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## Forensic Psychiatric Examination: General Theoretical Issues

The article outlines the issue of appointing and conducting a forensic examination in Ukraine, specifically focusing on forensic psychiatric examination. It presents the key concepts and terms related to forensic psychiatric examination, along with its tasks, types, procedures, and significance for the judicial process. The conclusion drawn is that expert conclusions constitute a vital form of evidence in court proceedings, enabling the determination of case circumstances that may not be established through any other means.

The current state of appointment and conduct of forensic psychiatric examinations in Ukraine has been analyzed, existing problems have been identified and ways of solving them have been considered.

It has been established that the main problem in appointing and conducting a forensic psychiatric examination is that it is a complex and multifaceted type of forensic examination, which requires highly qualified and experienced forensic experts, but currently, there is a shortage of qualified psychiatric experts. This might result in a forensic examination being conducted improperly or with infringements.

The paper specifies the need for advanced training and acquisition of experience by forensic experts conducting forensic psychiatric examinations to ensure conclusions' objectivity. The author concludes that forensic psychiatric examination requires the forensic expert to possess high professionalism, objectivity, independence, honesty, responsibility, competence, and tactfulness.

The article highlights the main concepts and terms associated with the appointment and conduct of a forensic psychiatric examination; describes the procedure for conducting a forensic psychiatric examination; reveals the importance of a forensic psychiatric examination for the judicial process; analyzes the current state of appointment and conduct of a forensic psychiatric examination in Ukraine; identifies the main problems associated with the appointment of a forensic psychiatric examination; considers possible recommendations for solving these problems. The author also draws attention to the importance of observing the rights and freedoms of persons who are the subject of forensic psychiatric examination.

**Keywords:** forensic examination, purpose of examination, forensic psychiatric, conducting a forensic examination, tasks and types of examination, conclusion of forensic psychiatric examination, forensic expert.

**Research Problem Formulation.** Psychiatric examination development history begins approximately in the 19th century. The Law of Ukraine On Judicial Examination was adopted in 1994, and the Order of the Ministry of Health of Ukraine On Approval the Procedure for Conducting a Forensic Psychiatric Examination was passed in 2018 <sup>1</sup>. The above documents define the basic principles and rules for conducting a forensic psychiatric

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### Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

### Declaration of Competing Interest

The author declare that they have no conflict of interest.

<sup>1</sup> Закон України «Про судову експертизу» від 25.02.1994 4038-XII. URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text>; Про затвердження Порядку проведення судово-



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### СУДОВО-ПСИХІАТРИЧНА ЕКСПЕРТИЗА: ЗАГАЛЬНОТЕОРЕТИЧНІ ПИТАННЯ

examination in Ukraine, namely: a forensic psychiatric examination in criminal and civil cases is performed based on and following the current legislation of Ukraine.

The conduct of forensic psychiatric examination is based on and regulated by the Criminal Procedure Code of Ukraine, Criminal Code of Ukraine, Civil Procedure Code of Ukraine, Code of Ukraine on Administrative Offenses, Code of Administrative Procedure of Ukraine, and the Law of Ukraine On Judicial Examination<sup>2</sup>.

Forensic psychiatric examination is a type of forensic examination conducted to conclude the mental condition of a person who is the subject of a court proceeding. The examination may be ordered in criminal, civil, and administrative cases.

The main problem with the appointment and conduct of forensic psychiatric examination is that it is a complex and multifaceted type of forensic examination, requiring forensic experts with high qualifications and experience. In addition, forensic psychiatric examination is often associated with certain risks, such as the difficulty in reaching an objective conclusion.

Forensic psychiatric examination encompasses the following main tasks: determining the presence or absence of mental illness in a person; identifying the nature and severity of the mental illness; establishing whether a person could comprehend the significance of his/her actions and manage them at the time of committing an unlawful act; determining the presence or absence of the individual's capacity to understand the nature and consequences of his/her actions at the time of committing an unlawful act<sup>3</sup>.

Forensic psychiatric examination is conducted in state specialized forensic psychiatric institutions by the decision of pre-trial investigation authorities or by court order. Forensic experts conducting a forensic psychiatric examination must comply with the requirements stipulated in the Law of Ukraine On Judicial Examination<sup>4</sup>.

Forensic psychiatric examination can be outpatient or inpatient. The outpatient forensic psychiatric examination is conducted outside a medical institution, while the inpatient one is conducted in a psychiatric hospital. The period for conducting the forensic psychiatric examination is thirty working days. In case of complexity, the examination period may be extended by the decision of the body that appointed the examination.

The conclusion of the forensic psychiatric examination is one of the pieces of evidence in the legal process. It can be of significant importance for the resolution of the case.

The issues related to the appointment and conduct of forensic psychiatric examination include: the need for high qualification and experience of experts conducting the forensic psychiatric examination; and the risk of not obtaining an objective conclusion, meaning it is necessary to understand that any conclusion is a subjective opinion of the expert, but the inferences are based on research, objectively established results that are described and can be verified; the risk of falsifying the conclusions, that is, intentionally providing a false conclusion, but this is subject to liability under Article 384 of the Criminal Code of Ukraine; the need to ensure the rights and freedoms of a

У статті розглянуто питання призначення та проведення експертизи в Україні, а саме судово-психіатричної експертизи. Подано основні поняття та терміни, пов'язані з судово-психіатричною експертизою, а також її завдання, види, порядок проведення та значення для судового процесу. Визначено, що висновок експерта є одним з видів доказів в судовому провадженні який дозволяє встановити обставини справи, які не можуть бути встановлені іншим шляхом.

Проаналізовано сучасний стан призначення та проведення судово-психіатричної експертизи в Україні, виявлено існуючі проблеми та окреслено шляхи їх вирішення.

Визначено, що основною проблемою призначення та проведення судово-психіатричної експертизи є те, що вона є складним і багатограним видом дослідження, який вимагає від експертів високої кваліфікації та досвіду, але на даний час спостерігається нестача кваліфікованих експертів-психіатрів. Це може призвести до того, що експертиза буде проведена неякісно або з порушеннями.

Визначено необхідність підвищення кваліфікації та набуття досвіду експертів, які проводять судово-психіатричну експертизу для забезпечення об'єктивності висновку. Автор приходить до висновку, що психіатрична експертиза вимагає від експерта високого професіоналізму, об'єктивності, незалежності, чесності, відповідальності, компетентності та тактовності.

Стаття висвітлює основні поняття та терміни, які пов'язані із призначенням та проведенням судово-психіатричної експертизи; описаний порядок проведення судово-психіатричної експертизи; розкриті значення судово-психіатричної експертизи для судового процесу; проаналізовано сучасний стан призначення та проведення судово-психіатричної експертизи в Україні; визначені основні проблеми, що пов'язані з призначенням судово-психіатричної експертизи; розглянуті можливі рекомендації щодо вирішення цих проблем. Також автор звертає увагу на важливість дотримання прав

психіатричної експертизи. Наказ МОЗ України від 08.05.2018 № 865. URL: <https://zakon.rada.gov.ua/laws/show/z0719-18#Text>

<sup>2</sup> Кримінальний кодекс України; Закон України від 05.04.2001 № 2341-III // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14>; Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651 -VI // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL <https://zakon.rada.gov.ua/laws/show/4651-17>

<sup>3</sup> Судова психіатрія та судово-психіатрична експертиза : навчальний посібник / І. М. Григус та ін. Львів, 2019. 119 с.

<sup>4</sup> Закон України «Про судову експертизу» від 25.02.1994 4038-XII URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text>



і свобод осіб, які є предметом судово-психіатричної експертизи.

Ключові слова: експертиза, призначення експертизи, судово-психіатрична, проведення експертизи, завдання та види експертизи, висновок судово-психіатричної експертизи, експерт.

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#### FORENSIC PSYCHIATRIC EXAMINATION: GENERAL THEORETICAL ISSUES

Expertise is a study conducted by an expert on the basis of special knowledge of material objects, phenomena and processes, which contain information about the circumstances of the case under judicial review, with the aim of providing a conclusion

The article examines the procedure for conducting examinations, which are regulated by the legislation of Ukraine, namely the Criminal Procedure Code of Ukraine, the Criminal Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Ukraine on Administrative Offenses, the Code of Administrative Procedure of Ukraine and the Law of Ukraine on "Judicial Examination"

The issue of appointing and conducting an examination in Ukraine, namely a forensic psychiatric examination, was considered. The main concepts and terms related to forensic psychiatric examination, as well as its tasks, types, procedure and significance for the judicial process are presented. It was determined that the expert's opinion is

person who is the subject of the examination; the need for proper funding for forensic psychiatric examination.

To address the outlined issues, it is necessary to: improve the qualification and experience of experts conducting forensic psychiatric examinations; develop mechanisms to ensure the objectivity of forensic psychiatric examination findings; take measures to prevent falsification of forensic psychiatric examination conclusions; and ensure proper funding for forensic psychiatric examination.

An important issue is also ensuring the rights and freedoms of the person who is the subject of the examination. The examination must be conducted in compliance with all rights and freedoms of the person, including the right to defense. It is also necessary to consider that forensic psychiatric examination is a complex and multifaceted type of examination that requires experts with high qualifications and experience. Therefore, to ensure the objectivity of the conclusions of forensic psychiatric examination, it is necessary for the experts conducting it to have the relevant experience and qualifications. Additionally, it is important to take into account that forensic psychiatric examination is often associated with certain risks, namely the impossibility of obtaining an objective conclusion and the possibility of falsifying the conclusion. To prevent these risks, it is necessary to develop a mechanism to ensure the objectivity of the conclusions of forensic psychiatric examination's conclusions.

Thus, the purpose and conduct of forensic psychiatric examination is a complicated and responsible procedure that requires compliance with all the rights and freedoms of the person undergoing examination, as well as ensuring the objectivity of the conclusions of the forensic psychiatric examination.

**Analysis of Essential Researches and Publications.** V. Anisimova, V. Baraniak, I. Lapin, I. Moroz, O. Rossinska, P. Repeshko, and V. Sherstiuk dedicated their works to the research on the professional training of experts conducting forensic psychiatric examinations. Most studies indicate that the level of professional training and experience of experts conducting forensic psychiatric examinations remain insufficient. This may be attributed to the meager funding of forensic psychiatric examinations, the lack of uniform qualification requirements for experts, and the shortage of specialized educational institutions for the training of forensic psychiatric experts.

Issues of objectivity in conclusions of forensic psychiatric examination were highlighted in the scientific research by V. Arseniev, L. Bulyha, V. Berher, A. Vinberh, O. Shliakhov, O. Rosynska, V. Lysychenko, Yu. Orlov, I. Petrukhin, H. Nahorny, M. Mikhaenko. The conducted studies indicate that the conclusions of the forensic psychiatric examination turn out to be

subjective which may be associated with several factors, including the personal preferences of experts, their professional involvement, as well as pressure from parties involved in the legal process.

The works by V. Lemak, V. Tsvika, S. Aleksiev, A. Kolodii, A. Venherov, Yu. Todyka, V. Nersesians, O. Skakun, O. Pertyshyn, P. Rabinovych, V. Pohorilko, O. Skryshniuk, O. Yarmasha, V. Tatsii, L. Yavych, V. Shapovalov were dedicated to ensuring the rights and freedoms of individuals who are the subject of forensic psychiatric examination. An analysis of the research shows that the rights and freedoms of individuals undergoing forensic psychiatric examination are often





not properly safeguarded. This is due to the fact that forensic psychiatric examinations are often conducted under conditions that restrict the freedom of the individual, as well as the lack of mechanisms to protect the rights and freedoms of these individuals.

**Article Purpose** is to identify the features of appointing and conducting forensic psychiatric examinations during criminal investigations.

**Main Content Presentation.** The forensic psychiatric examination is a scientific and practical investigation carried out by a forensic psychiatric expert under a resolution of the authorized bodies or a court order to address questions arising in criminal, administrative, and civil cases regarding the mental state of an individual<sup>5</sup>.

The main concepts and terms related to the purpose and conduct of forensic psychiatric examination include: sanity, insanity, incapacity, an object of examination; examination questions and expert opinion. Let's consider these concepts in more details:

An insanity is the ability of a person to comprehend the meaning of their actions and control them at the moment of committing a crime.

According to Part 2 of Article 19 of the Criminal Code of Ukraine, the state of insanity means that a person "could not comprehend their actions (inactions) or control them due to chronic mental illness, temporary mental disorder, dementia or another disease state of mind..."<sup>6</sup>.

An examination object is a person for whom the examination is conducted, and issues of examination are questions posed to the expert in order to obtain an opinion on a particular case or issue. The questions should be formulated in such a way that they can be answered unambiguously based on the expert's specific expertise.

The questions of the examination can be: diagnostic, aimed at establishing the fact, properties, or condition of the study object to a certain class, group, or type; identifying, aimed at establishing the identity or non-identity of objects; comparative, aimed at establishing the similarity or difference between objects. Examination questions must be formulated clearly and unambiguously. They should include evaluative judgments or assumptions. An expert is not allowed to answer questions that are beyond their competence or cannot be resolved based on specific knowledge. In some cases, examination questions may be presented in the form of alternatives.

An expert conclusion is a document that presents the results of an examination and answers to the questions posed<sup>7</sup>.

Forensic psychiatric examination is appointed by the investigator and judge in criminal proceedings, as well as by the judge in civil proceedings and by the administrative authority in cases of administrative offenses.

The basis for appointing an examination is the presence of grounds for the investigator, court, or administrative body to believe that the mental state of the person under investigation, judicial proceedings, or administrative offense may be relevant to the case. When appointing an examination, the investigator, prosecutor, or administrative body must formulate the questions of the examination. They must be specific and understandable so that the experts can provide answers to them.

Forensic psychiatric examination is conducted by a forensic expert or an expert commission. Primarily, the expert must comply with the requirements

one of the types of evidence in court proceedings that allows establishing the circumstances of the case that cannot be established in any other way.

The current state of appointment and conduct of forensic psychiatric examination in Ukraine has been analyzed, existing problems have been identified and ways of solving them have been considered.

It was determined that the main problem of appointing and conducting a forensic psychiatric examination is that it is a complex and multifaceted type of forensic examination, which requires highly qualified and experienced experts, but currently there is a shortage of qualified psychiatric experts. The number of expert psychiatrists with appropriate qualifications and work experience does not meet the needs of judicial practice. This can lead to the fact that the examination will be carried out with poor quality or with violations.

According to the results of writing the article, it was determined about the need to improve the qualifications and gain experience of experts who conduct forensic psychiatric examination, to ensure the objectivity of the conclusion. The author comes to the conclusion that psychiatric examination requires high professionalism, objectivity, independence, honesty, responsibility, competence and tact from the expert.

The article highlights the main concepts and terms associated with the appointment and conduct of a forensic psychiatric examination; the procedure for conducting a forensic psychiatric examination is described; revealed the importance of forensic psychiatric examination for the judicial process; the current state of appointment and conduct of forensic psychiatric examination in Ukraine is analyzed; the main problems associated with the appointment of a forensic psychiatric examination are identified; possible recommendations for solving these problems are considered. The author also draws attention to the importance of observing the rights and freedoms of persons who are the subject of forensic psychiatric examination.

Key words: examination, purpose of examination, forensic psychiatric, conducting examination, tasks and types of examination, conclusion of forensic psychiatric examination, expert.

<sup>5</sup> Гусева В. О. Сучасні можливості психологічних експертиз під час розслідування кримінальних правопорушень, вчинених проти працівників правоохоронних органів. *Вісник Луганського державного університету внутрішніх справ імені Е. О. Дідоренка*. 20216. № 3 (95). С. 56–67. DOI : 10.33766/2524-0323.95.256-267.

<sup>6</sup> Кримінальний кодекс України: Закон України від 05.04.2001№ 2341-III // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14>

<sup>7</sup> Лист Міністерство юстиції України «Про залучення фахівців для здійснення судово-експертної діяльності за спеціальностями» від 06.07.2006 № № 36-22-1358 URL: <https://zakon.rada.gov.ua/laws/card/v1358323-06>





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# **FORENSISCHE PSYCHIATRISCHE UNTERSUCHUNG: ALLGEMEINE THEORETISCHE FRAGEN**

Bei einem Gutachten handelt es sich um eine von einem Sachverständigen auf der Grundlage spezieller Kenntnisse materieller Gegenstände, Phänomene und Vorgänge durchgeführte Untersuchung, die Informationen über die Umstände des gerichtlich zu prüfenden Falles mit dem Ziel enthält, eine Schlussfolgerung zu ziehen

Der Artikel untersucht das Verfahren zur Durchführung von Prüfungen, das durch die Gesetzgebung der Ukraine geregelt ist, nämlich die Strafprozessordnung der Ukraine, das Strafgesetzbuch der Ukraine, die Zivilprozessordnung der Ukraine, das Gesetzbuch der Ukraine über Ordnungswidrigkeiten, das Gesetzbuch der Ukraine Verwaltungsverfahren der Ukraine und das Gesetz der Ukraine über die „gerichtliche Prüfung“

Es wurde die Frage der Bestellung und Durchführung einer Untersuchung in der Ukraine, nämlich einer forensisch-psychiatrischen Untersuchung, erörtert. Es werden die wichtigsten Konzepte und Begriffe der forensisch-psychiatrischen Untersuchung sowie deren Aufgaben, Art, Ablauf und Bedeutung für das Gerichtsverfahren vorgestellt. Es wurde festgestellt, dass das Gutachten des Sachverständigen zu den Beweismitteln im Gerichtsverfahren gehört, die es ermöglichen, die Umstände des Falles festzustellen, die auf andere Weise nicht festgestellt werden können.

Der aktuelle Stand der Ernennung und Durchführung der forensischen

of Article 10 of the Law of Ukraine On Judicial Examination<sup>8</sup>. The expert or a member of the expert commission may be a psychiatrist who has the appropriate qualifications and experience.

Let us consider the procedure for conducting an examination, which includes the following stages: appointment of examination – examination is appointed by the body (person) conducting the proceedings, the appointment of examination is made in the form of a decree, resolution, or order; involvement of an expert – an expert is involved based on their qualifications and competence in the field related to the questions raised for examination; provision of examination materials – the body (person) that appointed the expertise is obliged to provide the expert with all necessary materials for examination; conducting the examination – the expert conducts the examination based on the materials and using appropriate methods and tools; drawing up a conclusion – the expert compiles a conclusion in the form of a document, which presents the results of the conducted examination and answers to the questions raised.

Direct examination of the person subject to the examination is one of the stages of conducting the examination. It is carried out in cases where obtaining information that can only be obtained through direct observation of the person is necessary to address the issues under examination. Direct examination of the person may be conducted in the following cases: to determine the mental state of the person; to establish the age of the person; to determine the gender of the person; to determine the presence of certain knowledge, skills, or abilities in the person; to establish other circumstances that can only be determined through direct observation of the person. The direct examination of the person is carried out by an expert in the presence of the person being examined. During the examination, the expert may ask the person questions and use various methods and means of investigation, such as conversation, inspection, measurement, photography, and other methods and means that are not harmful to the person being examined. The results of the direct examination of the person are reflected in the expert's conclusion.

To ensure the objectivity of the examination results, it is necessary for the expert to be independent of the parties involved in the case and other individuals who may have an interest in the examination results. The expert should be objective in their judgments and refrain from making statements that could be perceived as evaluations of actions or personal qualities of the person being examined.

According to the Order of the Ministry of Health of Ukraine on Approval of the Procedure for Conducting Forensic Psychiatric Examination No. 865 dated 08.05.2018, the term for conducting an outpatient forensic psychiatric examination is up to thirty working days from the date of receipt of all necessary materials. The term for an inpatient forensic psychiatric examination is sixty working days from the date of receipt of all necessary materials. The term for conducting a postmortem examination in Ukraine is sixty working days from the date of receipt of all necessary materials, its term may be extended at the request of the expert if additional research, receipt of additional materials, or additional consultations with other experts are required for the examination, and the term for conducting a postmortem examination

<sup>8</sup> Кримінальний кодекс України: Закон України від 05.04.2001 № 2341-III // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14>





may be reduced at the request of the person who appointed the examination, if this does not lead to a decrease in the quality of the examination<sup>9</sup>.

During the examination, the expert may involve other individuals in the examination, such as psychiatrists, psychologists, and social workers. The reasons for involving other specialists in the examination may vary. Most often, this is because to resolve issues raised by the expert, it is necessary to have knowledge and experience in an area that is not within the competence of the staff expert<sup>10</sup>.

According to Articles 69, 77, and 79 of the Criminal Code of Ukraine, if the expert lacks the necessary knowledge or skills, or if they are a relative or close friend of the person undergoing examination<sup>11</sup>.

After conducting an examination, a conclusion is provided. The expert must provide the conclusion in written form and include answers to the questions posed. The conclusion of forensic psychiatric examination is one of the sources of evidence in criminal, civil, and administrative proceedings. The conclusion of the examination may have significant importance for the resolution of the case.

There are certain requirements regarding the form of the examination's conclusion. The conclusion of the forensic psychiatric examination is drawn up in writing and signed by the expert or expert commission. The conclusion should contain the following details: the name of the institution where the examination was conducted; the name, surname, and patronymic of the expert (members of the expert commission); the position of the expert (members of the expert commission); date of the examination; the questions posed to the expert (expert commission); answers to the questions posed; the conclusion of the expert (expert commission). The conclusion of the examination should be objective and impartial. The expert should not give evaluations of the actions of the person being examined<sup>12</sup>.

Forensic psychiatric examination is one of the most important sources of evidence in legal proceedings. It can be crucial in determining the outcome of a case as it allows for the assessment of the mental state of the individual under investigation or legal proceedings.

In criminal proceedings, the forensic psychiatric examination may be appointed to address the following issues: whether the person was mentally incompetent at the time of committing the crime; whether the person was intoxicated or under the influence of narcotics at the time of committing the crime; whether the person was capable of understanding the significance of their actions and controlling them at the time of committing the crime. Answers to these questions are crucial for the classification of the crime and the imposition of punishment.

In civil proceedings, psychiatric examination may be appointed to address such questions as whether the person was mentally competent at the time of certain actions, and whether the person was capable of understanding the significance of their actions and controlling them at the time of certain actions. Answers to these questions are crucial for resolving disputes regarding the civil rights and obligations of the individual.

In administrative offense proceedings, the forensic psychiatric examination may be appointed to address such questions as whether the person was capable of understanding their actions and controlling them at the time of committing the administrative offense. The answer to this

psychiatrischen Untersuchung in der Ukraine wurde analysiert, bestehende Probleme identifiziert und Möglichkeiten zu deren Lösung in Betracht gezogen. Es wurde festgestellt, dass das Hauptproblem bei der Bestellung und Durchführung einer forensischen psychiatrischen Untersuchung darin besteht, dass es sich um eine komplexe und vielschichtige Art der forensischen Untersuchung handelt, die hochqualifizierte und erfahrene Experten erfordert, derzeit jedoch ein Mangel an qualifizierten psychiatrischen Experten besteht. Die Zahl der fachkundigen Psychiater mit entsprechender Qualifikation und Berufserfahrung entspricht nicht den Anforderungen der gerichtlichen Praxis. Dies kann dazu führen, dass die Prüfung mit schlechter Qualität oder mit Verstößen durchgeführt wird.

Aufgrund der Ergebnisse der Erstellung des Artikels wurde festgestellt, dass die Qualifikationen und Erfahrungen von Experten, die forensische psychiatrische Untersuchungen durchführen, verbessert werden müssen, um die Objektivität der Schlussfolgerung sicherzustellen. Der Autor kommt zu dem Schluss, dass die psychiatrische Untersuchung vom Gutachter hohe Professionalität, Objektivität, Unabhängigkeit, Ehrlichkeit, Verantwortung, Kompetenz und Fingerspitzengefühl erfordert.

Der Artikel beleuchtet die wichtigsten Konzepte und Begriffe im Zusammenhang mit der Ernennung und Durchführung einer forensisch-psychiatrischen Untersuchung; das Verfahren zur Durchführung einer forensisch-psychiatrischen Untersuchung wird beschrieben; zeigte die Bedeutung der forensischen psychiatrischen Untersuchung für den Gerichtsprozess auf; Der aktuelle Stand der Ernennung und Durchführung forensischer psychiatrischer Untersuchungen in der Ukraine wird analysiert, die Hauptprobleme im Zusammenhang mit der Bestellung einer forensisch-psychiatrischen Untersuchung werden identifiziert; Mögliche Empfehlungen zur Lösung dieser Probleme werden berücksichtigt. Der Autor weist auch auf die Bedeutung der Wahrung der Rechte und Freiheiten von Personen hin, die Gegenstand einer forensisch-psychiatrischen Untersuchung sind.

Schlüsselwörter: Untersuchung, Zweck der Untersuchung, forensische Psychiatrie, Durchführung der Untersuchung, Aufgaben und Arten der Untersuchung, Abschluss der forensischen psychiatrischen Untersuchung, Sachverständiger.

<sup>9</sup> Про затвердження Порядку проведення судово-психіатричної експертизи. Наказ МОЗ України від 08.05.2018 № 865. URL: <https://zakon.rada.gov.ua/laws/show/z0719-18#Text>

<sup>10</sup> Макарова О. П. Судово-психіатрична експертиза: теоретичні аспекти та проблеми призначення. *Наше право*. 2023б. № 4. С. 61–66. DOI: <https://doi.org/10.32782/NP.2023.4.9>

<sup>11</sup> Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651 -VI // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL <https://zakon.rada.gov.ua/laws/show/4651-17>

<sup>12</sup> Щербаківський М. Г. Проведення та використання судових експертиз у кримінальному провадженні : монографія. Харків. 2015. 560 с.

## EXAMEN PSYCHIATRIQUE LÉGAL : QUESTIONS THÉORIQUES GÉNÉRALES

L'article traite de la question de la nomination et de l'examen en Ukraine, à savoir l'examen psychiatrique légal. Les principaux concepts et termes liés à l'examen psychiatrique légal, ainsi que ses tâches, types, procédure et importance pour le processus judiciaire sont présentés. Il a été déterminé que la conclusion de l'expert est l'un des types de preuves dans les procédures judiciaires qui permettent d'établir les circonstances de l'affaire qui ne peuvent être établies d'une autre manière.

L'état actuel de la nomination et de la conduite des examens psychiatriques légaux en Ukraine est analysé, les problèmes existants sont identifiés et les moyens de les résoudre sont décrits.

Il a été déterminé que le principal problème de la nomination et de la conduite d'un examen psychiatrique légal est qu'il s'agit d'un type de recherche complexe et multiforme qui nécessite des experts hautement qualifiés et expérimentés, mais qu'il existe actuellement une pénurie d'experts psychiatriques qualifiés. Cela peut conduire au fait que l'examen sera effectué de mauvaise qualité ou avec des violations.

La nécessité d'améliorer les qualifications et d'acquérir de l'expérience des experts qui procèdent à des examens psychiatriques légaux afin de garantir l'objectivité des conclusions a été déterminée. L'auteur arrive à la conclusion que l'examen psychiatrique exige un professionnalisme, une objectivité, une indépendance, une honnêteté,

question is significant for determining the extent of the person's responsibility for committing the offense.

The conclusion of the forensic psychiatric examination is submitted to the court in accordance with Article 101 of the Criminal Procedure Code of Ukraine. The court takes into account the conclusion of the examination when deciding the case. However, the court is not obliged to fully agree with the conclusion of the examination. The court may reject the conclusion of the examination if it considers it unjustified or contradictory to other evidence in the case<sup>13</sup>.

Forensic psychiatric examination is an important tool of justice. It allows the court to obtain an objective assessment of the psychological state of the person under investigation or trial. This enables the court to make a fair decision in the case<sup>14</sup>.

Forensic psychiatric examination is one of the most important types of forensic examination in Ukraine. According to recent data, there is a tendency towards an increase in the number of forensic psychiatric examinations. The main reasons may include: an increase in the number of criminal offenses associated with mental disorders; improvement in the accessibility of forensic psychiatric examination for individuals in need of it; and increased awareness of the role of forensic psychiatric examination in the judicial process.

At the same time, there are some issues associated with the appointment of forensic psychiatric examinations. One of the main issues is the shortage of qualified psychiatric experts. The number of psychiatric experts with the necessary qualifications and experience does not meet the needs of judicial practice. This can lead to the examination being conducted improperly or with violations.

Another issue is the imperfection of the legislation regulating forensic psychiatric examination, which requires improvement. In particular, it is necessary to clarify the procedure for appointing an examination, the procedure for conducting it, and the procedure for appealing the conclusions of the examination. Insufficient awareness of the participants in the judicial process about the role of forensic psychiatric examination is also one of the issues. Participants in the judicial process often do not understand the role of forensic psychiatric examination. This can lead to the examination not being conducted in full or not corresponding to the questions asked.

To solve these problems, it is necessary to implement certain measures, namely: 1) increasing the qualification of expert psychiatrists (this can be done by conducting additional training courses for expert psychiatrists, as well as by creating a system of internships for young expert psychiatrists); 2) improving the legislation regulating forensic psychiatric examination (this can be achieved by amending the legislation in line with international standards); increasing the awareness of participants in the judicial process about the role of forensic psychiatric examination (this can be done by organizing training events for judges, lawyers, investigators, and other participants in the judicial process). Addressing these issues will improve the



<sup>13</sup> Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651 – VI // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL <https://zakon.rada.gov.ua/laws/show/4651-17>

<sup>14</sup> Макарова О. П. Судово-психіатрична експертиза: теоретичні аспекти та проблеми призначення. *Наше право*. 2023б. № 4. С. 61–66. DOI : <https://doi.org/10.32782/NP.2023.4.9>.





quality of forensic psychiatric examination and its effectiveness in the judicial process.

The observance of the rights and freedoms of individuals undergoing forensic psychiatric examination is important. They constitute particularly vulnerable groups within the population, as they may be subjected to discrimination or even violence from experts or other participants in the judicial process. Therefore, ensuring their rights and freedoms is especially crucial.

The main rights and freedoms of persons subject to forensic psychiatric examination include: the right to a fair trial - it includes the right to defense, the right to legal assistance, the right to participate in the judicial process, and the right to appeal court decisions; the right to personality protection - it includes the right to privacy, the right to inviolability of the home, and the right to protection against unlawful interference in private life; the right to freedom and personal inviolability (including the right not to be arrested or detained without lawful grounds, the right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment).

Observing the rights and freedoms of individuals undergoing forensic psychiatric examination is crucial for ensuring a fair judicial process and protecting human rights.

**Conclusions.** Examination is an important type of evidence in the judicial process. It allows establishing circumstances of a case that cannot be determined by other means. To ensure the effectiveness of examination, it is necessary to enhance the level of professional training and experience of experts. Developing mechanisms to ensure the objectivity of expert conclusions and strengthening the protection of human rights and freedoms are also essential.

In modern Ukraine, there are several issues associated with the appointment and conduct of an examination. Among them, the following can be highlighted: insufficient level of professional training and experience of experts; violations of the rights and freedoms of individuals who are the subject of expertise. To address these issues, it is necessary to increase the level of professional training and experts' experience, develop a mechanism to ensure the objectivity of expert conclusions and strengthen the protection of the rights and freedoms of individuals subject to examination.

However, it should be noted that issues regarding the appointment and conduct of expert examinations are gradually being addressed: requirements for conducting any examination are developed, which are contained in laws and developed in general methodological provisions of forensic examination; a control system is being established, which exists in the form of ongoing control in expert institutions and regular reviews of experts by expert qualification commissions; to strengthen the protection of the rights and freedoms of the person who is the subject of the examination by ensuring their right to defense, the right to access information about the results of the examination, in accordance with Articles 221, 290 of the Criminal Procedure Code, participants have the right to familiarize themselves with the expert's conclusion before and after the investigation, according to article 303 of the Criminal Procedure Code they appeal decisions, inaction of the investigator, detective, or prosecutor.

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une responsabilité, une compétence et un tact élevés de la part de l'expert.

L'article met en évidence les principaux concepts et termes associés à la nomination et à la conduite d'un examen psychiatrique légal; la procédure à suivre pour réaliser un examen psychiatrique légal est décrite; a révélé l'importance de l'examen psychiatrique légal pour le processus judiciaire; l'état actuel de la nomination et de la conduite des examens psychiatriques légaux en Ukraine est analysé; les principaux problèmes liés à la nomination d'un examen psychiatrique légal sont identifiés; des recommandations possibles pour résoudre ces problèmes sont envisagées. L'auteur attire également l'attention sur l'importance du respect des droits et libertés des personnes faisant l'objet d'un examen psychiatrique légal.

Mots-clés: examen, affectation d'examen, psychiatrie légale, examen, tâches et types d'examen, conclusion de l'examen psychiatrique légal, expert.

Olena Makarova

## BADANIE PSYCHIATRYCZNE SĄDOWE: OGÓLNE ZAGADNIENIA TEORETYCZNE

Opinia biegłego to badanie prowadzone przez biegłego w oparciu o specjalistyczną wiedzę o przedmiotach, zjawiskach i procesach materialnych, zawierające informacje o okolicznościach sprawy rozpatrywanej przed sądem w celu wyciągnięcia wniosków

W artykule omówiono procedurę przeprowadzania egzaminów regulowaną przez ustawodawstwo Ukrainy, a mianowicie Kodeks postępowania karnego Ukrainy, Kodeks karny Ukrainy, Kodeks postępowania cywilnego Ukrainy, Kodeks wykroczeń administracyjnych Ukrainy, Kodeks postępowania administracyjnego Ukrainy i ustawy Ukrainy o „kontrolu sądowej”

Poruszono kwestię zlecania i przeprowadzania na Ukrainie badania sądowo-psychiatrycznego. W artykule przedstawiono najważniejsze pojęcia i terminy kryminalistycznego badania psychiatrycznego, ich zadania, rodzaj, przebieg i znaczenie dla postępowania sądowego. Zwrócono uwagę, że opinia biegłego jest jednym z dowodów w postępowaniu sądowym, pozwalającym na ustalenie



okoliczności sprawy, których nie da się ustalić w inny sposób.

Przeanalizowano aktualny stan powoływania i przeprowadzania kryminalistycznych badań psychiatrycznych na Ukrainie, zidentyfikowano istniejące problemy i rozważono sposoby ich rozwiązania. Stwierdzono, że głównym problemem w zlecaniu i przeprowadzaniu sądowo-psychiatrycznego badania kryminalistycznego jest to, że jest to złożony i wieloaspektowy rodzaj badania kryminalistycznego, wymagający wysoko wykwalifikowanych i doświadczonych ekspertów, a obecnie brakuje wykwalifikowanych biegłych psychiatrów. Liczba biegłych psychiatrów posiadających odpowiednie kwalifikacje i doświadczenie zawodowe nie odpowiada wymogom praktyki sądowej. Może to spowodować, że egzamin zostanie przeprowadzony o niskiej jakości lub z naruszeniami.

Na podstawie wyników przygotowania artykułu stwierdzono, że w celu zapewnienia obiektywności wniosków należy podnosić kwalifikacje i doświadczenie biegłych przeprowadzających badania psychiatryczne z zakresu medycyny sądowej. Autor dochodzi do wniosku, że badanie psychiatryczne wymaga od biegłego wysokiego profesjonalizmu, obiektywizmu, niezależności, uczciwości, odpowiedzialności, kompetencji i taktu.

W artykule zwrócono uwagę na główne pojęcia i terminy związane z wyznaczaniem i przeprowadzaniem sądowo-psychiatrycznego badania; opisano procedurę przeprowadzania sądowo-psychiatrycznego badania sądowego; Analizie poddano aktualny stan powoływania i przeprowadzania sądowo-psychiatrycznych badań na Ukrainie. zidentyfikowano główne problemy związane ze zleceniem sądowo-psychiatrycznego badania; Rozważane są możliwe rekomendacje rozwiązania tych problemów. Autorka zwraca także uwagę na wagę zachowania praw i wolności osób, które są objęte sądowo-psychiatrycznym badaniem.

Słowa kluczowe: badanie, cel badania, psychiatria sądowa, przeprowadzanie badania, zadania i rodzaje badań, zakończenie badania psychiatrycznego, biegły.

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