

# NATIONAL SCIENTIFIC CENTER «HON. PROF. M. S. BOKARIUS FORENSIC SCIENCE INSTITUTE» AND REFORMING ISSUES OF FORENSIC SCIENCE ACTIVITIES IN UKRAINE

Prof., habil. dr. **Ella Simakova-Yefremian**,

National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute»,

Zolochivska str. 8-a, 61177 Kharkiv, Ukraine,

<simakova@hniise.gov.ua>

## Annotation

Solving issues of organizing forensic science activities and, as a result, development of forensic science institutions is a direction of scientific researches requiring constant monitoring by scientists and practitioners. It is quite natural that effectiveness of the investigation and consideration of criminal cases and proceedings of other types in courts largely depends on the level and potential of a particular forensic science institution and the system of organizing forensic science in the country. In connection with the above, proposed topic seems to be relevant. The article provides information about National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» ideas are the basis for issue analysis and ways for their solving, set out in the second part of the article.

Author of the article considers the main activity directions of National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute». The main achievements of the Center in the field of science, education and forensic practice are analyzed. The analysis of by-laws governing the activities of forensic science institutions of the Ministry of Justice of Ukraine is carried out.

According to the author, taking into account the proposals for reforming forensic science activities will have a positive effect on the level of expert provision of justice in the State.

**Keywords:** National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute», forensic science, forensic support of justice, judicial and legal reform in Ukraine; forensic expert, forensic expertology.

## Ininitial remarks

In our opinion, before setting out the main, provisions of forensic science activities in Ukraine, it seems appropriate in the collection of materials dedicated to the anniversary of our colleague prof. dr. Egidijus Vidmantas Kurapka, known far beyond the borders of the Republic of Lithuania; provide information on National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science

Institute»(hereinafter referred to as NSC «Hon. Prof. M. S. Bokarius FSI») whose employees pay much attention to solving these issues.

It should be noted that the largest number of scientific topics developed by NSC «Hon. Prof. M. S. Bokarius FSI» scientists among other forensic science institutions of Ukraine is a traditional indicator of powerful scientific potential of the Institute. In this aspect, we proudly note that for many decades the institution has been a leader in the number and complexity of R&Ds. Thus, if in 2017 scientists of the institution carried out 25 research projects, then only this year, in accordance with the research plan of research institutions of the Ministry of Justice of Ukraine, there are 64 ones and last year: 67ones. Scientific developments are also carried out according to the internal plan of the institution: this year – on 41 research projects. Certain topics are international in nature. Since 2018, research on 7 topics has been carried out jointly with the staff of the National Center for Forensic Expertise of the Republic of Moldova and the “National Bureau of Expertises” of the National Academy of Sciences of the Republic of Armenia.

Results of scientific researches are fundamental developments in the field of forensic expertise and methodology of expert research, which are internationally recognized and of national importance, in which the state has a special need. Significant scientific achievements of NSC «Hon. Prof. M. S. Bokarius FSI» based on the results of research and innovation activities, integration of education and science in the institution, participation in implementation of international projects and programs, training of highly qualified scientific staff (doctors of philosophy in law), introduction of scientific achievements into forensic expert practice are far from a complete list of measures to develop scientific and technical potential of the institution and ensure its effective use for solving the most important tasks of State development.

An important scientific area is work on dissertations. In the system of forensic science institutions of Ukraine, only NSC «Hon. Prof. M. S. Bokarius FSI» has postgraduate and doctoral studies and, on the basis of a license issued by the Ministry of Education and Science of Ukraine, training of highly qualified scientific personnel is carried out according to its own educational and scientific program of a forensic expert profile. In accordance with the licensing requirements, applicants for academic degrees, graduate students and doctoral students, who are not only scientists of our institution, but persons working in other forensic science institutions, law enforcement agencies, courts, legal profession, etc., devote their work to solving urgent issues of expert provision of justice in the State. It should be noted that practically without exception, each

of dissertations deals with proposals of dissertation candidates for amending the legislation of Ukraine in the field of forensic science, and most importantly, issues of the theory and methodological support of forensic science activities.

One of the areas of scientific activity of the NSC «Hon. Prof. M. S. Bokarius FSI» is holding of international scientific and practical conferences, workshops, symposia, round tables<sup>1</sup>. The conferences are attended by representatives of the scientific community in the field of forensic science from almost all ministries and departments of Ukraine, whose field of management includes forensic science institutions, as well as scientists and forensic experts from dozens of countries around the world.

Thus, despite the pandemic, the two-day International Research and Practice Conference-Polylogue on *Topical Issues of Forensic Science and Criminalistics*<sup>2</sup> organized on the basis of our institution in April 2021, offline and online gathered an unprecedented number of participants in recent years: as foreign (Azerbaijan, Belarus, Great Britain, Armenia, Greece, Georgia, Israel, Kazakhstan, Latvia, Lithuania, Macedonia, Moldova, Poland, Uzbekistan, Montenegro and other countries) and domestic as ones. The participants (and there were 257 of them) demonstrated a significant interest in the problems of forensic

<sup>1</sup> For example: Сучасні напрямки розвитку судової експертизи та криміналістики. Тези доп. наук.-практ. конф., присвяч. пам'яті засл. проф. М. С. Бокаріуса; *М-во юстиції України, ХНДІСЕ ім. Засл. проф. М. С. Бокаріуса.* (2016); Актуальні питання судової експертизи та криміналістики: зб. мат-лів міжнар. наук. практ. конф., присвяч. 100-річ. від дня народж. д-ра юрид. наук, проф., засл. діяча науки і техн. Укр. М. В. Салтєвського. (2017); Ароцкерівські читання: зб. мат-лів міжнар. наук.-практ. конф., присвяч. 90-річ. від дня народж. видат. вченого-криміналіста, д-ра юрид. наук, проф. Л. Ю. Ароцкера (2017); Актуальні питання судової експертизи та криміналістики: зб. мат-лів міжнар. наук.-практ. конф., присвяч. 95-річ. створ. ХНДІСЕ ім. Засл. проф. М. С. Бокаріуса. (2018); Особливості підготовки матеріалів для призначення судових експертиз: навчальний наочний посібник для працівників правоохоронних органів. (2019). Уклад. Угровецький, О. П., Аброськін, В. В., Шинкаренко, І. Р. та ін.; Особливості підготовки матеріалів для призначення та проведення судових експертиз у кримінальних провадженнях за корупційними злочинами: *мат-ли міжвідом. наук.-практ. семінару «Проблемні питання призначення та проведення судових експертиз у кримінальних провадженнях за корупційними злочинами».* (2019); Актуальні питання судової експертизи і криміналістики: зб. мат-лів міжнар. наук.-практ. конф., присвяч. 150-річ. з дня народж. Засл. проф. М. С. Бокаріуса. (2019); Проблеми реформування базового законодавства України з питань експертного забезпечення правосуддя: *мат-ли круглого столу.* (2020); Проблеми реформування базового законодавства України з питань експертного забезпечення правосуддя: *мат-ли круглого столу.* (2020); Актуальні питання судової експертизи і криміналістики: зб. мат-лів міжнар. наук.-практ. конф.-полілогу. (2021); etc.

<sup>2</sup> Актуальні питання судової експертизи і криміналістики: зб. мат-лів міжнар. наук.-практ. конф.-полілогу. (2021).

expert activity and ways of solving them, which became the subject of discussion during the panel discussions.

It is a good tradition for NSC «Hon. Prof. M. S. Bokarius FSI» to hold annual conferences, round tables, lectures, discussions, workshops, and its employees take an active part in scientific events organized by forensic and legal institutions both abroad and in Ukraine (for example, in 2020 – in 50, and for the period 1–3 quarters of 2021 – about 40).

The publication activity of the staff of the institution is growing annually, and this applies not only to researchers, but also to persons holding positions of forensic experts. The results of this work are participation in numerous scientific events (with publication of printed scientific articles, manuals, monographs, abstracts, etc.), as well as patents for inventions and copyright certificates received by the staff of NSC «Hon. Prof. M. S. Bokarius FSI». For example, in 2019 350 research papers were published, including: 4 monographs, 4 textbooks, 148 articles in specialized editions (in particular, indexed in abstract and citation databases: Scopus, Web of Science: 13) and abstracts of reports at conferences, workshops and other content.

Since 2001, the NSC «Hon. Prof. M. S. Bokarius FSI», together with Yaroslav Mudryi National Law University has been publishing a collection of scientific papers: *Theory and Practice of Forensic Science and Criminalistics*. It is a scientific edition specific to the forensic science and criminalistics profile included in the List of Scientific Specialized Editions of Ukraine where the results of dissertations for the degree of Doctor and Candidate of Sciences (Doctor of Philosophy) in the field of legal sciences. This collection is published in parallel issues in Ukrainian and English and now their frequency has been increased (4 times a year).

In addition, in 2019, the *Archives of Criminology and Forensic Sciences* scientific edition was restored founded by M. S. Bokarius, Honored Professor founder of our institution. This edition is also included in the List of Scientific Specialized Publications of Ukraine. Restoration of this journal, closed in 1926 by the Soviet authorities for political reasons, is a tribute to the memory of Professor M. S. Bokarius, whose name is NSC «Hon. Prof. M. S. Bokarius FSI» bears. This scientific journal is published in five languages twice a year and is a platform for the exchange of information on topical issues of criminology and forensic science.

Scientific and production, innovative and intellectual potential of institution employees of the is unconditional including at international level. Since 2016, the institution has entered into a cooperation agreement with the

Institute of Forensic Research (Poland), Lithuanian Forensic Center, Lithuanian Institute of Law, Forensic Science Centre of Lithuania, National Institute of Forensic Expertise under the Ministry of Justice of the Republic of Moldova, National Bureau of Expertises of National Academy of Sciences of the Republic of Armenia, State Institution Scientific and Practical Center of the State Forensic Examination Committee of the Republic of Belarus, Forensic Examinations Centre of the Ministry of Justice of the Republic of Kazakhstan, the Forensic Center of the Police Administration of Montenegro, the Center for Forensic Expertise of the Republic of Uzbekistan, Forensic-Criminalistic Department of the Ministry of Internal Affairs of Georgia, etc. A fruitful exchange of experience is carried out with these organizations, mutual training is carried out; within the framework of the legislation, the exchange of the latest methods, monographs, periodicals is carried out, joint scientific topics are carried out. Work is underway to conclude international agreements on cooperation with forensic institutions of Colombia, China, etc.

A significant stage in the development of international relations of modern forensic institutions of Ukraine is cooperation in the field of forensic expertise. One of the important stages of work in this direction is the entry of NSC «Hon. Prof. M. S. Bokarius FSI» into one of the largest international forensic organizations – the European Network of Forensic Science Institutes (ENFSI). On May 17, 2018, our institution and its manager received certificates confirming permanent membership in ENFSI. A number of leading specialists of NSC «Hon. Prof. M. S. Bokarius FSI» are members of the ENFSI working groups, where urgent problems of forensic expert activity are solved. It is with the aim of improving the methodological support of forensic institutions of Ukraine and bringing all spheres of their activity in line with international standards that the idea of accession of expert institutions of Ukraine to ENFSI has been implemented. This institution (founded in 1995) creates a kind of platform for communication of forensic experts from different countries of the world and provides an exchange of experience in working with latest technologies. Any developed State sees as one of the main tasks the continuous improvement of the quality of products and services of national producers. The same trend is observed in the field of forensic institutions, which result of are forensic examinations. Certification of these institutions is a particularly urgent task in achieving this goal, because it is associated with a new strategic direction of work, namely: development and implementation of quality management systems built in accordance with the requirements of modern international standards. This makes it possible to create conditions for mutual recognition of the

activity results of accredited bodies at the international level increases the dynamics of the development of their methodological support due to the differentiation of scientific research and organize a wide information exchange on a single methodological basis.

NSC «Hon. Prof. M. S. Bokarius FSI» is unique one in the system of forensic institutions of Ukraine that received a license from the Ministry of Education and Science of Ukraine to carry out educational activities at the third educational and scientific level (training of applicants for higher education with a PhD degree) in the 081 *Law* Specialization. In order to train highly qualified scientific personnel at the third educational qualification level of higher education, in accordance with the order of the Ministry of Justice of Ukraine, postgraduate and doctoral schools are functioning in the institution. Currently, 45 people are studying in graduate school and outside of graduate school. The scientific council of the institute approves the topics for dissertations. Thus, for the first time in the history of Ukraine, on the basis of forensic science institution, the training of highly qualified scientific staff according to the profile of forensic science has begun, namely: doctors of philosophy and doctors the field of law according to the specified profile.

By order of the Ministry of Education and Science of Ukraine dated November 7, 2018, a specialized academic council was established at the NSC «Hon. Prof. M. S. Bokarius FSI» with the right to accept for consideration and defend dissertations for PHD degree in legal sciences.

Our institution employs specialists with a high level of professional qualifications and extensive practical experience, including 12 doctors of sciences and 36 candidates of sciences (doctors of philosophy), who have the academic title of professor, associate professor, senior researcher providing significant results in the activities of the institution. The effective implementation of scientific activities is associated with the proper training of highly qualified scientific personnel, both for state specialized institutions of the Ministry of Justice of Ukraine and for specialized institutions of other ministries and departments, as well as from among forensic experts who are not employees of these institutions, university teachers, etc. Thus, NSC «Hon. Prof. M. S. Bokarius FSI» ensures the continuity of professional education; creation of the most favorable conditions for obtaining third scientific and educational level of higher education in the field of forensic activity in its various areas at the level of state and world standards.

On the initiative of NSC «Hon. Prof. M. S. Bokarius FSI» professionals, new directions of forensic examinations were opened and a number of new types

of expert specialties were introduced, which were not previously conducted in any scientific research institution of forensic examinations in Ukraine. The Office Museum of Honored Professor M. S. Bokarius operates, the exposition of which contains hundreds of exhibits (personal belongings of the professor, original photographs, manuscripts and unique publications related to multi-faceted activities of outstanding scientist). A visit to the Office Museum has become traditional during any scientific and practical events in the institution, training of graduate students, internships for forensic experts, official visits and so on. In addition, there is a scientific and Applied Museum of the institution, on which basis of trainees of NSC «Hon. Prof. M. S. Bokarius FSI» and other forensic institutions of the state and abroad gain knowledge.

The institute has original scientific schools in many areas of forensic science famous scientists who have made a significant contribution to development of the theory and practice of forensic science and criminalistics: Prof. M. S. Bokarius, Prof. N. N. Bokarius, prof. V. P. Kolmakov, prof. L. E. Arotsker, prof. M. V. Saltevskyi, S. M. Vul, Prof. O. M. Kliuiev and others. Over the past two years, 14 employees of the institute have defended dissertations for PhD degree (Doctor of Philosophy).

We consider it expedient to complete the first part of our article with the prospects for the further development of NSC «Hon. Prof. M. S. Bokarius FSI», among which the following can be distinguished:

- within 5 years it is planned to carry out more than 200 scientific developments including the involvement of scientists from other countries;
- development of new methods and means of expert research, both traditional and new objects of an examination, and the solution of new tasks;
- approbation and implementation of scientific developments of the NSC «Hon. Prof. M. S. Bokarius FSI» into the practice of the state forensic institutions, as well as specialists who do not work in the state forensic institutions;
- inclusion of methods developed by the NSC «Hon. Prof. M. S. Bokarius FSI» into the State Register of methods for conducting forensic examinations of Ukraine;
- development of museums;
- inclusion of dedicated editions such as *Theory and Practice of Forensic Science and Criminalistics*, *Archives of Criminology and Forensic Sciences*, in the list of publications of scient metric databases of citation of scientific publications of «SCOPUS» or WEB OF SCIENCE;
- expanding the range of institution activities for the implementation of international contacts with foreign colleagues (conclusion of agreements on

international cooperation in the field of forensic examination; joint research developments, participation in international symposia, scientific and practical conferences, seminars, round tables, exchange of expert experience, training and internships in forensic institutions, telecommunications with foreign expert institutions on forensic issues, compatible publications, etc.);

- improvement of scientific approaches to the system of training and professional qualification of forensic experts;
- improvement of scientific and methodological support of forensic examination in Ukraine;
- improvement of the activities of postgraduate and doctoral studies;
- making scientifically grounded proposals on the legislation of Ukraine on forensic examination (laws and subordinate legislation (including preparation of proposals for the draft of Ukraine *On Forensic Examination*)).

Thus, NSC «Hon. Prof. M. S. Bokarius FSI» has significant scientific achievements, conducts research and innovation activities, ensures the integration of education and science, participates in the implementation of international projects and programs, trains highly qualified scientific personnel, implements scientific achievements, developments, realizes together with other specialized institutions joint programs in priority areas of applied scientific researches to solve important problems in the field of forensic examination and forensic science and is the only organization in the system of forensic institutions of Ukraine that trains highly qualified scientific personnel (Doctors of Philosophy) in the forensic profile. The institution employs highly qualified scientists and forensic experts whose research results are of national importance and international recognition. The scientific potential, laid down from the time of its foundation, to this day demonstrates the ability of the Institute's scientists to solve complex problems of forensic and expert provision of justice in Ukraine, including the issues of legal regulation of forensic expert activity.

Definitely, the reform of forensic examination system in the state is closely related to the judicial and legal reform, because one of the main tasks at the present historical stage of development of Ukraine is to build an independent and fair justice, without which it is impossible to establish a legal and democratic state, conduct any legal, economic and social reforms.

The main goal of the judicial and legal reform in Ukraine should be the creation of legislative and organizational conditions for the establishment in Ukraine of an independent, effective and responsible judiciary, which will be trusted by the society.

The reform of the forensic examination system should be comprehensive



and envisage changes in the basic legislation on the issues of expert provision of justice and improvement of procedural legislation. The basis for reforming forensic examination in Ukraine should be the best practices of democratic states, the results of a thorough analysis of domestic experience in the formation and development of forensic examination, as well as proposals already worked out on these issues.

The need for the scientific development of the doctrinal foundations of the forensic expert trainings, the methodological foundations of forensic examination is due to the legislative requirements for the reform of forensic examination. Thus, the round table session on the topic *Problems of Reforming the Primary Legislation of Ukraine on the issues of Expert Support of Justice*<sup>3</sup> was the first event for the community of experts (scientists and practitioners), initiated by National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute» and the Department of Criminology of Yaroslav Mudryi National Law University in accordance with the provisions of the Decrees of the President of Ukraine No. 722/2019 dated on September 30, 2019 *On Goals of Sustainable Development of Ukraine for the Period up to 2030*, and No. 837/2019 dated on November 8, 2019 *On Urgent Measures to Carry out Reforms and Strengthen the State*. In particular, the latest Decree of the President of Ukraine provides for the following task: to develop and submit for consideration to the Verkhovna Rada of Ukraine draft laws on amending some legislative acts of Ukraine regarding the creation of a system of self-government of forensic experts, reviewing the forensic expert's conclusion and determining the deadlines for conducting forensic examinations. In pursuance of the requirements of the Presidential Decree, the Ministry of Justice of Ukraine has prepared the draft law of Ukraine *On Forensic Activity*, which is currently at the stage of public discussion. When discussing this project, many debatable issues arose, which contributed to the emergence of alternative projects.

We consider that it would be more expedient to have the following title of the law *On Expert Support of Justice in Ukraine*, because the concept of expert support of justice is broader in meaning than the concept of forensic examination, since it contains not only organizational provisions for conducting a forensic examination, but also another – provisional function: training of expert personnel, their teaching, pension, social and financial support, scientific and methodological, material and technical support of forensic expert activity, and

<sup>3</sup> Проблеми реформування базового законодавства України з питань експертного забезпечення правосуддя: мат-ли круглого столу. (2020).

so on.

We combine the doctrinal foundations of forensic examination into three interrelated concepts – organizational and legal, methodological, (theoretical), scientific and methodological, which form the basis of the doctrine of forensic examination. The purpose of developing doctrinal approaches to expert support of justice is to reform the system of forensic examination in the state, which should be based on the experience of different countries of the world.

The development of doctrinal approaches in the field of forensic science activity and ways to modernize state forensic science institutions (hereinafter referred to as FSI) of the Ministry of Justice can be implemented in the following main tasks:

1) improving the legal regulation for the appointment and conduct of forensic examinations, as well as the legal status of a state forensic expert on the basis of: creating an appropriate legal position and regulatory support for organizing the activities of the system of state forensic science institutions; increasing the motivation of government forensic experts; counteraction to corruption in the field of forensic examination;

2) development of international cooperation in the field of forensic science activity (hereinafter referred to as FSA) in order to strengthen the position of Ukrainian forensic examination in the world, expand the knowledge base of experts, develop new methodological complexes (in particular, through the early adaptation of modern foreign methods, promotion of modern Ukrainian methods among expert laboratories of the world);

3) reorganization of forensic science institutions based on improved legislation and their accreditation in accordance with international standards.

As indicated in the Regulation on the Ministry of Justice of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) No. 228 dated on July 2, 2014, the Ministry of Justice of Ukraine organizes, in accordance with the legislation, the expert support of justice and research in the field of forensic examination; arranges the work of the Central Expert Qualification Commission under the Ministry of Justice and Scientific Advisory and Methodological Council on the issues of forensic examination under the Ministry of Justice; issues and cancels certificates of conferring the qualifications of a forensic expert to specialists who are not employees of state specialized institutions; exercises control over the organization of the activities of forensic experts who are not employees of state specialized institutions; ensures the maintenance of the State Register of Certified Forensic Experts and the Register of Forensic Examination Techniques;

directs and controls the activities of scientific research institutions conducting forensic examination and belongs to the sphere of management of the Ministry of Justice, provides regulatory and methodological support for their activities; coordinates the activities of ministries and other central executive authorities on the development of forensic expertise; ensures the organization of the work of the Coordination Council on the problems of forensic examination under the Ministry of Justice<sup>4</sup>.

Today, among the ministries and departments of Ukraine, which are in charge of the FSI, it is the FSI of the Ministry of Justice of Ukraine that carries out the widest range of researches (except for forensic medical), which covers almost all available types and kinds of forensic examinations (the methods of which are entered into the relevant Register, the owner of which is the Ministry of Justice of Ukraine), and, accordingly, developed the most complete regulatory legal framework for forensic examination.

Expert methods are registered by the decision of the Coordination Council on the problems of forensic examination under the Ministry of Justice in accordance with the developed division of expert justice support of the Ministry of Justice and approved Resolution by the CMU No. 595 dated on July 2, 2008, the Procedure for Attestation and State Registration of Forensic Examination Techniques, as well as in accordance with the Procedure maintaining the Register of methods of conducting forensic examinations, approved by Order of the Ministry of Justice of Ukraine No. 1666/5 dated on October 2, 2008<sup>5</sup>.

The work of the Coordinating Council (according to the Law of Ukraine *On Forensic Examination*) is carried out in accordance with the Regulations on the Coordinating Council on Forensic Examination under the Ministry of Justice of Ukraine, approved by the Resolution of the CMU No. 778 dated on November 16, 1994<sup>6</sup>.

In addition, in order to provide reliable information support for forensic science activity in Ukraine, by order of the Ministry of Justice of Ukraine No.

<sup>4</sup> Положення про Міністерство юстиції: постанова Кабінету Міністрів України від 2 лип. 2014 р. № 228: zakon0.rada.gov.ua/laws/show/228-2014-n/page

<sup>5</sup> Про затвердження порядку атестації та державної реєстрації методик проведення судових експертиз: постанова Каб. Міністрів України від 2 липня 2008 № 595. Офіц. вісн. України. 2008. № 49. Ст. 1585 (зі змінами та допов.); Про затвердження Порядку ведення Реєстру методик проведення судових експертиз: наказ М-ва юстиції України від 2 жовтня. 2008 № 1666/5. Офіц. вісн. України. 2008. № 77. Ст. 2588 (із змінами та допов.).

<sup>6</sup> Про затвердження Положення про Координаційну раду з проблем судової експертизи при Міністерстві юстиції України: постанова Кабінету Міністрів України від 16 листопада 994 № 778: <https://zakon.rada.gov.ua/laws/show/778-94-%D0%BF#Text>

1722/5 dated on July 30, 2010, lists of recommended scientific, technical and reference literature used in forensic examinations were approved<sup>7</sup>.

A well-functioning system of training and advanced training of expert personnel in accordance with the approved Order of the Ministry of Justice of Ukraine No. 301/5 dated on March 3, 2015 of the Regulation on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the certification of forensic experts (hereinafter referred to as the CEQC). Training and internship of forensic experts are carried out according to training programs for the relevant types of expert specialties, approved by the chairman of the CEQC.

In order to introduce uniform requirements for the level of necessary special knowledge of forensic experts, in accordance with the thematic plan of research works of scientific research institutions of the Ministry of Justice Ukraine, a training manual has been developed for specialists, who intend to obtain or confirm the qualifications of the forensic expert *Fundamentals of Forensic Examination*<sup>8</sup>, a training manual *Forensic Examination in Administrative Proceedings*<sup>9</sup>, *Forensic Examination in Criminal Proceedings in Ukraine*<sup>10</sup>, the active developers of which were the scientists and practitioners of the NSC «Hon. Prof. M. S. Bokarius FSI» and other expert institutions of Ukraine.

The selection and training of expert personnel is carried out on the basis of the qualification characteristics of the positions of employees of scientific research institutions of forensic examinations of the Ministry of Justice, which are used in the development of job descriptions of employees of scientific research institutions of forensic examinations of the Ministry of Justice, in accordance with the Handbook, according to the approved Order of the Ministry of Justice No. 611/5 dated April 19, 2012, of qualification characteristics of positions of employees of research institutions of forensic examination of the Ministry of Justice of Ukraine.

<sup>7</sup> Про затвердження переліків рекомендованої науково-технічної та довідкової літератури, що використовується під час проведення судових експертиз: наказ МЮ України від 30 липня. 2010 № 1722/5 із змінами та допов: <http://zakon3/rada.gov.ua/laws/show/v1722323-10/print1479818189324756>

<sup>8</sup> Основи судової експертизи: навч. посіб. для фахівців, які мають намір отримати або підтвердити кваліфікацію суд. експерта. (2016). Авт.-уклад.: Головченко, Л. М., Лозовий, А. І., Сімакова-Єфремян, Е. Б. та ін.

<sup>9</sup> Ключев, О. М., Угровецкий, О. П., Сімакова-Єфремян Е. Б. та ін. (2021). Судові експертизи в адміністративному провадженні: навч. посіб.

<sup>10</sup> Ріпенко, А. І., Тіщенко, В. В., Самойленко, О. А., Сімакова-Єфремян, Е. Б., Петрова, І. А., Белік, Л. С., Захарова, Т. О. (2021). Судові експертизи у кримінальному провадженні: посібник.

The procedures for assigning qualification classes of forensic experts to employees of SRIFE are carried out in accordance with the approved Order of the Ministry of Justice of Ukraine No. 2/20315 dated on January 3, 2012, Procedure for Assigning Qualification Classes of Forensic Experts to Employees of Scientific Research Institutions of Forensic Expertise of the Ministry of Justice of Ukraine<sup>11</sup>.

The system of methodological reviewing of supervisory proceedings (as a current control of the level of forensic expert competences) is being effectively implemented on the basis of the Procedure for reviewing the conclusions of forensic experts, approved by Order of the Ministry of Justice of Ukraine No. 335/5 dated on February 3, 2020<sup>12</sup>.

In order to increase the effectiveness of scientific researches in the field of forensic examination and the expert work, the Regulation on the Scientific Advisory and Methodological Council on the issues of forensic examination under the Ministry of Justice of Ukraine was developed, approved by Order of the Ministry of Justice of Ukraine No. 470/5 dated on March 27, 2012<sup>13</sup>.

In accordance with the current procedural legislation, the Instruction on the appointment and conduct of forensic examinations and expert researches (as amended and supplemented) has been developed and is successfully used in expert practice, as well as Scientific and Methodological Recommendations on the preparation and appointment of forensic examinations and expert researches, approved by Order of the Ministry of Justice of Ukraine No. 53/5 dated on October 8, 1998<sup>14</sup>.

<sup>11</sup> Про затвердження Порядку присвоєння кваліфікаційних класів судових експертів працівникам науково-дослідних установ судових експертиз М-ва юстиції України: наказ Міністерства юстиції України від 30 грудня 2011 № 3660/5 (із змінами та доповненнями). Офіц. вісн. України. 2012. №3. Ст. 105 (із змінами та допов.)

<sup>12</sup> Про затвердження Порядку проведення рецензування висновків судових експертів: наказ М-ва юстиції України від 3 лютого 2020 № 335/5. Офіц. вісн. України. 2020. № 13, стор.41. Ст. 533.

<sup>13</sup> Про затвердження Положення про науково-консультативну та методичну раду з проблем судової експертизи при Міністерстві юстиції України: наказ М-ва юстиції України від 27 березня 2012 № 470/5. Офіц. вісн. України. 2012. № 27, стор. 14. Ст. 1016 (із змінами та допов.).

<sup>14</sup> Інструкція про призначення та проведення судових експертиз та експертних досліджень: затв. наказом М-ва юстиції України від 08.10.1998 № 53/5 (уред. наказу М-ва юстиції України від 27 липня.2015 № 1350/5). Офіц. вісн. України. 2005. № 5. Ст. 325 (із змінами та допов.); Науково-методичні рекомендації з питань підготовки та призначення судових експертів: затв. наказом М-ва юстиції України від 8 жовтня 1998 № 53/5 (уред. наказу М-ва юстиції України від 27.07.2015 № 1350/5). Офіц. вісн. України. 2005. № 5. Ст. 325 (із змінами та допов.).

The aforementioned regulatory acts, as well as other components of the regulation of the FSA, have been developed and implemented by the units of expert support of justice of the Ministry of Justice on the proposals of the FSI of the Ministry of Justice of Ukraine, make it possible in all state FSI of the Ministry of Justice to ensure compliance with the requirements of the legislation on forensic examination on the basis of a unified scientific methodological approach.

The projected growth in the field of housing construction, the remaining relevant areas of production, the development of transport infrastructure, information and telecommunication technologies, as well as financial markets, the improvement of land relations in the state and the banking sector causes a corresponding increase in the work of the FSI.

Forensic examination is a knowledge intensive type of activity. It should be in constant development and use the advanced achievements of scientific and technological progress at a pace, not yielding to the rate of *scientific and technical* development of a crime. For its part, in order to implement this provision, it is necessary to constantly improve the organizational structure of the FSI, their management and the corresponding economic support.

Funding for the FSI system of the Ministry of Justice of Ukraine is in short supply: with a constant increase in the complexity, science intensity of forensic examinations, research and development in the field of forensic examination methods, funding is not provided by the State Budget of Ukraine in the required amount (budget program 3601070 *Forensic Examination, Research and Development in the Field of Methodology Conducting Forensic Examinations* does not provide the required amount of the need for wages, business travel expenses, information services, as well as for updating special equipment.

There is also an urgent problem of preserving the powerful scientific potential of highly qualified employees who are not satisfied with the salary: its level does not always allow attracting even novice specialists in the computer-technical, telecommunications industries and other high-tech areas; there is a certain outflow of highly qualified personnel to commercial structures.

There are serious issues in terms of the compliance of some premises of the FSI of the Ministry of Justice with modern safety requirements, equipment with technical means of protection and signaling, as well as compliance with the technical requirements for the operation of existing equipment.

However, despite all aforementioned problems, the average expert work, both in terms of the number of examinations performed and the number of standard hours, is quite high and, as already noted, exceeds the amount of

funding from the general fund of the State Budget.

The elimination of the aforementioned negative factors will contribute to increasing the efficiency of the FSA not only in the legal sphere but also in the general social aspect, creating conditions for a qualitative improvement in the situation in this area.

In this case, such general social factors that negatively affect the situation in the field of forensic activity should be taken into account:

- legal nihilism, attitudes of representatives of certain strata of society to unlawful behavior, ignoring the requirements of the law and, as a consequence, an increase in the number of illegal acts, which leads to an overload of forensic experts, hindering the quality performance of their duties;

- the insufficient level of interaction between public authorities at the state level causes the lack of systemic interaction between the bodies that prescribe the conduct of forensic examinations and the FSI, as well as the practical absence of the exchange of scientific and methodological information of the FSI of various departmental affiliations. In this case, for example, despite a number of decisions adopted by the relevant sections of the Scientific Advisory Council on the Issues of Forensic Expertise under the Ministry of Justice of Ukraine was on the research of narcotic drugs from hemp and poppy, research on pornographic products, weapons of traumatic action, etc., today no positive effect has been achieved from the implementation of these proposals in the FSI of various departments;

- the insufficient level of informatization of the FSI, associated with the limited ability to pay for the necessary information services, prevents the receipt of the full amount of information that is required for forensic examinations and researches.

The following should be recognized as structural issues in the development of FSA:

- lack of sufficient motivation in the timely and high-quality conduct of forensic examinations due to the insufficient level of remuneration for professionals with a high level of training;

- a significant difference between the cost of objects in dispute and the level of material support of the state forensic expert can lead to manifestations of corruption in the expert community;

- insufficient level of training of persons appointing forensic examinations and exercising procedural powers within the FSA;

- insufficient level of material, technical and informational support of state FSI;

A particular issue is the numerous conflicts and gaps in the legal regulation of the FSA and the status of the forensic expert, which leads to legal uncertainty in this area.

Forensic examination is a knowledge-intensive type of activity. It must be in constant development and use advanced achievements of scientific and technological progress at a rate that is not inferior to the rate of *scientific and technical* development of crime. For its part, to implement this provision, it is required to constantly improve the organizational structure of FSIs, their management and a corresponding economic support.

Funding for the FSI system of the Ministry of Justice of Ukraine is scarce: with a steady increase in the complexity, knowledge-intensity of forensic examinations, R&D intensity in the field of forensic examination methods, necessary funding is not provided by the State Budget of Ukraine (budget program 3601070: *Forensic examination, R&D in the field of methodology of conducting forensic examinations* does not fulfil to the extent necessary salary requirements, travel expenditures, information services, as well as specialized equipment upgrading.

There is also a pressing problem of preserving strong scientific capabilities of highly qualified employees who are not satisfied with salary: its level does not always allow attracting even novices in the computer-technical, telecommunication fields and other high-tech areas; there is a certain attrition of highly qualified staff to business corporations.

There are major problems in terms of compliance of some premises of FSIs of the Ministry of Justice with modern safety requirements, provision with technical assets of security and signalling, as well as compliance with technical requirements for the operation of existing equipment.

However, despite all the mentioned above issues, the average expert workload, both in terms of the number of performed examinations and the number of standard hours, is quite high and, as already emphasized, exceeds the amount of funding from the general fund of the State budget.

Addressing the above negative factors will contribute to increasing the efficiency of FEA not only in the legal field, but also in the general social aspect, creating conditions for a qualitative improvement in the situation in this field.

At the same time, one should consider such general social factors that negatively affect the situation in the field of forensic expert activity:

- legal nihilism, attitudes of representatives of certain society strata to unlawful behaviour, ignoring the requirements of the law and, consequently an increase in the number of illegal acts, which results in heavy workload of



forensic experts, preventing them from performing their duties properly;

– insufficient level of interaction between public authorities at the state level provokes the lack of systemic interaction between bodies appointing forensic examinations and FSIs, as well as practical absence of the exchange of scientific and methodological information of the FSIs of various organizational affiliation. Thus, for example, despite a number of decisions adopted by the relevant sections of the Scientific Advisory Council on Forensic Expertise under the Ministry of Justice of Ukraine on research on drugs from cannabis and poppy, research on pornographic products, traumatic weapons, etc. today no positive effect has been achieved from the implementation of these proposals in FSIs of various agencies;

– insufficient level of informatization of FSIs associated with limited capacity to pay for needed information services is an obstacle to obtaining full information that is required for forensic examinations and researches.

Structural issues in the development of FSIs should be considered as follows:

– lack of sufficient motivation in timely and high-quality conduct of forensic examinations due to inadequate level of payment of professionals with a high performance level;

– a significant difference between the cost of subjects to disputes and the level of financial support of state forensic expert can lead to corruption manifestations in the expert community;

– insufficient level of training of persons appointing forensic examinations and exercising procedural powers within FEA;

– inadequate level of logistical and informational support of state FSIs;

A special issue is numerous conflicts and gaps in the regulatory framework of FSIs and the status of a forensic expert, which result in legal uncertainty in this field.

Solution to the problem as to reducing time for conducting forensic examinations, increasing the research volume, improving their quality, the development of new methods and techniques of expert researches has a large-scale and long-term nature. The current stage of social and economic transformations dictates the need for transition of state FSIs to a completely new level of activity. This predetermines the need to ensure rational and target-focused spending of funds, taking into account the needs of the courts and law enforcement agencies of Ukraine in new services of state FSIs.

Otherwise, the reform of Ukrainian forensic expert system will lose its consistency, there will be inconsistency in the development of state FSIs of various

agencies, as well as in the regulation of the activities of private forensic experts. Consequences of this are unpredictable, in particular, business-as-usual development of FSIs in general, at which the state of the system will less and less correspond to social and economic needs of society and the state and can result in negative consequences for the system.

To fulfil the goals of the concept of law enforcement agencies reforming, the judicial system of Ukraine and solving tasks of the developed concept with regard to the activities of FSIs in Ukraine, a system of measures is suggested, formed in accordance with the following directions.

1. Active introduction of modern technologies in the field of FEA, strengthening of logistics, provision of FSIs with modern equipment.

The main goals of the introduction of the latest technologies in FEA:

- expanding the scope of researches;
- reduction of the timing of performing forensic examinations and researches (in particular, due to increase of efficiency of receiving information), as a result: reduction of terms of investigation and consideration of cases in the courts and increase in quality of court judgements;
- improving the research quality;
- timely exchange of information between the law enforcement official, FSI, governance structures of the Ministry of Justice of Ukraine, etc.

To increase the level of control over the timing and quality of forensic examinations, it is required to ensure the implementation of information and analytical systems of statistics and electronic document circulation systems.

As indicated, forensic science refers to knowledge-intensive types of activity. In the course of implementing doctrinal approaches to the implementation of FEA, it is planned to equip state FSIs so that it would enable them to solve new expert tasks, including performing forensic examinations in proceedings on extremism and terrorism, as well as computer and telecommunication forensic examinations; equipping institutions with mobile forensic laboratories, etc.

2. Reconstruction of existing and acquisition of additional premises for state FSIs of the Ministry of Justice of Ukraine.

High-quality forensic examinations are impossible in the absence of space for a well-maintained work of experts: employees of state FSIs, research laboratories. Requirements for the premises of forensic institutions are due to the importance of the presence of court proceeding parties while research. In addition, conduct of forensic examinations requires improvement of specialized premises (such as a shooting range, vehicle inspection box, chemistry laboratories, laboratories for operation of X-ray and other equipment with radiation,

rooms for video and audio analysis, a room for holding meetings of commissions, seminars in the teleconference mode, etc.).

In addition, it is necessary, both at the level of regulation and at the level of logistics support, to solve (if possible) the problem of remote interaction of an expert with subjects of criminal proceedings and other types of court proceedings by equipping corresponding premises in each FSI for participation in trial in the teleconference mode.

The indicated above measures entail acquiring of experimental equipment, the latest scientific and technical developments intended for the development of new methods and methodologies of forensic examination, expansion of the list of objects subjected to expert research, which, for its part, is also one of the areas of work within the framework of reforming. Furthermore, these measures provide for an increase in premises area where FSIs of the Ministry of Justice are situated, to adapt them to the standards for accommodation of workers and equipment.

Measures to strengthen logistics of state FSIs of the Ministry of Justice stipulated by this concept relate only to the issues of maintaining the equipment base updated, that is, replacing outdated and unusable equipment, fleet management (checking, standardization, repairing), as well as adapting premises of FSIs in accordance with standards in the field of preservation of physical evidence (research objects), fire safety, occupational safety and health, energy efficiency, etc. The acquisition of new equipment includes the provision of FSIs with the minimum essential set of instruments corresponding to existing methods for performing specific types of forensic examinations as well as to the standards of logistics support.

One of the most important problems of law enforcement in Ukraine is the timing of court proceedings. It is possible to reduce the cost of carrying out forensic examinations due to:

- an increase in the volume of conducted research: by increase in the staffing of forensic experts and financial incentives for employees;
- reducing the time for starting researches: by improving the quality of the preparation of materials submitted for forensic examination, agreeing on the text and the list of tasks to be addressed by parties, assign an examination;
- reducing the duration of specific examinations: by introducing new methodologies, applying modern technical tools;
- enhancing the quality of researches: by improving qualification of forensic experts, extending qualification requirements for an expert to forensic expert activities of all forensic science institutions in Ukraine.

It is essential to tackle these problems in the context of carrying out socio-economic and technological modernization in Ukraine, ensuring openness in the activities of state institutions, accessibility of functions they perform and services they provide for population. Therefore, it is vital to provide an intensive way for the development of FSIs with minimal involvement of additional material resources and effective use of existing ones.

Thus, implementation of doctrinal approaches to solving issues of forensic examination is as follows:

– improving the legal status of a state forensic expert through:

a) improving legal regulations governing FEA in Ukraine (in particular, the adoption of a new version of the Law of Ukraine: *On Forensic Expert Provision of Justice in Ukraine*, introduction of corresponding amendments and additions to the procedural legislation of Ukraine, by-laws, etc.);

b) enhancing motivation in state forensic experts: in the short term – the entry into force of Part 2 of Article 18 of the Law of Ukraine: *On Judicial Examination* in terms of remuneration of forensic experts and relevant by-laws governing requirements for remuneration of employees of state FSIs by legal adoption of provisions based on financial and social security of a forensic expert (pension) in the future: consolidation of these provisions under the law. Solving the issues of providing accommodation for employees of state FSIs in Ukraine through state central government authorities and local self-government;

c) enhancing the efficiency of research and forensic expert practice by combining functions of forensic experts with functions of scientists. Despite the fact that funding from the State budget is implemented according to the unified budget program 3601070: *Conducting forensic examination, research and development in the field of methodology for conducting forensic examinations*, as well as on the unity and continuity of research of state FSI specialists with the practice of performing forensic examinations, and not to differentiate the positions of scientists and forensic experts and to amend the Decree of the Cabinet of Ministers of Ukraine dated March 30, 2011 No. 314: *On requirements for remuneration of employees in state specialized institutions of forensic science*;

d) countering corruption manifestations in the field of forensic science by carrying out continuous educational legal work with employees of FSIs on the one hand, and increasing the level of remuneration for persons who possess qualification of a forensic expert on the other hand;

e) state support for training of highly qualified scientific personnel (Doctors of Sciences, PhDs ) by forensic science institutions licensed to carry out such

activities;

- preservation and development of the system of independent state specialized FSIs, at the heart of which (70% of staff) must be highly qualified scholars capable of combining functions of developing expert research methodologies and conducting forensic examinations;

- improvement and intensification of the system of advanced training of employees of state FSIs for the rational and efficient use of logistics: mastering a wide range of expert researches by all forensic experts at all institutions of the Ministry of Justice of Ukraine;

- development of international cooperation in the field of FEA to strengthen the position of Ukrainian forensic science in the world, expanding the knowledge base of forensic experts, development of new teaching methods (in particular, through a speedy adaptation of modern foreign methodologies, promotion of modern Ukrainian methodologies among forensic expert laboratories of the world);

- strengthening and development of FSI logistics of the Ministry of Justice;

- opening FSI branches in each region of Ukraine;

- enhanced cooperation with public organizations of forensic experts and criminalists: *Union of Experts of Ukraine, International Criminalists Congress, Community of Medical Examiners and Criminalists, European Federation of National Associations of Criminalists* etc.;

- further advancement of the FSI accreditation processes for compliance with international standards and expanding the circle of ENFSI members;

- expansion of the types of expert services;

- enhanced work at the state level to consolidate the efforts of the FSIs of the Ministry of Justice of Ukraine with corresponding state authorities to find opportunities for an increase in the amounts of taxes received by the State Budget of Ukraine, and to identify corruption schemes for tax evasion and other offenses;

- against the background of the preservation and development of the system of independent state specialized FSIs: a gradual systemic increase in the types of specializations for which the qualification of a forensic expert can be given to persons who are not employees of state FSIs.

## NACIONALINIS MOKSLINIS CENTRAS „PROF. M. S. BOKARIUS TEISMO EKSPERTIZĖS MOKSLŲ INSTITUTAS“ IR TEISMO EKSPERTINĖS VEIKLOS REFORMAVIMO KLAUSIMAI UKRAINOJE

Ella Simakova-Yefremian,

### Santrauka

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Autoriaus nuomone, atsižvelgimas į siūlymus reformuoti ekspertinę veiklą turės teigiamos įtakos ekspertinio teisingumo vykdymo lygiui valstybėje.

**Raktiniai žodžiai:** Nacionalinis mokslo centras „prof. N. S. Bocarius vardo teismo ekspertizės institutas“, teismo ekspertizė, ekspertinė teisingumo užtikrinimo veikla, teismų ir teisinės reformos Ukrainoje pagalba, teismo ekspertas.