scientific and expert activity does not require mandatory condition of having a certificate or other permit document (we noted this above);
- qualification deprivation of forensic expert due to the fact that expert in the field of law is not a forensic expert;
- lowering the qualification class of forensic expert due to the fact that experts in the field of law are not forensic experts of forensic science institutes of the Ministry of Justice of Ukraine.

29 Про наукову і науково-технічну експертизу URL: <https://zakon.rada.gov.ua/laws/show/51/95-вр#Text> (date accessed: 15.11.2023).

30 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 14.11.2023).

31 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: 15.11.2023).

32 Положення про Центральну експертно-кваліфікаційну комісію URL: <https://zakon.rada.gov.ua/laws/show/z0249-15#Text> (date accessed: 15.11.2023).

As for the warning, we believe that this type of disciplinary sanction can be applied to the expert in the field of law, but on the condition that he has an employment relationship, that is, there are relevant rules of labor discipline that should be followed by him and this type of disciplinary liability is provided for in normative documents regulating labor relations.

In addition to criminal and disciplinary liability, an expert in the field of law can bear tort liability “in case of causing property damage by his actions during the examination”³³. We draw attention to the fact that in this case the expert must have a working relationship with the institution of higher education, which, in fact, has been harmed as a result of the violation of the labor duties assigned to him. Such damage and its amount should be proven in a court of law and a corresponding court decision should be issued to hold forensic expert financially liable.

The conditions for imposing material liability on forensic expert in the field of law are as follows:

- direct actual damage;
- illegal employee behavior;
- causal connection between illegal actions or inaction and caused damage;
- fault of the employee in caused damage (under agreement on assuming full material responsibility, employee failed

to ensure integrity of valuables transferred to him for safekeeping);

- property or other valuables received by employee under a one-time power of attorney or other one-time documents;
- damage was caused by actions that have characteristics of those that are prosecuted in a criminal procedure;
- employee caused damage while intoxicated;
- damage was caused outside performance of working duties;
- official illegally dismissed the employee or transferred him to another position;
- damage caused by shortage, intentional destruction or damage to materials, products, devices, etc., issued to the employee by the enterprise, institution for use.

Separately in Art. 185⁴ of Code of Ukraine on Administrative Offenses³⁴ provides for administrative responsibility of forensic expert for evading appearance of a pre-trial investigation body or court, that in our opinion, can be applied to activity of forensic expert in the field of law. In addition, the legislation of Ukraine stipulates obligation of forensic expert in the field of law to appear before the court upon summons, answer the raised questions provide explanations.

33 Експерт у кримінальному провадженні: права, обов'язки, відповідальність / Довід.-інф. платф. правов. консулт. URL: https://wiki.legalaid.gov.ua/index.php/%D0%95%D0%BA%D1%81%D0%BF%D0%B5%D1%80%D1%82_%D1%83_%D0%BA%D1%80%D0%B8%D0%BC%D1%96%D0%BD%D0%B0%D0%BB%D1%8C%D0%BD%D0%BE%D0%BC%D1%83_%D0%BF%D1%80%D0%BE%D0%B2%D0%B0%D0%B4%D0%B6%D0%B5%D0%BD%D0%BD%D1%96:_%D0%BF%D1%80%D0%B0%D0%B2%D0%B0,_%D0%BE%D0%B1%D0%BE%D0%B2%27%D1%8F%D0%B7%D0%BA%D0%B8,_%D0%B2%D1%96%D0%B4%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D0%B0%D0%B-V%D1%8C%D0%BD%D1%96%D1%81%D1%82%D1%8C (date accessed: 15.11.2023).

34 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: 15.11.2023).

Conclusions

Performed research makes it possible to reach the following conclusions. Legal expert can be held liable: disciplinary, civil, administrative and criminal ones. While raising the issue of responsibility of forensic expert in the field of law, we based our reasoning on current industry legislation related to expert activity.

Note that such uncertainty in the activity of forensic expert in the field of law exists due to the lack of valid regulatory document that would regulate expert activity. Thereby further research should be directed to the development of a legislative and regulatory framework on activities of experts in the field of law for comprehensive and objective clarification of the truth during case consideration.

Питання юридичної відповідальності експерта в галузі права

Катерина Дзюбак

Зміни до процесуального законодавства України 2017 року додали нового учасника судового процесу — експерта з питань права. Таким експертом може бути особа, яка має науковий ступінь та є фахівцем у галузі права. Інших вимог до нового учасника судового процесу законодавець не висунув, що спричинило жваві дискусії, зокрема з питання, чи несе експерт у галузі права юридичну відповідальність узагалі та яку саме. З огляду на зазначене, метою цієї статті є визначення питання юридичної відповідальності експерта в галузі права. Методологічним підґрунтям статті є окремі наукові методи пізнання, зокрема: логіко-семантичний, системно-функціональний, порівняльно-правовий, структурно-логічний (розкриває питання юридичної відповідальності експерта в галузі права) і методи математичної статистики (для кількіс-

ного порівняльного оцінювання та якісного аналізування здобутих результатів). У статті наведено права й обов'язки експерта в галузі права, передбачені процесуальним законодавством України. Проведено порівняння процесуального статусу висновку експерта в галузі права із висновком експертного дослідження. Можливі види правопорушень експерта в галузі права запропоновано систематизувати за трьома групами: цивільно-правові, організаційні, процесуальні. Схарактеризовано чотири види юридичної відповідальності експерта в галузі права: дисциплінарний, цивільно-правовий, адміністративний і кримінальний.

Ключові слова: експерт у галузі права; юридична відповідальність; висновки експерта в галузі права; правопорушення експерта в галузі права; обов'язки експерта в галузі права; Положення про Центральну експертно-кваліфікаційну комісію; учасник процесуальних правовідносин.

Financing

This research did not receive any specific grant from funding institutions in the public, commercial or non-commercial sectors.

Disclaimer

Founders had no role in the study design, data collection and analysis, decision to publish, or manuscript preparation.

Participants

Author contributed solely to the intellectual discussion underlying this document, case law research, writing and editing and assumes responsibility for its content and interpretation.

Declaration of Competing Interest

The author declares no conflict of interest.

References

- Bortman, O. (2017). Ekspert u haluzi prava: suddia na frilansi? [Legal Expert: Freelance Judge?] *Yuryst i Zakon*. № 47. URL: https://vkr.ua/publication/ekspert_u_galuzi_prava_suddya_na_frilansi [in Ukrainian].

- Dziubak, K. M. (2020). Vidpovidalnist eksperta u haluzi prava: chy peredbachena vona protsesualnym zakonodavstvom? [Responsibility of expert in the field of law: is it provided for by procedural legislation?] *Teoretychni pytannia yurysprudentsii i problemy pravozaastosuvannia: vyklyky XXI stolittia*: tezy dop. uchasn. III Vseukr. nauk.-prakt. konf. (Kharkiv, 19.06.2020). Kharkiv. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/e2172522-77cc-48a2-bcb2-aa47fec76578/content> [in Ukrainian].
- Ekspert u kryminalnomu provadzheni: prava, oboviazky, vidpovidalnist* / Dovid.-inf. platf. pravov. konsult. URL: <http://surl.li/mxbuv> [in Ukrainian].
- Karmaza, O. (2019). Ekspert u haluzi prava v sudovomu protsesi: teoriia ta sudova praktyka [Expert in the field of law in litigation: theory and judicial practice]. *Pravo i suspilstvo*. № 5. DOI: 10.32842/2078-3736-2019-5-1-14 [in Ukrainian].
- Kebernyk, H. V. (2014). Naukova ekspertyza v administratyvno-yurysdyktsiini diialnosti: osnovy orhanizatsiino-pravovoho rehu-liuvannia v yevropeiskyykh krainakh [Scientific expertise in administrative and jurisdictional activities: foundations of organizational and legal regulation in European countries]. *Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Seriia: Yurysprudentsiia*. Vyp. 8. URL: http://nbuv.gov.ua/UJRN/Nvmgu_jur_2014_8_24 [in Ukrainian].
- Mamchur, L. V., Melnikov, M. O. (2019). Vysnovok yak protsesualna forma vykorystannia fakhovykh znan eksperta z pytan prava v tsyvilnomu protsesi Ukrainy [Conclusion as a procedural form of using expert knowledge on legal issues in the civil process of Ukraine]. *Prykarpatskyi yurydychnyi visnyk*. Vyp. 4 (29). T. 2. DOI: 10.32837/pyuv.v2i4(29).436 [in Ukrainian].
- Ozerskyi, I. V. (2019). Ekspertyza v haluzi prava yak nova forma zastosuvannia spetsialnykh znan yurydychnoho psykholoha [Expertise in the field of law as a new form of application of the special knowledge of a legal psychologist]. *Yurydychnyi naukovyi elektronnyi zhurnal*. № 5. DOI: 10.32782/2524-0374/2019-5/75 [in Ukrainian].
- Shcherbakovskyi, M. H. (2018). Fakhivets z pytan prava: ekspert chy konsultant? [Legal Specialist: Expert or Consultant?] *Aktualni problemy kryminalistyky ta sudovoï ekspertolohii*: mat-ly mizhvidom. nauk.-prakt. konf. (Kyiv, 22.11.2018). Kyiv. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/d8a68738-7911-4f10-b203-9a18b4aa1c28/content> [in Ukrainian].
- Zozulia, N. (2017). Ekspert z pytan prava: problema protsesualnogo statusu [Legal expert: issue of procedural status] / *Ukrainske pravo*. URL: https://ukrainepravo.com/scientific-thought/legal_analyst/ekspert-z-pitan-prava-problema-protsesualnogo-statusu/ [in Ukrainian].

Dziubak, K. (2023). Legal Responsibility Issue of Forensic Expert in the Field of Law. *Theory and Practice of Forensic Science and Criminalistics*. Issue 4 (33). Pp. 99–110. DOI: 10.32353/khrife.4.2023.07.