

Importance of Forensic Expert Activity for Justice Administration in Ukraine

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This article is devoted to importance of forensic expert activity for the protection of the rights and freedoms of a person and citizen, as well as creation of appropriate conditions for the adoption of a legal, justified and fair decision by the court. This research purpose is to provide the “justice” concept with a modern meaningful characteristic as a special type of State activity and an object of forensic science support. For achieving this goal, theoretical foundations of functional distribution of State power were analyzed. Management, specifics and judicial power peculiarities, whose leading task is justice administration were separately studied. Ukrainian legislation on justice implementation is summarized and the subjects related to this type of State activity are identified. Examining magistrate status was traced and his competence was clarified. Available substantive and formal characteristics of “justice” legal category concept are outlined in order to form a circle of subjects which expert support is directed to. Possibilities of forensic science as the most qualified form of using specific expertise in legal proceedings are considered. Procedural provisions regulating the legal status forensic expert and his conclusion as one of the types of evidence are separately highlighted. The most common approaches to defining the concept of “forensic science activity” are analyzed, features and content of this type of State activity are revealed. The concept definition of “forensic science support to justice” is proposed, modern understanding of forensic science activity is formulated, and an up-to-date list of its directions is given.

Keywords: *State power, distribution of power, judiciary, legal proceedings, forensic science support to justice, forensic science, forensic expert, forensic expert activity, forensic expert conclusion.*

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Research Problem Formulation

Despite a significant amount of scientific research on law enforcement and law enforcement, which causes, in particular, the powers of the judiciary, the provisions on the legal nature of justice remain debatable to this day, due to the lack of a single scientifically based position on its essence as a legal phenomenon. Therefore, as of today, the issues of the form of administration of justice, its subject composition, content and connection with its integral interim component, namely: forensic expert activity (hereinafter referred to as the FEA) remain incompletely investigated.

Analysis of Essential Researches and Publications

At the present stage of procedural science development, many scientists in their

research often use the category of justice, which content and scope of to this day remain the subject of a lively discussion. Without defining basic, cornerstone concepts, it is impossible to conduct research on individual issues of this activity.

Understanding justice in a broad substantive definition makes possible to overcome the significant isolation of scientific research of the system individual elements of its direct provision, which one of components is forensic science.

The scientific basis of this work was made up of the works of foreign and domestic researchers, including: R. Zippelius ¹; V. B. Averianov ²; K. A. Babenko ³; V. D. Bryntsev ⁴; O. O. Vakulyk ⁵; A. V. Vorontsov ⁶; V. V. Halunko, O. H. Murashyn and D. H. Sevriukov ⁷; L. M. Holovchenko ⁸; I. S. Hrytsenko and M. A. Pohoretskyi ⁹; S. S. Miroshnichenko ¹⁰; I. V. Pyrih ¹¹;

- 1 Zippelius R. Allgemeine Staatslehre: Politikwissenschaft : ein Studienbuch. 17.Auflage. München : C. H. BECK, 2017. 383 s.
- 2 Авер'янов В. Організація виконавчої влади: необхідність усунення внутрішніх суперечностей. *Право України*. 2009. № 5. С. 30–35.
- 3 Бабенко К. А. Конституційні засади розвитку і регулювання політико-правових відносин в Україні : монографія. Київ, 2008. 480 с.
- 4 Брынцев В. Д. Судебная власть /правосудие/: Пути реформирования в Украине. Харьков, 1998. 186 с.
- 5 Вакулик О. О. Особливості родового об'єкта злочинів проти правосуддя. *Науковий вісник публічного та приватного права*. 2018. Вип. 6. Т. 2. С. 183–187.
- 6 Воронцов А. В. Родовий об'єкт злочинів проти правосуддя: шляхи удосконалення. *Південноукраїнський правовий часопис*. 2014. № 2. С. 41–44. URL: http://nbuv.gov.ua/UJRN/Pupch_2014_2_14 (date accessed: 25.11.2022).
- 7 Теорія держави і права : навч. посіб. для студ. юрид. спец. заоч. форми навч. / авт.-упоряд.: В. В. Галунько, О. Г. Мурашин, Д. Г. Севрюков. Київ, 2012. 218 с.
- 8 Головченко Л. М. Про необхідність вдосконалення законодавства про судово-експертну діяльність в Україні. *Криміналістика и судебная экспертиза*. 2013. Вып. 58. Ч. 1. С. 5–12. URL: http://nbuv.gov.ua/UJRN/krise_2013_58%281%29__3 (date accessed: 25.11.2022).
- 9 Гриценко І. С., Погорельський М. А. Судова влада в Україні: до визначення поняття. *Право і суспільство*. 2012. № 2. С. 23–27. URL: http://nbuv.gov.ua/UJRN/Pis_2012_2_8 (date accessed: 25.11.2022).
- 10 Мірошніченко С. С. Злочини проти правосуддя: теоретичні і прикладні проблеми запобігання та протидії : дис. ... д-ра юрид. наук. Київ, 2012. 462 с.
- 11 Пиріг І. В. Теоретичні основи експертної діяльності органів внутрішніх справ : монографія. Дніпропетровськ, 2011. 312 с.

P. M. Rabinovych¹²; P. I. Repeshko¹³; M. Ya. Sehai¹⁴; A. O. Selivanov¹⁵; V. V. Serdiuk¹⁶; S. M. Tymchenko¹⁷; M. G. Shcherbakovskiy¹⁸ et al. However, these scientists paid attention to the questions we studied only indirectly, considering other, more general, specifics or related challenges.

Article Purpose

Reveal content and peculiarities of the justice administration in Ukraine, as well as to provide a modern substantiated description of the FEA and forensic science support to justice.

Research methods

While research, as general scientific as special methods of scientific knowledge were used. Their application is due to a systematic approach which made possible to consider the issues under research in unity of their social content and legal form.

Main Content Presentation

One of priority directions of ensuring proper level of realization of human and

civil rights and freedoms, ensuring their observance by the subjects of a multi-vector social system is introduction and implementation of democratic values that determine the development of modern society, as well as the creation of a rule of law state in which judiciary (along with legislative and executive) is one of the most important structures of state power.

Existence of the judiciary, which the main form of implementation is justice, and its separation from the rest of the State-power structures testifies to advancement of State in terms of implementation of the principles of the rule of law and the ideas of freedom and justice enshrined in. Thus, implementation of rule of law principles and separation of powers are closely related.

Adopted in 1996, the Constitution proclaimed Ukraine a democratic, rule of law State, and also consolidated priority of a person, his life and health, honor and dignity, inviolability and security. This demonstrated Ukraine recognition of the European approach to the relationship between State and law.

Management and activity of public authorities in Ukraine is based on pan-European principles which include

- 12 Рабінович П. М. Державна влада / Юридична енциклопедія : в 6 т. / НАН України, Ін-т держави і права ім. В. М. Корецького, Вид-во «Українська енциклопедія» ім. М. П. Бажана ; редкол.: Шемшученко Ю. С. (відп. ред.) та ін. Київ, 1998—2004. Т. 2 : Д—Й. 1999. С. 85—86. URL: http://leksika.com.ua/10701026/legal/derzhavna_vlada (date accessed: 25.11.2022).
- 13 Репешко П. І. Щодо сутності судово-експертної діяльності як об'єкта державного регулювання. *Криміналістика и судебная экспертиза*. 2013. Вып. 58. Ч. 1. С. 45—52. URL: http://nbuv.gov.ua/UJRN/krise_2013_58%281%29__8 (date accessed: 25.11.2022).
- 14 Сегай М. Судова експертологія — наука про судово-експертну діяльність. *Вісник Академії правових наук*. 2003. № 2—3 (33—34). С. 740—742.
- 15 Селіванов А. О. Конституція. Громадянин. Суд. Професійні та суспільні погляди. Київ, 2009. 560 с.
- 16 Сердюк В. В. Судова влада та її місце в теорії поділу влади. *Вісник Академії адвокатури України*. 2006. № 5. С. 38—46. URL: http://nbuv.gov.ua/UJRN/vaau_2006_5_6 (date accessed: 25.11.2022).
- 17 Тимченко С. М. Судові та правоохоронні органи України : навч. посіб. Київ, 2004. 304 с.
- 18 Щербаковский М. Г. Судебные экспертизы: назначение, производство, использование : учеб.-практ. пособ. Харьков, 2005. 544 с. URL: https://library.nlu.edu.ua/POLN_TEXT/UP/SHERBAKOVSKIY_2005.pdf (date accessed: 25.11.2022).

principle of separation of powers, which, according to K. A. Babenko, is one of the main principles of state development in the twentieth and early XXI centuries ¹⁹. The principle of power separation should be understood as the dispersal of state power into some political institutions independent of each other who have their own rights and obligations in the field of law and power, as well as deterrence and counterweights.

The power separation doctrine according to reasoning of R. Zippelius, distinguishes between the most important areas of the functional activity of the state and related competencies and requires creation of its own bodies for each such realm. For its part, each of these bodies should fundamentally limit its activities to function performance that is subordinate to. In the end, everything is reduced to preventing the concentration of power in the hands of the same political entity ²⁰.

In a general sense, optimal competence model is impossibility of legislators interfering in justice and executive branch. Executive bodies should not assume justice functions, as well as engage in lawmaking and issue legal acts.

The classical theory power separation formed as a scientific justification for such a structure of the state apparatus that ensures democracy and freedom. Thus, Sh.-L. Montesquieu, noting the legal meaning of the separation of powers, observes: *"If legislative and executive powers are united in one person or institution, then there will be no freedom, since one can fear that this monarch or senate will create tyrannical*

laws in order to apply them in a tyrannical way. There will be no freedom even when the judiciary is not separated from the power of the legislative and executive. If it is combined with the legislature, then the life and freedom of citizens will be at the mercy of arbitrariness, because the judge will be the legislator. If the judiciary is combined with the executive, then the judge will have the opportunity to become an oppressor" ²¹. The thinker considered the division of power in three variants – functional, structural and personal.

As V. B. Averianov rightly points out, State power is a holistic phenomenon that integrates all manifestations of the political will of the people as the exclusive source (sovereign) of power in the state. In other words, it is not the power itself that is divided, but the organizational mechanism for its implementation. According to this principle, the organizational mechanism for the exercise of state power should be made up of legislative, executive and judicial authorities ²². It is the judicial branch of state power that is designed to protect the rights and interests of man and citizen, as well as to promote their restoration.

At the present stage of society development, the classical doctrine of separation of powers, according to V. V. Serdiuk, should be understood as a division not of its own power, but of its functions, with the provision of each function to a separate body of the state. Delimitation of the functions of state power is, in fact, the division of labor by spheres of activity at the state level, which objectively arise from the tasks

19 Бабенко К. А. Оп. cit. С. 156.

20 Zippelius R. Ibid. Pp. 317–318.

21 Montesquieu. De l'Esprit des lois. Paris : GF Flammarion, 2013. Livre XI. Chap. 6. P. 328. URL: <https://www.les-philosophes.fr/montesquieu/esprit-des-lois/philosophie/Page-6.html> (date accessed: 25.11.2022).

22 Авер'янов В. Б. Оп. cit. С. 30.

and functions of the state and society²³. The separation of state power has two aspects: institutional (assumes that each branch of state power — legislative, executive, judicial — is represented by normatively defined, organizationally separate bodies) and functional (reflects the level of independence and autonomy of implementation by the relevant state bodies) legislative and executive power depending on the competence relationships of the head of state, parliament and government)²⁴. In other words, the functional judiciary determination is an integral factor of its legal nature.

In art. Article 6 of the Constitution of Ukraine states that *“State power in Ukraine is exercised on the basis of its division into legislative, executive and judicial one”*²⁵. Functional distribution of the triad of branches of power in a modern developed state is logically built on the mechanisms of organization of the state apparatus and its rational component in the aspect of preventing dictatorship.

The Law of Ukraine: *On the Judiciary and the Status of Judges* defines: *“organization of the “judiciary and the administration of justice in Ukraine, which operates on the basis of the rule of law in accordance with European standards and ensures the right of everyone to a fair trial”*²⁶.

It should be noted that until today in the legal literature there is no single approach

to the definition of the term “judicial power”. For example, P. M. Rabinovych defines the judicial power as a type of public power exercised by the state and its bodies, the ability to subordinate to its will the behavior of people and the activities of associations located on its territory²⁷; H. O. Murashyn — as a system of independent state bodies: courts obliged to administer justice on behalf of the state, to resolve legal disputes and conflicts in court sessions²⁸. The opinion of A. O. Selivanov is correct, he notes that the judicial power is an independent type of state power, which cannot be limited only to the system of general and specialized courts, therefore it functions in two forms of organization — as a judicial system and as a judicial system. Under the latter, the scientist proposes to understand justice, and the judicial system may include other entities that do not directly perform the functions of justice²⁹. At the same time, V. D. Bryntsev considers the judicial power as a legitimate activity of all branches of the judicial system to ensure and implement constitutional, economic, criminal, administrative and civil justice³⁰. Similar understanding of the judiciary is actually recorded in the Constitution of Ukraine, which Ch. VIII is dedicated to this branch of government and is called *Justice*.

In our opinion, the most acceptable definition of judiciary is the formulation of

23 Сердюк В. В. О.р. cit. С. 43. URL: http://nbuv.gov.ua/UJRN/vaau_2006_5_6 (date accessed: 25.11.2022).

24 Теорія держави і права ... С. 45—46.

25 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (date accessed: 25.11.2022).

26 Про судоустрій і статус суддів : Закон України від 02.06.2016 р. № 1402-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 25.11.2022).

27 Рабінович П. М. О.р. cit. С. 86. URL: http://leksika.com.ua/10701026/legal/derzhavna_vlada (date accessed: 25.11.2022).

28 Мурашин Г. О. До питання реформування судової влади. *Правова держава*. 1997. Вип. 7. С. 71.

29 Селіванов А. О. О.р. cit. С. 305.

30 Брынцев В. Д. О.р. cit. С. 25, 26—27.

I. S. Hrytsenko and M. A. Pohoretskyi: by judicial power they mean an independent branch of power belonging to the courts, which form a single judicial system, the unity of which is ensured by the unified principles of organization and activity of the courts, the main tasks of which are to resolve on the basis of the law social conflicts between the state and citizens, citizens themselves, citizens and legal entities, legal entities among themselves, as well as control over the constitutionality of laws, protection of citizens' rights in their relations with executive authorities and officials, control over observance of citizens' rights during the investigation of crimes and conducting operational-search activities, establishment of the most significant legal facts³¹. In addition, researching the concept of judicial power, scientists identified its main essential signs:

- judicial power is exercised exclusively by special State bodies: courts;
- judicial power in Ukraine belongs to the courts that constitute a single judicial system;
- unity of the system of courts of general jurisdiction is ensured by the uniform principles of the organization and activity of courts, uniform status of judges, the rules of judicial procedure binding for all courts, the uniform order of organizational support for the activities of judges, financing of courts exclusively from the Government Budget of Ukraine, the resolution of issues of internal activity of judges by bodies of judicial self-government;

- judiciary is autonomous and independent;
- for implementation of judicial power, law gives the courts all the necessary powers;
- main tasks of all courts are to protect the rights and freedoms of man and citizen guaranteed by the Constitution of Ukraine and laws, rights and legitimate interests of legal entities, interests of society and the state;
- jurisdiction of the courts extends to all legal relations in the state;
- decision on the case by the court means that the court applies the norms of substantive law to the specific legal relations that were the subject of consideration in the court session, and renders a reasoned decision based on;
- judicial power is exercised on the basis of and in accordance with requirements of procedural law;
- court decisions are binding throughout the territory of Ukraine;
- court powers have an authoritative nature;
- fulfillment of court requirements and execution of its decisions is ensured by the State power³².

Taking into account the above, judicial power can be defined as the exclusive power of the courts to resolve conflicts of a legal nature that arise in society by exercising justice within the limits of a special procedural form and making decisions that are mandatory for all members of society.

The practical implementation of democratic humanistic principles (as the basis for the formation of the rule of law) directly depends on the availability of an

31 Гриценко І. С., Погорельський М. А. Опр. cit. С. 27. URL: http://nbuv.gov.ua/UJRN/Pis_2012_2_8 (date accessed: 25.11.2022).

32 Гриценко І. С., Погорельський М. А. Опр. cit. С. 26–27. URL: http://nbuv.gov.ua/UJRN/Pis_2012_2_8 (date accessed: 25.11.2022).

effective and efficient legal mechanism for the protection of human and civil rights and freedoms proclaimed by law. One of important components of this mechanism is the system of judicial protection, designed to exercise in the State of justice: general function of the judiciary.

Article 55 of the Constitution of Ukraine states that everyone is guaranteed *“right to appeal in court against decisions, actions or omissions of state authorities, local self-government bodies, officials and officials”*³³, which fully meets the requirements of Article 8 of the Universal Declaration of Human Rights: *“Everyone has the right to effective restoration of his rights by competent national courts in case of violation of his fundamental rights granted to him by the Constitution or the law.”* Consequently, the protection of human rights and freedoms is carried out by the judicial authorities through the administration of justice, which is regulated by Articles 124–131² (sect. VIII) of the Constitution of Ukraine, legislation on the judiciary, constitutional, civil, criminal, administrative and arbitration proceedings³⁴.

Despite the fact that the concepts of *judicial power*, *judicial system* and *justice* are closely related and are in meaningful interdependence, they should not be identified with such a concept as “justice”, since the latter implements the main functional areas of the judicial power,

namely: an independent and independent institution (branch) of State power.

Justice in Ukraine is exercised exclusively by courts that are an independent branch of power and act independently of the legislative and executive authorities (Article 124 of the Constitution of Ukraine and Article 5 of the Law of Ukraine: *On the Judiciary and the Status of Judges*)³⁵. In interpreting the constitutional provisions on justice, the Constitutional Court of Ukraine in 1997 noted that (in accordance with Article 124 of the Constitution of Ukraine) *“justice is an independent branch of state activity that courts carry out by considering and deciding in court sessions in a special procedural form of civil, criminal and other cases established by law”*³⁶.

Taking into account the provisions of Art. 124 of the Basic Law of Ukraine, it can be stated that the legislator identifies the concepts of *justice* and *judicial power*. Because of this, most scientists, exploring the problematic issues of modern justice, in their works rely on this “narrow” legal interpretation. Within the framework of legislative definitions, the narrow liquid approach, in our opinion, does not allow us to see the problem as a whole, which results in minimizing the effectiveness of judicial and legal transformations in the State.

The provisions of Article 127 of the Constitution of Ukraine *“Judges shall*

33 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (date accessed: 25.11.2022).

34 Загальна декларація прав людини : прийнята і проголош. резолюцією 217 А (III) Генасамблеї ООН від 10.12.1948 р. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text (date accessed: 25.11.2022).

35 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (date accessed: 25.11.2022) ; Про судоустрій і статус суддів URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (date accessed: 25.11.2022).

36 Про відмову у відкритті конституційного провадження у справі за конституційним зверненням державного зовнішньоекономічного підприємства «Славутич-Сталь» щодо тлумачення статті 124 Конституції України і Закону України «Про міжнародний комерційний арбітраж» : ухвала КС України від 14.10.1997 р. № 44-з у справі № 016/1241-97. URL: <https://zakon.rada.gov.ua/laws/show/vz44u710-97#Text> (date accessed: 25.11.2022).

administer justice. In cases specified by law, justice is carried out with the participation of a jury” specifies the principles of Art. 124, namely: that the functions of justice are carried out only by judges, the guarantees of independence and inviolability of which are devoted to Art. 127–129 of the Basic Law.

2016 Ch. VIII *Judiciary* of the Constitution of Ukraine is supplemented with norms that regulate the activities of the prosecutor’s office and the bar. In Art. 131¹ states that the prosecutor’s office carries out “organization and procedural management of pre-trial investigations, resolution of other issues in accordance with the law during criminal proceedings, supervision of covert and other investigative and search actions of law enforcement agencies, in Article 131² that the bar provides defense against criminal charges.”³⁷ The above demonstrates that activities of these bodies go beyond the exercise of their functions by judges. Therefore, the sphere of justice includes both the activity of the court to resolve any legal dispute and criminal accusation, as well as the activity of the prosecutor office and the bar at the stages of pre-trial investigation and trial.

With adoption by Verkhovna Rada of Ukraine in 2012 of the Criminal Procedural Code of Ukraine, institution of an investigating judge was introduced, the functional focus of which is to perform the functions of judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings³⁸.

Section VIII: *Justice* of the Constitution of Ukraine defines the subjects related to this type of state activity: courts, judges, juries, the High Council of Justice, the prosecutor’s office and the bar. At the same time, there is no mention of such a subject as *examining magistrate*.

Since the investigative judge is a professional judge, he is subject to the relevant provisions of the Constitution of Ukraine and the Law of Ukraine: *On the Judiciary and the Status of Judges*. His procedural status (as a subject of exclusively criminal proceedings) is determined by the norms of criminal procedural legislation: according to Clause 18, Part 1 of Art. 3 of the Criminal Procedural Code of Ukraine, an investigating judge is a “judge of a court of first instance whose authority includes the exercise of judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings in accordance with the procedure provided for by this Code, and in the case provided for by Article 247 of this Code,— the chairman or, as determined by him, another judge of the relevant court of appeal. Examining magistrate(examining magistrates) in the court of first instance is elected by the meeting of judges from among the judges of this court”³⁹. Examining magistrate competence is to resolve the motions and complaints of the parties to the criminal proceedings only at the stage of the pre-trial investigation, since he does not decide the merits of criminal proceedings and generally does not consider cases of any jurisdiction. Therefore, the investigating judge does not administer justice by exercising judicial control.

37 Про внесення змін до Конституції України (щодо правосуддя) : Закон України від 02.06.2016 р. № 1401-VIII URL: <https://zakon.rada.gov.ua/laws/show/1401-19#n6> (date accessed: 25.11.2022).

38 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 25.11.2022).

39 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 25.11.2022).

At the same time, the examining magistrate (as a new subject of criminal proceedings in Ukraine) is the bearer of judicial power. It carries out activities aimed at preventing unlawful and unreasonable restriction of constitutional rights and freedoms of a person at the pre-trial stages of criminal proceedings by preventing and protecting the rights and freedoms of a person, in other words to restore them in case of violation.

Despite the significant number of normative acts relating to the implementation of justice, domestic legislation does not define its concepts. Content and specifics of this type of activity are also not disclosed, which is associated with the excessive complexity and multidimensional nature of this social and legal phenomenon. In domestic everyday linguistic practice, the interpretation of the concept of *justice* is limited only by its identification with the *lawful, true and fair court*, whose decisions are made impartially.

In *Etymological Dictionary of the Ukrainian Language* the words *justice, justice, judge* is interpreted as *just* (right) judge (borrowing from the Church Slavonic language: “правосѣдище” formed from

the basis of the adjective *right* that means *right, correct, fair* and the noun “сѣдѣ”⁴⁰ that means *court*). In *Academic Explanatory Dictionary of Ukrainian Language*, the word *justice* is defined as follows: “1. *Court, judicial activity of the State, justice. // Institutions that carry out judicial activities of the state.* 2. *Consideration of court cases; proceedings.* 3. *A fair court*”⁴¹, and in *Great Ukrainian Legal Encyclopedia* it is “1) *law-enforcing jurisdictional activity in the implementation of administrative, economic, criminal, civil and constitutional proceedings; 2) the procedural form of application of legal norms by making court decisions*”⁴². Therefore, the meaning of the concept of *justice* in the mentioned dictionaries is limited only to the activity of the court and legal proceedings.

It is worth noting that a synonym of justice (besides judiciary) is also *justice*⁴³ (lat. *jūstītia*: *justice, justice; law, set of laws* derives from the Latin *jūstus*: *just*)⁴⁴. In *Academic Explanatory Dictionary...* the word *justice* is interpreted, in particular, as follows: “1. *Court, judicial activity of the state; justice.* 2. *Set of state bodies engaged in legal proceedings*”⁴⁵ and in the *Legal Encyclopedia* — “as a system of judicial institutions (a system of courts), as well as their activities in the administration of

40 Етимологічний словник української мови : в 7 т. Т. 4 : Н—П / ред. кол.: О. С. Мельничук (голов. ред.) та ін. ; уклад.: Р. В. Болдирев та ін. НАН України. Ін-т мовознавства ім. О. О. Потебні. Київ, 2003. С. 552. URL: http://history.org.ua/LiberUA/EtSIUkrM_2003/EtSIUkrM_2003.pdf (date accessed: 25.11.2022).

41 Академічний тлумачний словник української мови : в 11 т. ; за ред. І. К. Білодіда. Київ, 1970—1980. Т. 7. 1976. С. 509. URL: <http://sum.in.ua/s/pravosuddja> (date accessed: 25.11.2022).

42 Велика українська юридична енциклопедія : у 20 т. Харків, 2016—2020. Т. 19 : Кримінальний процес, судоустрій, прокуратура та адвокатура / редкол.: В. Т. Нор (голова) та ін. 2020. С. 663.

43 Караванський С. Практичний словник синонімів української мови. 2-ге вид., доп. й опрац. Київ, 2000. С. 323. URL: http://kropivnitsky.maup.com.ua/assets/files/praktichnij_slovník_sinonimiv_ukrajinskoji_movi.pdf (date accessed: 25.11.2022).

44 Етимологічний словник Т. 6: У—Я ... ; уклад.: Г. П. Півторак та ін. 2012. С. 526. URL: <http://history.org.ua/LiberUA/978-966-00-0197-8/978-966-00-0197-8.pdf> (date accessed: 25.11.2022).

45 Академічний тлумачний словник Т. 11. 1980. С. 617. URL: <http://sum.in.ua/s/justycja> (date accessed: 25.11.2022).

justice”⁴⁶. The encyclopedia also states this system (in addition to the courts) includes the prosecutor office, investigative bodies, the bar, the notary, etc. The common principles for them are serving the triumph of justice, legality and justice, ensuring the rights of citizens⁴⁷. Analysis of norms of the Constitution of Ukraine indicates that the Examining magistrate, investigative bodies, prosecutor’s offices and advocates (unlike judges) do not administer justice. However, we should state that without the performance of functions by these bodies, the activity of the court is impossible.

In modern legal science, there is no single position on the definition of the concept of *justice*, instead, substantive and formal characteristics of the legal category of this concept are the subject of lively discussion. Formation of the circle of subjects to which forensic expert support is directed depends on the resolution of the mentioned issue. Thus, M. I. Shevchuk is convinced: justice is an exclusive activity of the judiciary, called to consider cases and make decisions on them, which is implemented in a strictly defined procedural form, with observance of the principle of competition and other principles (fundamentals) of judiciary, determined by the law that gives be able to perform the tasks of the court and the judiciary in general⁴⁸. Sharing this position, S. S. Miroschnychenko notes that justice is the main function of the judicial power, which in its essence is a type of state activity, which consists in the resolution

of legal disputes by the courts. For the implementation of justice, there are general procedural forms clearly determined by the laws of Ukraine: civil, economic, administrative, criminal, constitutional proceedings and proceedings on cases of administrative offenses. Subjects of justice in Ukraine today are only professional judges (in some cases, people assessors and jurors)⁴⁹. S. M. Timchenko considers justice as the activity of the court in the form of civil, administrative, criminal, economic and constitutional proceedings, which takes place in procedural forms defined by law in court sessions with the participation of the parties and other participants in the process and consists in establishing the factual circumstances of the case and elucidation of the truth in the considered case through the investigation of evidence, which ends with the adoption of a decision in the case with the application of the norms of the relevant substantive law⁵⁰. In other words, justice is understood as the procedurally regulated activity of the courts in the objective consideration of constitutional, civil, criminal, economic and administrative cases and rendering a legal and impartial decision on.

At the same time, some scientists insist that justice in criminal law outlines a wider range of legal relations and can be achieved only by the joint, well-organized efforts of many subjects (pre-trial investigation bodies, the prosecutor’s office, the investigating judge, enforcement bodies of decisions that have entered into force,

46 Велика українська юридична енциклопедія Т. 20 : Криміналістика, судова експертиза, юридична психологія / редкол.: В. Ю. Шепітько (голова) та ін. 2018. С. 925.

47 Шемшученко Ю. С. Юстиція / Юридична енциклопедія : у 6 т. Т. 6 : Т—Я. 2004. С. 499. URL: <https://leksika.com.ua/19200421/legal/yustitsiya> (date accessed: 25.11.2022).

48 Шевчук М. Функції суду в сучасному кримінальному провадженні України. Вісник Львівського університету. Сер.: Юридична. 2014. Вип. 59. С. 373. URL: http://nbuv.gov.ua/UJRN/Vlnu_yu_2014_59_53 (date accessed: 25.11.2022).

49 Мірошніченко С. С. Оp. cit. С. 46.

50 Тимченко С. М. Оp. cit. С. 25.

etc.). An important role in this process is played by activities aimed at performing the functions of pre-trial investigation and judicial acts. In the considered hierarchy of subjects of justice, the court occupies a special and decisive place. That is, justice is considered as the direct activity of the court, as well as the activity of all bodies (officials) that do not belong to the judicial system, but contribute to the implementation of justice. For example, A. V. Vorontsov understands justice in a broad sense as the activity of not only the court, but also those bodies that contribute (help) the court in the implementation of the goals and tasks before justice (pre-trial investigation, prosecutor's office, etc.)⁵¹. O. O. Vakulyk calls justice the activity of judicial bodies in the consideration of cases or proceedings of all forms of judicial proceedings, as well as other bodies and persons entrusted with the duty to facilitate the administration of justice by the court and ensure the implementation of its decisions⁵². In this aspect, in our opinion, under justice, it is appropriate to understand the state activity of the court in the consideration of criminal proceedings on the merits, the imposition of punishment, as well as the consideration and resolution of issues related to the execution of the sentence. At the same time, the activity of authorized persons, regulated by the criminal procedural legislation, related to the investigation and consideration of criminal proceedings (at pre-trial stages) is the prerogative of the criminal justice system, i.e., justice covers only the activities of the court, while the justice system also includes the stages of the pre-trial investigation.

To summarize: *justice* is a component of the main functional content of the judiciary, carried out in accordance with the procedural procedure stipulated by law, the activities of judicial bodies for the consideration and resolution of civil, criminal and other cases. Distinctive features of justice (compared to other types of State activity) are as follows:

- is carried out exclusively by courts that is enshrined not only in constitutional provisions, but also in sectoral legislation;
- is carried out only by legally defined means with provision of procedural guarantees in a strictly regulated form;
- as a type of state activity ends with the adoption of a decision binding on all bodies, organizations, institutions and citizens under the threat of responsibility for its non-fulfillment.

It should be noted that justice is not only a form of exercising judicial power, but a reflection of its content, since the judgment on the right reflected in the relevant acts following the results of the court session belongs only to the court (regardless of the type of proceedings).

It is well known that the task of protecting the rights and freedoms of man and citizen, as well as creation of appropriate conditions for a court decision of a legal, reasonable and fair decision cannot be implemented without proper expert support, regulated by relevant legislation.

Objectivization of proceedings largely depends on its proper provision with the means of using special knowledge to

51 Воронцов А. В. Оп. cit. С. 41. URL: http://nbuv.gov.ua/UJRN/Pupch_2014_2_14 (date accessed: 25.11.2022).

52 Вакулик О. О. Оп. cit. С. 186.

achieve legal goals in a certain procedural form. The most common and effective form of using this knowledge is forensic science that is a procedural action regulated by law, the essence of which is to study the materials of the case (proceedings) provided at the disposal of the court by an expert on behalf of court in order to establish factual data that are essential for solving the tasks. Based on the results of the study, forensic expert draws up a conclusion which is one of the sources of evidence provided for by law.

According to clause 14 of Art. 92 of the Basic Law *“judiciary, legal procedure, status of judges; principles of forensic examination; organization and activity of the prosecutor’s office, notary, pre-trial investigation bodies, bodies and institutions for the execution of punishments; procedure for execution of court decisions; the principles of the organization and activity of the bar”* are defined exclusively by the laws of Ukraine⁵³. The Institute of Forensic Expertise is regulated by the provisions of the Constitution of Ukraine, the procedural legislation of Ukraine, international treaties (binding consent of which was given by Verkhovna Rada of Ukraine), the Law of Ukraine: *On Judicial Examination*⁵⁴ (hereinafter referred to as the *relevant Law*) and other normative legal acts, which complementing each other, determine the general provisions, tasks and principles of activity in this field. The legal institute of forensic examination is a stable complex of norms separated in the procedural legal system

not only by the subject and method of legal regulation, but also by its specific structure, which is expressed in the internal, dialectically interconnected and mutually conditioned organization of the normative material covered by it. Thus, the relevant Law defines the legal, organizational and financial foundations of FEA with the aim of ensuring the justice of Ukraine with independent, qualified and objective expertise, focused on the maximum use of the achievements of science and technology⁵⁵. However, there is no direct definition of the concept of FEA in the relevant Law, but in the preamble and individual articles (for example, Article 3: *Principles of forensic expert activity*, Article 7: *Subjects of forensic expert activity*, Article 8: *Scientific methodical and organizational methodical support of forensic expert activity*, Article 15: *Financing of forensic expert activity*), some components of its content are revealed.

Analyzing the provisions of some of these articles of the relevant Law, S. M. Sehai emphasizes that the FEA can be defined as the constitutional based activities of State authorities, legal entities and individuals to ensure justice with an independent, objective, qualified forensic examination based on the achievements of science and technology⁵⁶.

According to M. G. Shcherbakovskyi, FEA is a system of procedural and organizational procedures related to conducting forensic examinations⁵⁷. I. V. Pyrih considers FEA as a legally

53 Конституція України ... URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 25.11.2022).

54 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: 25.11.2022).

55 Про судову експертизу ... URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 25.11.2022).

56 Серай М. Оп. cit. С. 752.

57 Щербаковский М. Г. Оп. cit. С. 26. URL: https://library.nlu.edu.ua/POLN_TEXT/UP/SHERBAKOVSKIY_2005.pdf (date accessed: 25.11.2022).

regulated activity of persons who have specific expertise and are authorized by the parties to the proceedings to perform actions, the content of which is the study of certain objects, processes and phenomena with the aim of providing scientifically based conclusions for their use during pre-trial and judicial investigation ⁵⁸. P. I. Repeshko defines the FEA as an object of state regulation; activity of the State, legal entities and individuals to ensure justice through independent, objective, competent and qualified expertise, carried out by professional (certified) forensic experts on the basis of the relevant Law and other persons in within the limits of their competence, in the order and on the grounds determined by the relevant norms of the current legislation of Ukraine ⁵⁹. L. M. Holovchenko proposed the most meaningful interpretation of forensic science; it is an activity related to state administration and scientific and methodological support in the field of forensic examination, the organization and conduct of forensic examinations, aimed at ensuring justice with an independent, qualified and objective examination. oriented to the maximum use of the achievements of science and technology ⁶⁰. In our opinion, the essence of FEA(as one of the types of state activity) consists in the organization and conduct of forensic examinations and forensic research aimed at providing authorized persons (bodies), as well as legal entities and individuals with qualified and objective conclusions, oriented to the use modern achievements of science and technology. In this context, authorized persons (bodies) include

entities authorized to appoint a forensic expert (forensic expert recruitment) in accordance with procedure provided for by the legislation of Ukraine:

- *in criminal proceedings*: parties to criminal proceedings, examining magistrate, court;
- *in civil, economic and administrative proceedings*: court, a party to the case;
- *in cases of administrative offense*: court, an official (body) in which proceedings there is a case on an administrative offense;
- *in enforcement proceedings*: state executor.

Forensic expert activity as a complex system includes the following areas:

- conducting forensic examinations;
- conducting forensic researches in order to provide conclusions outside the legal proceedings in cases stipulated by law and executive proceedings;
- State regulation;
- organizational, managerial, scientific and methodological support;
- financial support;
- information support;
- international cooperation;
- training, attestation and advanced training (postgraduate education for persons with higher education);
- training of higher education applicants at the third (educational, scientific) and scientific levels of higher education in order to obtain a degree of higher education of a Doctor of Philosophy and a Doctor, respectively.

58 Пиріг І. В. О.р. cit. С. 27.

59 Репешко П. І. О.р. cit. С. 51. URL: http://nbuv.gov.ua/UJRN/krise_2013_58%281%29__8 (date accessed: 25.11.2022).

60 Головченко Л. М. О.р. cit. С. 7. URL: http://nbuv.gov.ua/UJRN/krise_2013_58%281%29__3 (date accessed: 25.11.2022).

The preamble of relevant Law clearly states that activities in the field of forensic science are aimed directly at ensuring justice in Ukraine.

It should be noted that the list of normative legal acts, in the names, preambles and texts of which the word *provision* is placed, is quite long, indicating active use of this term by state authorities in law-making activities. However, lack of a definition of this key, fundamental element in such acts significantly complicates its correct perception and understanding.

Taking into account the dynamics of positive transformations in the field of FEA, the participants of the Round Table: *Problems of Reforming the Basic Legislation of Ukraine on Expert Justice Provision* (organized in February 2020 on the basis of Hon. Prof. M. S. Bokarius Kharkiv Research Institute of Forensic Examinations (now National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute») of the Ministry of Justice of Ukraine with the participation of scientists from institutions of higher education, academic science, scientists and practitioners of forensic expert institutions of Ukraine, representatives of public organizations of judicial experts) considered the proposals regarding the implementation of the norms of the current procedural codes to the acts

that ensure the implementation of the FEA, unambiguous terminological definition of the conceptual apparatus in the relevant Law and provided valid proposals for the formation of the concept of the project of the Law of Ukraine on forensic science support to justice in Ukraine ⁶¹.

In 2021, the Verkhovna Rada of Ukraine submitted 4 draft laws on the regulation of FEA, in three of which the concept of *forensic science support to justice* is identical in content to forensic expert activity. So, in draft laws No. 6284 dated on November 5, 2021 ⁶² (hereinafter referred to as draft law No. 6284), No. 6284-1 dated on November 19, 2021 ⁶³, No. 6284-2 dated on November 22, 2021 ⁶⁴, and No. 6284-2 dated on November 23, 2021 6284-3 ⁶⁵ (hereinafter referred to as Draft Law No. 6284-1, Draft Law No. 6284-2, and Draft Law No. 6284-3, respectively) it is stated that the state regulation of FEA consists in ensuring regulatory, legal, organizational, managerial, scientific, methodological and informational foundations in the field forensic examination in order to create conditions for effective forensic science support to justice. This concept is also used in draft law No. 6284-1 (Article 3: “Content of forensic expert activity”): “1. Forensic expert activity includes: <...> 7) training of highly qualified scientific personnel for the purpose of

61 Проблеми реформування базового законодавства України з питань експертного забезпечення правосуддя : мат-ли кругл. столу (Харків, 06—07.02.2020). Харків, 2020. 136 с. URL: https://www.hniise.gov.ua/user_files/File/other/13%20%D0%BF%D0%BE%D1%81%D0%B-B%D0%B5%D0%B4%D0%BD%D1%8F%D1%8F%20%D0%BD%D0%B0%20%D0%B-F%D0%B5%D1%87%D0%B0%D1%82%D1%8C.pdf (date accessed: 25.11.2022).

62 Проект закону про судово-експертну діяльність від 05.11.2021 р. № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 25.11.2022).

63 Проект закону про судово-експертну діяльність від 19.11.2021 р. № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 25.11.2022).

64 Проект закону про судово-експертну діяльність та самоврядування судових експертів від 22.11.2021 р. № 6284-2. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73258 (date accessed: 25.11.2022).

65 Проект закону про внесення змін до Закону України «Про судову експертизу» від 23.11.2021 р. № 6284-3. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73261 (date accessed: 25.11.2022).

expert provision of justice”, Art. 23 “Subjects of forensic examination and forensic activity”: “2. Subjects of judicial expert activity include: <...> relevant subdivisions (authorized persons) for expert provision of justice of state bodies, to the sphere of management of which these institutions belong,” Art. 57 “Features of social protection of a forensic expert”: “1. The grounds for applying <...> social protection of a forensic expert are <...>: a complex scientific nature, intensity of intellectual work, its unregulated duration under the conditions of the performance of urgent and particularly important tasks of expert justice provision”) ⁶⁶ and in draft law No. 6284-2 (Article 1: “Definition of the main terms”: 19) forensic expert activity - the activity of the state, legal entities and individuals with the aim of ensuring the justice of Ukraine with independent, qualified and objective expertise, focused on the maximum use of the achievements of science, technology, art and craft”) ⁶⁷.

In the explanatory note to draft law No. 6284, its purpose is defined as “improvement of the legal basis of the modern system of expert justice provision with the aim of providing justice with independent, qualified and objective expertisethatwouldmeettherequirements of international standards and modern challenges. <...> “Implementation of the act will contribute to the improvement of the regulatory and legal basis of the modern system of expert provision of justice and the provision of justice by independent, qualified and objective expertise” ⁶⁸. The purpose of the development of draft law No. 6284-2 is

stated in the explanatory note to optimize the structure of FEA subjects, “creation of a new, modern model — a single state institution for expert justice provision and improvement of the regulatory and legal framework” ⁶⁹. This draft law proposes to improve the regulation of FEA at the legislative level in order to create conditions for proper and effective forensic science support to justice , in particular, related to the implementation of judicial reform.

In addition to the legislative sphere, the concept of forensic science support to justice is also found in many scientific publications devoted to the problematic issues of forensics and criminology. It is worth noting that the control over the activities of scientific and research institutions of forensic examinations belonging to the Ministry of Justice of Ukraine and judicial experts who are not employees of state specialized institutions, as well as the organization of scientific and methodological support of FEA and the organization of the work of the Central Expert Qualification Commissions under the Ministry of Justice of Ukraine are assigned to the Department of Expert Justice Support of the said Ministry.

Despite the wide range of application of the concept studied above, its definition and legal characteristics have not been scientifically substantiated to date. Therefore, revealing the meaning of the phrase forensic science support to justice will contribute to a clearer formulation of the conceptual and categorical apparatus of

66 Проект закону ... № 6284-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73246 (date accessed: 25.11.2022).

67 Проект закону ... № 6284-2. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73258 (date accessed: 25.11.2022).

68 Проект закону ... № 6284. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73154 (date accessed: 25.11.2022).

69 Проект закону ... № 6284-2. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=73258 (date accessed: 25.11.2022).

administrative and legal science in general and the specific application of this concept in particular.

As is well known, the theory of state and law is a basic science in relation to other legal sciences, because it is its competence to develop a general legal conceptual apparatus. However, the concept of *support* as a separate legal category in this field of knowledge is not the object of scientific research.

In *Academic Explanatory Dictionary...* the word “support” is defined as an action with the meaning *provide*, “, namely: “1. By supplying something in sufficient quantity, to satisfy someone, something in some needs. // To provide someone with sufficient material means of subsistence. 2. To create reliable conditions for doing something; guarantee something 3. To protect, protect someone, something from danger”⁷⁰. In our opinion, in terms of the functional orientation of forensic expert activity in relation to justice, the first definition is more acceptable, in which the leading word is “satisfy”: “1. Fulfill someone’s demands, wishes, claims, etc. // Provide, satisfy someone by giving something desired, needed in sufficient quantity, to complete satisfaction. // To appease, appease some feelings, aspirations, etc. 2. To make someone feel satisfied with something. 3. To be, to be appropriate to someone’s demands, expectations”⁷¹. In other words, provision directly depends on the fulfillment and satisfaction of certain requirements.

In order to form within legal science, the concept of *support* and give it an expert orientation, it is first of all necessary to find out the purpose of such an action, which is considered in normalization with the help of certain legal measures of social relations that arise in the process of appointing and organizing forensic examinations.

According to *Great Ukrainian Legal Encyclopedia*, forensic examination is research by a forensic expert based on specific expertise of material (materialized) objects (tangible evidence) of various types of materials and documents that contain evidentiary information, with the aim of establishing relevant factual data for the correct resolution of the case (proceedings)⁷².

At the legislative level, the term: *forensic science* was established in 1994 with the adoption of the relevant Law (Article 1). Until October 5, 2004, the concept of forensic examination was defined as “*examination by an expert on the basis of special knowledge of material objects, phenomena and processes that contain information about the circumstances of a case that is being investigated by bodies of inquiry, preliminary investigation or court*”⁷³. However, in 2004, the legislator replaced the words “*preliminary investigation or court*” with the words “*pre-trial and judicial investigation*”⁷⁴, and in 2012 (with the adoption of the new Code of Criminal Procedure of Ukraine) the words “*authorities of inquiry, pre-trial and judicial*

70 Академічний тлумачний словник Т. 3. 1972. С. 18. URL: <http://sum.in.ua/s/zabezpechuvaty> (date accessed: 25.11.2022).

71 Ibid. С. 113. URL: <http://sum.in.ua/s/zadovoljnjaty> (date accessed: 25.11.2022).

72 Велика українська юридична енциклопедія Т. 20 : Криміналістика, судова експертиза, юридична психологія / редкол.: В. Ю. Шепітько (голова) та ін. 2018. С. 256–257.

73 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 25.11.2022).

74 Про внесення змін до Закону України «Про судову експертизу» : Закон України від 09.09.2004 р. № 1992-IV. URL: <https://zakon.rada.gov.ua/laws/show/1992-15/ed20041005#Text> (date accessed: 25.11.2022).

investigation” with the words “bodies of pre-trial investigation or court”⁷⁵.

With the changes of 2017, Art. 1 of the profile Law is set out in the following wording: “Forensic examination is a study based on special knowledge in the field of science, technology, art, craft, etc., of objects, phenomena and processes with the aim of providing a conclusion on issues that are or will be the subject of judicial proceedings”⁷⁶. In our opinion, this edition has certain flaws, as the direct subject of the research – the forensic expert – has been lost. Taking into account the current definition of forensic examination, its performance is allowed to any person who has specific expertise (is a specialist or other professional), but at the same time does not meet the requirements that are put forward specifically for a forensic expert (Articles 10–11 of the Law).

Forensic expert is a person who has special knowledge and qualifications in a certain expert specialty and the right to conduct a forensic examination regulated by the procedural legislation of Ukraine. The qualification of a forensic expert is determined by the scope of his theoretical knowledge and practical skills and abilities necessary for conducting an examination in the relevant specialty, as well as determined by attestation in accordance with the procedure

provided for in Art. 16 of the Law. In his professional activity, when providing an opinion, forensic expert combines the statuses of a specialist in the relevant field of knowledge and a procedural person. Thus, according to the Criminal Procedural Code of Ukraine, an expert in criminal proceedings is a person who has the right in accordance with the Law to conduct an examination and who is assigned to conduct research on objects, phenomena and processes that contain information about the circumstances of the commission of a criminal offense and to give a conclusion on issues that arise during criminal proceedings and relate to the field of her knowledge⁷⁷. The current codes stipulate that an expert can be a person who has special knowledge necessary to clarify the relevant circumstances of the case, i.e. a judicial expert is a knowledgeable person engaged by the investigator (court, investigating judge, defense party, etc.) to conduct the examination, who has scientific, technical or other special knowledge and the necessary qualification to provide a conclusion on the investigated issues, which is defined as one of the sources of evidence in the judicial proceedings (Article 84 of the Criminal Procedural Code of Ukraine of Ukraine⁷⁸, Article 76 of the Civil Procedure Code of Ukraine⁷⁹,

75 Про внесення змін до деяких законодавчих актів України у зв'язку з прийняттям Кримінального процесуального кодексу України : Закон України від 13.04.2012 р. № 4652-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4652-17/ed20121119#Text> (date accessed: 25.11.2022).

76 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%D0%B0-19/ed20171215#Text> (date accessed: 25.11.2022).

77 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 25.11.2022).

78 Ibid.

79 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: 25.11.2022).

Article 73 of the Commercial Procedure Code of Ukraine⁸⁰, Article 72 of Code of Administrative Proceedings of Ukraine⁸¹; Article 251 of the Code of Ukraine on Administrative Offenses⁸²).

In accordance with Part 1 of Art. 101 of the Criminal Procedural Code of Ukraine *“expert conclusion is a detailed description of the research carried out by the expert and the conclusions drawn based on their results, substantiated answers to the questions posed by the person who engaged the expert, or by the investigating judge or the court that commissioned the examination”*⁸³. Since the procedural sources of evidence in Art. 84 of the Criminal Procedure Code of Ukraine is called *“testimony, physical evidence, documents, expert conclusions”*⁸⁴, then we can come to the conclusion that with the help of forensic examination, as well as during the analysis of other evidence, availability or lack of facts and circumstances that are of significant importance for the correct decision are established criminal proceedings. As evidenced by court practice, the opinion of an expert is often decisive during investigation and detection of crimes.

Despite the fact that the expert conclusions an independent source of evidence, all the collected evidence is considered as a whole for the purpose of

completing the pre-trial investigation and considering the merits of the criminal proceedings by the court. Therefore, an expert opinion, like any other source of evidence, should be subjected to careful research, comprehensive examination and critical evaluation together with others collected in accordance with Art. 93 of the Criminal Procedural Code of Ukraine as evidence in criminal proceedings.

The subject of an expert opinion in civil, economic and administrative proceedings may be the investigation of circumstances that belong to the subject of proof and the establishment of which requires the expert's special knowledge (Article 102 of the Civil Procedural Code of Ukraine of Ukraine⁸⁵, Article 98 of Commercial and Procedural Code of Ukraine⁸⁶ and Article 101 of Code of Administrative Proceedings of Ukraine⁸⁷).

Forensic expert activity is aimed at the successful solution of tasks arising in investigative and judicial practice, namely, at the transformation of potential evidentiary information contained in the materials provided for research into actual evidentiary information that can be used for the correct resolution of the case (proceedings). The above indicates the extreme importance and prevalence (in the practice of crime investigation and

80 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: 25.11.2022).

81 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 25.11.2022).

82 Кодекс України про адміністративні правопорушення від 07.12.1984 р. № 8037-X (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/80732-10#Text> (date accessed: 25.11.2022).

83 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 25.11.2022).

84 Ibid.

85 Цивільний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 25.11.2022).

86 Господарський процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 25.11.2022).

87 Кодекс адміністративного судочинства URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 25.11.2022).

court proceedings) of the appointment of forensic experts, which make it possible to use the entire arsenal of scientific research and tools. It is worth noting that in recent years there has been a positive trend in the appointment and conduct of forensic examinations, which is due to increased requirements for improving the quality of the judiciary, strengthening the guarantees and freedoms of citizens, as well as the development of democratic foundations of State and public life.

In Ukraine, FEA is carried out on the principles of legality, independence, objectivity and completeness of the research ⁸⁸: the legislation obliges the forensic expert to provide an objective opinion, which the expert implements in the truth of the conducted research and the establishment of relevant facts that characterize criminal crimes, as well as civil, economic or administrative offenses from different sides. Since the aspiration of the investigator or the court is aimed at finding out the objective truth in each case, forensic expert conclusion on the established facts plays an important role in the administration of justice. In addition, the expert conclusion makes it possible to discover new facts and determine the connection between facts, contributes to the verification of investigative (judicial) versions, and also helps to assess the reliability of other evidence.

Conclusions

Consequently, the FEA provides substantial assistance to justice in the implementation of the most important constitutional provision, namely: a person is considered innocent of committing a crime and cannot

be subjected to criminal punishment until his guilt is proved in a legal manner and established by a court verdict (Article 62 of the Constitution of Ukraine) ⁸⁹.

Forensic science support to justice should be understood as functionally directed activity of the subjects of FEA to ensure judicial proceedings of Ukraine with independent, qualified and objective expertise, focused on the maximum use of scientific and technological achievements.

Значення судово-експертної діяльності для здійснення правосуддя в Україні Вадим Хоша

Статтю присвячено значенню судово-експертної діяльності для захисту прав і свобод людини та громадянина, а також створення належних умов для ухвалення судом законного, обґрунтованого та справедливого рішення. Метою наукового дослідження є надання поняттю «правосуддя» сучасної змістовної характеристики як особливому виду державної діяльності й об'єкту експертного забезпечення. Для досягнення поставленої мети проаналізовано теоретичні засади функційного розподілу державної влади. Окремо досліджено організацію, специфіку й особливості судової влади, провідним завданням якої є здійснення правосуддя. Узагальнено законодавство України щодо реалізації правосуддя і визначено суб'єктів, дотичних до цього виду державної діяльності. Простежено правовий статус слідчого судді та з'ясовано його компетенцію. Окреслено наявні змістовні й формальні характеристики правової категорії поняття «правосуддя» з метою формування кола суб'єктів, на яких спрямовано експертне забезпечення. Розглянуто можливості судової експертизи як

88 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 25.11.2022).

89 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (date accessed: 25.11.2022).

найбільш кваліфікованої форми використання спеціальних знань у судочинстві. Окремо висвітлено процесуальні положення, якими регламентовано правовий статус судового експерта та його висновку як одного із видів доказів. Проаналізовано найпоширеніші підходи до визначення поняття «судово-експертна діяльність», розкрито особливості та зміст цього виду державної діяльності. Запропоновано визначення поняття «експертне забезпечення правосуддя», сформульовано сучасне розуміння судово-експертної діяльності й наведено актуальний перелік її напрямів.

Ключові слова: державна влада; розподіл влади; судова влада; судочинство; експертне забезпечення правосуддя; судова експертиза; судовий експерт; судово-експертна діяльність; висновки експерта.

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