

Legislative Regulation Issues of Forensic Examinations Appointed While Domestic Violence Investigation

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Certain aspects of regulating forensic examination appointment while pre-trial investigation of criminal offenses related to domestic violence have been studied. On the basis of general scientific and special methods which are built on the theory of cognition of socio-legal phenomena, a thorough analysis of criminal procedural legislation and legal regulations of Ukraine and foreign countries, as well as of opinions of leading domestic researchers on this issue, has been performed. In criminal proceedings involving domestic violence, the issue of timely appointment and conducting of forensic examinations to clarify facts of physical, sexual, psychological or economic violence is quite relevant. The indicated factors are mostly established by conducting criminalistics, forensic medical and forensic psychiatric examinations, conducted exclusively by state specialized forensic science institutions. Sometimes, this hinders a thorough and objective investigation and prevents participants in a criminal proceeding from selecting the most qualified forensic expert. It is recommended to end the monopoly of state forensic institutions in conducting such forensic examinations, which will help victims exercise their right to fair justice. Attention is drawn to the issues of procedural legal capacity of a victim, whose testimony is one of the most important sources of evidence. Since suspects are often subjects of forensic psychiatric examinations, appropriate amendments and additions to the Criminal Procedure Code and to certain legal regulations of Ukraine regarding appointment of forensic psychiatric examinations for victims have been proposed.

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Keywords: *criminal procedure; pre-trial investigation; domestic violence; specific expertise; forensic expert; forensic examination appointment; regulation; proving.*

Research Problem Formulation

Ukraine has been one of the first countries in Eastern Europe to recognize domestic violence as a pressing social issue and has been actively participating in standardizing procedures that directly affect the perpetrators' ability to hide behind the smokescreen of non-interference in private life. Thus, in June 2022, Ukraine ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) ¹, which is a fundamental international legal act that directly obliges governments of countries to take specific measures to combat all types of violence against women.

A further important step in this direction was the adoption by Ukraine of a number of legislative acts which provisions introduced a new approach to combating domestic violence.

After discovering the fact of domestic violence and during pre-trial investigation, the investigator must use all means and methods at his/her disposal to collect enough evidence that would confirm involvement of a relevant person in a committed criminal offense. An important place in this is occupied by the system of normative prescriptions and forensic recommendations regarding the appointment of forensic examinations.

Analysis of Essential Researches and Publications

The use of specific expertise during pre-trial investigation of domestic violence crimes has been studied by the following domestic researchers: H. K. Avdieieva ², O. O. Babkina with co-authors ³, I. V. Hloviuk with co-authors ⁴,

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- 1 Конвенція Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу із цими явищами (Стамбульська конвенція) від 11.05.2011 р.; ратифік. Законом України від 20.06.2022 р. № 2319-IX. URL: https://zakon.rada.gov.ua/laws/show/994_001-11#Text (date accessed: 03.03.2023).
 - 2 Авдєєва Г. К. Недержавна судова експертиза і рецензування висновків експерта як засоби забезпечення принципу змагальності сторін у кримінальному судочинстві України. *Місце недержавної судової експертизи у забезпеченні судочинства України* : мат-ли Всеукр. наук.-практ. конф.-дискус. (Київ, 19.10.2020). Київ, 2020. С. 41–44.
 - 3 Бабкіна О. О., Ткачов А. С., Данильченко С. І. Правові та судово-медичні аспекти домашнього насильства в Україні. *Український журнал медицини, біології та спорту*. 2020. Т. 5. № 4 (26). С. 336–342. DOI: [10.26693/jmbs05.04.336](https://doi.org/10.26693/jmbs05.04.336) (date accessed: 03.03.2023).
 - 4 Романцова С., Устрицька Н., Гловюк І. та ін. Кваліфікація та основи методики розслідування домашнього насильства : навч. посіб. / за ред. І. Гловюк, Н. Лащук, С. Романцової. Львів, 2022. 404 с. URL: <https://dspace.lvduvs.edu.ua/handle/1234567890/4807> (date accessed: 03.03.2023).

T. V. Ishchenko ⁵, I. V. Zahorodnii ⁶, R. V. Kyfliuk ⁷, M. L. Mikheieva ⁸, O. I. Motliakh with co-authors ⁹, I. O. Savchenko with co-authors ¹⁰, K. A. Shapoval ¹¹ and many others. However, certain procedural aspects related to the procedure for appointing forensic examinations requiring further regulation in the current Ukrainian legislation have not received sufficient attention from the scientific community.

Article Purpose

To thoroughly study peculiarities of legal regulation concerning appointment of forensic examinations both in general and while pre-trial investigation of crimes involving domestic violence. In accordance with the research purpose, research tasks are as follows: to formulate theoretical conclusions and scientifically grounded

proposals for improving current criminal procedural legislation and certain legal regulations governing procedural order of appointing forensic examinations in the specified area.

Research Methods

In order to achieve the set purpose and taking into account specific nature of the research, general scientific and special methods have been applied on the basis of the cognition theory of socio and legal phenomena, in particular: *comparative legal analysis* for comparing the norms of criminal procedural legislation in Ukraine and foreign countries, and *systems analysis* for formulating amendments to provisions of the Criminal Procedure Code of Ukraine and to other national legislation regarding determination

- 5 Іщенко Т. В. Розслідування домашнього насильства : дис. ... д-ра філос. Київ, 2021. 324 с. URL: http://elar.naiu.kiev.ua/jspui/bitstream/123456789/20120/1/dysert_ishchenko.pdf (date accessed: 03.03.2023).
- 6 Загородній І. В. Розслідування злочинів, пов'язаних із нанесенням тілесних ушкоджень : дис. ... канд. юрид. наук. Одеса, 2018. 242 с. URL: <http://dspace.onua.edu.ua/bitstream/handle/11300/9316/%d0%97%d0%b0%d0%b3%d0%be%d1%80%d0%be%d0%b4%d0%bd%d1%96%d0%b9%20%d0%86.%d0%92..pdf?sequence=6&isAllowed=y> (date accessed: 03.03.2023).
- 7 Кифлюк Р. В. Особливості розслідування та судового розгляду кримінальних проваджень, пов'язаних з насильством в сім'ї : дис. ... канд. юрид. наук. Ірпінь, 2020. 233 с.
- 8 Міхеева М. Л. Теоретико-методологічні та кримінально-процесуальні підстави судової психологічної експертизи осіб, постраждалих внаслідок домашнього насильства. *Теорія і практика сучасної психології*. 2020. № 1. Т. 3. С. 127—131. DOI: [10.32840/2663-6026.2020.1-3.22](https://doi.org/10.32840/2663-6026.2020.1-3.22) (date accessed: 03.03.2023).
- 9 Мотлях О. І., Іщенко Т. В. Специфіка призначення судово-психіатричних експертиз у розслідуванні домашнього насильства. *Порівняльно-аналітичне право*. 2020. № 2. С. 212—215. URL: <https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/35563/1/%D0%A1%D0%9F%D0%95%D0%A6%D0%98%D0%A4%D0%86%D0%9A%D0%90%20%D0%9F%D0%A0%D0%98%D0%97%D0%9D%D0%90%D0%A7%D0%95%D0%9D%D0%9D%D0%AF.pdf> (date accessed: 03.03.2023).
- 10 Савченко І. О., Бабич С. Л., Ускіла Р. Деякі питання судової психологічної експертизи потерпілих від домашнього насильства (*оглядова стаття*). *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 22. С. 538—554. DOI: [10.32353/khrife.2.2020.43](https://doi.org/10.32353/khrife.2.2020.43) (date accessed: 03.03.2023).
- 11 Шаповал К. А. До питання призначення комплексної психолого-психіатричної експертизи під час розслідування вбивств, скоєних унаслідок застосування домашнього насильства. *Актуальні питання судової експертизи і криміналістики* : зб. мат-лів міжнар. наук.-практ. конф.-полілогу (Харків, 15—16.04.2021). Харків, 2021. С. 280—281.

of directions for improving specific expertise application.

Main Content Presentation

During investigation of domestic violence crimes, it is essential to apply specific expertise of a forensic expert whose conclusion (according to Part 2 of Article 84 of the Criminal Procedure Code of Ukraine¹²) is one of the sources of evidence. A thorough analysis of the Criminal Code of Ukraine provisions indicates that the investigator or the public prosecutor has the right to appoint any forensic examination that (in their opinion) is appropriate to appoint under specific circumstances. For criminal proceedings involving domestic violence, the issue of timely appointment and conduct of forensic examinations to establish facts of physical, sexual, psychological, or economic violence is quite urgent.

In the context of discussing this issue, it should be stressed that forensic expert activities related to criminalistics, forensic medical and forensic psychiatric examinations are carried out exclusively by state specialized institutions (Part 3,

Article 7 of the Law of Ukraine *On Judicial Examination*¹³) in Ukraine. Therefore, the majority of forensic examinations in the studied category of criminal proceedings are performed by state forensic science institutions. In light of the above-mentioned, the issue of the inherent inequality between state and private forensic experts is a topic of debate and research among legal scholars. Most of them propose ending the monopoly of conducting such forensic examinations in state forensic expert institutions. Specifically, H. K. Avdieieva suggests legalizing conduct of forensic examinations in criminal procedure. As mentioned by the scientist, *“these changes should help to ensure the right to fair justice, especially for Ukrainian women who have suffered domestic violence <...>, to enable the development of evidence base of the highest quality and in the shortest possible time when investigating crimes of this kind by applying specific expertise within an adversarial criminal procedure”*¹⁴.

It is worth mentioning that the practice of parallel functioning of state and non-state forensic science institutions (forensic experts) exists in the legislation of post-Soviet countries (see e.g. Article 97 of

12 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: 03.03.2023).

13 Про судову експертизу: Закон України від 25.04.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 03.03.2023).

14 Авдєєва Г. К. Використання спеціальних знань у розслідуванні домашнього насильства в умовах змалюального кримінального процесу. *Організаційно-правові засади запобігання домашньому насильству: реалії та перспективи*: мат-ли кругл. столу. (Запоріжжя, 31.05.2019). Запоріжжя: КПУ, 2019. С. 12—13. URL: <https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/24652/1/%D0%90%D0%BD%D0%B4%D1%80%D1%83%D1%88%D0%BA%D0%BE%20%D0%90.%D0%92.%20%D0%9D%D0%B5%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%BD%D0%B5%20%D0%BF%D0%BE%D0%B7%D0%B1%D0%B0%D0%B2%D0%BB%D0%B5%D0%BD%D0%BD%D1%8F%20%D0%B2%D0%BE%D0%BB%D1%96%20%D1%8F%D0%BA%20%D0%B2%D0%B8%D0%B4%20%D0%B4%D0%BE%D0%BC%D0%B0%D1%88%D0%BD%D1%8C%D0%BE%D0%B3%D0%BE%20%D0%BD%D0%B0%D1%81%D0%B8%D0%BB%D1%8C%D1%81%D1%82%D0%B2%D0%B0%20%28%D0%BA%D1%80%D0%B8%D0%BC%D1%96%D0%BD%D0%BE%D0%BB%D0%BE%D0%B3%D1%96%D1%87%D0%BD%D0%B8%D0%B9%20%D0%B0%D1%81%D0%BF%D0%B5%D0%BA%D1%82%29%20-%20%D0%A1.%2018.PDF> (date accessed: 03.03.2023).

the Code of Criminal Procedure of the Azerbaijan Republic ¹⁵ and Art. 150 of the Criminal Procedure Code of the Republic of Moldova ¹⁶) and Western European countries. In particular, principal tasks of the forensic science service of the United Kingdom (an executive agency of the Home Office, which plays a crucial role in the work of the British police in crime detection, investigation, and prevention) include: *“providing professional assistance in the course of crime detection and investigation. However, the legislation <...> provides for the possibility of involving forensic experts from private forensic laboratories, who oftentimes offer their services in certain specific areas of forensic science (e.g., forensic document examination)”* ¹⁷.

While investigating the disputed issue, Yu. O. Tkachenko emphasizes that in the Czech Republic, *“the institution of forensic science is specific: a forensic expert <...> is entitled to provide services not only to courts but also to all state institutions. However, all forensic experts <...> must*

refrain from providing services to private organizations” ¹⁸.

Based on the above, we believe that the end of the monopoly in conducting forensic examinations in state forensic science institutions is quite acceptable. Furthermore, according to Yu. Yu. Yaroslav, the abolition of the monopoly position of state forensic examination will also contribute to *“gradual establishment of scientific adversariality in forensic science”* ¹⁹. Therefore, this issue requires appropriate regulation both in provisions of Article 243 of the Criminal Procedure Code of Ukraine ²⁰, and in Part 3 of Article 7 of the Law of Ukraine On Judicial Examination ²¹.

During investigation of domestic violence, forensic medical examination is most commonly appointed, which is conducted according to the rules stipulated in the Instruction on the Conduct of Forensic Medical Examination (approved by the Order of the Ministry of Health of Ukraine No. 6 On the Development and Improvement of the Forensic Medical Service

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- 15 Уголовно-процессуальный кодекс Азербайджанской Республики от 14.07.2000 г. № 907-IQ (с изм. и доп.). URL: http://continent-online.com/Document/?doc_id=30420280 (date accessed: 03.03.2023).
 - 16 Уголовно-процессуальный кодекс Республики Молдова от 14.03.2003 г. № 122-XV (с изм. и доп.). URL: https://continent-online.com/Document/?doc_id=30397729 (date accessed: 03.03.2023).
 - 17 Гузела М., Канцір В. Зарубіжний досвід організації судово-експертної діяльності в процесі здійснення кримінального переслідування. Вісник Національного університету «Львівська політехніка». Серія: Юридичні науки. 2018. № 906 (20). С. 129—135. URL: http://nbuv.gov.ua/UJRN/vnulpurn_2018_20_21 (date accessed: 03.03.2023).
 - 18 Ткаченко Ю. О. Зарубіжний досвід проведення судово-бухгалтерських експертиз. Управління розвитком соціально-економічних систем : мат-ли IV Міжнар. наук.-практ. інтернет-конф. (Харків, 08.10.2020). Харків, 2020. С. 419—421. URL: <https://repo.btu.kharkov.ua/handle/123456789/24081> (date accessed: 03.03.2023).
 - 19 Ярослав Ю. Ю. Саморегулювання — найважливіша умова розвитку недержавної (приватної) судової експертизи. Місце недержавної судової експертизи у забезпеченні судочинства України : мат-ли Всеукр. наук.-практ. конф.-дискус. (Київ, 19.10.2020). Київ, 2020. С. 26—30. URL: <http://nndes.org.ua/images/18112020.pdf> (date accessed: 03.03.2023).
 - 20 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 03.03.2023).
 - 21 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 03.03.2023).

of Ukraine dated January 17, 1995 ²²⁾ ²³⁾. As stated by T. V. Ishchenko, “subsequent criminal-legal qualification of a criminal offense depends to a large extent on results of this forensic examination: not only according to Art. 126–1 of the Criminal Code ²⁴⁾ of Ukraine, but also under other specific articles of this Code, in particular, Art. 115, 121, 122, 125, 126 <...>. And taking into account the fact that one of the forms of domestic violence is physical violence <...>, in particular, the following actions: slapping, kicking, pushing, pinching, spanking, beating, facial assault, inflicting bodily injuries of various degrees of severity, causing death <...>, they should be given special attention” ²⁵⁾. However, conducting forensic examination in respect of establishing causes of death, gravity and nature of bodily injuries (clauses 1 and 2, Part 2, Article 242 of the Criminal Procedure Code of Ukraine) ²⁶⁾ is obligatory.

In addition to the above, authors of the *Handbook for an Investigator Scientific-Practical Manual* rightly put an emphasis on the fact that the purpose of forensic medical examination: “it is not only to determine the severity of bodily injuries but also to establish the time and mechanism of their infliction, to identify information about the possible origin of the weapon or tool used (firearm, blunt, sharp, sharp cutting, etc.),

which is particularly important during the initial stage of investigation” ²⁷⁾.

In fact, criminal offenses involving domestic violence are oftentimes committed using various tools. Considering this, V. P. Revin states that during acts of violence, weapons (firearms, cold weapons) as well as household sharp-cutting and other objects are used. However, the use of weapons as instruments of violence in a home environment is still atypical. In any case, a weapon is used only if it is available in a family and is not specially purchased. Therefore, during domestic violence commission, the most typical is the use of available household items that happen to be at hand, such as knives, scissors, and other household objects ²⁸⁾. In view of this, there are grounds for appointing the following forensic examinations (in addition to forensic medical examination): examination of weapons and evidence and circumstances of their use, trace evidence analysis, fingerprint analysis, etc.

It should be noted that provisions of the Criminal Procedure Code of Ukraine do not specify conditions for the appointment of forensic medical examination, but this should not be overlooked. First of all, this is connected with the following factors: a) untimely appointment of forensic medical

22 Про розвиток та вдосконалення судово-медичної служби України : наказ МОЗ України від 17.01.95 р. № 6. URL: <https://zakon.rada.gov.ua/laws/show/z0248-95#Text> (date accessed: 03.03.2023).

23 Інструкція про проведення судово-медичної експертизи : затв. наказом МОЗ України від 17.01.95 р. № 6. URL: <https://zakon.rada.gov.ua/laws/show/z0254-95#Text> (date accessed: 03.03.2023).

24 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: 03.03.2023).— Прим. В. Гонтаренка.

25 Іщенко Т. В. Оп. cit. С. 157.

26 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 03.03.2023).

27 Панов М. І., Шепітько В. Ю., Коновалова В. О. та ін. Настільна книга слідчого : наук.-практ. вид. для слідч. і дізнавач. 2-ге вид., перероб. і допов. Київ, 2007. С. 240. URL: https://dspace.nlu.edu.ua/bitstream/123456789/13703/1/Bululukov_232-241.pdf (date accessed: 19.01.2023).

28 Ревин В. П. Насильственные преступления в сфере семейно-бытовых отношений и проблемы их профилактики : метод. рек. Москва, 1993. 56 с.

examination may result in disappearance of bodily injuries; b) conducting forensic medical examination takes a considerable amount of time, which may cause delays in pre-trial investigation and other issues.

Within the scope of considering this issue, it is important to note that in the practical aspect of investigating crimes involving domestic violence, forensic medical examination is appointed directly against a victim. However, as rightly pointed out by I. V. Hloviuk and colleagues, *“forensic medical examination should be directed not only towards the victim but also towards the suspect when there are signs of bodily injuries or when the suspect claims that harm has been caused to his/her health as a result of a committed crime”*²⁹.

The issues associated with appointment of forensic psychiatric examination necessitate separate consideration within the studied category of criminal proceedings. According to clause 10 of the Procedure for Conducting Forensic Psychiatric Examination approved by the Order of the Ministry of Health of Ukraine No. 865 dated May 8, 2018: *“The subject of forensic psychiatric examination is the mental state of an individual during specific legally significant time intervals”*³⁰. There are different positions in scientific literature as to formal grounds for directing an individual to such forensic examination, including: *“a) information about past mental disorders found in a person; b) receiving treatment at a psychiatric hospital; c) exemption from compulsory military service due*

*to mental illness; d) being registered at a psychoneurological clinic; e) the presence of mental disorders in close relatives of an individual; f) inappropriate behavior and intellectual incapacity; e) suicide attempts, strange, meaningless behavior of the detainee in a detention center; g) inability to properly comprehend the issue, inconsistency, irrationality of answers and reflections; g) inability to focus and understand the essence of events, fears, inadequate affective reactions; h) manifestations of mental disorders, understanding a painful condition that require application of specific medical expertise”*³¹. For our part, let's note that the above list is not exhaustive, since a person may have other signs of mental disorders.

It should be emphasized that an important stage prior to appointing this forensic examination is preparation of materials for its conduct. Firstly, the investigator should obtain relevant medical documentation regarding a person's mental health from healthcare institutions. Additionally, sources of information on the presence of a mental disorder in a suspect can include: a) testimonies of relatives, acquaintances, neighbors; b) references from the place of residence, work, or education; c) a conclusion of a military medical commission, etc. However, as N. M. Senchenko states, *“relatives' testimony about mental health of a person under investigation is not always objective and can have a dual nature <...>. Thus, relatives might falsely assert that a person has a mental illness that he/she does not actually*

29 Романцова С., Устрицька Н., Гловюк І. та ін. *Ор. cit.* С. 232. URL: <https://dspace.lvduvs.edu.ua/handle/1234567890/4807> (date accessed: 03.03.2023).

30 Порядок проведення судово-психіатричної експертизи : затв. наказом МОЗ України від 08.05.2018 р. № 865. URL: <https://zakon.rada.gov.ua/laws/show/z0719-18> (date accessed: 03.03.2023).

31 Григус І. М., Самороков В. О., Цимбалюк В. І., Цимбалюк В. О., Сахнюк В. В. Судова психіатрія та судово-психіатрична експертиза : навч. посіб. / під ред. І. М. Григуса. Львів, 2020. 119 с.

have, or claim that the suspect suffers from a more serious mental illness than she/he does”³². Therefore, the investigator should thoughtfully perceive such information and duly verify it through implementation of appropriate procedural actions stipulated by the Criminal Procedure Code of Ukraine.

Investigative and judicial practice shows that forensic psychiatric examination is most often appointed against suspects in criminal proceedings involving domestic violence. However, one of the sources of evidence set forth in Part 2 of Article 84 of the Criminal Procedure Code of Ukraine³³ is a victim's testimony. Since evaluation of his/her testimony is highly important for fulfillment of criminal proceeding tasks, the issue of her/his capacity to sue or be sued is gaining relevance.

It is worth mentioning that the scientific community first paid attention to the aspects of studying the mental state of crime victims at the International Congress of Psychiatrists in Bucharest in 1947³⁴. However, to date, the current legislation of Ukraine does not contain detailed regulations on appointment of forensic psychiatric examination against a victim. The possibility of conducting forensic psychiatric examination against victims and other certain participants is discussed in the Regulation of the Plenum of the Supreme Court of Ukraine No. 8 of 30 May 1997. According to this

regulation: “If there are doubts about the ability of a victim, a witness, a civil plaintiff or an accused in criminal cases <...> to perceive events correctly, to react to them appropriately and to reproduce them accurately in their testimonies, the court may appoint a psychiatric expert to participate in interrogation of these persons. The appointment of forensic psychiatric examination against such persons with placement in a medical institution is permitted only with their consent”³⁵. Considering that the cited Regulation is not a law and is only advisory in nature, the measures provided in Article 509 of the Criminal Procedure Code of Ukraine require supplementation in the research section of this paper.

Generalization of criminal proceedings involving domestic violence indicates that 63% of them were committed by individuals under the influence of alcohol or drugs, of which 47% were directly registered with narcologists. In view of the above, representatives of the scientific community and practitioners are concerned about the specific scope of expertise required to address this issue. Given the outlined aspect, O. A. Revenok, O. P. Oliynyk, A. V. Kanishchev, O. V. Radzevilova stress that “in accordance with the Law of Ukraine ‘On Psychiatric Aid’ and the current International Classification of Diseases (ICD-10), mental disorders resulting from the use of psychoactive substances (PAS) are disorders of the psyche and behavior which

32 Сенченко Н. М. Щодо окремих питань призначення та проведення судово-психіатричної експертизи у кримінальному провадженні. *Право і суспільство*. 2017. № 5. Ч. 2. С. 251. URL: http://pravoisuspilstvo.org.ua/archive/2017/5_2017/part_2/55.pdf (date accessed: 03.03.2023).

33 Кримінальний процесуальний кодекс України URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 03.03.2023).

34 Левенець І. В. Судова психіатрія : навч. посіб. Тернопіль, 2005. 328 с.

35 Про судову експертизу в кримінальних і цивільних справах : Постанова Пленуму ВС України від 30.05.1997 р. № 8 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/v0008700-97#Text> (date accessed: 03.03.2023).

fall within the professional competence of psychiatrists and narcologists”³⁶. In addition, “alcoholism significantly affects volitional processes of a person. Therefore, the study of a person’s motivational sphere is subject to expert assessment, which can be carried out within the framework of multidisciplinary forensic psycho-psychiatric examinations (MFPPEs).

<...>

Determination of the potential impact of personal traits on an individual’s ability to fully comprehend the significance of her/his actions and exert control over them in a legally significant situation requires involvement of forensic psychologists. Within the algorithm of forensic examination of persons with alcohol dependence, apart from assessing the examinee’s mental state, it is essential to include the study and comparison of psychosocial functioning parameters throughout their lifetime and in the legally significant period”³⁷. Accordingly, forensic psychiatric or multidisciplinary forensic psycho-psychiatric examinations should be appointed against suspects who abuse alcoholic beverages or drugs.

It is also relevant to address the issue of establishing circumstances of psychological violence. As stated in clause 6.4 of the Scientific and Methodological Guidelines on the Preparation and Appointment of Forensic Examinations and Expert Research approved by the Order of the Ministry of Justice of Ukraine No. 53/5

dated October 8, 1998, the main objective of forensic psychological examination is to determine in an examinee:

“• individual psychological traits, character traits, leading personality traits; motivational factors of mental life and behavior;

• emotional reactions and states;

• regularities of mental processes, the level of their development and their individual properties”³⁸.

Certain difficulties arise directly when proving facts of psychological violence against a victim, especially when it was not accompanied by physical violence (thus, it has a somewhat hidden nature). The investigator can obtain such information through interrogation of a victim, suspect, and witnesses. However, documenting the use of psychological violence in the interview record is often a formality in many cases. Moreover, investigators are not always capable of properly assessing the psychological state of an interrogated person and the impact of psychological violence on their vital functions. Therefore, interrogation of such persons should be conducted with a mandatory participation of a psychologist, and the interview record should be used in the course of forensic examination.

With regard to the aforementioned, in criminal investigations involving domestic violence, there is a need to appoint forensic psychological examination. According to

36 Ревенок О. А., Олійник О. П., Канищев А. В., Радзевілова О. В. Аналіз практики проведення судово-наркологічної експертизи в кримінальному провадженні. *Web of Scholar*. 2018. Vol. 1. № 11. Pp. 22–27. URL: <http://www.psychiatry.ua/articles/paper472.htm> (date accessed: 03.03.2023).

37 Олійник О. П., Радзевілова О. В. Комплексна судова психолого-психіатрична оцінка станів залежності від алкоголю в цивільному та кримінальному процесі. *Український медичний часопис*. 2018. 1 (2) (123) — I/II. DOI 10.32471/umj.1680-3051.123.122293 (date accessed: 03.03.2023).

38 Науково-методичні рекомендації з питань підготовки та призначення судових експертиз та експертних досліджень : затв. наказом Мін’юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 03.03.2023).

I. O. Savchenko, S. L. Babych, R. Uskila, it should address the following questions:

“1. ‘Are there any changes in emotional state or individual psychological manifestations of a victim that impede her/his active social functioning as a person and have arisen as a result of a suspect’s (accused’s) actions?’

2. ‘Is a situation under study psychologically traumatizing for a victim? If so, has the victim experienced moral and physical suffering?’”³⁹

Let’s emphasize that within the scope of our research, attention is drawn to only the most common types of forensic examinations that investigators appoint during investigation of domestic violence crimes, and to issues of their regulation.

Conclusions

The procedural order of appointing forensic examinations in a criminal proceeding both in general and during pre-trial investigation of criminal offenses involving domestic violence is stipulated in the Criminal Procedure Code of Ukraine and other legal regulations. However, it contains problematic aspects resulting in certain complications in its practical application.

Key debatable issues of the indicated procedure are associated with the fact that criminalistics, forensic medical, and forensic psychiatric examinations can only be performed by state specialized institutions in Ukraine. This impedes participants in a criminal proceeding from choosing the most qualified forensic expert in a particular field and violates the principle of adversariality. Ending the monopoly of state forensic science institutions in conducting such forensic examinations will help victims exercise

their right to fair justice. In addition, certain aspects concerning the ordering of forensic psychiatric examinations against victims and certain other participants in a criminal proceeding have been overlooked by legislators to this day. Obviously, the above-mentioned issues require further thorough research and regulation in Ukrainian legislation.

Проблеми законодавчого регламентування судових експертиз, призначених під час розслідування домашнього насильства

В’ячеслав Гонтаренко

Досліджено окремі аспекти регламентування призначення судових експертиз під час досудового розслідування кримінальних правопорушень, пов’язаних із домашнім насильством. На підставі загальнонаукових і спеціальних методів, що ґрунтуються на теорії пізнання соціально-правових явищ, здійснено докладний аналіз кримінального процесуального законодавства та нормативно-правових актів України й іноземних держав, а також думок провідних вітчизняних науковців із цього питання. У кримінальних провадженнях, пов’язаних із домашнім насильством, доволі актуальним є питання щодо своєчасного призначення та проведення експертиз для з’ясування фактів фізичного, сексуального, психологічного або економічного насильства. Названі чинники здебільшого встановлюють шляхом проведення криміналістичних, судово-медичних і судово-психіатричних експертиз, здійснюваних винятково державними спеціалізованими експертними установами. Інколи це перешкоджає повному й об’єктивному розслідуванню та заважає учасникам кримінального

39 Савченко І. О., Бабич С. Л., Ускіла Р. Оп. cit. С. 548. DOI: 10.32353/khrife.2.2020.43 (date accessed: 03.03.2023).

провадження обрати найбільш кваліфікованого експерта. Рекомендовано скасувати монополію державних експертних установ на проведення таких експертиз, що допоможе постраждалим реалізувати право на справедливе правосуддя. Увагу акцентовано на питаннях процесуальної правоздатності потерпілого, показання якого є одним з найважливіших джерел доказів. Оскільки найчастіше об'єктами судово-психіатричної експертизи стають підозрювані, запропоновано відповідні зміни й доповнення до Кримінального процесуального кодексу та деяких нормативно-правових актів України, які стосуються призначення судово-психіатричної експертизи потерпілих.

Ключові слова: кримінальний процес; досудове розслідування; домашнє насильство; спеціальні знання; експерт; призначення експертизи; регламентування; доказування.

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Declaration of Competing Interest

Author declare no conflict of interest.

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