

Signs of Errors Made by Forensic Experts: How They Differ From Errors in Other Areas of Human Activity

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The authors pinpoint that expert errors can lead to erroneous decisions in criminal proceedings (due to their tendency to become investigative, comprehensive investigative-prosecutorial, or judicial errors). Unfortunately, such errors do become more complex, evolve, and adversely affect the process of ascertaining objective truth. This situation has highlighted the pressing need to identify specific signs of expert errors that are distinct from errors in other areas of human activity, and the urgent necessity for defining these signs. The Article Purpose is to conduct a theory-based analysis of factors underlying the emergence of expert errors, to identify signs characterizing errors made by forensic experts during forensic examinations and distinguishing them from errors made in other areas of human activity, and to develop a sound definition for the concept of “expert error” that could be used in the system of forensic expert activity. Methodological framework of the research comprises general scientific and specialised methods of scientific inquiry. Essentially, error is a distorted reflection of reality in the human mind. It has been observed that errors are associated with erroneous cognitive processing, inadequate reasoning, misinterpretation and

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imprecise actions, and with violation of certain rules. It has been pointed out that error is always unintentional, which distinguishes it from falsehood (lying/misrepresentation) and disinformation (false information disseminated as true in order to mislead). While identifying differences between human error and expert error, we provide the analysis on error interpretation across various scientific disciplines. It has been emphasized that errors in fact-finding may manifest in the form of: a statement of fact in the absence of sufficient grounds for doing so; a denial of a fact where there are grounds for recognising its occurrence. Findings confirm that causes of errors can be either objective (measurement instrument errors, unrecorded environmental influences on objects under study, etc.) or subjective (overconfidence, negligence of a forensic expert, his/her over-reliance on erroneous expert opinions, etc.). The concept of "error" has been addressed. Key signs of errors, particularly expert errors, have been identified.

Keywords: activity; error; cause; forensic expert; sign; truth; opinion; expert research; object; forensic examination.

Research Problem Formulation

Under current circumstances, special attention is devoted to streamlining efficiency of forensic expert activity. This situation reflects the fact that, in the course of judicial proceedings, the need to order forensic examinations or engage a forensic expert is growing steadily, as an expert's opinion constitutes one of evidence sources during the process of establishing specific facts. It bears noting that the evidentiary value of an expert's opinion depends on its validity, internal coherence, accuracy and plausibility of all actions, assessments, and opinions of a forensic expert. It is because during a forensic examination, the forensic expert must comply with the requirements of current legislation and make full use of scientific and technical advances, as this allows them to arrive at the objective truth.

Without a doubt, a careful study of certain patterns in any area of human activity and principles governing this activi-

ty will help you succeed. Such knowledge helps identify to what extent the level and state of a specific field of activity matches its essence and potential, and also helps explore the capacity for further development and improvement. The underlying basis for this is an understanding of the nature of such activity, its specifics, social and economic determinants, and existing needs, etc.

Various approaches to resolving issues and tackling tasks in this field determine complexity and multifaceted nature of processes underpinning forensic expert services. Since conducting forensic examinations is the main activity of a forensic expert, we shall focus on specific issues relating to the occurrence of expert errors, as these irreversibly affect the quality of forensic examination findings and experts' opinions.

It is worth noting that expert errors (owing to their tendency to be transformed into investigative, composite investigative-prosecutorial or judicial errors) lay

the groundwork for erroneous decisions being made during criminal proceedings. Sadly, expert errors tend to become more challenging, thereby evolving and negatively impacting the process of uncovering objective truth. Errors committed by a forensic expert in the course of research or when evaluating its results may result in an expert's opinion being excluded from the body of evidence. Accordingly, the urgent need for research into signs of expert errors has been stressed. Such a study would help to distinguish these errors from those in other areas of human activity and to characterise these signs.

Analysis of Essential Researches and Publications

The range of issues involving expert errors in various areas of human activity, particularly those made by forensic experts, is a subject of interest to many researchers. It has also attracted the attention of criminalists, psychiatrists, psychologists, and representatives of other disciplines, such as: V. Abramova ¹, I. Aliiev ², V. Bakhin ³, V. Honcharenko ⁴, R. Dombrovskiy ⁵, F. Dzhabadov ⁶, N. Klymenko ⁷, V. Lysychenko ⁸, V. Pervomaiskiy ⁹, M. Sehai ¹⁰, M. Shcherbakovskiy ¹¹, et al. Recently, there has been

- 1 Абрамова В. М. Поняття помилки судового експерта. *Вісник Академії правових наук*. 2002. № 3 (30). С. 172—179 ; Її ж. Експертні помилки: сутність, генезис, шляхи подолання : дис. ... канд. юрид. наук. Київ, 2004. 266 с. ; Абрамова В. М., Свобода Є. Ю. Помилки в судово-експертній діяльності: сутність, умови виникнення та види. *Криміналістика и судебная экспертиза*. 2014. Вып. 59. С. 72—80. URL: http://nbuv.gov.ua/UJRN/krise_2014_59_11 (date accessed: 01.04.2026).
- 2 Алиев И. А. и др. Концептуальные основы общей теории судебной экспертизы. Баку, 1992. 235 с.
- 3 Бахін В. П., Садченко О. О., Кузьмічов В. С. Потреби слідчої практики : навч. посіб. Київ, 1993. 56 с.
- 4 Гончаренко В. И. Единство и отличие криминалистики и криминалистической экспертизы. *Теорія та практика судової експертизи і криміналістики*. 2002. Вип. 2. С. 55—59.
- 5 Домбровский Р. Г. Познание и доказывание в расследовании преступлений : автореф. дис. ... д-ра юрид. наук. Киев, 1990. 62 с.
- 6 Джавадов Ф. М. Концептуальные основы развития судебной экспертизы в современных условиях : дис. ... д-ра юрид. наук. Киев, 2000. 373 с.
- 7 Клименко Н. И. Экспертные ошибки и их причины. *Криминалістика и судебная экспертиза*. 1988. Вып. 37. С. 35—38 ; Клименко Н. И., Домбровский Р. Г. Криминалистические знания: природа и содержание. *Там же*. 1995. Вып. 47. С. 3—10.
- 8 Лисиченко В. К. Особенности проверки и оценки заключений экспертизы на предварительном следствии и в суде. *Там же*. 1982. Вып. 24. С. 30—36.
- 9 Пervomaiskiy В. Б. Експертна посилка / Юридична енциклопедія. У 6 т. Т. 2 : Д — Й // редкол.: Ю. С. Шемшученко (голова) та ін. Київ, 1998. С. 346.
- 10 Сегай М. Я. Судова експертологія — наука про судово-експертну діяльність. *Вісник Академії правових наук України*. 2003. № 2 (33) / 3 (34). С. 740—762. URI: <https://dspace.nlu.edu.ua/handle/123456789/694> (date accessed: 01.04.2026).
- 11 Щербаковський М. Стандарт достовірності висновку експерта у кримінальному процесі. *Теорія та практика судової експертизи і криміналістики*. 2021. Вип. 3 (25). С. 21—39. DOI: 10.32353/khrife.3.2021.03 (date accessed: 01.04.2026) ; Його ж. Слідчі та експертні помилки, що обумовлюють недопустимість експертного висновку. *Теоретичні та прикладні проблеми судової експертизи і криміналістики : тези доп. учасн. IX Всеукр. наук.-практ. конф. (Харків, 30.09.2022)*. Харків, 2022. С. 37—40. URL: https://library.pp-ss.pro/index.php/ndippsn_20220930/article/view/shcherbakovskiy/pdf (date accessed: 01.04.2026).

a marked increase in academic interest in the study of expert errors, as evidenced by a number of specialised studies and the renewed focus on this issue in Ukraine. This is due to heightened attention given to the rule of law and fairness surrounding the reforms of national legislation, government branches and civil society required for EU membership.

Nevertheless, opinions vary on how to interpret the definition of expert error or other key aspects of the outlined issue, leading to less-than-effective prevention of such errors, hindering their timely detection, rapid rectification of expert errors and harmful consequences they cause. Therefore, expert errors remain a widespread and insufficiently researched legal phenomenon.

Article Purpose

Analyse factors contributing to expert errors, identify signs that define errors made by forensic experts during forensic examinations and make an attempt to differentiate such errors from the ones committed in other areas of human activity. Propose a sound definition of the *expert error* concept within the system of forensic expert activity.

Research Methods

Methodological framework of the study was built on general scientific and special methods of scientific inquiry (including dogmatic, hermeneutic, comparative ones, extrapolation, and analogy).

Main Content Presentation

Any truth is rooted in objective reality, as it manifests itself in certain concepts or judgments. The truth that a forensic ex-

pert reveals in the course of conducting forensic examinations finds specific expression in reasoning formulated as opinions that are based on identification, study, and evaluation of the totality of features typical of objects under study.

An objective foundation of truth, however, does not constitute a guarantee, once and for all, of attaining valid knowledge. In the process of cognition, a subjective aspect is integral to the performance of specific duties by a forensic expert. This is due to the fact that inherent individual psychological traits of different actors shape the way reality is reflected in their consciousness. That is why a forensic expert draws inaccurate or erroneous opinions when he/she fails to realise that these opinions do not accurately reflect reality. Hence, it can be concluded that expert errors occur for the same reasons as errors in any other human activity.

However, sometimes a subject makes a wrong decision on the basis of information he/she has deliberately distorted, whilst being fully aware that knowledge he/she has applied is questionable. The remaining question is: do such decisions count as erroneous? Clearly, inaccuracy cannot be reduced solely to fallacy or error; it is therefore necessary to clarify whether the inaccurate is always an error. For this purpose, let us examine how error emerges and develops in human activity, and what signs are typical of it.

It is hard to deny that, in order to succeed in any field, a person must rely on a deep understanding of patterns and principles governing certain activities. Doing so makes it possible to assess a specific field's current maturity level and state—namely, its nature and potential—as well as to identify existing opportunities for further development. Understanding nature, specifics, needs, socio-economic

determinants, etc., of a particular area of activity should serve as the basis for enhancing it. With this in mind, we deem it appropriate to dwell on interpretations of the general concept of *activity*. It should be pointed out that scientific papers offer no generally accepted interpretation of this definition. Meanwhile, the *activity* term is commonly understood:

- firstly, as a synonym for active action;
- secondly, as a philosophical concept for defining human activity.

We should emphasize that this concept has acquired the status of a philosophical category today. Accordingly, philosophically speaking, the category of activity is fundamental in both genetic and ontological approaches. T. Pshcholvoskyi focuses on the fact that *“activity, as a subject’s way of being in the world, is inherent only to humans and constitutes their mode of existence”*¹². Therefore, subjects of human activity should be regarded as individuals, groups, and society.

V. Abramova stated: *“Broadly speaking, the concept of activity refers to the multifaceted process by which a specific social subject seeks to establish conditions for its own existence and development, and to transform social reality with a view to meeting societal needs, goals, and objectives. Activity intensification is a defining feature of our times. It manifests itself in an increase in social engagement within society and in improvement of lifestyles. Lifestyle is viewed as a way of living under specific objective and subjective conditions”*¹³.

Note the statement that *“activity is a force that reproduces and transforms the system of objective and subjective conditions, social relations and social institutions, along with the system of corresponding ideas, people’s way of life and thought”*¹⁴. Scholars believe that human activity can be seen as a way of life and a means for society and a human to develop; as a comprehensive process through which humans transform their natural and social environment. Bearing this in mind, human activity is divided into two broad categories: practical and spiritual; and the following *“typical features of activity, such as purposefulness, a transformative and creative nature, objectivity, distribution and coordination of functional duties, as well as communication between people engaged in activity”* are identified¹⁵.

The issue of human activity phenomenon continues to be a subject of keen interest for legal experts, with many offering their own interpretations of this concept and its structure. More specifically, N. Klymenko and R. Dombrovskyi defined *“a specific type of activity—forensic activity—concluding that forensic knowledge is rooted in practical forensic cognitive activity”*¹⁶.

Notably, the activity-based approach to the study of cognition objects is recognised as an exceptionally important methodological principle in psychology; it is entirely applicable to forensic science, which is now becoming a separate branch of science distinct from criminalistics: forensic expertology. Distinguishing between criminalistics and forensic science (in terms of objects, subjects and functions), M. Sehai

12 Pszczółowski T. Zasady sprawnego działania: wstęp do prakseologii. Warszawa, 1967. 222 s.

13 Абрамова В. М. Экспертні помилки ... С. 8.

14 Бергер В. Е., Коваленко Ю. Н. Основные стадии производства комплексных криминалистических и судебно-медицинских экспертиз. Криминалистика и судебная экспертиза. 1981. Вып. 22. С. 30–35.

15 Там же.

16 Клименко Н. И., Домбровский Р. Г. Указ. соч. С. 4, 8.

interprets “forensic expert activity as the object of study of forensic science”¹⁷.

Praxeological approach used in forensic expertology as an applied science contributing to the optimisation of specific activities within the justice system is also supported by F. Dzhabadov¹⁸. He argues that the object of forensic expertology is forensic expert practice. Other scholars have supplemented the object of study with organisational and procedural forms of using forensic examination¹⁹.

M. Sehai believes that “forensic expert activity can be defined as constitutionally grounded activities of government authorities, legal entities, and individuals aimed at ensuring justice through independent, objective, and qualified forensic examination that draws on scientific and technological advances”²⁰.

As previously stated, forensic expert activity is a reflection of professional practice, a type of scientific and practical activity that (like any other activity) is inherently prone to errors. According to this statement, errors are an integral part of forensic expert practice. However, their presence hinders the goal of forensic expert activity, which is to ensure justice through independent, objective, and qualified forensic examinations. It is therefore necessary to address the issue of errors in forensic expert activity.

Since errors are inherent in every area of human activity, error has a distinct purpose in various fields of scientific knowledge: philosophy, mathematics, logic, economics, medicine, law, etc. Meanwhile,

each branch of science deals with its own errors, often leaving aside distinctive signs of errors that come up in other sciences. In medicine and veterinary science, issues pertaining to errors made by doctors, vets and in treatment are studied within the theory of errology; in mathematics, or the “general theory of errors”, there is no distinction between human and computer errors, etc. M. Vanchak notes that “the following forms of erroneousness are identified: scientific and non-scientific, empirical and theoretical, religious, political, economic, moral, etc.”²¹.

Discussing the nature of errors in reasoning, O. Bandurka and O. Tiahlo propose classifying them into material and logical errors, noting that “material errors involve violations of, for example, laws of physics, rules of mathematical calculation, or norms of due legal process <...> The specifics of purely logical errors is that they are universal; that is, they occur in every area of social space: everywhere human thought reaches. They often prove to be the factor that initiates or reinforces material errors. Knowledge of logic then proves to be a necessary condition for successfully overcoming such compound errors”²².

It should be pointed out that legal scientific papers do not provide a unified interpretation of the term *error*, nor is there a single view on how to understand this concept. To grasp its essence, let us turn to the scientific understanding of this concept across various fields of study: philosophy, philology, mathematics, medicine, psychology, law, etc. We will try to explain

17 Сегай М. Я. Зазнач. твір. С. 750.

18 Джавадов Ф. М. Указ. соч.

19 Алиев И. А. и др. Указ. соч.

20 Сегай М. Я. Зазнач. твір. С. 752.

21 Ванчак М. Л. Поняття законотворчих помилок у кримінальному праві. Науковий вісник Львівського державного університету внутрішніх справ. Серія юридична. 2011. № 3. С. 233.

22 Бандурка О. М., Тягло О. В. Юридична логіка : підручник. 2-ге вид., перероб. і допов. Харків, 2017. С. 24. URI: <https://dspace.krok.edu.ua/handle/krok/8130> (date accessed: 01.04.2026).

the nature of an error both in its semantic sense and in terms of cognitive activity. First, let us clarify the semantic basis behind the *error* concept.

Definitions of the term *error* can be found in Ukrainian dictionaries. They are as follows: “An erroneous opinion or action, an inaccuracy, or fallacies”²³; «1. Errors in calculations, spelling, etc. <...> 2. Errors in behaviour, actions, etc.”²⁴. To make a mistake means “1. To make an error in calculations, spelling, etc. <...> To find oneself short of something (usually money); to fail to include or hand over something. <...> 2. To do something the wrong way. <...> To have a misconception, leading to inaccuracy. <...> To shape a false opinion or impression of someone. <...> To make a wrong prediction. <...> 3. To confuse something with something of the same kind or nature”²⁵.

Obviously, an error is the result of a flawed line of reasoning, an inappropriate action, or a wrongful act resulting in failure to achieve the intended goal; it is a pattern of behaviour based on a fallacy. An error is always a breach of norms; it is an action that is always contrary to what is right, committed unintentionally and always involving misconduct. All of the above indicates that errors arising from flawed reasoning, inadequate thoughts, misinterpretations and professional misconduct constitute violations of certain rules. Flawed thinking and the resulting actions undermine the integrity of thought and professional practice, thereby creating conditions for various errors to occur.

By its very nature, erroneousness is a distorted reflection of reality in the human mind. Note that erroneousness is always unintentional, unlike falsehood (lying) and disinformation (deliberately false information disseminated as true in order to mislead).

In modern scientific papers philosophers primarily focus on the relationship between truth and error (mistake, fallacy) within scientific and practical knowledge: “Error serves a vital cognitive function, one that is even more significant and more cognitively valuable than truth itself. It turns out that errors, too, can contribute to science and play a part in productive search”²⁶. Philosophers also single out logical errors (also known as fallacies) associated with violations of logical principles and sound reasoning. Such errors are also tied to inappropriate mental operations and logical techniques.

Logically speaking, judgements and opinions (or conclusions) contain errors, since an opinion is regarded as erroneous if it does not relate to the object of cognition. In logic, an error is a distorted perception of objective reality, which is shaped by a subject's personal traits and can lead to unpredictable outcomes. Logic explores various types of errors occurring when defining and distinguishing concepts, when drawing up opinions, handling evidence, etc. Accordingly, V. Bernaz defines logical errors as a sub-category of epistemological errors and classifies them as follows: errors in concepts; errors in

23 Новий тлумачний словник української мови. У 4 т. : для студент. вищ. та серед. навч. закл. Т. 3 : Обє — Роб / укладачі: В. Яременко, О. Сліпущко. Київ, 1998. С. 556.

24 Помилка / Словник української мови online. Т. 1—16 (А — Ряхтливий). URL: <https://surl.li/newuuu> (date accessed: 29.03.2026).

25 Помилатися, помилитися / Там само. URL: <https://surl.li/lpxaiq> (date accessed: 29.03.2026).

26 Антологія лібералізму: політико-правничі вчення та верховенство права / упорядники: С. Головатий, М. Козюбра, О. Сироїд. Київ, 2008. С. 792.

judgements; errors in reasoning; errors in evidence²⁷.

In jurisprudence, error is one of the complex phenomena that have not yet been subject to systematic study. Regarding this, L. Kalienichenko notes: *“Given that in legal practice error generally entails certain legal implications, the task of clarifying the general legal and scientific importance of an error and developing its universal concept is one of the pressing challenges facing contemporary jurisprudence”*²⁸. According to Ye. Yevhrafova, error *“is the result of a miscalculation, or an inadequate, imprecise or incorrect approach <...> to the nature and character of regulated social relations, and to the choice <...> of legal methods and means”*²⁹.

Having analysed developments by legal experts, it is clear that there is no single, unambiguous definition of an expert error. This is largely influenced by various academic approaches to understanding the general concept of error in human activity. Given that forensic expert activity constitutes a distinct kind of human activity, it can be argued that such activity rooted in common principles underlying all human activity. Consequently, any discussion of expert errors must be grounded in common principles pertaining to the likelihood of errors occurring in any human activity.

In legal awareness, in the legal conduct or acts of subjects, or in legal documents, a legal error is one that fails to meet certain requirements, rules, standards, mod-

els, principles, values, etc. By their very nature, such requirements are idealised phenomena defining positive characteristics. Characteristics of a real-world phenomenon must correspond to these idealised characteristics. The subject of a legal error is always a person as the bearer of knowledge. It should be pointed out that legal regulations do not contain an explicit definition of a legal error; therefore, it is not regarded as an unlawful act. However, an error is, in essence, an objectively unlawful phenomenon, as it does not correspond to the objectives of social development and hinders the achievement of socially significant goals.

Notably, when making a decision after reviewing results of their activities, a subject (individual) is convinced of its validity, hoping that it will deliver a favourable outcome. If the actual outcome matches the expected one, this is regarded as natural. If, however, a result does not match the favourable outcome, it is deemed inaccurate, and this can lead to anxiety and disruption of one's activities. A negative outcome is equated with an error. To understand “right” and “wrong”, people often rely on the philosophical proposition regarding the knowability of objects and phenomena in the material world, and the possibility of attaining reliable knowledge and seeking truth.

Right decision, being the result of human activity, stems from reliable knowledge of facts, phenomena, and events. Defining reliability as an accurate reflection

27 Берназ В. Д. К вопросу о логических ошибках при решении криминалистических задач. *Актуальные проблемы уголовного процесса и криминалистики на современном этапе* : сб. науч. тр. Одесса, 1993. С. 230—231.

28 Каленіченко Л. І. Помилка як категорія правознавства. *Вісник Харківського національного університету імені В. Н. Каразіна. Серія «Право»*. 2014. Вип. 17. С. 31. URL: <https://periodicals.karazin.ua/law/article/view/1180/956> (date accessed: 29.03.2026).

29 Євграфова Є. П. Практика виправлення законотворчих помилок. *Часопис цивільного і кримінального судочинства*. 2016. № 2 (29). С. 116. URL: http://nbuv.gov.ua/UJRN/Chcks_2016_2_8 (date accessed: 29.03.2026).

of reality can be seen as aligning truth with objective reality. Hence, reliability of a decision made by an actor is equivalent to the truthfulness of that decision, that is, its accuracy and conformity with reality. With this in mind, cl. 1 of Pt. 5 of Art. 69 of the Criminal Procedure Code of Ukraine stipulates the following: *“A forensic expert shall conduct full-fledged examination in person and prepare well-grounded and impartial written opinion in respect of questions asked, and where necessary, provide explanations thereon”*³⁰.

In the view of V. Abramova, *“Two approaches have emerged in academia regarding the relationship and equivalence of the concepts of truth and reliability. The first is that “true” and “reliable” mean adequate, consistent knowledge has been attained about the object of study, and that reliability implies truth. However, although the approach to the equivalence of the concepts of truth and reliability (still widely recognised by the academic community today) does not entail any fundamental error, in the opinion of other scholars, the second approach is more sound; its essence lies not in equating “truth” and “reliability”, but rather in establishing qualitative determinacy and specific nature of each of these concepts, something that is of significant methodological importance for cognition of crime scene traces”*³¹.

Obviously, when it comes to discovering the truth in the course of a forensic examination, one must understand the importance of obtaining reliable knowledge and ensuring that opinions and de-

cisions of a forensic expert are sound and well-reasoned. We note that unreliability of an expert's opinion may adversely affect activities of the investigator during investigation and judicial proceedings. In their quest for the truth, investigators may also make errors. In the course of a forensic examination, a forensic expert is responsible for both providing formally accurate opinions and ensuring that these opinions align with reality.

V. Abramova also stated that *“accurate representation of various facts of the surrounding world in human consciousness is a prerequisite for human existence. Therefore, in a commonly understood narrow sense, it can be argued that truth, unlike falsehood, constitutes accuracy; it is alignment of our conceptions of the object with the object itself”*. However, objective truth is incomparably greater than mere accuracy. It embodies the process of cognition, the transition from likelihood to certainty. Accuracy alone attests only to the existence of our reasoning, to the very fact that it functions properly, that is, to the very capacity of human beings to perceive objective reality”³².

With the aim of distinguishing between human errors and expert errors, we analysed the concept of error across various disciplines. Thus, the philosophical approach asserts that logical errors³³ occur when rules are violated during proving (proof procedure), and also classifies error as false knowledge (equally characteristic of memory, doubt, and hypothetical reasoning)³⁴. However, from the standpoint

30 Кримінальний процесуальний кодекс України 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 25.03.2026).

31 Абрамова В. М. Експертні помилки ... С. 11.

32 Там само. С. 13.

33 Свириденко В. Доведення, доказ / Філософський енциклопедичний словник / В. І. Шинкарук (гол. редкол.) та ін.; Л. В. Озадовська, Н. П. Поліщук (наук. ред.) Київ, 2002. С. 165. URL: https://archive.org/details/filosofskiyi_entsyklop/page/496/mode/2up (date accessed: 25.03.2026).

34 Завгородній Ю. Ньяя / Філософський енциклопедичний словник ... С. 437. URL: https://archive.org/details/filosofskiyi_entsyklop/page/496/mode/2up (date accessed: 25.03.2026).

of logic, “a human error is a faulty inference or line of reasoning resulting from a violation of laws of thought (post hoc ergo propter hoc fallacy [or false sequence error], affirming the consequent [converse error], arbitrary inference error, non causa pro causa fallacy [or false cause error], etc.)”³⁵. Furthermore, clinical medicine distinguishes between cognitive errors (in diagnosing) and errors in the choice of methods to achieve a specific goal (patient treatment procedures)³⁶. In addition, similar to medical errors, in epistemology errors can be divided into those arising from an inaccurate assessment of factual circumstances and those arising from an erroneous evaluation of established facts.

Looking at expert errors under these criteria, it should be mentioned that errors in fact-finding can take the following forms:

- stating a fact without sufficient grounds therefor;
- denying a fact when there are grounds for ascertaining its existence.

Additionally, psychology identifies the role of errors within the structure of human activity. These errors can be localised:

- in perception (visual, auditory, etc.);
- in memory (memorisation, retention, recall);
- in decision-making (in logical operations, calculations);
- in creative thinking;
- in executive actions (in movement, verbal responses).

Erroneous actions include “slips of the tongue, typos, lapses of memory, memory errors, and fallacious errors”³⁷. Errors occur both in representations and in actions because of their non-conformity with ideal patterns: the ones where information is represented.

It should be observed that each error is externally manifested in an action or inaction with a negative outcome. What is more, error can be regarded as a system comprising several interconnected elements, including the object, the subject, objective and subjective aspects in their interrelatedness. Each of these elements is capable of adversely affecting the development of the others; this is reflected, either explicitly or implicitly, in a certain cluster of signs. For example, the likelihood of failing to achieve a desired outcome increases when a crisis situation develops.

Challenging situations arising in a forensic expert's work while conducting forensic examinations may be exacerbated by organizationally disordered situations:

- incomplete understanding of one's own goals and needs;
- inaccurate assessment of one's own capabilities, resources, and performance criteria;
- severe time constraints and pressure to complete a substantial amount of work within an extremely tight deadline;
- lack of adequate professional training;
- labour-intensive nature of certain methods;

35 Цалін С. Д. Логічний словник-довідник. 4-те вид., випр. і допов. Харків, 2006. С. 113, 226, 227.

36 Сенюта І. Я. Цивільно-правове регулювання відносин у сфері надання медичної допомоги: питання теорії і практики : монографія. Львів, 2018. 640 с. URL: <https://library.megu.edu.ua:9443/jspui/handle/123456789/2915> (date accessed: 25.03.2026).

37 Шапар В. Б. Сучасний тлумачний психологічний словник. Харків, 2007. С. 101. URL: <https://archive.org/details/psycholoh2007/page/100/mode/2up> (date accessed: 25.03.2026).

- a considerable number of research objects to be examined;
- inadequate or outdated infrastructure.

Whether these factors will interfere with obtaining reliable expert examination findings, however, depends solely on the individual. It is a forensic expert, with all his/her abilities and habits, personality traits and willpower, knowledge, emotions and experience, who ultimately makes decisions and ensures they are implemented. Wrong decisions are a reflection of one's personal perspective on any phenomenon. This is precisely why error is a subjective category; it always originates from the subject (or individual): their actions or inaction. Other elements act as factors that may (or may not) lead to misrepresentation of reality in the conscious mind of the subject. Accordingly, the first sign of an error in human activity is **the presence of a subject** (testifying to the subjective nature of activity).

Unlike errors made by technical devices and in the natural world, human errors arise during the deliberate transformation of the environment. In such conditions, however, the result of this transformation does not always correspond to the set goal. Errors are likely to arise as a result of a particular individual's incorrect choice of goals and needs, or of an inaccurate assessment of one's capabilities, resources, criteria, methods, means and forms of activity.

Bearing in mind that errors can be made both deliberately or inadvertently, the concept of error requires further in-depth analysis. Following the above, our analysis reveals that what is accurate can be defined as adequate, whilst what is inaccurate can be classified as inadequate. This implies that inaccuracy is the opposite of accuracy, a form of inadequa-

cy — that is, a failure to accurately reflect reality. However, equating an error with any inaccuracy is also wrong. It is important to distinguish between deliberate and unintentional inaccuracies; to tell the difference between unintentional errors and deliberately inaccurate results, the latter of which are not errors.

It should be noted that error is a manifestation of the inaccurate, yet error is only one part of this broader concept. To equate an error with any inaccuracy is also wrong. What is meant here is an involuntary, unintentional error, as opposed to a deliberate inaccuracy. Accordingly, the second sign of human error is defined as **unintentional inaccuracy**. The statement "deliberate error" (or "conscious error") implies that errors are made deliberately, consciously. Nevertheless, asserting this entails accepting a fallacy, a logical contradiction.

It is crucial to highlight that an erroneous result may arise not only as a result of actively transforming actions, but conversely, due to the failure to take actions required to achieve an accurate and favourable outcome. This is precisely why an error can result from both actions and inaction on the part of the individual. In terms of actions, an error may occur during the perception, processing, evaluation of information, decision-making, or the motor implementation of such a decision, etc.

Inaction can manifest as an error when an individual ignores the required course of action or what was necessary to be executed in a particular context. This may involve professional oversights or failure to comply with regulatory documentation. Oversights alone do not constitute errors. This raises the question: at what point can misjudgements, wrongful actions, or inaction be considered errors? An error should

be considered as such only when it has affected the outcome (erroneous judgment, error in decision-making, miscalculation, clerical error, slip of the pen/ or linguistic slip, etc.). Therefore, the third sign of an error is that only such ***judgments, actions or inaction that have led to an erroneous outcome*** should be regarded as errors.

Summarizing the above, we can conclude that an error in human activity has its own “face”: an outwardly manifested action or inaction with a negative result that is distinguished by certain signs. Where one of these signs is lacking, the phenomenon cannot be referred to as an error.

It is worth noting that human activity is inherently prone to error in situations characterised by:

- a high level of informational uncertainty regarding initial data of a situation at hand;
- a lack of a guaranteed positive outcome (coupled with the influence on an individual of objective and subjective factors contributing to the occurrence of errors);
- the possibility of negative consequences resulting from errors.

The likelihood of an error occurring in certain circumstances depends on an individual and their psychological, social, and biological traits. This explains why, in the course of their activities, each person perceives and evaluates facts prompting them to act in their unique way. These perceptions are shaped by their psychological, social, and biological traits. Ultimately, minds of two different subjects perceive and represent the same object in different ways. It is these conditions that prevent the individual from making an accurate decision.

V. Abramova has analysed various approaches to defining error in human activity, determining that all types of human activity inherently contain the potential for error, and has proposed the following broad definition: ***“Errors in human activity are inadvertently inaccurate judgments, actions, or inaction arising from a distorted sensory perception or mental interpretation of objects, phenomena, or processes in a person’s consciousness, conditioned by psychophysiological and social traits of the individual and manifested in inaccurate decisions or conclusions”***³⁸.

Given that forensic examination of objects involves certain challenges and does not always lead to an accurate opinion, it can be assumed that errors made by forensic experts during forensic examinations exhibit certain distinctive signs.

Today’s Ukrainian justice system is known for actively utilising specific expertise. Specific expertise manifests itself as having a legal basis for conducting forensic examinations, with an expert’s opinion subsequently serving as a procedural source of evidence when proving facts and circumstances of substantive legal significance in court. Art. 1 of the Law of Ukraine: *On Forensic Examination* defines the term *forensic examination* as “a research-based study conducted by an expert using specific expertise in science, technology, art, or crafts. It aims to analyse material objects, phenomena, or processes to provide expert opinions on case-related facts”³⁹.

Justice authorities expect a forensic expert, who is independent of parties to proceedings and courts, to provide complete and objectively reliable answers to questions posed to him/her on the basis of his/her expertise in a specific field of

38 Абрамова В. М. Експертні помилки С. 18.

39 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: 01.04.2026).

science, technology, art or crafts. Often-times, fairness of the final court decision as an act of justice, as well as the fate, rights and interests of parties involved in proceedings (defendants, victims, plaintiff, respondents, etc.), depends entirely on the accuracy and exhaustiveness of responses provided to these complex and crucial questions by a forensic expert. It is precisely this specific uniqueness of an expert's opinion as a distinct source of judicial evidence that makes an expert error inadmissible. That is because an error made by a forensic expert can logically lead to a judicial error.

Unfortunately, investigative and judicial practice has seen instances of expert errors resulting in innocent people being convicted, whilst some real criminals have escaped punishment. The most high-profile of these errors concern actions of medical examiners in cases that have come to the attention of the European Court of Human Rights (hereinafter the *ECHR*) due to the ineffectiveness of investigations in Ukraine into the unlawful deprivation of a person's right to life under the Convention (*Gongadze v. Ukraine*⁴⁰, *Serdyuk v. Ukraine*⁴¹, *Matushevsky and Matushevskya vs. Ukraine*⁴², *Basyuk v. Ukraine*⁴³, *Khaylo v. Ukraine* cases⁴⁴). These cases were subject to tight supervision by the Committee of Ministers of the Council of Europe (with a view to streamlining the process of obtaining

evidence from forensic medical examinations, etc.).

Predominately, specific nature of expert errors is attributed not only to the level of development and understanding of errors within the scientific discipline underlying a particular expert field (chemistry, physics, biology, etc.), but also to existing errors in related specific expertise, objects, and subjects utilised during the conduct of forensic examinations (criminalistics, forensic science theory, theory of forensic evidence, etc.). This is because humans are not the only ones prone to error; errors also occur in technical devices (technical errors), in the natural world (in the plant and animal kingdoms, where metabolic disorders and deviations from normal functioning, behaviour and development take place), etc.

With this in mind, it should be pointed out that causes of errors can be *objective* (measurement instrument errors, unrecorded environmental influences on the objects of study, etc.) and *subjective* (overconfidence, carelessness, being misled by a false expert opinion, etc.). And although an expert's erroneous actions or opinions are shaped by a variety of factors, there is a big personal element in the whole expert error thing. It is because a forensic expert, "*while independent from parties and courts, is nevertheless swayed to some degree by interests and emotional states of various individuals*

40 Справа «Гонгадзе проти України»: рішення ЄСПЛ від 08.11.2005 р. (заява № 34056/02). URL: https://zakon.rada.gov.ua/laws/show/980_420#Text (date accessed: 01.04.2026).

41 Справа «Сердюк проти України»: рішення ЄСПЛ від 12.03.2015 р. (заява № 61876/08). URL: https://zakon.rada.gov.ua/laws/show/974_a49#Text (date accessed: 01.04.2026).

42 Справа «Матушевський і Матушевська проти України»: стисл. виклад остаточ. рішення ЄСПЛ від 23.06.2011 р. (заява № 59461/08). URL: https://court.gov.ua/userfiles/file/court_gov_ua_sud5010/Konvenciya_z_prav/st_2/MATUSHEVSKYY%20AND%20MATUSHEVSKA.pdf (date accessed: 01.04.2026).

43 Справа «Басюк проти України»: рішення ЄСПЛ від 05.02.2016 р. (заява № 51151/10). URL: https://zakon.rada.gov.ua/laws/show/974_b15#Text (date accessed: 01.04.2026).

44 Справа «Хайло проти України»: рішення ЄСПЛ від 13.11.2008 р. (заява № 39964/02). URL: https://zakon.rada.gov.ua/laws/show/974_439#Text (date accessed: 01.04.2026).

with whom they must interact and communicate in the course of conducting forensic examinations in criminal proceedings” (initiators and clients; heads and colleagues, in case they work in a forensic institution, etc.)⁴⁵. It is not uncommon for “the power of reason to yield to the power of emotion, leading to what is known as emotion fallacy”⁴⁶.

Expert errors stem from a complex motivation behind a forensic expert’s professional conduct and opinions, acting as a manifestation of their personal worldview. Such an error is most often ambiguous and contradictory, and may be linked simultaneously to a lack of knowledge or forgetfulness, insufficient experience or unwarranted confidence in one’s expertise, an objectively complex expert situation, as well as to a deliberate disregard for regulatory requirements and scientific and methodological guidelines, and to ordinary carelessness.

In such situations, an expert error represents a hybrid form of expert culpability: intentional action combined with carelessness regarding a resulting outcome leading to the formulation of an erroneous opinion. It is not always possible to clearly distinguish between these different motivations, separating a good-faith error from a deliberately wrongful action or opinion. Researchers do not even rule out the possible occurrence of an expert error committed “deliberately, not accidentally”⁴⁷, where a forensic expert, driven by certain motives and objectives, acted deliberately in the wrong manner in order to pass off

their deliberate actions and reasoning as erroneous and unintentional, concealing their own wilful and deliberate intent, by disguising it as an error, so as not to incur negative consequences for themselves, such as those resulting from a deliberate wrongful or unlawful act.

Legal liability and public condemnation are considerably less severe for a person who has made an error than for a person who has acted with intent. Deliberate errors on the part of forensic experts are more likely to remain undetected, as the presumption of innocence means that it is difficult to prove that a forensic expert acted with intent to commit such errors. However, not all oversights by a forensic expert should be regarded as an expert error; only those that have distorted forensic analysis findings, led to inaccurate expert opinions, and are included in an expert’s opinion as evidence.

Rectification of *minor* and *insignificant* errors made by forensic experts may be introduced in court during interrogation of a forensic expert, who shall testify as to the cause of an error and explain how it affects forensic examination findings. On rare occasions, the court may, either on its own initiative or upon the motion of a party to proceedings, order a new or repeated forensic examination for this purpose. If a court finds a substantial error in an expert’s opinion, the opinion cannot serve as the basis for a court decision.

Therefore, **expert error** refers to *erroneous judgments, actions, or opinions reached*

45 Баулін О. В. Поняття, види, причини й наслідки помилок експерта в кримінальному судочинстві України. *Європейський правовий часопис*. 2025. Вип. 6, 7. С. 190. DOI: 10.36919/3041-1149(Print).6-7.2025.188-195 (date accessed: 01.04.2026).

46 Там само ; Мельник Я. Г. Помилки у системі традиційної логіки: філософсько-діалектичний та комунікативно-девіатологічний аспекти / за ред. доц. Г. Д. Єрушевича. Івано-Франківськ, 2019. С. 16. URL: <https://kc.cnu.edu.ua/wp-content/uploads/sites/156/2020/09/%D0%9F%D0%BE%D0%BC%D0%B8%D0%BB%D0%BA%D0%B8.-doc-1.pdf> (date accessed: 01.04.2026).

47 Абрамова В. М. Поняття помилки С. 176.

by a forensic expert which objectively reflect a breach of logic laws and regulatory provisions; it also involves improper application of expert methodology and scientific and methodological guidelines during a forensic examination, preventing the completion of a forensic examination's objectives; or a forensic expert's failure to act, provided an expert error is unintentional. It is precisely this sign that distinguishes an expert's error from a criminal offence against justice. Under such a scenario, a forensic expert believes (or is inwardly convinced) that their actions, conclusions, or inaction are valid. At the same time, consequences of the forensic expert's actions discussed above (whether resulting from an honest oversight or a deliberate act) become grave in the event that they lead to a miscarriage of justice.

When analysing common types of expert errors with a view to identifying causes and conditions of their occurrence, we suggest focusing on the *epistemological*, *logical*, and *psychological* aspects of their evolution.

Notably, in a broad sense, expert errors are interpreted as errors of thought (perception, judgement, understanding), whilst in a narrow sense they are errors of action (actions, decision-making, influence). Errors of thought are associated with the cognition of objective reality and constitute the *epistemological aspect* of error analysis. Errors of action, shaped during the cognitive process aimed at achieving a set goal, constitute the *teleological aspect*. The teleological approach focuses on the purpose behind a particular process and the appropriateness of a specific action.

A common factor linking both of the above approaches to understanding causes and conditions of expert errors is the expert's inner conviction, directly related to patterns of volitional processes that motivate their cognitive activity. M. Dementiev noted that forensic researchers have been exploring the issue of a forensic expert's internal conviction since the 1950s: "V. P. Kolmakov, a distinguished Ukrainian criminalist, was the first to elaborate on the issue of a forensic expert's inner conviction"⁴⁸, and individual aspects of conviction "have been meticulously studied at various times by... L. Yu. Arotsker, <...> N. I. Klymenko, V. P. Kolmakov, <...> M. V. Saltevs'kyi, M. Ya. Sehai, E. B. Simakova-Yefremian, <...> V. D. Yurchyshyn <...>, and others"⁴⁹.

Trustfulness and reliability of cognitive activity are inextricably linked to a forensic expert's internal conviction, which serves as a key motivator in getting to the bottom of objective truth during forensic research. Regardless of how exactly the forensic expert processes initial data provided to them by a forensic research initiator—manually (heuristically) or using automated tools—their intellectual capabilities play a decisive role in this information-processing, determining the level of a forensic expert's competence and, consequently, the likelihood of making errors.

Note that an essential component of a forensic expert's competence is the ability to select appropriate cognitive techniques: tried-and-tested, highly effective methods and tools for gathering and heuristically analysing initial data. The level of the forensic expert's prudence, as a subjective component in the process of

48 Демент'єв М. Внутрішнє переконання та форми висновків експерта. *Теорія та практика судової експертизи і криміналістики*. 2022. Вип. 4 (29). С. 152. DOI: 10.32353/khrife.4.2022.08 (date accessed: 01.04.2026).

49 Там само. С. 150.

obtaining new evidentiary information, depends entirely on their internal convictions about the appropriateness of their own actions, operations and research procedures they perform. Moreover, a forensic expert's interpretation of evidentiary information obtained in the course of investigations involves not only establishing facts and circumstances, but also adapting that information to investigatory needs. A step-by-step process of accumulating information during expert research on evidence contributes both to the compilation of interim and final opinions and to the strengthening of the forensic expert's internal conviction, thereby increasing their confidence in their actions.

Both the epistemological and logical aspects of a forensic expert's internal conviction are inseparable from the psychological aspect of their mental activity and reflect their inner volitional capacity to formulate a categorical, unambiguous conclusion that leaves no room for doubt. Such absolute certainty should be regarded as a moral and psychological guarantee of infallible (or error-free) cognition, proper evaluation of initial data, and flawless logic in decision-making. This means that a forensic expert's personal conviction is a subjective reflection of objective truth. This is precisely what one must rely on when analysing the expert's actions at every stage of a forensic analysis.

It has been noted above that unintentionality remains the defining sign of expert error, since the loss of this component fundamentally alters the approach to determining both the nature of expert error and its structure, shifting focus from the psychological to the legal realm. From our perspective, expert errors stem primarily from a forensic expert's heuristic mental activity. With this in mind, it is advisable to review the procedural, organi-

sational, and methodological aspects of expert errors in light of their underlying causes.

Conclusions

Error has been proven to be a fairly common phenomenon, characteristic of all areas of human activity. Therefore, various approaches to its understanding have been developed. For example, the praxeological approach defines successful activity as one that corresponds to reality, which is achieved when the subject (individual) adequately mirrors objects, phenomena or processes in their mind and makes sound decisions based on these representations. If, however, a result does not match reality, one can speak of an error having occurred.

Given that activities of a forensic expert are a type of human activity grounded in common principles determining fundamental nature and mechanism of errors that occur in any field of activity (taking into account its specific nature), we assume that a forensic expert cannot avoid all errors (which will inevitably possess distinctive signs) whilst conducting forensic examinations and formulating expert opinions. Accordingly, the issue of expert errors should be approached based on the likelihood of errors occurring in any area of human activity.

The concept of error is interpreted as follows: ***“Errors are inadvertently inaccurate judgments, actions, or inaction arising from a distorted sensory perception or mental interpretation of objects, phenomena, or processes in a person’s consciousness, conditioned by psychophysiological and social traits of the individual and manifested in inaccurate decisions or opinions (conclusions).*** Principle signs of errors have been identified as follows:

- Error is an unintentional (accidental) inaccuracy (where a forensic expert's error is caused not by intent but merely by carelessness or unintentional actions); it is important to distinguish between erroneous results that have been made unintentionally and those that have been made deliberately and cannot be regarded as errors;
- Error is a subjective category; it can only be committed by a subject (a forensic expert).
- Any error is manifested in an action or omission with a negative outcome (manifested in forensic expert activity).
- Only such actions or inaction that are embodied in a result constitute an error (manifested as inaccurate expert opinions made by a forensic expert).

**Ознаки помилок
судового експерта:
відмінність від помилок
в інших сферах
людської діяльності**

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Дарина Духненко**

Зауважено, що експертні помилки (через тенденцію їх можливого перетворення на слідчі, комплексні слідчо-прокурорські або судові) створюють підґрунтя для ухвалення помилкових рішень у процесі кримінального провадження. На жаль, експертні помилки ускладнюються, розвиваються та негативно впливають на процес з'ясування об'єктивної істини. Окреслена ситуація висвітлила нагальну потребу у виявленні тих ознак експертних помилок, які відрізняють їх від помилок в інших сферах людської діяльності, і схарактеризувати ці ознаки. Метою статті є теоретичне аналізування передумов виникнення експертних помилок, визначення ознак, що характеризують помилку судового експерта під час проведення експертиз і відрізняють їх від помилок в інших сферах людської діяльності, та розроблення обґрунтованого визначення поняття «експертна помилка» в системі судово-експертної діяльності. Методологічне підґрунтя дослідження склали загальнонаукові та спеціальні методи наукового пізнання. За своєю сутністю помилковість є викривленим відображенням дійсності у свідомості людини. Зауважено, що помилки пов'язані з неправильним перебігом думки, неадекватністю мислення, неправильним тлумаченням і неточністю дій, порушують певні правила. Наголошено, що помилковість завжди ненавмисна, що відрізняє її від неправди (брехні) і дезінформації (свідомо неправдива, що поширюється як правдива для введення в оману). Під час виявлення відмінностей помилок людини від експертних помилок проаналізовано тлумачення помилки в різних науках. Акцентовано, що помилки у встановленні факту можливі у вигляді констатації факту за відсутності для того достатніх підстав і заперечення факту за наявності підстав для визнання його наявним. Визначено, що причини помилок можуть бути об'єктивними (похибки вимірювальних приладів, незафіксований вплив на об'єкти дослідження навколишнього середовища тощо) і суб'єктивними (самовпевненість та неуважність експерта, його захоплення помилковою експертною версією тощо). Наведено тлумачення поняття «помилка» і виокремлено основні ознаки помилок, зокрема експертних.

рактеризувати ці ознаки. Метою статті є теоретичне аналізування передумов виникнення експертних помилок, визначення ознак, що характеризують помилку судового експерта під час проведення експертиз і відрізняють їх від помилок в інших сферах людської діяльності, та розроблення обґрунтованого визначення поняття «експертна помилка» в системі судово-експертної діяльності. Методологічне підґрунтя дослідження склали загальнонаукові та спеціальні методи наукового пізнання. За своєю сутністю помилковість є викривленим відображенням дійсності у свідомості людини. Зауважено, що помилки пов'язані з неправильним перебігом думки, неадекватністю мислення, неправильним тлумаченням і неточністю дій, порушують певні правила. Наголошено, що помилковість завжди ненавмисна, що відрізняє її від неправди (брехні) і дезінформації (свідомо неправдива, що поширюється як правдива для введення в оману). Під час виявлення відмінностей помилок людини від експертних помилок проаналізовано тлумачення помилки в різних науках. Акцентовано, що помилки у встановленні факту можливі у вигляді констатації факту за відсутності для того достатніх підстав і заперечення факту за наявності підстав для визнання його наявним. Визначено, що причини помилок можуть бути об'єктивними (похибки вимірювальних приладів, незафіксований вплив на об'єкти дослідження навколишнього середовища тощо) і суб'єктивними (самовпевненість та неуважність експерта, його захоплення помилковою експертною версією тощо). Наведено тлумачення поняття «помилка» і виокремлено основні ознаки помилок, зокрема експертних.

Ключові слова: діяльність; помилка; причина; експерт; ознака; істина; висновок; експертне дослідження; об'єкт; судова експертиза.

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Declaration of Competing Interest

The authors declare no conflict of interest.

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