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Organization of forensic examinations in criminal proceedings as a condition for the effectiveness of the investigation of criminal offences

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Abstract

In the science of criminology and the activity of investigating criminal offences, organizational activity is of immense importance. One of the forms of its implementation is forensic examinations, and its improvement directly affects the achievement of the objectives of criminal proceedings. The purpose of this study was to highlight organizational activities related to conducting forensic examinations as a means of ensuring effective pre-trial investigation and trial in every criminal proceeding. To fulfil the set purpose, general scientific and special methods were used to investigate the object and subject of research: analysis, synthesis, deduction, induction, analogy; special-legal methods: comparative-legal, historical-legal, system-structural, method of system analysis. Based on the analysis of the provisions of regulations and scientific, educational, and methodological material, it was established that the organization of forensic examination in criminal proceedings encompasses the system of organizational and administrative actions of authorized subjects and lies in ensuring the proper, timely, and objective appointment and conduct of forensic examinations, as well as obtaining an expert opinion, which is required to achieve the objectives of criminal proceedings. The main stages of the organization of forensic examinations in criminal proceedings were identified and characterized. The subjects of the activity under study were classified, specifically according to the nature of the implementation of organizational actions. It was found that a prominent place among the subjects of the considered activity belongs to the investigator as the subject of initiation of forensic examinations. It is the investigator who collects and analyses materials when conducting a pre-trial investigation, decides which circumstances of the criminal proceedings need to be verified by conducting an expert examination, and evaluates the expert's opinion. The provisions given in this paper can be used in the practical activities of individual forensic experts and forensic divisions and institutions; entities authorized to carry out pretrial investigation of criminal offences

Keywords:

forensic expert; investigator; prosecutor; expert research; evidence; legislation; expert opinion; international cooperation; martial law

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Introduction

The investigation of criminal offences under modern conditions, with the rapid development of science and technology, requires the use of special knowledge in various forms, the main of which is the conduct of forensic examinations. An important condition for the effective investigation of criminal offences is its forensic support, one of the components of which is expert forensic support.

Increasing the effectiveness of forensic expert activity depends on the state of its organization, compliance with the modern needs of the practice of fighting crime and scientific and technical achievements designed to meet these needs. The system of such an organization in its concrete expression is governed by legislation and departmental regulations. It is important that under the current conditions of countering the armed aggression of the Russian Federation, the commission of war crimes by the occupiers against the citizens of Ukraine, law enforcement agencies have faced questions related to the need to investigate such criminal actions, an integral component of which is the mandatory expert research.

The assigned tasks should be solved because the investigation of criminal offences should take place factoring in the new achievements of science and the best practices of law enforcement both in Ukraine and in democratic countries of the world. One of the factors that determines the need to research ways to improve the effectiveness of the investigation of criminal offences is related to the search for optimal forms of investigation organization, ways and means of solving its forensic tasks. Considering this, an indispensable condition for the effectiveness of the investigation of criminal offences is the implementation of forensic expert activities, and specifically relates to the organization of forensic examinations in criminal proceedings.

As noted by V.Yu. Shepitko & M.V. Shepitko (2021), the application of forensic science and examination is a necessary prerequisite for the investigation of crimes at the local and national levels. In the context of the investigation of certain types of criminal offences, A.S. Bali *et al.* (2020) and V.Y. Tatsiy *et al.* (2019) investigated the organization of trials.

H.S. Bidniak (2019) studied the organizational and preparatory measures of conducting an examination during the investigation of certain criminal offences. L.M. Holovchenko (2013) offers well-elaborated scientific opinions related to the assessment of the forensic expert's opinion. The scientific papers of N. Klymenko (2019) highlight the issues related to determining the place of the general theory of forensic examination in forensic science and form the theoretical framework of the study. Scientific articles of O.M. Kliuiev (2018) refer to the organization of international cooperation during forensic examinations.

The specified studies contain conceptual principles related to the organization of forensic expert activity and

are definitely the basis for further scientific research on the specified issues. Therewith, the organization of forensic examination in criminal proceedings should be considered as a component of the investigation of criminal offences, the essence of which is the system of organizational and administrative actions of authorized subjects, to ensure the achievement of the objectives of criminal proceedings. Considering the constant changes taking place in science and technology, the development of innovative technologies, it is important to update the theoretical and practical basis of the science of forensics. Specifically, this applies to the search for new ways to improve the organizational activity of the investigator, as a subject authorized to appoint expert research in criminal proceedings, its evaluation, and use when proving the circumstances of a criminal offence.

The relevance of the study of the outlined issues is also substantiated by the current state of the fight against crime, which in the light of today's events has reached a new international level. To effectively investigate new types and forms of criminal offences, a powerful basis is necessary, which will include basic recommendations regarding the organization of the activities of the relevant subjects, which also concerns the organization of forensic examinations in criminal proceedings.

The purpose of this paper was to highlight the organization of forensic examinations in criminal proceedings as a condition for ensuring the effectiveness of the investigation of criminal offences. The scientific originality lies in the formation of practical recommendations for increasing the effectiveness of organizational activities when appointing and conducting forensic examinations, as a means of ensuring an effective pre-trial investigation and trial in every criminal proceeding.

Literature Review

From the standpoint of the scientist N. Klymenko (2019), the science of forensics is based on scientifically sound and proven means, techniques, and methods of crime detection, investigation and trial of criminal cases, which serve as a tool for the work of investigators, detectives, experts, judges, etc.

When investigating the organizational foundations of conducting forensic examinations in criminal proceedings, it is necessary to analyse the scientific concepts related to the definition of the essence and significance of forensic examination in the activity of investigating criminal offences. An integral component of the investigation of criminal offences is the use of special knowledge to solve issues that require the use of scientific, technical, or other special knowledge that transcends the professional activity of the investigator. Therewith, the coverage of the subject of research is impossible without the investigation of scientific literature, which relates to the study of the organizational foundations of forensic expert activity, as a prerequisite for ensuring

the investigation of criminal offences and achieving the objectives of criminal proceedings.

Thus, L.M. Holovchenko (2013) explored the concept of forensic expert activity in Ukraine, as well as promising areas for its improvement. The scientist connects forensic expert activity with activities in the field of public administration and scientific and methodological support in the field of forensic examination, which includes the organization and conduct of forensic examinations, carried out for proper administration of justice through independent, objective expert research by qualified experts.

However, in the context of the study, the institution of "forensic expert activity" is quite broad in content, and covers the organizational, legal, methodological, technical principles of forensic expert justice, which provides all forms of judicial proceedings in Ukraine. However, the subject of this study is narrower, and the authors consider it expedient to analyse the organizational aspects of forensic examination in criminal proceedings.

In this regard, attention should be paid to select papers by N.M. Tkachenko (2016), wherein she investigated the term "expert support for criminal proceedings". Tkachenko notes that the following types of support are used in relation to criminal proceedings: organizational, personnel, logistical, financial, informational, forensic, expert, etc. The authors of this paper can agree with Tkachenko's opinion regarding the statement that expert support of criminal proceedings is a component of expert delivery of justice, as it is widely used in all forms of judicial proceedings in Ukraine, including criminal ones. Based on the results of research conducted by N.M. Tkachenko (2016), it is worth emphasizing the organizational component of forensic examinations, as a component of the investigation of criminal offences.

Forensic examination itself can be considered as a procedural, investigative activity, which aims to conduct an expert study of objects or processes to establish the circumstances of criminal proceedings, on behalf of competent subjects, the results of which are reflected in a procedural document that constitutes a source of evidence – an expert's opinion. The activity of preparation for expert research materials is important, which includes a system of procedural actions, organizational measures, technical actions, tactical techniques, aimed at collecting, verifying, evaluating, processing, and providing the appropriate subject with materials for expert research.

Some authors, among the types of forensic support of criminal proceedings, single out technical forensic and expert forensic support. Therewith, they share a common purpose, which is to ensure the activity of investigating criminal offences at the stages of pre-trial investigation and trial, and should be carried out using scientifically sound means, methods, and techniques, as well as forensic recommendations for their practical application (Chornous, 2014).

However, analysing the specified opinion, it should be noted that the organization of forensic examinations in criminal proceedings encompasses a much wider spectrum, which includes both the management component of the specified activity and its tactical principles. Despite the scientific interest and numerous scientific studies on forensic expert activity, the problems of the organization of forensic examinations in criminal proceedings as a condition for ensuring the effectiveness of the investigation of criminal offences are not exhausted and have not been adequately reflected in modern scientific papers.

Materials and Methods

During the preparation of the present paper, a comprehensive analysis of the scientific studies of foreign and Ukrainian authors, who directly or indirectly investigated issues related to the organization of forensic examinations in criminal proceedings, was conducted. In this study, both general scientific and special methods, which are means of scientific research, were used to thoroughly examine the organizational activity of the forensic investigator. Thus, the dialectical method helped research the significance of the organization of forensic examinations in criminal proceedings as a component of the investigation of criminal offences.

Methods of synthesis and analysis were used to formulate the conclusions of this scientific paper. Using methods of comparison, description, and classification, the opinions expressed in science regarding the identification of the main stages of the organization of forensic examinations were systematized.

Among the special methods, the comparative legal method, historical-legal method, system analysis method, system-structural method, dogmatic method, axiomatic method, and forecasting method were used to cover the subject under study comprehensively. The comparative legal method was used to analyse the norms of material and procedural law, scientific categories, definitions, and approaches. Using the historical-legal method, the meaning of the terms "forensic examination", "expert support", "organization of forensic examinations" was revealed, and the development of scientific opinions on certain issues of the subject under study were highlighted.

Using the system analysis method, as well as the system-structural method, the subjects of organizational activity for conducting forensic examinations in criminal proceedings were identified and systematized. To form scientific concepts and categories, namely, clarify the terminology of forensic science in relation to the definition of the term "organization of forensic examinations in criminal proceedings", the dogmatic method of scientific research was used. The axiomatic method was used to construct the typical features of each stage of the organization of forensic examinations, according to the general rules of logic. To formulate proposals for

improving the activities of the investigator in the organization of forensic examinations in criminal proceedings, the forecasting method was used.

Results and Discussion

Both pre-trial investigation bodies and other authorized entities, which are not directly subordinated to each other, take part in the investigation of criminal offences, but their activities must be coordinated and effective. Therewith, an important condition for the detection, investigation, and solving of criminal offences is the proper organization of the interaction of these bodies (Oderii & Shulha, 2011).

The complex organizational system, represented by such entities as the investigator (inquiry officer, detective), the prosecutor, also includes the entities that perform the task of expert forensic support for the investigation of criminal offences, and directly – the conduct of a forensic examination. Therefore, the organization of forensic examination during the investigation of criminal offences can be interpreted as a system of organizational and administrative actions of authorized subjects, which lies in ensuring the proper, timely, and objective appointment and conduct of forensic examinations, as well as obtaining an expert opinion, which is sought to achieve the objectives of criminal proceedings.

The legal basis for the organization of forensic examination in criminal proceedings is as follows: the Constitution of Ukraine¹, the Criminal Procedural Code of Ukraine (hereinafter – the CPCU)², the Law of Ukraine “On Forensic Examination”³, the Instruction on the Appointment and Conduct of Forensic Examinations and Expert Research (hereinafter – the Instruction) and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Research, approved by the Order of the Ministry of Justice of Ukraine No. 53/5 dated October 8, 1998⁴.

Activities related to the organization of forensic examinations are entrusted to the prosecutor, investigator, inquirer, detective, and to the heads of relevant expert institutions, as well as to individual experts. In the context of the study, namely from the standpoint of the analysis of the organizational foundations of conducting forensic examinations, as a component of the activity of investigating criminal offences.

According to the analysis of the norms of the CPCU⁵, the Law of Ukraine “On Forensic Expertise”⁶, as well as the reference literature, the subjects of the organization of forensic examination in investigating criminal offences should be distinguished, namely by the nature of organizational actions:

- entities entitled to initiate forensic examinations, to involve individual experts: an investigating judge or court, a prosecutor, an investigator, an inquiry officer, a defence attorney, and other parties to criminal proceedings;

- entities that, pursuant to the Law of Ukraine “On Forensic Expertise”, are authorized to conduct forensic expert investigations: state specialized institutions, their territorial branches, expert institutions of a communal form of ownership, as well as forensic experts who are not employees of the specified institutions, and other specialists (experts) from relevant fields of knowledge according to the procedure and under the conditions determined by legislation;

- entities entrusted with scientific-methodical and organizational-management support of forensic expert activities: the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine, the Department of Expert Justice Support, the Coordinating Council for Forensic Expertise Issues, etc.

Let us consider the organizational principles of forensic expert activity using evidence from the Expert Service of the Ministry of Internal Affairs (hereinafter – the MIA) of Ukraine. Based on the analysis of legal acts that determine the principal areas of development of forensic expert activity in Ukraine, namely the Strategy for the Development of the Expert Service of the Ministry of Internal Affairs of Ukraine for the period until 2020, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 229 dated 15.03.2017⁷ (hereinafter – the Strategy), it is necessary to single out issues related to the improvement of the organization of forensic examinations in criminal proceedings. Specifically, the need to establish cooperation between bodies and organizations in the field of forensic expert activity; training of highly qualified specialists in the latest areas of forensic examination and expert research; increasing the level of training of persons who appoint forensic examinations and evaluate conclusions based on the results of forensic examination, namely the prosecution;

¹Constitution of Ukraine No. 254к/96-VR. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/conv#Text>.

²Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

³Law of Ukraine No. 4038-XII “On Forensic Examination”. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38>.

⁴Order of the Ministry of Justice of Ukraine No. 53/5 “On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies”. (1998, October). Retrieved from https://zakononline.com.ua/documents/show/192273__192338.

⁵Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁶Law of Ukraine No. 4038-XII “On Forensic Examination”. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38>.

⁷Order of the Ministry of Internal Affairs of Ukraine dated No. 229 “On the Approval of the Development Strategy of the Expert Service of the Ministry of Internal Affairs of Ukraine for the Period Until 2020 and the Plan of Measures for Its Implementation”. (2017, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0022-21#Text>.

ensuring compliance with the deadlines for conducting forensic examinations; the need to expand international cooperation.

The tasks defined in the Strategy are still partially unresolved, namely, the mechanism of interaction between the entities that initiate forensic examinations and the entities that directly conduct them is not fully established. This also includes issues related to the excessive workload of expert institutions and individual experts, which, in turn, leads to missing the deadlines for conducting examinations, unintentionally prolonging the pre-trial investigation of criminal proceedings, and obtaining low-quality expert opinions. This requires improvement of the organizational aspects of forensic examinations in criminal proceedings.

Furthermore, the entire investigation of criminal offences is characterized by phasing. For instance, in criminology, during the formation of recommendations within the framework of individual methods of investigation, a situational approach is most often used, considering the division of the investigation procedure into certain stages (staged investigation) (Korniev, 2021).

Therewith, legal science has developed two positions related to the division of the activity of investigating criminal offences into separate stages. According to the opinions of the first group of authors, the investigation of criminal offences should be divided into two stages: initial and subsequent (Shevchuk, 2013; Prokopenko, 2023). Instead, other opinions substantiate the selection of three stages of the investigation: initial; the next (subsequent) stage; final stage (Kohutych, 2013).

Within the framework of the investigation of certain types of criminal offences, as an example, the following stages of forensic examinations are defined, which are carried out when protecting human rights in the field of healthcare, namely: preparatory; organizational; basic; final (Shevchuk, 2013; Shevchuk *et al.*, 2022). In the context of the present study, to follow the sequence of the presentation of the main aspects of the organization of forensic examinations in criminal proceedings, three stages were distinguished, each of which has its own specific features: preparatory stage – characterized by the decision-making on the need to appoint and conduct a forensic examination; working – preliminary analysis of materials submitted for expert research and direct examination; final – delivery of the expert's opinion, evaluation of the results of the conducted examination by the investigator.

The preparatory stage is important, because it is at this stage that the investigators decide on the necessity of appointing a forensic examination in criminal proceedings. The prerequisite for the appointment of an expert during the investigation of a criminal offence is the need to refer to special knowledge to confirm or refute certain facts obtained during the pre-trial investigation.

The principal tasks of using the conclusions of expert research in criminal proceedings should be

highlighted as follows: verification of existing evidence and obtaining new evidence in the course of it; proposing and verifying versions of the commission of a criminal offence, overcoming opposition to the investigation; establishment of circumstances that contributed to the commission of criminal offences; substantiation of decisions taken by the investigator in the investigated criminal proceedings (Ortinski, 2021). Thus, the activity of the investigator using the expert's conclusions can be characterized both from a procedural and an organizational and tactical standpoint.

Among the grounds that serve as a precondition for the examination, it is possible to define a resolution on the appointment of an examination, which is drafted by pre-trial investigation bodies pursuant to the procedure established by law, or a contract with an expert or an expert institution, concluded at the written request of the defence party or other persons (Kushpit *et al.*, 2019). This procedure is preceded by familiarization of the investigator with the procedural requirements and methodical recommendations for each particular type of expert investigation, determination of the expert institution or individual expert to conduct the expert investigation, selection of materials and samples for the expert investigation, determination of the main tasks that need to be solved as a result of the expert investigation, posing questions of the expert investigation.

It is important for the investigator to correctly choose the time for the appointment of an expert examination, which will depend on several factors, namely: the amount of information collected in the criminal proceedings, the state and nature of the evidentiary material, etc. Attention should be paid to the importance of preliminary consultation of the investigator with the expert, regarding individual issues, at the stage of appointing an expert investigation. Scientists G.O. Spitsyna & G.S. Bidniak (2018) believe that this form of interaction is quite common. It should also be emphasized that the investigator can consult with an expert who conducts an examination on various issues related to the subject of the examination, clarify individual points or expand them.

Therewith, it is important to establish cooperation between the investigator and the expert institution or an individual expert to obtain proper consultation on certain issues related to the definition of the subject of expert research, the formulation of the tasks of the examination, the selection of materials, etc. The specified problem can be highlighted in the context of the organization of the investigation of certain types of criminal offences. Thus, in the current conditions, investigative practice is faced with the spread of new types and methods of committing criminal offences, specifically cyber terrorism. In turn, to ensure the investigation of this category of criminal offences, the organization of forensic examinations in criminal proceedings needs improvement. Investigators in criminal proceedings on the facts of the commission of acts related to the implementation

of criminal actions using computer and other software often appoint an examination of malicious software.

Difficulties with organizing the examination of malicious software are manifested in the fact that it consists of a complex study and requires the involvement of a wide range of experts. Specifically, pursuant to the Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies, approved by the Order of the Ministry of Justice of Ukraine dated October 8, 1998 No. 53/5¹ expert studies of malicious software can be carried out within the framework of the examination of computer equipment and software products, examination of telecommunication systems and facilities.

Therewith, considering the specific nature of the issues to be resolved during the examination of malicious software, as well as a significant array of information that must be processed by the expert, the authors of the present study consider it appropriate to provide within the relevant regulations separate norms dedicated to the procedure for conducting the examination of malicious software. Since the investigator of the pre-trial investigation body may not in all cases be aware of the issues to be resolved in the event of the need to conduct an examination of malicious software, and may formulate questions incorrectly or inaccurately, etc., the regulatory and organizational settlement of the specified issue is important. As for statutory regulation, it is necessary to introduce appropriate legislative amendments, which should relate to the definition of the object and the main tasks of the examination of malicious software and contain an approximate list of issues to be resolved. From an organizational standpoint, in turn, the issue related to the need to establish information interaction regarding the appointment and conduct of forensic examinations between pre-trial investigation bodies, the court, other authorized subjects, experts of various departments, as well as non-state experts needs to be resolved.

It should be emphasized that with the beginning of the full-scale invasion of the Russian Federation on the territory of the Ukrainian state and the introduction of martial law, the criminal procedural legislation underwent significant changes, both in terms of the organization of the investigation of war crimes and criminal offences of a general criminal nature. An innovation was the introduction of a new section of the CPCU, which

regulates procedural and organizational aspects of interaction with the International Criminal Court, based on the Law of Ukraine No. 2236-IX "On Amendments to the Criminal Procedural Code of Ukraine and other legislative acts of Ukraine regarding cooperation with the International Criminal Court" dated May 3, 2022².

In addition, pursuant to Law of Ukraine No. 2201-IX "On Amendments to the Criminal Procedural Code of Ukraine on Improving the Procedure for Conducting Criminal Proceedings under Martial Law" dated May 1, 2022³, the legislator regulated the procedure of pre-trial investigation under martial law. Specifically, changes made to the CPCU in connection with its adoption relate to the special content and form of criminal proceedings under martial law, a significant expansion of the powers of the prosecutor by delegating to them the separate powers of an investigating judge to resolve certain issues, etc.⁴.

In the context of the study, the specified amendments also affected the procedure for the organization of the forensic examination. Thus, according to Item 2, Part 1, Article 615 of the CPCU⁵, if there is no objective possibility for the investigating judge to exercise powers related to the need to obtain samples for examination, such powers shall be exercised by the head of the relevant prosecutor's office at the request of the prosecutor or at the request of the investigator agreed with the prosecutor.

An equally important issue at the preparatory stage of the organization of forensic examinations is the verification by the investigator of the validity period of the certificate of qualification of a forensic expert, since in practice there are cases when the defence side questioned the expert's opinion and it was not considered by the court due to the examination by an inappropriate subject. Analysing such facts and considering the events that are taking place in Ukraine today, it should be noted that during the legal regime of martial law in Ukraine, certain legal changes were made in the organizational and management support of judicial expert activity. Thus, the Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Ensuring Forensic Expert Activity Under Martial Law" dated March 14, 2022⁶ came into force.

Having analysed the specified sub-legislative regulation, it should be noted about major changes related

¹Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakononline.com.ua/documents/show/192273__192338.

²Law of Ukraine No. 2236-IX "On Making Changes to the Criminal Procedural Code of Ukraine and Other Legislative Acts of Ukraine Regarding Cooperation with the International Criminal Court". (2022, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2236-20#n13>.

³Law of Ukraine No. 2201-IX "On the Introduction of Amendments to the Criminal Procedural Code of Ukraine Regarding the Improvement of the Procedure for Carrying out Criminal Proceedings Under Martial Law". (2022, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2201-20#Text>.

⁴Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁵Ibidem, 2012.

⁶Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Providing Forensic Expert Activity in the Conditions of Martial Law". (2022, March). Retrieved from <https://ips.ligazakon.net/document/RE37662?an=16>.

to the organization of forensic examination in criminal proceedings. Specifically, the period of consideration of applications and documents for the qualification of a forensic expert was stopped; the term of validity of the certificates on the assignment of the qualification of a forensic expert to specialists who submitted applications and documents for attestation before the introduction of martial law in Ukraine, as well as the certificates on the assignment of the qualification of a forensic expert, the term of which expires during the period of martial law, or within one month after the termination or cancellation of the martial law, has been extended¹.

Thus, as a general rule, to avoid problematic issues with the recognition of an expert's opinion, in the event of an appeal to experts, the investigator must verify the powers of the forensic expert in the Register of Forensic Experts of the Ministry of Justice of Ukraine. However, during the period of martial law and within one month after its termination or cancellation, this rule does not apply. The preparatory stage ends with the sending of the document on the appointment of the examination, the materials of the criminal proceedings, as well as the objects of the examination to the expert institution or a particular expert who will conduct the study.

The working stage of the organization of forensic examinations is directly related to the implementation of expert studies by a designated expert or a group of experts, or by experts from several expert institutions in the event of the appointment of a commission or complex examination. According to the Instructions, after receiving the appointment document and its registration at the State Scientific Research Expert Forensic Centre, the Research and Development Expert Forensic Centre, the relevant manager must review all the received materials, and in the absence of errors or other reasons for their return, hand them over to the head of the corresponding laboratory (department, sector) for further organization of the forensic examination or independently appoint a forensic expert who, according to the qualifications, is authorized to conduct a particular expert examination².

When choosing an expert or a group of experts, the head of an expert institution, apart from the specialization and type of expert research, must consider several important aspects: workload of a particular expert; the terms of the examination, the scope of the expert study. Before sending all materials for research to a particular expert, the head of the expert institution checks them for compliance with all the requirements established by law regarding the form, and in case of detection of violations, they must notify the investigator who appointed the examination with an indication of the reasons for the return.

Therewith, one of the aspects of the organization of forensic examinations in criminal proceedings is important, such as the establishment of effective interaction between the heads of expert institutions and the investigator who is the initiator of the expert investigation. Furthermore, when conducting an expert investigation, the investigator constantly interacts with the expert who conducts it.

Investigating the opinions of S.P. Lapta (2006) and L.S. Belik (2020) regarding the selection of tactical recommendations concerning the organization of interaction between the investigator and the expert, the most important of them should be highlighted. Thus, before the start of the expert investigation, the investigative body of the pre-trial investigation is tasked with presenting the expert with the subject of the examination and all the necessary materials that the expert is entitled to familiarize themselves with during the examination, as well as, at the request of the expert, other information of the criminal proceedings. In addition, the investigator is entitled to be present during the examination, which in turn contributes to their prompt receipt of information related to the examination and the circumstances to be investigated. Furthermore, among the non-procedural forms of interaction between the investigator and the expert, scientists highlight the clarification of the time of the examination, the terms of the examination, and the method of returning the objects.

Considering the above, the activity of the investigator in the organization of forensic examinations does not end at the initial stage and is of great importance at the stage of direct expert research. Therewith, at the specified stage, the investigator has a managerial role, since they are the subject of the appointment of the forensic examination, assess the expert's opinion, and, if necessary, can interrogate the expert on issues that require clarification. In addition, the organizational role of the investigator is manifested in the fact that they decide which circumstances of the criminal proceedings require analysis and verification by conducting an expert study, and which will be important for the pre-trial investigation in the future.

At the final stage of the organization of forensic examinations, the expert drafts an opinion based on the results of the examination and hands it over to the investigator who appointed the expert examination. Among the organizational aspects of the specified stage, the investigator's assessment of the expert's opinion is of great importance. According to Article 94 of the CPCU, the investigator, prosecutor, investigating judge, court based on their internal conviction, which is based on a comprehensive, complete, and impartial investigation

¹Order of the Ministry of Justice of Ukraine No. 1138/5 "On Some Issues of Providing Forensic Expert Activity in the Conditions of Martial Law". (2022, March). Retrieved from <https://ips.ligazakon.net/document/RE37662?an=16>.

²Order of the Ministry of Justice of Ukraine No. 53/5 "On the Approval of the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies". (1998, October). Retrieved from https://zakononline.com.ua/documents/show/192273__192338.

of all the circumstances of the criminal proceedings, guided by the law, evaluate each piece of evidence from the standpoint of propriety, admissibility, credibility, and the totality of the collected evidence – from the perspective of sufficiency and interrelationship for making an relevant procedural decision¹.

Thus, the investigator assesses the expert's opinion for compliance with its four criteria: propriety, admissibility, reliability, sufficiency, and the relationship between the obtained data and other information available in the criminal proceedings. Therewith, the norms of the Criminal Procedural Code of Ukraine do not directly indicate that the investigator must evaluate the expert's opinion for compliance with the specified criteria.

From the standpoint of some scientists, one of the key conditions for the admissibility of an expert's opinion is compliance with the procedural form of conducting an examination and drafting an opinion. Therewith, among the requirements that the investigator should address in the first place is the verification of compliance with the procedural requirements regarding the form and content of the expert research and the expert's opinion, the objectivity and reliability of the conducted research and the opinion, etc. (Davydova & Volobuieva, 2015).

From an organizational perspective, when the investigator evaluates the expert's opinion, it is important to focus on the fact that it is carried out according to substantive requirements, namely, its procedural form, literacy, and logical presentation. As well as checking directly the activities that accompanied its implementation, i.e., compliance with the requirements of criminal procedural legislation, the rights and freedoms of the persons in respect of whom the examination was conducted, the authority of the expert who conducted the examination, the type and nature of the methods that were used during the expert research. Therewith, the question arises of the investigator's ability to verify the methods and methodology of the examination.

No less important in the conditions of martial law are issues related to the preservation of expert documentation, as well as the restoration of lost documents. In this regard, the regulatory consolidation of the entire array of methods and techniques used during expert research will lead to the presence of many secondary legal acts, which will considerably complicate the work of the investigator.

It should be emphasized that a Register of Methods of Conducting Forensic Examinations operates, which contains current methods of conducting forensic

examinations, certified and recommended for implementation in expert practice pursuant to the Procedure for attestation and state registration of methods of conducting forensic examinations, approved by Resolution No. 595 of the Cabinet of Ministers of Ukraine dated July 2, 2008². Thus, during the evaluation of the expert's opinion, the investigator can review the information available in the register about a certain method, namely: the type of examination, the name of the method, the name of the developer of the method, the date of its state registration, and the date of the decision to stop using the method.

Pursuant to Item 3, Part 5 of Article 69 of the CPCU³, the expert is obliged to ensure the preservation of the subject of the examination. Part 2 of Article 100 of the CPCU⁴ also establishes that the duty to preserve material evidence in a condition suitable for use in criminal proceedings is assigned to the party to the criminal proceedings to whom the material evidence or document is provided. Furthermore, as noted above, the CPCU⁵ prescribes a special regime of pre-trial investigation, trial under martial law, which specifically stipulates that the copies of materials of criminal proceedings, in which pre-trial investigation is carried out under martial law, must be stored in electronic form by the inquirer, investigator, or prosecutor.

In light of the recent events taking place in Ukraine, the overcoming of Russia's armed aggression, the urgency of preserving and restoring the materials of the pre-trial investigation, material evidence, expert opinions and other procedural documents during the investigation of criminal offences becomes extremely important. For this purpose, on May 30, 2022, the Council of the European Union amended Regulation 2018/1727⁶ on the collection, preservation, and analysis of evidence related to war crimes, certain changes in which relate to the procedure for preserving evidence in Eurojust. Evidence related to genocide, crimes against humanity, and war crimes cannot be safely stored in a combat zone, and therefore it is suitable to establish a central repository in a secure location. Since the need to preserve such evidence is urgent, it must be stored in an automated data storage facility. The preservation, analysis, and storage of such evidence, as well as the access to this evidence when required by national authorities and international judicial authorities, must comply with the highest standards of cyber security and data protection. Furthermore, the new rules allow the collection and preservation of evidence related to war crimes, including satellite

¹Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

²Resolution of the Cabinet of Ministers of Ukraine No. 595 "On the Procedure for Attestation and State Registration of Forensic Examination Methods". (2008, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/595-2008-%D0%BF#Text>.

³Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁴Ibidem, 2012.

⁵Ibidem, 2012.

⁶Regulation of the European Parliament and of the Council Amending Regulation (EU) No. 2018/1727 "As Regards the Preservation, Analysis and Storage at Eurojust of Evidence Relating to Genocide, Crimes Against Humanity, War Crimes and Related Criminal Offences". (2022, May). Retrieved from <https://data.consilium.europa.eu/doc/document/PE-18-2022-INIT/en/pdf>.

images, photographs, videos, audio recordings, DNA profiles and fingerprints, the processing and analysis of such evidence in close cooperation with Europol, and the exchange of information with relevant national and international judicial authorities, including the International Criminal Court.

In addition, according to the amendments to the Regulation¹, the European Parliament calls on the Ukrainian authorities to harmonize the national legislation and procedures of Ukraine with international law and in this way to strengthen the internal legal mechanisms of combating impunity for crimes, the harmonization of national legislation, as well as the adoption of clear and practical frameworks for cooperation with the International Criminal Court and other bodies investigating war crimes committed in Ukraine.

Considering the above, it should be considered expedient to bring national legislation into line with international standards relating to the order and procedure of preservation of pre-trial investigation materials, including expert opinion, as well as objects of examination. It is also important to determine the limits of the expert's responsibility for the preservation of documents, considering the circumstances beyond their control, as well as the normative establishment of the rules for the transmission of the expert's conclusions from the territories of military (combat) actions by means of electronic communication and to settle issues related to the storage of documentation in temporarily occupied territories.

Furthermore, in conditions of active development of information technologies, Ukraine is gradually moving towards the implementation of electronic justice, and electronic document management is actively spreading. To this end, to ensure the preservation of the materials of the pre-trial investigation, specifically the expert's opinion, to prevent their loss or destruction as a result of active hostilities on the territory of Ukraine, occupation and de-occupation of territories, it is necessary to consider the possibility of its presentation and storage in electronic form.

In support of this statement, it should also be noted that the Law of Ukraine No. 1498-IX "On Amendments to the Criminal Procedural Code of Ukraine Regarding the Introduction of the Information and Telecommunication System of Pretrial Investigation" dated

June 1, 2021² defined the legal and procedural bases for the use of the information and telecommunication system of pre-trial investigation in the activities of participants in criminal proceedings. Specifically, pursuant to Part 2 of Article 106-1 of the CPCU³, the investigator, inquiring officer, prosecutor, investigating judge, court, as well as the defence attorney (with their consent) use, and other participants in criminal proceedings can use, the information and telecommunications system of the pre-trial investigation in the exercise of their powers, rights, and interests⁴.

Therefore, during the study, it was proposed to amend Part 7 of Article 101 of the CPCU, and word it as follows: "The expert's opinion shall be provided in written and/or electronic form, but each party is entitled to apply to the court to summon the expert for questioning during the trial to clarify or supplement their opinion".

Furthermore, considering the enormous number of war crimes committed by the Russian Federation against Ukraine, the number of which continues to grow, the issue of organizing the involvement of foreign experts to conduct forensic examinations is becoming increasingly widespread. The Law of Ukraine "On Forensic Expertise" contains the entire Chapter IV "International Cooperation in the Field of Forensic Expertise", which covers specific issues related to the conduct of forensic examination on behalf of a body or official of a foreign state, as well as the involvement of foreign experts by Ukraine⁵. Therewith, the analysis of the norms of the Law, which regulate international cooperation in the field of forensic examination, shows that they have not been systematically updated since 2004, contrary to the requirements of the time.

According to Article 22 of the Law establishes the priority of the national legislation of Ukraine, during the conduct of a forensic examination on behalf of the relevant body or person of another state with which Ukraine has an agreement on mutual legal aid and cooperation, unless otherwise prescribed in the said agreement. Furthermore, the norms of the law make provision for a separate procedure to involve foreign experts for joint forensic examinations⁶.

Notably, the existing regulations rather narrowly and vaguely regulate relations in the field under study, and do not touch upon such important organizational

¹Regulation of the European Parliament and of the Council Amending Regulation (EU) No. 2018/1727 "As Regards the Preservation, Analysis and Storage at Eurojust of Evidence Relating to Genocide, Crimes Against Humanity, War Crimes and Related Criminal Offences". (2022, May). Retrieved from <https://data.consilium.europa.eu/doc/document/PE-18-2022-INIT/en/pdf>.

²Law of Ukraine No. 1498-IX "On Making Changes to the Criminal Procedural Code of Ukraine Regarding the Introduction of the Information and Telecommunications System of Pre-Trial Investigation". (2021, June). Retrieved from <https://ips.ligazakon.net/document/view/T211498?an=1>.

³Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁴Law of Ukraine No. 1498-IX "On Making Changes to the Criminal Procedural Code of Ukraine Regarding the Introduction of the Information and Telecommunications System of Pre-Trial Investigation". (2021, June). Retrieved from <https://ips.ligazakon.net/document/view/T211498?an=1>.

⁵Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38>.

⁶Ibidem, 1994.

issues as the procedure for involving international expert institutions, or individual experts for joint forensic examination in Ukraine; procedure for sending samples for examination abroad; areas of international cooperation in the field of forensic expert activity, conditions for recognition of the opinion on an expert examination that was conducted abroad and the procedure for conducting an interrogation of a foreign expert.

The need for expanding international cooperation in forensic expert activity is also evidenced by the research of individual scientists. For instance, N.I. Klymenko & O.A. Kuprievych (2015) note that thanks to the establishment of close cooperation with foreign expert bodies and institutions, Ukraine will have a high-quality and rapid implementation of international standards for conducting expert research. In addition, the specified activity will improve the theoretical foundations of the examination, its practical component, development of uniform methodological recommendations for various types of examinations, etc.

Another group of scientists also emphasizes the importance of establishing international cooperation during examinations with the participation of foreign experts, including within the framework of joint groups (Motoryhina *et al.*, 2019). Thus, at the legislative level, it is necessary to develop a unified mechanism to involve international expert institutions, or individual experts for joint forensic examination in Ukraine; to establish the procedure for sending samples for examination abroad; to determine the conditions for recognition of the conclusion of an expert examination that was conducted outside Ukraine and the procedure for conducting an interrogation of a foreign expert; to identify the priority areas of international cooperation in the field of forensic expert activity and to provide a mechanism for their implementation. The development of the specified provisions will form the organizational principles of forensic examination in criminal proceedings under the condition of international cooperation.

Therewith, analysing the norms of the Law of Ukraine "On Forensic Examination"¹, the legislator does not define the terms "interaction", "international cooperation". Currently, there are no unified approaches to the interpretation of the essence of the concept of "interaction", the classification and content of its forms and methods. For a correct interpretation of the essence of the specified concept, the authors of the present study consider it expedient to regulate these concepts legislatively.

Thus, the activity of investigating criminal offences in each particular case depends on the organization of its main elements, which are designed to ensure a swift, objective, and high-quality pre-trial investigation of criminal proceedings, one of which is the conduct of forensic examinations. The importance of proper

organization of forensic examinations is explained by the fact that today it is still one of the leading and effective means of proof. The appointment and conduct of forensic examinations is factually the main part of the pre-trial investigation. The information obtained during the forensic examination helps make the process of proof as objective as possible in the future, and the results of the forensic examination are one of the main sources of evidence in the investigation of criminal offences.

Therewith, the organization of forensic examination during the investigation of criminal offences is a set of organizational and administrative actions of authorized subjects, which lies in ensuring the proper, timely, and objective appointment and conducting of forensic examinations, as well as obtaining an expert opinion, which is sought to complete the tasks of criminal proceedings.

Conclusions

Analysing the circle of subjects engaged in the organization of expert examination in criminal proceedings, it was found that in the context of the study of the activity of investigating criminal offences, the leading role belongs to the investigator, who is the subject of initiating the conduct of expert examination in a specific criminal proceeding.

It is the investigator (inquiring officer, detective), the prosecutor, as a subject of authority, who is authorized to make procedural decisions within a specific criminal proceeding. The activity of the investigator in the organization of forensic examinations is carried out at all its stages, and consists in the implementation of the following: at the preparatory stage – in relation to the object of examination: search, check, selection, and preparation of all materials and objects for expert examination; in relation to the subject that will conduct the examination – selection of an expert body or a particular expert, verification of their eligibility and establishment of cooperation; at the working stage – organization of constant interaction with the head of the expert institution and an individual expert during the examination, direct presence during the expert study; to provide additional materials for examination, to receive consultations from an expert on issues related to expert research; at the final stage – evaluation of the results of the conducted examination to establish compliance with its requirements determined by the criminal procedural law.

Notably, the legislation in the field of the organization of forensic examinations needs to bring the national legislation into line with international standards, namely: the procedure for preserving the materials of the pre-trial investigation, including the opinion of the expert, as well as the objects of the examination, the definition of the limits of the responsibility of the

¹Law of Ukraine No. 4038-XII "On Forensic Examination". (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12/conv#n38>.

expert for the preservation of documents, considering the circumstances that do not depend on them, as well as the regulatory consolidation of the rules for the transmission of the expert's conclusions from the territories of military (combat) operations by means of electronic communication and the settlement of issues related to with storage of documentation in the temporarily occupied territories.

Furthermore, to ensure the preservation of the expert's opinion, to prevent its loss or destruction, it is necessary to amend Part 7 of Article 101 of the Criminal Procedural Code of Ukraine, and word it as follows: "The expert's opinion shall be provided in written and/or electronic form, but each party is entitled to apply to the court to summon the expert for questioning during the trial to clarify or supplement their opinion."

In addition, since the beginning of the large-scale armed invasion of the Russian Federation on the territory of Ukraine, considering the rapid increase in the number of war crimes against citizens on the territory

of Ukraine and beyond, it is important to develop a unified and effective algorithm for the interaction of the investigator with international expert institutions or individual experts during the organization of the involvement of foreign judicial experts in conducting examinations in Ukraine.

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Conflict of Interest

None.

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Організація проведення судових експертиз у кримінальному провадженні як умова ефективності розслідування кримінальних правопорушень

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Анотація

У науці криміналістики та діяльності з розслідування кримінальних правопорушень важливе значення має організаційна діяльність. Однією з форм її реалізації є проведення судових експертиз, а її вдосконалення безпосередньо впливає на досягнення завдань кримінального провадження. Мета статті полягала у висвітленні організаційної діяльності щодо проведення судових експертиз як засобу забезпечення ефективного досудового розслідування та судового розгляду в кожному кримінальному провадженні. Для досягнення поставленої мети використано загальнонаукові та спеціальні методи з метою вивчення об'єкта й предмета дослідження: аналіз, синтез, дедукція, індукція, аналогія; спеціально-правові методи: порівняльно-правовий, історико-правовий, системно-структурний, метод системного аналізу. На основі аналізу положень нормативно-правових актів і наукового, навчально-методичного матеріалу встановлено, що організація проведення судової експертизи в кримінальному провадженні охоплює систему організаційно-розпорядчих дій уповноважених суб'єктів та полягає в забезпеченні належного, своєчасного й об'єктивного призначення та проведення судових експертиз, а також отримання висновку експерта, яка здійснюється з метою досягнення завдань кримінального провадження. Виокремлено та схарактеризовано основні етапи організації проведення судових експертиз у кримінальному провадженні. Здійснено класифікацію суб'єктів розглядуваної діяльності, зокрема за характером реалізації організаційних дій. Констатовано, що чільне місце серед суб'єктного складу розглядуваної діяльності належить слідчому як суб'єкту ініціювання проведення судових експертиз. Саме він у процесі проведення досудового розслідування здійснює збір та аналіз матеріалів, вирішує, які саме обставини кримінального провадження потребують перевірки шляхом проведення експертизи, оцінює висновок експерта. Наведені в статті положення можуть бути використані в практичній діяльності окремих судових експертів і судово-експертних підрозділів та установ; суб'єктів, уповноважених на здійснення досудового розслідування кримінальних правопорушень

Ключові слова:

судовий експерт; слідчий; прокурор; експертне дослідження; доказ; законодавство; висновок експерта; міжнародне співробітництво; військовий стан