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DOCTRINAL AND LEGAL ASPECTS OF FORENSIC MEDICAL EXAMINATION

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Abstract. The article highlights doctrinal and legal problems by the use of forensic medical examinations to ensure justice. It is proposed by Art. 3 of the Law of Ukraine "On Forensic Examination", to be supplemented with such principles of expert activity as the rule of law, legality, humanity, respect for human dignity, honor and human rights and freedoms, inviolability of the sphere of private life, proportionality (admissibility of the use of coercion only in case of extreme necessity and by the least burdensome means). Based on the requirement of the law on the obligation to conduct an examination to establish the severity of bodily injuries, and the classification of facts of irreparable disfigurement of the face as serious bodily injuries, it is necessary to improve the conceptual and categorical apparatus of the law. It is proposed to set out the following definition in the Rules of Forensic Medical Determination of the Severity of Bodily Injuries: "The face is the front personified part of the head, by which it is identified, as a unique personality, which includes eyes, nose, bridge of the nose, eyebrows, lips, cheeks, ears, exclusively within the framework limited by the end of its elements such as forehead, chin, cheeks and ears". To determine the fact of irreparable disfigurement of the face, it is necessary to consolidate the requirements and methodology for conducting medical and aesthetic examination. The need to expand the types of examinations and the formation of the subject and features of such expertise as medical and aesthetic is substantiated. Ensuring the quality of forensic medical and other examinations requires improving the status of an expert, consolidating increased guarantees of his protection. The expediency of supplementing the Criminal Code of Ukraine with Art. 351-4 "Obstruction of the expert's activities" is substantiated. An integrative analysis of the problems of forensic examination leads to the conclusion that it is necessary to adopt a universal legislative act – the "Code of Forensic Examinations".

Key words: expertise, forensic medical examination, irreparable disfigurement of the face, expert opinions, principles of expert activity, expert law.

ДОКТРИНАЛЬНО-ПРАВОВІ АСПЕКТИ СУДОВО-МЕДИЧНОЇ ЕКСПЕРТИЗИ

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Резюме. У статті висвітлюються доктринально-правові проблеми застосуванням судово- медичних експертіз для забезпечення правосуддя. Пропонується ст. 3 Закону України «Про судову експертизу», доповнити такими зasadами експертної діяльності як верховенство права, законність, людяність, повага до людської гідності, честі та прав і свобод людини, недоторканість сфери приватного життя, пропорційність (допустимість застосування примусу лише в разі крайньої необхідності та найменш обтяжливим засобом). Виходячи з вимоги закону про обов'язковість проведення експертизи для встановлення тяжкості тілесних ушкоджень та віднесення до тяжких тілесних ушкоджень фактів непоправного знівечення обличчя, необхідно удосконалити понятійно-категоріальний апарат закону. Пропонується у Правилах судово- медичного визначення ступеня тяжкості тілесних ушкоджень, викласти таку дефініцію: «Обличчя – передня персоніфікована частина голови людини, за якою її ідентифікують, як неповторну особистість, що включає в себе очі, ніс, перенісся, брови, губи, щоки, вуха, виключно в рамках, обмежених закінченням таких її елементів, як чоло, підборіддя, щоки та вуха». Для визначення факту непоправного знівечення обличчя варто закріпити вимоги та методологію проведення медико-естетичної експертизи. Обґрунтовується необхідність розширення видів експертиз та формування предмета й особливостей такої експертизи як медико-естетична. Забезпечення якості судово- медичних та інших експертіз потребує удосконалення статусу експерта, закріплення підвищених гарантій його захисту. Обґрунтовується доцільність доповнення КК України ст. 35⁴ «Перешкоджання діяльності експерта». Інтегративний аналіз проблем судової експертизи приводить до висновку про необхідність прийняття універсального законодавчого акту – «Кодекс про проведення судових експертіз».

Ключові слова: експертиза, судово- медична експертиза, непоправне знівечення обличчя, висновки експерта, принципи експертної діяльності, експертне право.

Introduction. *Forensic medical examination* is one of the most common types of expertise in the legal field, it is a powerful means of establishing the truth and ensuring a fair trial, and the development of natural sciences expands such

opportunities [1-3]. In particular, the use of genotyping in forensic medical examination allows ensuring the identification of a person by various traces of biological origin. *Molecular genetic identification analysis, forensic immunology, forensic cytology, forensic molecular biology* – the use of such new technologies requires the formation of a balanced procedure of expert activity, which would ensure its effectiveness, improvement of the conceptual apparatus of legal norms, strengthening the guarantees of expert activity.

The *relevance of the problem under study* is due to the fact that despite the updating of the legal and organizational foundations of expert activity and the attention of scientists to these problems, certain doctrinal and legal aspects of forensic medical examinations have not yet received an integrative analysis, coverage and legislative solution.

The analysis of recent scientific research shows that the problems of expert activity are paid to the attention of scientists [4-15]. But the existing publications do not exhaust the entire complex problem; do not reveal all the possibilities of modern innovative technologies and models for improving the methodology of expert activity.

The aim of the study. Determine guidelines and specific means of improving doctrinal and legal forms of optimization of forensic medical examination.

Results and discussion.

Forensic examination – is a research and legal action carried out in the form defined by law, which is aimed at solving complex issues, the solution of which requires special knowledge on the part of competent persons (experts), on the basis of which the expert forms a qualified conclusion on issues of importance for justice. The priorities of modern forensic expertise are to expand the potential of expert research on the basis of modern scientific achievements of natural and other sciences, to form standards for the admissibility of expert opinions as evidence in court proceedings.

The law provides for cases of *mandatory appointment of an examination* and its conduct in criminal proceedings. As for forensic medical examination, in accordance with the provisions of Part 2 of Article 242 of the CPC of Ukraine, the examination is mandatory, in particular, regarding "establishing the severity and nature of bodily injuries".

It is worth revealing the problems of fulfilling such an obligation in more detail. For example, according to paragraph 2 of the current Rules for Forensic Medical Determination of the Severity of Bodily Injuries, serious bodily injuries include irreparable disfigurement of the face [3].

The following example is noteworthy. The investigator opened criminal proceedings on the fact of biting off the victim's ear and detained the suspect. The question immediately arose regarding the determination of the severity of bodily injuries and the qualification of the suspect's actions, on which the possible decision of the court to arrest him depended. At the same time, the forensic medical expert, the investigator, and the prosecutor faced a number of problems. The forensic medical expert, based on his competence, was able to give an opinion only on the irreparability of bodily injuries. The question of whether they are in the nature of mutilation remained unresolved before the trial. In the adversarial trial, the lawyer

defended the position that the ear is not part of the "face", besides; it is covered by the victim's hairstyle and is not a disfigurement of his appearance. And his position was difficult to refute. After all, until now, anatomical and other dictionaries do not give an answer to this question. In this case, the court, at its discretion, recognized the fact of irreparable disfigurement of the face and convicted the accused for grievous bodily harm, creating a certain judicial precedent.

But in the conditions of the rule of law, judicial discretion should be based on clear concepts of law, or acts of its interpretation by the Constitutional Court of Ukraine or the European Court of Human Rights. At the moment, neither one nor the other is yet.

For a clear answer to these challenges, it is necessary to determine the categorical apparatus and answer the questions: a) What is a face?; b) What is irreparable facial damage?; c) What damage to the face is its distortion (disfigurement)?

It should be noted that currently in legal acts, encyclopedic and other publications there is no clear concept of "person", which would be acceptable for its application in legal practice.

Currently, we propose to give the following concept at least in the Rules for Forensic Medical Determination of the Severity of Bodily Injuries: "*The face* is the front personified part of a person's head, by which he is identified as a unique personality, which includes eyes, nose, bridge of the nose, eyebrows, lips, cheeks, ears, exclusively within the framework limited by the end of its elements such as forehead, chin, cheeks and ears". This concept should also be enshrined at the level of integrative legislative acts on the rules of forensic examination.

Meanwhile, the competence of a forensic medical expert includes only establishing the fact of irreparable damage to the face, and the issue of its disfigurement, disfigurement belongs to aesthetic and legal issues, the solution of which has not yet received a clear legal definition.

The law requires an examination to determine the severity of bodily injuries. But in this case, it is unfeasible.

The rules of forensic medical determination of the severity of bodily injuries (clause 2.1.8. Irreparable disfigurement of the face) form the following prescriptions. A forensic medical expert does not qualify facial injuries as disfigurement, since this concept is not medical. It determines the type of damage, its features and mechanism of formation, establishes whether this damage is *correctable* or *irreparable*. When surgery (cosmetic surgery) is necessary to eliminate it, then the damage to the face is considered irreparable. The expert states that the injury can be regarded as serious if it is recognized as disfiguring the face.

Currently, if the injuries are considered by the forensic medical expert to be irreparable, then, in order to establish the severity of bodily injuries, he notes that they can be reclassified as serious, provided that they are recognized as disfiguring the face. To reclassify bodily injuries of the face as serious on the basis of irreparable disfigurement of the face, a *comprehensive medical and aesthetic examination* is required.

For the investigator, the law determined that it is mandatory to conduct an

examination to establish the severity of bodily injuries, in all its aspects (irreparability and mutilation). The way out of this conflict may be the formation by law of the requirement to conduct a *commission examination*. At the same time, the Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies [3] should clearly prescribe the competence of which expert is to determine the fact of facial disfigurement, and set out the relevant recommendations. There is a need for the formation of new types of expertise: *aesthetic* and *legal, humanitarian*.

In criminal proceedings, when conducting forensic medical examinations, it will be advisable to provide the victim with the opportunity to familiarize him with the decision on the appointment of examinations and give him the right to file a motion to raise additional questions before the expert. In situations where a forensic medical examination is prescribed, and the victim himself is subject to examination, especially when bodily injuries are caused by sexual crimes, it is important to comply with the ethical principles of human treatment.

There is a need to expand the principles of forensic activity. Currently, in Art. 3 of the Law of Ukraine "On Forensic Examination", it is determined that forensic activity is carried out on the principles of legality, independence, objectivity and completeness of the study. In our opinion, it is necessary to supplement this norm with such principles as the *rule of law, humanity, respect for human dignity and human rights and freedoms, proportionality*.

Ensuring the quality of forensic medical and other examinations requires improving the status of an expert, consolidating guarantees for his activities and defense. In our opinion, it is necessary to provide an expert with an increased degree of protection. In particular, to enshrine the rule that the opening of criminal proceedings against an expert would be allowed only by a regional prosecutor or a prosecutor of the appropriate or higher level, and also that the participation of a defense attorney (lawyer) in such proceedings is mandatory.

If the Law of Ukraine of July 16, 2025 No. 4547 IX amends Article 397 of the Criminal Code of Ukraine "Interference in the Activities of a Lawyer", which strengthens the responsibility for obstruction of advocacy, then logically the question arises whether there is a need for liability for this kind of obstruction of expert activity. We propose to supplement the Criminal Code of Ukraine Art. 351-4 "Obstruction of the expert's activities" with the following content: "Failure to comply with the lawful requirements of the expert, interference in expert activities by illegal access to the materials of expert research, seizure or disclosure of such, blackmail, creation of artificial complications in the expert's work, taking actions to prevent the expert from exercising his legal powers – are punishable by a fine of six hundred to two thousand non-taxable minimum incomes of citizens or corrective labor for up to two years, or restriction of liberty for the same period.

Currently, the conduct of examinations in Ukraine is regulated by a number of legislative and other regulatory legal acts: the Criminal Procedure Code of Ukraine, the Law of Ukraine "On Forensic Examination", "Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies", "Rules for Forensic Medical Determination of the Severity of

Bodily Injuries". An integrative analysis of these legislative acts shows the presence of both repetitions and gaps, inconsistencies and contradictory provisions, prescriptions. That needs to be developed and improved.

It will be appropriate to unify them and develop and adopt an integrative legislative act – the "Code of Forensic Examinations".

Conclusions.

Art. 3 of the Law of Ukraine "On Forensic Examination" should be supplemented with such principles of expert activity as the rule of law, legality, humanity, respect for human dignity and human rights and freedoms, inviolability of the sphere of private life, proportionality (admissibility of the use of coercion only in case of extreme necessity and by the least burdensome means).

Based on the requirement of the law on the obligation to conduct an examination to establish the severity of bodily injuries, and the classification of facts of irreparable disfigurement of the face as serious bodily injuries, it is necessary to improve the conceptual and categorical apparatus of the law.

First of all, the law should give the concept of "face". We propose to set out the following definition in the Rules of Forensic Medical Determination of the Severity of Bodily Injuries: "The face is the front personified part of the head of a person, by which he is identified, as a unique personality, which includes eyes, nose, bridge of the nose, eyebrows, lips, cheeks, ears, exclusively within the framework limited by the end of its elements such as forehead, chin, cheeks and ears." To determine the fact that there is irreparable disfigurement of the face, it is necessary to fix the requirements for a medical and aesthetic examination.

Ensuring the quality of forensic medical and other examinations requires improving the status of an expert, consolidating increased guarantees of his protection. It is expedient to supplement Article 351-4 of the Criminal Code of Ukraine "Obstruction of the expert's activities".

It is advisable to carry out a systematic analysis of existing legislative acts on expert activities and develop and adopt an integrative legislative act – the "Code of Forensic Examinations".

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