

Fundamental Principles of Forensic Expert Activity and Psychological Science in Service of Resolving Forensic Psychological Examination Tasks

Oleksandr Yevsiukov*

* PhD in Education, Docent, Doctoral student, NSC «Hon. Prof. M. S. Bokarius FSI», Kharkiv, Ukraine, ORCID: <https://orcid.org/0000-0002-3554-8848>, e-mail: a.evsyukov1971@gmail.com

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Legal regulations and literary sources on the issues of forensic expert activity and the science of psychology have been analyzed. The paper substantiates grounds for differentiating the principles of forensic expert activity and psychology and their influence on the performance of forensic psychological examination tasks. While preparing the article, the author used general, individual, and special methods of cognition. Since the Fundamental Law of Ukraine proclaims the recognition and operation of the rule of law principle in the State, it is proposed to supplement Article 3 of the Law of Ukraine “On Judicial Examination” with this principle. The author proves that the principle of legitimacy is enforced in various ways: the legislation envisages liability for both a forensic expert’s offenses as well as for offenses against a forensic expert. Researchers have been supported on the need to amend the Criminal Code of Ukraine in the aspect of increasing liability for exerting unlawful pressure on a forensic expert. It is emphasized that the principle of independence is one of the key principles underpinning the effective execution of forensic expert activity. Moreover, guarantees ensuring the independence of forensic experts have been considered. The research paper discusses controversial issues of implementing the principles of objectivity and research completeness. The author analyzes the main groups of psychological science principles: derived from philosophy, general psychological and specific scientific (sectoral) principles.

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Emphasis is made on the fact that the principles of forensic expert activity along with the basic principles of psychology form a strong foundation for a forensic psychological examination (provided that scientifically sound and proven methods and techniques that have been certified and registered by the State and are essential for conducting forensic examinations in this field have been used).

Keywords: forensic activity; forensic examination; basic principles of psychology; forensic psychological examination; principles of independence, legitimacy, objectivity; rule of law principle; completeness of research; reflection of connection between psyche and activity; principle of development; principle of systemic nature; principle of professional ethics.

Research Problem Formulation

The practice of conducting forensic examinations overall and forensic psychological examinations specifically is closely linked to the theoretical justification for forensic examination subject and relevant tasks, objects, subjects, and methods of forensic psychological examination. Each of these concepts and their combination must comply with the principles of forensic expert activity (hereinafter referred to as FEA). Unfortunately, there are cases in expert practice where, from a forensic point of view, there are incorrect or insufficiently supported ideas about the above-mentioned cornerstone concepts that are pivotal for forensic examination. The Article Purpose is to attempt to formulate the principles of forensic

psychological examination, which can be used to theoretically substantiate and develop theoretical, legal, and methodological foundations of various subject types of forensic psychological examination for their systematization and development.

Analysis of Essential Researches and Publications

The differentiated approach to formulating FEA principles is certainly not new not only to forensic science but also to the underlying sciences and the scientific and methodological underpinnings of different forensic examination types. We have already provided a general block diagram of the relationship between FEA principles ¹ in previous research papers (see Fig. 1).

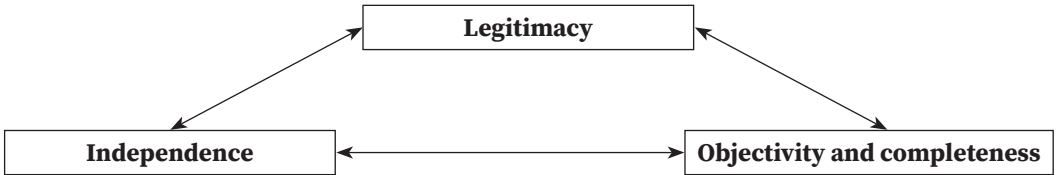


Fig. 1. The relationship between FEA principles

1 Євсюков О. Специфіка принципів судово-психологічної експертної діяльності. Сучасні напрямки розвитку судової експертизи та криміналістики : зб. Всеукр. наук.-практ. конф. (Одеса, 05.09.2024). Одеса, 2024. С. 170—173. URL: <http://catalog.liha-pres.eu/index.php/liha-pres/catalog/view/320/9272/21031-1> (date accessed: 01.02.2025).

Specifically, we have noted that Art. 3 of the Law of Ukraine *On Judicial Examination*² (hereinafter referred to as the *Special Law*) sets forth such principles of FEA as “legitimacy”, “independence”, “objectivity” and “completeness” (although the essence of these concepts has not been revealed). Instead, researchers offer other principles to formulate FEA principles. For instance, M. Shcherbakovskyi mentions the following: a forensic expert’s competence; the possibility for a person appointing a forensic examination to review the expert’s conclusions; respect for a person’s safety and rights during a forensic examination³. Other scholars⁴ have also worked on identifying basic FEA principles in Ukraine. That is why we deem it essential to delve deeper into these concepts in terms of scientific and legal approaches to their interpretation.

Article Purpose

Undertake a theoretical and legal analysis of fundamental FEA principles in general,

as well as a theoretical analysis of the science of psychology, and on this basis formulate specific principles of forensic expert activity in forensic psychological examination.

Research Methods

The author employs general, individual, and special methods of cognition. Based on the analysis of regulatory and legal, literary sources, expert practice, and the author’s individual experience in scientific and practical endeavors, proposals for improving the theory and practice of forensic examination in general and forensic psychological examination in particular have been developed.

Main Content Presentation

Let’s begin by discussing the concept of legitimacy. Unquestionably, this issue is not new in the legislative and scientific discourse: it is enshrined in the Constitution⁵ and other laws of Ukraine, it has

- 2 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.02.2025).
- 3 Щербаківський М. Г. Судебные экспертизы: назначение, производство, использование : учеб.-практ. пособ. Харьков, 2005. 544 с. URI: <http://dspace.univd.edu.ua/xmlui/handle/123456789/12421> (date accessed: 01.02.2025).
- 4 Див., напр.: Жеребко О. І. Судово-експертна діяльність: сутність, принципи, організаційні основи : автореф. дис. ... канд. юрид. наук. Запоріжжя, 2010. 22 с. ; Казаров А. О. Принципи адміністративно-правового регулювання судово-експертної діяльності у справах про адміністративні правопорушення, пов’язані з дорожньо-транспортними пригодами. *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 22. С. 260—271. DOI: 10.32353/khrife.2.2020.20 (date accessed: 02.03.2025) ; Олійник О. О., Галунько В. В., Єшук О. М. Адміністративно-правове регулювання судово-експертної діяльності : монографія. Херсон, 2015. 224 с. ; Остропілець А. В. Принципи адміністративно-правового регулювання судово-експертної діяльності в Україні. *Прикарпатський юридичний вісник*. 2018. Вип. 1 (22). Т. 3. С. 197—202. URL: http://www.pjv.nuoua.od.ua/v1-3_2018/41.pdf (date accessed: 01.02.2025). ; Пиріг І. В., Шинкаренко І. Р. Принципи судової експертизи (оглядова стаття). *Теорія та практика судової експертизи і криміналістики*. 2018. Вип. 18. С. 221—230. DOI: 10.32353/khrife.2018.24 (date accessed: 02.03.2025) та ін.
- 5 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 01.02.2025).

been addressed by Ukrainian researchers both in the aspect of public administration ⁶ and in terms of analyzing constitutional and sectoral legislation ⁷.

According to Art. 8 of the Constitution, the principle of the rule of law ⁸ is recognized and effective in Ukraine. The Constitution has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and shall conform to it. The norms of the Constitution of Ukraine are norms of direct effect. Appeals to the court in defense of the constitutional rights and freedoms of the individual and citizen direct-

ly on the grounds of the Constitution of Ukraine are guaranteed ⁹.

The rule of law and legitimacy are defined as general principles of criminal proceedings in the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC) ¹⁰. At the same time, Art. 8 of the CPC sets forth that criminal proceedings shall be conducted in accordance with the principle of the rule of law, under which a human being, his/her rights and freedoms are the highest values which define content and priority areas of state activities, and Pt. 1 of Art. 9 of the CPC stipulates that in the course of criminal

- 6 Див., напр.: Мельник Р. Принцип законності vs. принцип правомірності: до питання про оновлення юридичних засад діяльності органів публічної влади. *Право України*. 2018. № 11. С. 14—31. DOI: [10.33498/louu-2018-11-014](https://doi.org/10.33498/louu-2018-11-014) (date accessed: 01.02.2025) ; Каленіченко С. І. Сутність законності в організації та діяльності Національної поліції України. *Правоохоронна функція держави: теоретико-методологічні та історико-правові проблеми* : тези доп. учасн. Міжнар. наук.-практ. конф. (Харків, 17.05.2019). Харків, 2019. С. 89—91. URL: https://univd.edu.ua/general/publishing/konf/17_05_2019/pdf/42.pdf (date accessed: 01.02.2025) ; Журавель М. В. Принцип законності в процесі розвитку державного управління в Україні. *Наукові праці Національного університету «Одеська юридична академія»*. 2013. Т. 13. С. 220—227. URL: http://nbuv.gov.ua/UJRN/Nponyua_2013_13_24 (date accessed: 01.02.2025) та ін.
- 7 Див., напр.: Братасюк М., Росоляк О. Співвідношення принципу верховенства права та принципу законності. *Актуальні проблеми правознавства*. 2018. Вип. 1 (13). С. 11—17. URL: https://ccu.gov.ua/sites/default/files/bratasyuk_m._spivvidnoshennya_pryncypu_verhovenstva_prava_ta_pryncypu_zakonnosti.pdf (date accessed: 01.02.2025) ; Шевчук С. Конституційні засади правової системи України і проблеми її вдосконалення. *Право України*. 2010. № 12. С. 326—329. URL: https://pravoua.com.ua/storage/files/magazines/files/content-pravoukr-2010-12-pravoukr_2010-12-1.pdf (date accessed: 01.02.2025) ; Його ж. Доктрина верховенства права та конституціоналізму: історична генеза і співвідношення. *Там само*. № 3. С. 52—61. URL: https://pravoua.com.ua/storage/files/magazines/files/content-pravoukr-2010-3-pravoukr_2010-3-1.pdf (date accessed: 01.02.2025) ; Козюбра М. Принцип верховенства права та вітчизняна теорія і практика. *Українське право*. 2006. Вип. 1 (19). С. 15—24 ; Патеї-Братасюк М. Г., Гвоздецький В. Д., Мурашин О. Г. та ін. Верховенство права: традиція доктрини і потенціал практики : монографія / за заг. ред. М. Г. Патеї-Братасюк. Київ, 2010. 536 с. ; Матвеева Ю. І. Тлумачення поняття «закон» як вимога принципу правової визначеності. *Наукові записки НаУКМА. Юридичні науки*. 2014. Т. 155. С. 18—20. URL: http://nbuv.gov.ua/UJRN/NaUKMAun_2014_155_6 (date accessed: 01.02.2025) та ін.
- 8 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 01.02.2025).
- 9 Там само.
- 10 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: 01.02.2025).

proceedings, a court, investigating judge, public prosecutor, chief officer of pre-trial investigation agency, investigator, other officials of government authorities shall fully comply with the requirements of the Constitution of Ukraine, this Code, and international treaties, ratified by the Verkhovna Rada of Ukraine, and requirements of other laws ¹¹.

Art. 2 of the Civil Procedure Code of Ukraine (hereinafter referred to as the CivPC) defines the rule of law as one of the main principles of civil proceedings, and Pts. 1 and 2 of Art. 10 of this Code envisage that when considering a case, the court shall be guided by the principle of the rule of law, and the court shall consider cases in accordance with the Constitution of Ukraine, laws of Ukraine, international treaties that the Verkhovna Rada of Ukraine agrees are binding ¹². Similar norms are contained in Art. 2 of the Code of Commercial Procedure of Ukraine ¹³, and Art. 2 of the Code of Administrative Proceedings of Ukraine ¹⁴.

Therefore, as mentioned above, the Special Law lists legitimacy as one of the basic FEA principles but does not mention the rule of law. Since legitimacy is part of the rule of law, we do not see this as a significant disadvantage. We agree with the opinion of scholars M. Bratasiuk and O. Rosoliak, who argue that the rule of law as one of the guiding principles does not exclude the principle of legitimacy,

and the correlation of these principles can be analyzed by means of the manifestation of the rule of law in the national legal system, specifically by the legislator's creation of laws and statutory regulations that are legal in content (acts of positive law that violate human rights and contradict the substantive characteristics of law cannot be considered lawful); implementation of law application activities based on the principles of law, which reflect the spirit of the law, widely accepted values, and meanings; these principles express equal requirements for all subjects of the legal system and determine the priority and position of the law within the system of legal acts of the state ¹⁵.

Simultaneously, since the Fundamental Law of Ukraine proclaims the recognition and operation of the rule of law principle in the state, we propose supplementing Article 3 of the Special Law with this principle. The main thing is that any type of FEA shall fully comply with the requirements of the Constitution of Ukraine, this Code, and international treaties, ratified by the Verkhovna Rada of Ukraine, and requirements of other laws.

Legitimacy is a multifaceted concept when it comes to the implementation of FEA. On the one hand, Ukrainian legislation envisages a forensic expert's accountability for misleading a court or other authorized body (person) by providing a knowingly false conclusion, failure to

11 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.02.2025)..

12 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: 01.02.2025).

13 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: 01.02.2025).

14 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: 01.02.2025).

15 Братасюк М., Росоляк О. Зазнач. твір. С. 14. URL: https://ccu.gov.ua/sites/default/files/bratasyuk_m._spivvidnoshennya_pryncypu_verhovenstva_prava_ta_pryncypu_zakonnosti.pdf (date accessed: 01.02.2025)

fulfill statutory obligations without valid reasons, disclosure of pre-trial investigation data (Arts. 384, 385, 387 of the Criminal Code of Ukraine, hereinafter referred to as the CC) ¹⁶, for showing disrespect toward the court or the Constitutional Court of Ukraine (malicious evasion of the court, or disobedience to the presiding officer's order, or violation of the order during a trial, as well as taking actions that testify to a clear disregard for court or the rules established in court), for malicious evasion of the expert's appearance before the investigating authorities or the prosecutor's failure to appear during the investigation (Arts. 185-3 and 185-4 of the Code of Ukraine on Administrative Offenses) ¹⁷.

Moreover, Art. 14 of the Special Law also stipulates the prosecution of a forensic expert for the following disciplinary misconduct:

- “1) self-collection of materials to be researched, as well as independent selection of initial data for a forensic examination;
- 2) conducting a forensic examination by a forensic expert who is an employee of a state specialized institution without a written mandate from his/her head, in the event that a forensic examination is ordered to be conducted by a state specialized institution;
- 3) reassignment of forensic examination to another person in violation of the procedure established by law;
- 4) violation without valid reasons of the requirements of the law regarding the terms for conducting a forensic examination;

- 5) resolution of issues beyond the scope of a forensic expert's qualification in the relevant field of expertise, including issues of law;
- 6) failure of a forensic expert who is not an employee of a state specialized institution to comply with the legislative requirements for organizing a forensic expert's workplace;
- 7) evasion by a forensic expert who is not an employee of a state specialized institution from conducting a verification of his/her activities and/or his/her obstruction of such verification;
- 8) violation of the procedure for storage and handling of research objects, case (proceedings) materials, which has led or may lead to their loss or damage;
- 9) use of destructive research methods in violation of the legally established procedure;
- 10) failure to notify the holder of the State Register of Certified Forensic Experts, in accordance with the procedure established by law, of the occurrence of circumstances which, upon notification by a forensic expert, must be entered in such a register;
- 11) violation of the legislation requirements on drawing up a forensic expert's conclusion;
- 12) non-execution or improper execution of tasks assigned to a forensic expert without valid reasons, which became the basis for the court to issue a separate ruling raising the issue of disciplinary liability of a forensic expert” ¹⁸.

We deem it is appropriate to consider some of the disciplinary offenses men-

16 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: 02.02.2025).

17 Кодекс України про адміністративні правопорушення від 07.12.1984 р. № 8073-X (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text> (date accessed: 02.02.2025).

18 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.02.2025).

tioned, but not explained in the Special Law. The first of them concerns the criteria for independent collection of materials and initial data by a forensic expert. From the perspective of V. Alieksieichuk¹⁹, it is worth considering addressing this issue by clarifying the list of actions that do not fall under the concept of *independent collection of materials* in para. 5 of cl. 9 of Section VI of the Provision on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the Certification of Forensic Experts: “*The use of samples from registers, registers, collections obtained in accordance with the legally established procedure, the use of information from information databases and other information sources, including for the purpose of determining the value of property, shall not be considered independent collection of materials*”²⁰. At the same time, the scholar points out that these provisions do not completely resolve the situation of uncertainty, since, *firstly*, the norm of the Law cannot be narrowed by the norm of a lower-level legal regulation (by an order of a central executive authority); *secondly*, this clarification is unlikely to be considered by court that is guided by laws; *thirdly*, such a norm applies exclusively to forensic experts working in state specialized institutions of the Ministry of Justice of Ukraine and private forensic experts, as for other forensic experts, the issue of “independent collec-

tion of materials” is yet to be clarified in relevant departmental legal regulations²¹. In view of the above, the concepts of *independent collection of materials to be researched* and *independent selection of initial data for a forensic examination* should be revealed in the Special Law, specifically by drawing up a list of actions which do not fall within these concepts²². In this regard, we align with the opinion of V. Alieksieichuk and propose amending Art. 14 of the Special Law to include criteria for independent collection of materials and initial data for research by a forensic expert, as well as guidelines for the expert's actions to prevent such misconduct. Specifically, we suggest requiring the forensic expert to submit a motion if necessary initial data are not provided in the materials or are ambiguously reflected.

We also consider a disciplinary offense manifested as a forensic expert delegating the conduct of a forensic examination to another person to be unjustified, since a forensic expert is not entitled to delegate the conduct of a forensic examination to another person, and such a delegation is illogical.

The provision for failing to comply with the legislation requirements for drawing up a forensic report, as set out in the article analyzed, is somewhat unclear. What kind of violation of these requirements would be grounds for bringing

19 Алексейчук В. І. Запобігання самостійному збиранню судовим експертом матеріалів дослідження та вибору вихідних даних (за результатами аналізу практики дисциплінарних проваджень). *Криміналістика та судова експертиза у XXI столітті* : мат-ли всеукр. наук.-практ. семінару (Київ, 30.05.2024). Київ, 2024. С. 15—19. URL: <http://ndekc.lviv.ua/pdf/18.06.2024.pdf> (date accessed: 01.02.2025).

20 Положення про Центральну експертно-кваліфікаційну комісію при Міністерстві юстиції України та атестацію судових експертів : затв. наказ. Мін'юсту України від 03.03.2015 р. № 301/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0249-15#Text> (date accessed: 01.02.2025).

21 Алексейчук В. І. Зазнач. твір. URL: <http://ndekc.lviv.ua/pdf/18.06.2024.pdf> (date accessed: 01.02.2025).

22 Там само.

a forensic expert to disciplinary liability? The Special Law does not contain answers to this question. So, let's consider the following example. Pt. 2 of Article 102 of the CPC sets forth that expert opinion shall necessarily state that he/she was *warned* [hereinafter emphasis added by the author] about liability for knowingly misleading opinion and for refusal to fulfil his/her expert duties without valid reasons. At the same time, both the prosecution and the defense counsel may engage a forensic expert. However, according to the law, only the prosecution or court can warn a forensic expert: the defense counsel does not have this right. The question therefore arises: On what basis will a forensic expert, when called upon by the defense counsel, state that he/she was warned about criminal liability in his/her opinion? Who warned him/her: the defense counsel or suspect? We believe that this legislation gap should be eliminated: after the words *"the expert's opinion must state that he/she has been warned"*, it is necessary to add *"(that he/she is aware)"* of liability for a knowingly false conclusion and refusal to fulfill his/her duties without valid reasons.

Let's continue to analyze the versatility of the *legitimacy* concept. It is worth pointing out that Ukrainian legislation envisages liability for offenses against expert support for justice (in particular, those directed against a forensic expert): obstructing the appearance of a forensic expert before a court, pre-trial investigation authorities, temporary investigators, and the special temporary investigative commission of the Verkhovna Rada of Ukraine; or coercion of the forensic expert to refuse to testify or give an opinion, and also give any knowingly false testimony or

opinion, by threats of murder, violence, destruction of property of these persons or their close relatives, or disclosure of defamatory information about him/her, or tampering with a forensic expert for the same purposes, and also any threats to commit any such actions as a revenge for any previously presented testimony or opinion (Art. 386 of the CC) ²³.

Since this article stipulates criminal liability for violation of the rights of not only a forensic expert, but also other participants in the proceedings (witnesses, victims, specialists), whose functions in the process are different in nature, we believe the opinion of E. Simakova-Yefremian regarding the need to increase liability for exerting unlawful pressure on a forensic expert, exclude him/her from the norms of Art. 386 of the Criminal Code, and supplement the Criminal Code with a new article that states:

"Article 386-1. Obstructing a forensic expert's appearance, forcing him/her to refuse to provide testimony or an opinion and to give knowingly false testimony or an opinion"

Obstructing the appearance of a forensic expert before the court, pre-trial investigation authorities, temporary investigators, and the special temporary investigative commission of the Verkhovna Rada of Ukraine, forcing him/her to refuse to give testimony or an opinion, or coercion of the forensic expert to refuse to testify or give an opinion, or to provide knowingly false testimony or an opinion, by representatives of state authorities, local self-government, courts, criminal justice and pre-trial investigation authorities, or other individuals. This may involve threats of murder, violence, destruction of property, or disclosure of defamatory information about the forensic expert or his/her close relatives, or tampering with the forensic expert for

23 Кримінальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 02.02.2025).

the same purposes, and also any threats to commit any such actions as a revenge for any previously presented testimony or an opinion, —

shall be punishable by a fine of three hundred to five hundred tax-free minimum incomes, or correctional labor for a term of up to two years, or imprisonment for a term of up to three years”²⁴.

The next principle we propose discussing is the independence of a forensic expert. From the point of view of E. Simakova-Yefremian, ensuring FEA independence guaranteed by para. 2 of Pt. 1 of Art. 4 of the Special Law (prohibition of any person to interfere in the conduct of a forensic examination under the threat of liability envisaged by law)²⁵ is not always possible. The author was prompted to this opinion by empirical data obtained from a survey of forensic experts. Only one third of respondents answered the question in the affirmative: *“Have you ever been influenced to give a false expert opinion (refusal to perform your duties without valid reasons) in your practice?”* Proceeding with derivative questions: *“If so, from whom did such influence come?”*, and *“What was the nature of such influence?”* Two-thirds of respondents did not answer, suggesting that forensic experts experience a degree of anxiety in giving a positive answer, on the one hand, and the dissonance of answering “no”, on the other. Of the respondents who answered the question, 93% said “yes” and only 7% said “no”, indicating that exerting pressure on forensic experts is still a relevant issue. The situation with differentia-

tion of persons who resorted to pressure (investigators: 9%, defense attorneys: 32%, prosecutors: 2%, judges: 5%, heads of forensic science institutions: 3%, victims: 3%, suspects: 11%, representatives of a party to the case: 8%, anonymous persons: 32%) and various ways of influence (failure to provide materials or samples for comparison or samples for comparative research or providing low-quality materials or samples for expert research: 41%, exerting psychological influence on an expert: 21%, disclosure of data on expert research: 3%, physical violence against a forensic expert in criminal proceedings: 2%) raises concerns²⁶. Thereby, the above statistics point to the need to increase liability for the crime of exerting undue pressure on a forensic expert, as we have noted above.

One of the key principles in the conduct of forensic expert activity is its independence. The preamble of the Special Law contains a direct norm on the purpose of FEA: *“Ensuring justice in Ukraine through independent, qualified, and objective forensic examination focused on the maximum use of science and technology achievements”²⁷, which means the independence of a forensic expert as a party to the process. In criminal proceedings, he/she does not represent the interests of either the prosecution or defense counsel, even if he/she prepares a conclusion at the request of one of the parties. The same applies to other types of court proceedings in cases where a forensic expert conducts a forensic examination at the request of a party to the case (plaintiff or defendant), since in*

24 Сімакова-Єфремян Е. Б. Теоретико-правові та методологічні засади комплексних судово-експертних досліджень : дис. ... д-ра юрид. наук. Харків, 2017. С. 315—316. URL: <https://uacademic.info/ua/document/0517U000760> (дата звернення: 02.02.2025).

25 Про судову експертизу ... URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.02.2025).

26 Сімакова-Єфремян Е. Б. Зазнач. твір.

27 Про судову експертизу ... URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.02.2025).

all types of court proceedings a forensic expert takes an oath as follows: "I, (last name, name, middle name), hereby swear to faithfully perform the duties of a forensic expert to the best of my ability". For this reason, the legislator has consolidated guarantees to ensure a forensic expert's independence (Art. 4 of the Special Law) ²⁸.

The first guarantee of independence is the procedure for appointing a forensic expert specified by law. This norm means that a person with specific expertise can be involved in conducting a forensic examination in a particular type of proceedings only in the manner provided by Ukrainian legislation. Therefore, a forensic expert cannot be subjected to any action that is not provided for in the procedure for his/her appointment and violates his/her rights defined by the legislation. This is, of course, a guarantee of a forensic expert's independence.

The second independence guarantee is a prohibition, under the threat of legal liability, against anyone interfering with a forensic examination. Undoubtedly, this rule (as a reliable guarantee of a forensic expert's independence) is to some extent a preventive measure against exerting any pressure on a forensic expert. As mentioned above, we are in favor of increasing liability for putting pressure on the forensic expert. According to scientific sources, it is not an interference in a forensic examination if the head of a forensic science institution performs his/her organizational and managerial functions to control

the quality of expert research established by statutory regulations ²⁹, since as stated in cl. 1.10 of Sec. I of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies (hereinafter referred to as the *Instructions*): "In the course of a forensic examination at the forensic institution, a forensic institution's head is responsible for the organizational, logistical support of its performance, control over its timely conduct, and compliance with laws and other statutory regulations on forensic examination" ³⁰. In this case, it is highly important to distinguish between leadership's control over the quality of research and possible undue influence on the forensic expert during a forensic examination. The fact is that statutory regulations do not outline any signs or mechanisms that could be used to establish with certainty that a forensic expert has violated the methodology requirements for conducting a particular forensic examination, which the head of the forensic institution could identify at the stage of submitting an opinion. Moreover, according to the legislation, the choice of the method for conducting a forensic examination is the prerogative of a forensic expert, as he/she is personally responsible for an opinion he/she provides under the threat of criminal penalty. Thus, there is a dualism in the perception of legal norms on expert support for justice. On the one hand, the head of a specialized institution is vested by law with the functions of controlling the expert research quality, and on the other hand, the rule on the in-

28 Про судову експертизу ... URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.02.2025)..

29 Судові експертизи в процесуальному праві України : навч. посіб. / за заг. ред. О. Г. Рувіна. Київ, 2019. С. 43. URL: https://kndise.gov.ua/wp-content/uploads/2021/06/sudovi-ekspertyzy_posibnyk_druk.pdf (date accessed: 01.02.2025).

30 Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказ. Мін'юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 01.02.2025).

admissibility of exerting pressure on a forensic expert, in particular, by the head of a forensic institution (his/her deputy or head of a structural unit) is quite justified. In such cases, we consider it appropriate to reinstate the following provision in the Instructions: *"If, upon reviewing the expert's opinion, it is found that the research was conducted in violation of or deviated from research methodology, a forensic institution's head may reassign a forensic examination to the expert committee, which shall include a forensic expert who has conducted previous research"* (it was once removed from the Instructions to uphold the principle of a forensic expert's independence)³¹.

Another guarantee of a forensic expert's independence is associated with the independence of forensic institutions from the authorities conducting operational (search) actions, pre-trial investigation agencies, and court (forensic institutions of the Ministry of Justice and the Ministry of Health of Ukraine, private experts). Even when expert services operate under defense and law enforcement ministries and agencies (MIA, SSU), their functionality, structure, and place within the system of specialized forensic institutions do not involve subordination to inquiry or pre-trial investigation agencies. Thus, the possibility of pressure being exerted on forensic experts by the leadership of defense and law enforcement agencies (in the hypothetical scenario of needing to protect corporate reputation or maintain a biased, accusatory approach in applying specific expertise) is completely excluded.

The last and, in our view, the most important guarantee of a forensic expert's

independence is the creation of necessary conditions for his/her activities, as well as his/her financial and social security. At this point, we must also note that the realities of martial law do not allow us to fully implement the norms of Article 18 of the Special Law, which states that motivation for preventing offenses in the field of FEA would be a high level of salary, salary and pension benefits for a forensic expert, and improvement of the norms of his/her social welfare. Unfortunately, the provision of Pt. 2 of Art. 18 of the Special Law, according to which the salaries of employees working at state specialized institutions and qualified as forensic experts should be at least 10 times the minimum subsistence income for able-bodied persons as of 1 January of the calendar year³², has not yet been implemented: the budget legislation of Ukraine suspends this norm every year. We must acknowledge that at certain enterprises (especially in the private sector), the salary of an unskilled worker exceeds the salary of a forensic expert working at a specialized institution. At the same time, a forensic expert working at a specialized institution is under a heavy workload due to the unprecedented number of forensic examinations, which is constantly growing (especially under martial law), visits to inspect objects of study in frontline areas, posing an increased danger to his/her life and health, complications caused by corruption risks, and the specifics of his/her work, necessitating direct inspection of criminal elements or mass graves, murders, and other grave crimes, negatively affecting the emotional state of a forensic expert and, consequently, the results of

31 Про затвердження Змін до деяких нормативно-правових актів з питань судово-експертної діяльності : наказ Міністерства України від 20.01.2021 р. № 243/5. URL: <https://zakon.rada.gov.ua/laws/show/z0089-21#Text> (date accessed: 01.02.2025).

32 Про судову експертизу URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 01.02.2025).

his/her work. Therefore, the motivation for forensic experts to work (such as special remuneration and retirement benefits), which is enshrined in the legislation to guarantee his/her independence, needs to be implemented not only by proclamation but also by effective enforcement.

The principles of objectivity and completeness are also cornerstones of expert research based on specific expertise in the field of science, technology, art, etc. Let us dwell on the dualism of the objectivity principle. This is difficult because the sources of evidence, which also include the expert's opinion, are divided into direct and indirect, primary and secondary, indictment and acquittal, personal (subjective) and real (objective), etc.³³. To put it differently, an expert's opinion is, on the one hand, a product created by the activity of a single forensic examination subject (a forensic expert) and drawn up according to his/her internal conviction — a personal (subjective) source of evidence. On the other hand (taking into account objectivity as a principle of FEA enshrined in the legislation), the expert's opinion has an objective basis: a forensic expert examines exclusively the objects provided to him/her for exam-

ination or at his/her request and is prohibited from collecting them independently (i.e., the choice of objects does not depend on him/her). Ultimately, a forensic expert uses specific expertise from a particular field of science, technology, art, etc., that is the objective knowledge of mankind accumulated over thousands of years, which has not been dependent on him/her. Therefore, when evaluating the principle of FEA objectivity, we should consider the factors mentioned earlier.

Let's elaborate on some grounds for evaluating the principle of research completeness, which is being debated in the theory and practice of forensic science. One of the rights of a forensic expert is the right to request the provision of necessary materials due to the lack of materials that would help in answering the question posed to him/her. There is a misconception that a forensic expert is not obliged to exercise this right and may refuse to answer questions or claim that it is impossible to answer a question, refusing to submit a motion for additional materials. In fact, a forensic expert is obliged to conduct full-fledged examination in person and prepare well-grounded

33 Див., напр.: Анохін А. М. Про допустимість ймовірного висновку при встановленні обставин предмета доказування у кримінальному провадженні про дорожньо-транспортні пригоди. *Митна справа*. 2013. № 1 (85). Ч. 2. Кн. 1. С. 121—126 ; Богдан О. Ю. Критерії оцінювання висновку експерта у кримінальному процесі. *Науковий вісник Національної академії внутрішніх справ*. 2011. Вип. 2. С. 247 ; Дячук В. І. Спеціальні знання у кримінально-процесуальній діяльності [Specific expertise in criminal procedural activity]. *Там само*. 2011. Вип. 4. С. 202 ; Марчак В. Я. «Консультації та роз'яснення спеціаліста» як новела в кримінальному процесуальному законодавстві України. *Митна справа*. 2013. № 2 (86). Ч. 2. Кн. 1. С. 100—105 ; Ревака В. Використання спеціальних знань у діяльності органів слідства та дізнання. *Вісник прокуратури*. 2010. № 3 (105). С. 34 ; Його ж. Правова експертиза в кримінальному судочинстві. *Там само*. 2008. № 10 (88). С. 88 ; Його ж. Правове регулювання використання спеціальних знань при здійсненні оперативно-розшукової діяльності. *Там само*. 2009. № 2 (92). С. 85 ; Рогатинська Н. З. Значення висновку експерта як джерела доказів у кримінальному процесі України. *Держава і право*. 2009. Вип. 46. С. 479—484. URI: <http://dspace.nbuv.gov.ua/handle/123456789/9081> (date accessed: 01.02.2025) ; Ціркаль В. Перевірка та оцінка висновку експертизи на досудовому слідстві і у суді. *Право України*. 2005. № 8. С. 60.

and impartial written opinion in respect of questions asked, and where necessary, provide explanations thereon (cl. 1 of Pt. 5 of Article 69 of the CPC) ³⁴.

Therefore, the FEA principles that we have analyzed are common to any type of forensic expert activities. We believe it is in this sense that they are theoretical and practical principles of a forensic expert's activities.

Cl. 1.2 of the Instructions lists the main types (subtypes) of forensic examinations ³⁵. We focus on forensic psychological examination. The Scientific and Methodological Guidelines on the Preparation and Appointment of Forensic Examinations and Expert Studies ³⁶ determine their object, purpose, objectives, and an indicative list of questions addressed to a forensic expert. Given the specifics of expert research and specific questions posed to forensic psychological examination, it is appropriate to outline fundamental principles of psychological science.

O. Khokhlina points out that in psychology, three groups (levels) of principles are often identified: 1) derived from philosophy; 2) general psychological 3) specific scientific (sectoral) ³⁷. The principles that come from philosophy are primarily historicism, the principles of systemic nature, dialectical contradiction, unity of quality and quantity, dialectical negation, development, causality, etc. The researcher con-

siders the following to be the cornerstone principles of psychology (general psychological principles): determinism, reflection, unity of psyche and activity, development, and systemic nature (according to O. Tkachenko) ³⁸. The researcher goes on to note that the list of specific scientific principles is conditioned by a certain branch of psychology, given the specifics of its subject ³⁹.

Modern scientific psychology is a rather diverse system of disciplines and branches. Psychologists define three large groups according to the focus of activities in the process of transforming the psyche:

- theoretical;
- scientific and applied psychology;
- practical psychology.

Theoretical psychology consists of: general psychology, history of psychology, experimental, differential, psychophysiology, etc.

Scientific and applied psychology recognizes a number of branches characterized by researching and applying knowledge to optimize human behavior and activities according to the following criteria:

- a) type of human activity and behavior:
 - occupational psychology;
 - engineering psychology;
 - psychology of creativity;
 - psychology of management and leadership;
 - psychology of sports, etc.;

34 Кримінальний процесуальний ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.02.2025).

35 Інструкція ... URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 01.02.2025).

36 Науково-методичні рекомендації з питань підготовки та призначення судових експертів та експертних досліджень : затв. наказ. Мін'юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 01.02.2025).

37 Хохліна О. П. Проблема методологічних принципів психології. *Юридична психологія*. 2015. № 2. С. 5—25. URL: http://nbuv.gov.ua/UJRN/urpp-2015_2_3 (date accessed: 01.02.2025).

38 Там само. С. 6.

39 Там само.

- b) psychological issues of human development:
 - age psychology;
 - educational psychology;
 - developmental psychology, etc.;
- c) attitude toward normal psyche and mental illness:
 - health psychology;
 - medical psychology;
- d) attitude to law: legal psychology⁴⁰.

Practical psychology is a major branch of psychology that focuses on applying its theories, methods, and tools to various practical areas of human behavior and psyche⁴¹.

In view of the fundamental nature of general psychology, which belongs to the group of theoretical and legal psychology (which in turn is a component of scientific and applied psychology), it is recommended to apply an integrated approach to outline the principles of forensic psychological examination from the perspective of psychology as a science, which will further facilitate the synthesis of these principles into an integrated system in accordance with the purpose and objectives of forensic psychological examination and the methods and activities of a forensic psychologist.

O. Tkachenko, a renowned Ukrainian psychologist of the XX century, identified the following cornerstone principles of psychological science:

- 1) *the principle of determinism*. This principle explains the nature of the subject's psyche development and focuses primarily on causes determining the phenomenon under study. In the course of research, the development of individual consciousness is analyzed not only

on the basis of what is acquired in the process of formation and cultivation of experience, but also as a result of inheritance of certain hereditary traits. The subject's psyche is shaped by the product of current and post-event interaction with an object, it is an important determinant of behavior and human activity. What is more, a product is a subjectivized (disobjectified) object and an objectified subject;

- 2) *the principle of reflection*. All mental functions are reflections of reality. Mental reflection serves a signaling function and can be used to comprehensively describe the formation of behavior. It is also active in nature, e.g., in rational (mental) cognition in the process of perception (individual level) and creation (personality level) of social and historical experience. It is this principle of psychological science that aims to cover and explain all levels of mental reflection, to reveal the general and specific of the phenomenon being analyzed;
- 3) *the principle of unity of psyche and activity*. The individual's way of being and development is to perceive and reproduce established patterns of social experience. The logic of the individual's development is understood by studying the logic of his/her actions and things he/she creates. This principle clarifies the principles of determinism and reflection and reveals the mechanism of mental reflection development;
- 4) *the principle of development*. Behavior formation, the connection be-

40 Євсюков О. Ф. Психологія : навч. посіб. Харків, 2020. 256 с.

41 Практична психологія / Простір психологів : вебсайт. 13.04.2023. URL: <https://psychology.space/psychedia-post/praktychna-psychologiya/> (date accessed: 18.02.2025).

tween consciousness and activity is objectively manifested and realized in the course of psychic phenomena development. Each level of psychic evolution is characterized by a specific type of development: the organism (characterized by the general biological and biopsychic level of determination) develops in the process of maturation and formation of psychophysiological structures; the individual (characterized by the socio-psychic level of determination): in the process of learning, perception (mastery); the personality (also characterized by the socio-psychic level of determination): in the process of transformative, creative activity aimed at creating social and historical experience. Following the development principle requirements, the processes of human development as a personality should be linked to his/her creative activity. The logic of the relevant cycles of psychological categories should reflect the sequence of developmental stages of the object being studied;

- 5) *the principle of systemic nature*. It has broad heuristic possibilities in the study of personality, considering it as a special open system, and performs an important explanatory function. It contributes to the differentiation of essential aspects of the psyche's reality, outlines essential connections of the psy-

che with the reflected reality, reveals the structural organization of the psyche as a complex system of interconnected elements⁴².

Agreeing with the renowned researcher, let us emphasize that the above sequence of psychological science principles is by no means a ranking by importance.

Today, there is an urgent need to exhaustively define fundamental principles of forensic psychological examination in accordance with the specific problematics and tasks facing a psychologist. From our standpoint, the FEA principles discussed earlier in conjunction with the basic psychology principles defined by O. Tkachenko will become a solid foundation for a forensic psychological examination (provided that scientifically sound and proven methods of cognition and techniques that have passed state certification and registration are used). We believe that a forensic psychologist's personality is pivotal in the forensic psychological expert activity. Therefore, we propose that the above principles be supplemented by the principle of professional ethics of a forensic psychologist. Supporters of certain positions see professional ethics as a system of norms and a code of rules that determine the behavior of a specialist in an official setting⁴³. Others point out that professional ethics is a theory of professional morality shaping a person's attitude to his or her professional duties⁴⁴. We will discuss the principle of professional ethics in further publications.

All of the above principles are dialectically interrelated; depending on a task

42 Ткаченко О. Принципи, категорії і методологічні проблеми психології. *Психологія і суспільство*. 2009. № 1 (35). Copyright © 1979. С. 45—134. URL: <https://pis.wunu.edu.ua/index.php/uapis/article/view/390> (date accessed: 01.02.2025).

43 Бралатан В. П., Гуцаленко Л. В., Здирко Н. Г. Професійна етика : навч. посіб. Київ, 2011. 252 с. URL: http://elcat.pnpu.edu.ua/docs/Prof_etika.pdf (date accessed: 01.02.2025).

44 Професійна етика : лекції / Професійна етика : вебсайт. 2017. URL: <http://pe.ptngu.com/01.html> (date accessed: 18.02.2025).

and subject types of forensic psychological examination, some of them may prevail over others. Following the logic of forensic psychology, true representation of complex intrapsychic connections, and

the place of the psychic in the overarching relationship of physical world phenomena, research should adhere to the unity of these principles and consider them as a fundamental system (see Fig. 2).

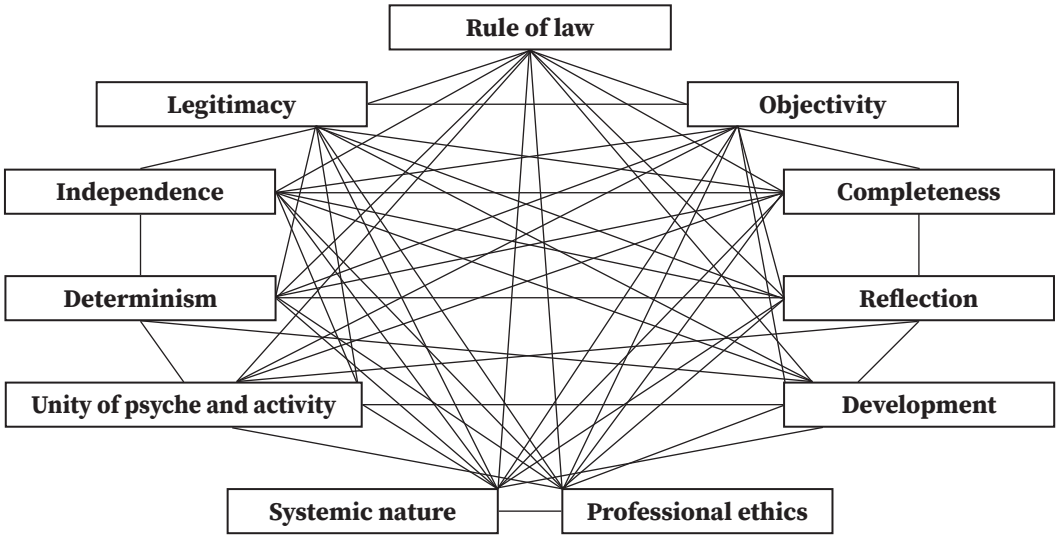


Fig. 2. System of forensic psychological examination principles

The proposed system of forensic psychological examination principles is based both on the requirements of Ukrainian legislation and on the specifics of psychological science.

Conclusions

Since the Fundamental Law of Ukraine proclaims the recognition and operation of the rule of law principle in the State, it is proposed to supplement Article 3 of the Law of Ukraine *On Judicial Examination* with this principle.

The legislation envisages liability for both a forensic expert's offenses as well as for offenses against expert support for justice (i.e., for offenses against the forensic expert): this forms the multidimensional nature of the principle of legitimacy.

The author supports researchers' suggestions on the need to strengthen liability for exerting unlawful pressure on a forensic expert: exclusion of the forensic expert from Art. 386 of the CC and supplementation of the Criminal Code with a new Art. 386-1 (punishment for obstructing a forensic expert's appearance, forcing him/her to refuse to provide testimony or an opinion and to give knowingly false testimony or an opinion).

The author emphasizes that the principle of FEA independence is one of the key principles underpinning the effective execution of forensic expert activity. Moreover, guarantees ensuring the independence of forensic experts have been considered. Specifically, it is stressed that the norm prohibiting anyone from interfering with a forensic examination under

threat of legal liability is a reliable guarantee of a forensic expert's independence and, to a certain extent, prevents any pressure from being exerted on him/her. In this regard, the researcher considers functions of a forensic science institution's head, who, on the one hand, is vested by law with functions of controlling the expert research quality, and on the other hand, the rule on the inadmissibility of exerting pressure on a forensic expert, in particular, by the head of a forensic institution (his/her deputy or head of a structural unit) is quite justified. We consider it appropriate to reinstate in the Instructions the rule that the head of a forensic institution may reassign a forensic examination to the expert committee, which shall include a forensic expert who has conducted previous research (if, upon reviewing the expert's opinion, it is found that the research was conducted in violation of or deviated from the research methodology).

The author analyzes guarantees of a forensic expert's independence, which is closely related to the independence of forensic institutions from the authorities conducting operational (search) actions, pre-trial investigation agencies, and court (forensic institutions of the Ministry of Justice and the Ministry of Health of Ukraine, private experts). Even when expert services operate under defense and law enforcement ministries and agencies (MIA, SSU), their functionality, structure, and place within the system of specialized forensic institutions do not involve subordination to inquiry or pre-trial investigation agencies. This also excludes the possibility of exerting pressure on well-versed persons.

The author proves that the essential guarantee of a forensic expert's independence is creation of necessary conditions for his/her activities, as well as his/her financial and social security. Given the ex-

cessive workload of forensic experts, the unprecedented number and complexity of forensic examinations under martial law, visits to inspect objects of study in frontline areas, the need to examine dangerous criminals, inspect sites of mass graves, murders, and other grave crimes, motivation for forensic experts to work (such as special remuneration and retirement benefits), which is enshrined in law to guarantee his/her independence, needs to be implemented not only by proclamation but also by effective enforcement.

Emphasis is placed on the dualism of the objectivity principle: on the one hand, the expert's opinion is a personal (subjective) source of evidence, and on the other hand, the expert's opinion has an objective basis related to the study of submitted objects, prohibition to collect them independently, and the use of objective expertise from science and technology by a forensic expert. Therefore, when evaluating the principle of FEA objectivity, we should consider the factors mentioned earlier.

In light of the specifics of expert research and tasks involved in forensic psychological examination, the author has, for the first time, developed a system of principles for forensic psychological examination. This system incorporates both the general principles of FEA outlined in Ukrainian legislation and those from the field of psychology.

Основні принципи судово-експертної діяльності та психологічної науки на виконанні завдань судово-психологічних експертних досліджень

Олександр Євсюков

Проаналізовано нормативно-правові акти та літературні джерела з питань судово-експертної діяльності й науки психології.

Обґрунтовано підстави для диференціювання принципів судово-експертної діяльності й науки психології та їхній вплив на виконання завдань судово-психологічних експертних досліджень. Під час роботи над статтею застосовано загальні, окремі та спеціальні методи пізнання. Оскільки Основний Закон України проголошує визнання та дію в державі принципу верховенства права, запропоновано доповнити цим принципом статтю 3 Закону України «Про судову експертизу». Доведено різнобічність реалізації принципу законності: законодавством передбачено відповідальність як судового експерта за вчинені ним правопорушення, так і за правопорушення проти судового експерта. Підтримано пропозиції науковців щодо необхідності внесення змін до Кримінального кодексу України в аспекті посилення відповідальності за протиправний тиск на судового експерта. Наголошено на тому, що принцип незалежності судово-експертної діяльності є одним із провідних під час її здійснення, і розглянуто гарантії забезпечення незалежності судового експерта. Опрацьовано дискусійні питання реалізації принципів об'єктивності й повноти дослідження. Проаналізовано основні групи принципів психологічної науки: похідні із філософії, загально-психологічні та конкретно-наукові (галузеві). Увагу акцентовано на тому, що принципи судово-експертної діяльності у взаємозв'язку з основними принципами психології створюють надійні засади для проведення судово-психологічного експертного дослідження (за умови застосування науково-обґрунтованих і перевірених методів пізнання та методик, які пройшли державні атестацію й реєстрацію і є наріжними для виконання судових експертиз цього напрямку).

Ключові слова: судово-експертна діяльність; судова експертиза; основні принципи психології; судова психологічна експертиза; принципи незалежності, законності, об'єктивності; принцип верховенства права; повнота дослідження; відображення єдності психіки та діяльності; принцип розвитку; принцип системності; принцип професійної етики.

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The author states that there is no conflict of interest relating to this topic.

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