UDC 343.13
https://doi.org/10.31612/2616-4868.2.2025.15

EUROPEAN STANDARDS FOR GUARANTEEING HUMAN RIGHTS IN THE APPOINTMENT AND CONDUCT OF FORENSIC EXAMINATIONS IN CRIMINAL PROCEEDINGS

Oksana Yu. Khablo, Hanna M. Stepanova, Olha V. Rymarchuk, Oksana G. Strelchenko, Mykhailo Ya. Nykonenko, Andrii M. Shkliarenko

National Academy of Internal Affairs, Kyiv, Ukraine

Abstract

Aim. To analyse and systematise the procedural framework for the appointment and conduct of forensic examinations in criminal proceedings, as well as the case law of the European Court of Human Rights regarding the establishment of standards for guaranteeing human rights in the appointment and conduct of forensic examinations in criminal proceedings. This will contribute to the development of a consistent and unified law enforcement practice on this issue, the formulation of well-founded approaches and proposals for improving Ukraine's criminal procedural legislation and its application.

Materials and methods. In conducting a comprehensive study on the regulation of the procedural framework for the appointment and conduct of forensic examinations in criminal proceedings, as well as in determining European standards for guaranteeing human rights in the appointment and conduct of forensic examinations in criminal proceedings, we analysed thirty-five judgments of the European Court of Human Rights, twenty-seven decisions of the Supreme Court of Ukraine, and judicial statistics. Upon assessing and systematising the results of the study, it is necessary to note that human rights may be violated during forensic examinations. Such violations may occur concerning the following conventional norms: Article 3 of the Convention (regarding treatment that degrades human dignity); Article 6 of the Convention (regarding the right to a fair trial); Article 8 of the Convention (regarding the right to respect for private and family life); Article 13 of the Convention (regarding the right to an effective remedy).

Results. Knowledge and understanding of the European Court of Human Rights (ECtHR) case law determine how confidently Ukraine and its legal system are approaching European standards. According to ECtHR statistics for 2023, the Court received a total of 34,650 applications throughout the year (compared to 45,500 in 2022), the lowest figure in the past 10 years. Among them, 2,531 applications were filed against Ukraine. The average number of applications per 10,000 residents is 0.41, while in Ukraine, it is 0.56. For comparison, the number of applications per 10,000 residents in Poland is 0.5, in Moldova – 2.6, in Belgium – 1.13, and in Estonia – 0.75. In 2023, the Court examined 38,260 applications, of which 67% were declared inadmissible, and only 18% resulted in a judgment. That is, out of 38,260 applications, decisions were issued for 6,931. In 2022, 79% of applications were declared inadmissible, while in 2021, the figure was 76% [1].

Conclusions. Ukrainian forensic activity must comply with international and national standards and principles. All participants in criminal proceedings must have the opportunity to exercise their rights, including the right to legal assistance, humane treatment, respect for private and family life, and a fair trial. This approach must be mandatory to ensure that a conclusion from a Ukrainian expert holds the same legal and professional weight as similar conclusions from experts in other countries. Conversely, conclusions from experts in other countries should be admissible evidence in Ukrainian courts.

Keywords: **forensic medical examination, medical examination, criminal procedure, European standards, human rights, victim, suspect**

INTRODUCTION

According to Article 3 of the Constitution of Ukraine, a person, their life and health, honour and dignity, inviolability, and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is accountable to the person for its activities [2]. Moreover, everyone has the right to professional legal assistance, including when appointing and conducting forensic medical examinations. The issue of ensuring rights has been raised by more than one generation, as emphasized by the European Court of Human Rights (ECtHR).

Human rights violations during the appointment and conduct of forensic examinations can manifest in various forms, depending on the type of examination and the object it targets. A person may be treated disrespectfully or discriminatorily, thus violating their right to dignity. Such violations may be observed during the conduct of compulsory psychiatric examinations.

There have been instances of personal data disclosure regarding individuals undergoing forensic medical examinations, especially in cases that cause public resonance. An examination may be conducted without adequately informing the person about its purpose, scope, and possible consequences. The individual may not be granted the right to refuse the examination (except in cases provided for by law). This can be seen in cases of compulsory collection of samples for expert examination (biomaterials such as blood, DNA) without explanations or a court order. Unfortunately, experts may act in the interests of one party, falsifying the examination results in favour of a particular party in the criminal proceedings.

European standards for the protection of human rights in the appointment and conduct of forensic medical examinations in criminal proceedings are important tools for ensuring a fair trial and safeguarding human rights in legal systems across Europe. Furthermore, these standards are crucial in the context of justice, as experts often play a key role in providing the reasoning or legitimacy for claims where they act as expert witnesses.

Guaranteeing human rights during examinations is the foundation that ensures fairness, transparency, and the protection of all participants' rights. These principles ensure proper procedure, comply with international standards, and guarantee the respect of individual rights. This article analyses the main principles concerning the protection of human rights during examinations in line with the European Convention on Human Rights and the decisions of the European Court of Human Rights.

MATERIALS AND METHODS

To achieve the stated goal and ensure the reliability of the obtained results, a set of general scientific and special methods of cognition was applied. In particular, general theoretical research methods such as description, comparison, analysis, synthesis, generalization, and a systemic approach were used, which allowed the identification of the research subject, the description of the results of the conducted observations, the comparison of criminal procedural legislation norms with international law norms, and the substantiation of the conclusions of the study. In particular, to determine European standards for human rights guarantees in the appointment and conduct of forensic medical examinations in criminal proceedings, a generalization of ECtHR case law was carried out. Special scientific methods of jurisprudence phenomena research were also applied, namely: comparative-legal, system-structural, and formal-legal methods. The comparative-legal method was used in analysing the norms of criminal procedural legislation and the European Convention on Human Rights, as well as in formulating conclusions regarding the main approaches to human rights guarantees in the appointment and conduct of forensic medical examinations. The formal-legal method was used to analyse regulatory legal acts that regulate the content of the Convention standards for human rights guarantees in the appointment and conduct of forensic medical examinations in criminal proceedings. Using the system-structural method, the main approaches of the ECtHR to interpreting the rules for respecting human rights during the appointment and conduct of forensic medical examinations in criminal proceedings were determined. These methods were used in conjunction, which allowed for a comprehensive and thorough study and the substantiation of the formulated scientific conclusions and proposals.

The normative framework of the study consisted of international law norms – the European Convention on Human Rights [3], the International Covenant on Civil and Political Rights [4], which guarantee the rights of suspects (defendants) to dignified treatment, freedom and personal inviolability, a fair trial, respect for private and family life, and an effective remedy. The norms of the Constitution of Ukraine [2], the Criminal Procedure Code (CPC) of Ukraine [5], which define the principles of criminal proceedings and the rules for appointing and conducting forensic medical examinations in criminal proceedings, were analysed. During the study, particular attention was paid to the analysis of decisions by the European Court of Human Rights, which have developed standards for guaranteeing human rights that may be limited during the appointment and conduct of forensic medical examinations. These include decisions such as *Mirilashvili v. Russia* (2008), *Salah Sheikh v. Netherlands* (2006), *Saunders v. United Kingdom* (1996), *O'Galloran and Francis v. United Kingdom* (2007), *Bikov v. Russia* (2009), *Yalloh v. Germany* (2006), *Funke v. France* (1993), and *J.B. v. Switzerland* (2001).

These decisions contain important legal conclusions, precedents, and interpretations that form the standards for guaranteeing human rights during the appointment

and conduct of forensic medical examinations in criminal proceedings. The analysis and systematization of these decisions allow for a deep understanding of the factors influencing human rights guarantees during the appointment and conduct of forensic medical examinations and how this is practically implemented in judicial decisions.

RESULTS

Forensic expert examination, as one of the means of evidence, contributes to a comprehensive, full, and objective investigation of the circumstances of a criminal proceeding, leading to lawful and well-founded court decisions [6]. According to Article 1 of the Law of Ukraine «On Forensic Examination,» the objects of forensic examination may include phenomena or processes that may contain or contain any information about the circumstances of an event [7].

The forensic medical examination is a type of forensic examination, the essence of which is that authorized persons (investigators, detectives, prosecutors, investigating judges, or courts) assign the questions to be resolved to the State Specialized Forensic Expert Institution in the field of forensic medicine or to a forensic medical expert/experts, who, using their special knowledge, conduct an examination of the provided materials and objects and produce a report, which is used as evidence in criminal, civil, or administrative court proceedings or criminal proceedings.

In criminal proceedings, the procedural form of assigning and conducting forensic medical examinations is regulated by Articles 69-72, 78, 79, 80, 238-243 of the Criminal Procedure Code (CPC) of Ukraine and the Law of Ukraine dated February 25, 1994, «On Forensic Examination» [5]. In addition, the rules for conducting forensic examinations are detailed in the following by-law normative legal acts: the Instruction on the Conduct of Forensic Medical Examinations from January 17, 1995, No. 6; the Instruction on the Assignment and Conduct of Forensic Examinations and Expert Studies from October 8, 1998, No. 53/5; the Rules for Conducting Commissioned Forensic Medical Examinations in Forensic Medical Bureaus from January 17, 1995, No. 6; the Rules for Forensic Medical Determination of the Degree of Severity of Bodily Injuries from January 17, 1995, No. 6; the Rules for Conducting Forensic Medical Examinations (Investigations) Regarding Sexual Conditions in Forensic Medical Bureaus from January 17, 1995, No. 6; the Regulations on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the Certification of Forensic Experts from March 3, 2015, No. 301/5; the Procedure for Interaction Between the Bodies and Units of the National Police of Ukraine, Healthcare Institutions, and Prosecutor's Offices of Ukraine in Establishing the Fact of a Person's Death During Martial Law on the Territory of Ukraine from March 9, 2022, No. 177/405/46.

According to Part 1 of Article 69 of the CPC of Ukraine, an expert in criminal proceedings is a person who possesses scientific, technical, or other special knowledge, has the right under the Law of Ukraine «On Forensic Examination» to conduct an examination, and is assigned to examine objects, phenomena, and processes that contain information about the circumstances of the criminal offense and provide an opinion on issues arising during the criminal proceedings and related to their field of expertise [5].

The expert presents the results of their research in the form of an expert opinion, which, following the provisions of Part 2 of Article 84 and Article 101 of the CPC of Ukraine, is a source of evidence in criminal proceedings. During the pre-trial investigation and trial of criminal proceedings, the conclusion of the forensic medical examination is a key source of evidence. Although the expert's conclusion is not mandatory for the person or body conducting the proceedings, disagreement with the expert's conclusion must be justified in the relevant ruling, decision, or verdict (Part 10 of Article 101 of the CPC of Ukraine). One type of forensic examination is forensic medical examination, which includes the examination of corpses in cases of violent death, suspicion of violence, or other circumstances that necessitate such an examination, the examination of victims, suspects, accused persons, and other individuals, the examination of physical evidence, and the resolution of other issues that may arise during pre-trial investigation or court proceedings.

According to the Instruction on the conduct of forensic medical examinations, the following are conducted:

- Examination of corpses in cases of violent death;
- Examination of corpses in cases of suspected violence or other circumstances that necessitate such an examination;
- Examination of victims, accused persons, and other individuals;
- Examination of physical evidence;
- Examination based on materials from criminal and civil proceedings [8].

Thus, based on the object, forensic medical examination should be divided into the following types: Examination of the corpse; Examination of living individuals; Examination of physical evidence.

Examinations of corpses are conducted on the body of the deceased to establish the cause of death and may also include the study of external signs of the body, internal organs, tissues, and fluids, as well as laboratory tests to detect poisons, drugs, or other substances in the body [9, p. 61]. Examinations of living individuals are conducted to determine bodily injuries, the nature and severity of the injuries, and the assessment of the effect of certain factors on the person's body [9, p. 62].

Examination of physical evidence involves the study of various bodily fluids such as blood, saliva, urine, hair, skin, etc., to determine group affiliation (DNA, blood group), detect drugs, poisons, or other substances, and clarify other issues [9, p. 62].

The above indicates that the objects of forensic medical examination are: Living individuals (victims, accused persons, and other individuals); Corpses (body parts) of individuals; Physical evidence; Materials from criminal and civil proceedings; Medical documentation.

The examination is conducted by an expert institution, an expert, or experts, who are engaged by the parties in the criminal proceedings or the investigating judge at the request of the defence, in the cases and manner prescribed by Article 244 of the CPC of Ukraine, if special knowledge is necessary to clarify the circumstances relevant to the criminal proceedings (Part 1 of Article 242 of the CPC of Ukraine).

However, the criminal procedural legislation provides for cases of mandatory appointment and conducting of forensic medical examinations. These cases include:

1. Establishing the cause of death;

2. Determining the severity and nature of bodily injuries;

3. Establishing the age of an individual, if this is necessary for determining the possibility of bringing them to criminal responsibility, and other means cannot provide such information (items 1, 2, 4, Part 2 of Article 242 of the CPC of Ukraine).

According to Article 71 of the Law of Ukraine «Fundamentals of the legislation of Ukraine on health protection», the appointment of a forensic medical examination is made by the person conducting the investigation, the investigator, the prosecutor, or the court, in the manner established by law, to resolve issues that require special knowledge in the field of forensic medicine. Organizational management of forensic medical and forensic psychiatric services is carried out by the central executive body implementing state policy in the field of health protection [10]. In this case, forensic medical examinations are carried out by state specialized expert institutions on the principles of legality, objectivity, impartiality, completeness of research, and independence.

Forensic medical examinations are conducted based on a ruling by the investigator, inquiry officer, prosecutor, or on the order of an investigating judge or court. However, the compulsory involvement of a person for forensic medical examination is carried out solely by the ruling of the investigating judge or court (Part 2 of Article 242 of the CPC of Ukraine). According to the provisions of Article 243 of the CPC of Ukraine, the defence has the right to independently engage experts on a contractual basis for conducting the examination, including mandatory ones. An expert may be engaged by the investigating judge at the request of the defence in cases and in the manner prescribed by Article 244 of the CPC of Ukraine.

To ensure the conduct of forensic medical examination, there may be a need to obtain samples for expert examination. According to the decision of the Supreme Court dated February 2, 2023, in case No. 591/2823/19, samples obtained for examination are not evidence in the criminal case, but they contain information that is of evidentiary value. Such information becomes accessible and can be used in proving the facts of the criminal proceedings only as a result of the examination. Therefore, samples for comparative research have a special procedural status; they are materials for obtaining new evidence or verifying existing evidence. The samples obtained for the examination, by themselves, do not establish the circumstances of the case to be proved; they are needed for comparative research during the examination. The process of obtaining samples for examination must comply with the following requirements: ensuring human rights and freedoms; obtaining samples by an authorized person in the prescribed manner; ensuring the undoubted origin of the samples from a specific object and their reliability; proper documentation of the course and results of the investigative action [11]. Samples for the examination are selected by the party of the criminal proceedings that applied for the examination or at the request of which the examination was appointed by the investigating judge. If the examination is ordered by the court, the selection of samples for it is carried out by the court or, at its instruction, by an involved specialist. The provisions of Art. 245 of the Criminal Procedure Code (CPC) of Ukraine provide for the selection of samples from things and documents and the collection of biological samples from a person. In particular, the selection of samples from things and documents is carried out according to the provisions on temporary access to things and documents (Art. 160-166 CPC), and the collection of biological samples is done according to the rules of conducting such investigative (search) action as the examination of a person (Art. 241 CPC). If a person refuses to voluntarily provide biological samples, the investigating judge, the court, at the request of the party of the criminal proceedings, which is considered in the manner prescribed for temporary access to things and documents, has the right to allow the investigator, prosecutor (or oblige them if the request was made by the defence) to collect biological samples forcibly [5].

European standards of human rights guarantee in the context of appointing and conducting forensic medical examinations in criminal proceedings are based on the norms of the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the practice of the European Court of Human Rights. Moreover, the recommendations of the Council of Europe

regarding the provision of training for experts in the field of human rights, the creation of independent institutions for conducting examinations, the establishment of clear standards for conducting examinations, and documenting their results should also be taken into account [12].

The procedural form described above for the appointment and conduct of forensic medical examinations suggests that such processes may violate human rights guaranteed by the European Convention on Human Rights, namely the prohibition of torture (Art. 3 of the Convention), the right to a fair trial (Art. 6 of the Convention); the right to respect for private and family life (Art. 8 of the Convention); the right to an effective remedy (Art. 13 of the Convention).

To ensure human rights during the appointment and conduct of forensic medical examinations, the following principles must be adhered to:

1. Prohibition of Torture (Art. 3 of the Convention): Specifically, examinations conducted without respect for the dignity of the suspect contradict Article 3 of the European Convention on Human Rights, as seen in the case *Salah Sheikh v. Netherlands* (2006), among others. Medical intervention performed against a person's will, including interventions aimed at providing psychiatric assistance, may be considered treatment prohibited under Article 3 of the Convention. During the conduct of the examination, proper medical assistance must be guaranteed. In cases where accusations are based on mental and physical health disorders, adequate medical care must be provided, and relevant examinations must be conducted, considering the individual's rights [13].

For instance, in the case *Yallog v. Germany* on 11.07.2006, it was noted that the collection of blood or saliva samples against the will of suspects for criminal investigation purposes is not prohibited by Articles 3 and 8 of the Convention. However, the use of the corresponding medical procedure must be convincingly justified by the circumstances of the case. Specifically, the seriousness of the alleged crime, the possibility of using alternative methods to obtain evidence, the manner in which the procedure was carried out, whether it caused serious pain or suffering to the individual, whether the person was under medical supervision, and possible negative consequences for their health should all be considered (paras. 70-74 and 76). Moreover, the European Court of Human Rights concluded that the applicant's medical history was not collected prior to the forced medical procedure, which involved the introduction of emetics through his nose to obtain evidence of a crime (drugs he had swallowed), to assess whether there were any risks to his health from the procedure [14].

At the same time, it should be noted that references by national courts to the case *Yallog v. Germany* in arguing that the forced collection of blood samples is permissible «provided that a preliminary medical opinion is obtained on the possibility of performing the forced sample collection or forensic medical examination» are misleading. The case *Yallog v. Germany* involved a much more serious medical procedure compared to a simple blood draw, which led to the death of two individuals in Germany (para. 78), and thus was examined under Article 3 of the Convention, emphasizing the necessity of prior assessment of possible health risks for the individual [14].

2. The Right to a Fair Trial. Article 6 of the European Convention on Human Rights guarantees everyone the right to a fair and public hearing of their case by an independent and impartial tribunal. The right to a fair trial is a complex requirement that includes the following provisions: independence and impartiality, adversarial process, equality of parties, reasonable timeframes, public hearing, reasoned and motivated judicial decisions, fair procedure, presumption of innocence, awareness of the nature and cause of the accusation, the right to defence, sufficient time and opportunities for preparing the defence, the right to cross-examine, and the right to free legal assistance [15, p. 176]. Some of these requirements must also be implemented during the appointment and conduct of forensic medical examinations. Thus, the appointment of a forensic medical examination should be based on sufficient justification and relevant evidence that confirms the need for its conduct. This may concern, for example, the cause of death or the severity of bodily injuries. Justification for the necessity of conducting the examination can be provided by the testimony of witnesses, victims, results of investigative (search) actions, as well as the medical history of the victim or suspect.

Independence and impartiality of experts require that the process of conducting a forensic medical examination be free from external influence or prejudice from law enforcement agencies or other participants in the process. Ensuring the independence of the expert helps to establish trust in their conclusions. Ukrainian court practice and the case law of the European Court of Human Rights (ECtHR) emphasize that any actions or conclusions by experts must be objective and impartial. The parties to the case have the right to appeal the results of the forensic medical examination in case of doubts about their legality or adequacy.

The process of conducting the forensic medical examination must be transparent, understandable, and accessible for the parties involved in the criminal proceedings. All stages of the examination must be properly documented. The expert prepares a detailed report, which must be accessible to the parties to the criminal proceedings. This includes the right to receive copies of all documents and expert conclusions. Transparency is important, but it is also necessary to ensure the confidentiality of the personal data of individuals involved in criminal proceedings. This

information must not be misused or jeopardize the personal lives of witnesses or victims.

The expert must be ready to explain their findings and answer the questions of the parties during the court hearing. This facilitates better understanding of the results of the examination and its relevance to the case.

The European Court of Human Rights emphasizes that no coercive measures should be applied to a person to obtain data that may be used as a basis for accusing that person. The right not to testify against oneself, as stated, includes that in criminal proceedings, the prosecution cannot use evidence obtained against the will of the accused through coercion or pressure (see *Yallog v. Germany* 11.07.2006; *Funke v. France* 25.02.1993; *J.B. v. Switzerland* 03.05.2001). The conclusions presented in these cases do not mean that forced collection of biological samples is always contrary to the Convention, but in each case, the legality of the obtained evidence must be verified. This assertion is based on the following provisions. According to parts 4 and 5 of Article 42 of the Criminal Procedure Code of Ukraine, a suspect has the right to remain silent about the suspicion against them, the accusation, or to refuse to answer questions, provide explanations, or give testimony at any moment. The right not to testify against oneself implies that in criminal proceedings, the prosecution must substantiate its arguments without relying on evidence obtained under coercion or pressure, against the will of the accused (*Saunders v. the United Kingdom*, *Bykov v. Russia*). However, the right not to testify against oneself does not apply to information in criminal proceedings that can be obtained from the accused through coercive powers but exists independently of the suspect's will, such as documents seized by court order, breath, blood, and urine samples, as well as body tissues for DNA analysis (*Saunders v. the United Kingdom*, *O'Halloran and Francis v. the United Kingdom*) [16; 17].

Biological samples from a person can be taken without their consent only when the purpose of obtaining such samples is not to gather evidence for the prosecution of the person providing those samples (*Yallog v. Germany* 11.07.2006) [14].

In the decision of the Cassation Criminal Court of the Supreme Court of Ukraine dated November 18, 2021, in case No. 185/6429/17, it was determined that the collection of samples for expert examination is related to the necessity of obtaining evidence of an objective nature, and therefore cannot be considered a violation of the right to remain silent [18]. Moreover, it should be noted that the provisions of the Criminal Procedure Code of Ukraine do not require the mandatory involvement of a defence attorney during the collection of biological samples. Thus, the requirement for fairness is one of the foundational values of the legal system as a whole, and the criminal process in particular. All actions within the framework of criminal proceedings must adhere to the principles of fairness and equality of the parties. This applies to the appointment and conduct of forensic medical examinations as well. All participants in the trial have equal rights to present their positions and evidence. Adherence to the principle of fairness is a critical element in the functioning of a democratic society and ensures public trust in legal institutions and the justice system as a whole.

3. ***Right to respect for private and family life*** (Article 8 of the Convention). According to the case law of the European Court of Human Rights (ECtHR), personal integrity is encompassed by the concept of «private life» protected under Article 8 of the Convention. This right pertains to the most intimate aspects of private life, and compulsory medical intervention, even if minor, constitutes an infringement of this right. The ECtHR allows the possibility of coercive sample collection for examination, while also regulating specific conditions and procedures for its implementation. It emphasizes that sample collection can only be carried out upon the order of an authorized official, and it must be performed by an accredited doctor, who is entitled to refuse to conduct the analysis for exceptional medical reasons. Similar requirements apply to national legislation (Case *X and Y v. Netherlands* dated July 10, 2018) [19].

4. ***Right to an effective remedy*** (Article 13 of the Convention). All participants in criminal proceedings have the right to adequate legal assistance. The ECtHR has repeatedly emphasized the importance of respecting human rights during the appointment and conduct of expert examinations, particularly that restricting the defence's access to expert conclusions infringes the principle of a fair trial (Case *Mirilashvili v. Russia* (2008)) [20]. Moreover, participants should have the opportunity to access qualified experts to verify the findings of forensic experts. This allows the parties to challenge or confirm an expert's conclusions, which are crucial for a fair trial. The parties should be informed of all aspects of the forensic examination and its results. If there are doubts about the impartiality or professionalism of the forensic expert's work, the parties may request the appointment of another specialist or conduct their own independent evaluation. Adhering to the aforementioned rules and principles in the appointment and conduct of forensic medical examinations ensures scientifically substantiated conclusions within the judicial process, fosters trust in the justice system as a whole, and, most importantly, upholds the constitutional rights of individuals involved in criminal proceedings.

CONCLUSIONS

Ensuring human rights during the appointment and conduct of forensic medical examinations is crucial for the objective and fair administration of justice. All participants in criminal proceedings must have the opportunity to exercise their rights, including the right to

legal assistance, humane treatment, respect for private and family life, and a fair trial.

To ensure the objectivity of the results, forensic medical examinations must be conducted by independent and qualified specialists who are not influenced by external factors. Experts must adhere to high ethical standards in performing their professional duties, as defined in the Code of Ethics for Forensic Experts, while respecting the rights of participants in pre-trial investigations and judicial proceedings [21, 22, 23]. Successful forensic medical examinations at a high level of professionalism and adaptation to new legislative and human rights practices require continuous professional development for experts and participation in scientific and practical conferences and seminars. It is crucial that all stages of the forensic medical examination process are transparent, and that the parties have appropriate access to results and findings, enabling them to effectively protect their rights and legitimate interests. In turn, the parties must have the opportunity to challenge expert conclusions, which contributes to ensuring fairness and the quality of the obtained results. Equal access to resources and information regarding the conducted examination must be ensured for all participants in criminal proceedings. The use of modern methods and technologies during forensic medical examinations is essential for obtaining reliable results in line with international standards. There is a need for monitoring and evaluation systems for the activities of bodies and institutions conducting forensic medical examinations, to ensure their alignment with human rights standards and principles.

Compliance with these requirements will contribute to the transformation of the justice system in Ukraine and guarantee the protection of the rights of all participants in criminal proceedings when appointing and conducting forensic medical examinations.

Prospects for further research. The development and improvement of legislative acts concerning the mechanisms for appointing and conducting forensic medical examinations should focus on integrating European norms and standards into Ukrainian legislation. This will ensure the respect of human rights and fundamental freedoms during the administration of justice in general, and the appointment and conduct of forensic medical examinations in particular, preventing any limitations or violations of those rights.

COMPLIANCE WITH ETHICAL REQUIREMENTS

The publication of data obtained during the legal research was carried out by the principles of ethics and legislative norms and requirements for conducting legal research, including: the European Convention on Human Rights (1950), the International Covenant on Civil and Political Rights (1966), the Constitution of Ukraine (1996), the Criminal Procedure Code of Ukraine (2012), the Fundamentals of Health Legislation of Ukraine (1992), the Law of Ukraine on Forensic Expertise (1994), and such decisions of the European Court of Human Rights (ECtHR) as: *Mirilashvili v. Russia* (2008), *Salah Sheekh v. Netherlands* (2006), *Saunders v. United Kingdom* (1996), *O'Halloran and Francis v. United Kingdom* (2007), *Bykov v. Russia* (2009), *Jalloh v. Germany* (2006), *Funke v. France* (1993), *J.B. v. Switzerland* (2001).

FUNDING AND CONFLICT OF INTEREST

The authors emphasize the absence of any potential conflict of interest regarding the research, authorship, and publication of this article. The article is self-funded.

AUTHOR CONTRIBUTIONS

Khablo O. Yu. [B-D]

Stepanova H. M. [A, F]

Rymarchuk O. V. [A, C]

Strelchenko O. G. [E-F]

Nykonenko M. Ya. [B, F]

Shkliarenko A. M. [A, F]

REFERENCES

1. Annual report 2023. European Court of Human Rights. Available from: https://www.echr.coe.int/documents/d/echr/annual-report-2023-eng
2. Konstytutsiia Ukrainy: pryiniata 28 cherv. 1996 roku. Verkhovnoi Rady Ukrainy. 1996. № 30. [Constitution of Ukraine: dated June 28, 1996. № 30] Available from: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text [in Ukrainian].
3. Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod: pryiniata 4 lystop. 1950 roku [Convention for the Protection of Human Rights and Fundamental Freedoms: dated November 04, 1950] Available from: https://zakon.rada.gov.ua/laws/show/995_004#Text
4. Mizhnarodnyi pakt pro hromadianski i politychni prava liudyny: pryiniatyi Heneralnoiu Asambleieiu Orhanizatsiieiu Obiednanykh Natsii 16 hrudnia 1966 roku [International Covenant on Civil and Political Rights: dated December 16, 1966] Available from: https://zakon.rada.gov.ua/laws/show/995_043
5. Kryminalnyi protsesualnyi kodeks Ukrainy: Zakon Ukrainy vid 13 kvitnia 2012 roku № 4651-VI [Criminal Procedure Code of Ukraine: dated April 13,

2012. № 4651-VI] Available from: https://zakon.rada.gov.ua/laws/show/4651-1775 [in Ukrainian].
6. Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 30 travnia 1997 roku № 8 «Pro sudovu ekspertyzu v kryminalnykh i tsyvilnykh spravakh» [Resolution of the Plenum of the Supreme Court of Ukraine «On Forensic Examination in Criminal and Civil Cases»: dated May 30, 1997. № 8] Available from: https://zakon.rada.gov.ua/laws/show/v0008700-97#Text [in Ukrainian].
7. Pro Sudovu ekspertyzu: Zakon Ukrainy vid 25 liutoho 1994 roku № 4038-XII [Law of Ukraine «About Forensic Examination»: dated February 25, 1994. № 4038-XII] Available from: https://zakon.rada.gov.ua/laws/show/4038-12#Text [in Ukrainian].
8. Instruktsiia pro provedennia sudovo-medychnoi ekspertyzy: nakaz Ministerstva okhorony zdorovia Ukrainy vid 17 sichnia 1995 roku № 6 [Instructions for conducting a forensic medical examination: dated January 17, 1995. № 6] Available from: https://zakon.rada.gov.ua/laws/show/z0254-95#Text [in Ukrainian].
9. Klymenko O.S. (2023) Publichne upravlinnia sferoiu sudovo-medychnykh ekspertyz u systemi okhorony zdorovia v Ukraini [Public management of the field of forensic medical examinations in the healthcare system in Ukraine] Odesa. 243 s. https://op.edu.ua/sites/default/files/publicFiles/dissphd/dis_klymenko_oleksandr.pdf [in Ukrainian].
10. Pro Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia: Zakon Ukrainy vid 19 lystopada 1992 roku [Law of Ukraine «On Fundamentals of Ukrainian Legislation on Healthcare»: dated November 19, 1992]. Available from: https://zakon.rada.gov.ua/laws/show/2801-12#Text [in Ukrainian].
11. Postanova kolehii suddiv Druhoi sudovoi palaty Kasatsiinoho kryminalnoho sudu Verkhovnoho Sudu vid 02 liutoho 2023 roku u spravi № 591/2823/19 (provadzhennia № 51-49 km22) [Resolution of the Panel of Judges of the Second Judicial Chamber of the Cassation Criminal Court of the Supreme Court in case № 591/2823/19 (proceedings № 51-49 km22): dated February 02, 2023]. Available from: https://reyestr.court.gov.ua/Review/108849815 [in Ukrainian].
12. Rekomendatsiia CM/Rec(2022)18 Komitetu ministriv do derzhav-chleniv shchodo protydii shakhraistvu v osviti: zatverdzhenyi Komitetom ministriv 13 lypnia 2022 roku na 1440-mu zasidanni zastupnykiv ministriv [Recommendation CM/Rec(2022)18 of the Committee of Ministers to Member States on combating fraud in education: dated July 13, 2022]. Available from: https://enic.in.ua/attachments/4all/CM_Rec(2022)18E%20%D1%83%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D1%81%D1%8C%D0%BA%D0%BE%D1%8E.pdf Sprava «Salakh Sheikh proty Niderlandiv (Salan v. the Netneraland)» (Zaiava № 8196/02): rishennia Yevropeiskoho sudu z prav liudyny vid 15 chervnia 2006 roku [The case «Salah Sheikh v. The Netherlands (Salan v. the Netneraland)» (Application № 8196/02): Judgment of the European Court of Human Rights dated June 15, 2006]. Available from: file:///C:/Users/Hp/Downloads/CASE%20OF%20SALAH%20v.%20THE%20NETHERLANDS%20-%20[Ukrainian%20Translation]%20(2).pdf
13. Sprava «Yalloh proty Nimechchyny (Jalloh v. Germany)» (Zaiava № 54810/00): rishennia Yevropeiskoho sudu z prav liudyny vid 54810/00 Rishennia vid 11 lypnia 2006 roku [The case «Jalloh v. Germany)» (Application № 54810/00): Judgment of the European Court of Human Rights dated 11 July, 2006] Available from: file:///C:/Users/Acer/Downloads/CASE%20OF%20JALLOH%20v.%20GERMANY%20-%20[Ukrainian%20Translation]%20legal%20summary%20by%20the%20CoE%20Project%20_Continued%20support%20to%20the%20criminal%20justice%20reform%20in%20Ukraine_.pdf
14. Khablo O. Yu., Boyko O. V. (2022) Pravo na spravedlyvyi sudovyi rozghliad u kryminalnomu sudochynstvi Ukrainy [The right to a fair trial in the criminal proceedings of Ukraine] Kyiv. Kafedra Publishing Centre, 216 s. [in Ukrainian].
15. Sprava «Saunders proty Spoluchenoho Korolivstva (Saunders v. the United Kingdom)» (Zaiava № 19187/91): rishennia Yevropeiskoho sudu z prav liudyny vid 17 hrudnia 1996 roku [The case «Sounders v. United Kingdom (Saunders v. the United Kingdom)» (Application № 19187/91): Judgment of the European Court of Human Rights dated December 17, 1996]. Available from: https://ips.ligazakon.net/document/SO2492?ed=1996_12_17
16. Sprava «OHalloran i Frensis proty Spoluchenoho Korolivstva» (O'Halloran and Francis v. the United Kingdom)» (Zaiava № 15809/02): rishennia Yevropeiskoho sudu z prav liudyny vid 29 chervnia 2007 roku [The case «O'Halloran and Francis v. the United Kingdom)» (Application № 15809/02): Judgment of the European Court of Human Rights of 29 June 2007: Judgment of the European Court of Human Rights dated August 25, 2023]. Available from: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-117934%22]}
17. Postanova kolehii suddiv Druhoi sudovoi palaty Kasatsiinoho kryminalnoho sudu Verkhovnoho Sudu vid 18 lystopada 2021 roku u spravi № 185/6429/17 (provadzhennia № 51-6142km20) [Resolution of the panel of judges of the Second Judicial Chamber of the Criminal Court of Cassation of the Supreme Court in case № 185/6429/17 (proceedings № 51-6142km20): dated November 18, 2021]. Available from: https://reyestr.court.gov.ua/Review/101361157 [in Ukrainian].
18. Sprava «Kh ta Y proty Niderlandiv (X. and Y/ v/ the Netherlands)» (Zaiava № 8978/80): rishennia Yevropeiskoho sudu z prav liudyny vid 04 hrudnia 1978 roku [The case «X and Y v. The Netherlands (X. and Y/v/the Netherlands)» (Application № 8978/80):

Judgment of the European Court of Human Rights dated December 04, 1978]. Available from: file:///C:/Users/Acer/Downloads/H.%20AND%20J.%20v.%20THE%20NETHERLANDS%20-%20[Ukrainian%20Translation]%20legal%20summary%20by%20the%20COE%20Human%20Rights%20Trust%20Fund.pdf

19. Sprava «Mirilashvili proty Rosii (Mirilashvili v. Russia)» (Zaiava № 6293/04): rishennia Yevropeiskoho sudu z prav liudyny vid 11 hrudnia 2008 roku [The case «Mirilashvili v. Russia (Mirilashvili v. Russia)» (Application № 6293/04): Judgment of the European Court of Human Rights dated December 11, 2008]. Available from: http://hudoc.echr.coe.int/eng?i=001-90099
20. Kodeks etyky sudovoho eksperta: nakaz Dyrektora TOV «SNEU» vid 30 hrudnia 2014 roku № 56 [Code of Ethics of a Forensic Expert: dated December 30, 2014. № 56]. Available from: https://ekspertiza.com.ua/uk/kodeks-etyky-sudovoho-eksperta [in Ukrainian].
21. Oksana G. Strelchenko, Igor D. Pastukh, Oleksandr S. Dotsenko, Iryna G. Bukhtiyarova, Svitlana P. Koshova (2024). Protection of the rights of healthcare workers in the light of european integration processes. Clinical and Preventive Medicine. № 1 (31). С. 130-139. https://cp-medical.com/index.php/journal/article/view/382
22. Oksana G. Strelchenko, Taisiia G. Korzh-Ikaieva, Antonina V. Dimich, Yuliia V. Vysotenko, Svitlana P. Koshova, Roman V. Derkach (2024). Logistic support for voluntary social health insurance subjects in medical legal relations. Clinical and Preventive Medicine. № 7. 138-148. DOI: https://doi.org/10.31612/2616-4868.7.2024.17

Резюме

ЄВРОПЕЙСЬКІ СТАНДАРТИ ГАРАНТІЙ ПРАВ ЛЮДИНИ ПРИ ПРИЗНАЧЕННІ ТА ПРОВЕДЕННІ СУДОВО-МЕДИЧНОЇ ЕКСПЕРТИЗИ У КРИМІНАЛЬНОМУ ПРОЦЕСІ

Оксана Ю. Хабло, Ганна М. Степанова, Ольга В. Римарчук, Оксана Г. Стрельченко, Михайло Я. Никоненко, Андрій М. Шкляренко

Національна академія внутрішніх справ, м. Київ, Україна

Мета. Аналіз та систематизація процесуальної форми призначення та проведення судово-медичної експертизи у кримінальному процесі, практики Європейського суду з прав людини щодо визначення стандартів гарантування прав людини при призначенні та проведенні судово-медичної експертизи у кримінальному провадженні, що сприятиме забезпеченню формування усталеної та уніфікованої правозастосовної практики з цього питання, виробленню обґрунтованих підходів та пропозицій з вдосконалення кримінального процесуального законодавства України та практики його застосування.

Матеріали та методи. При проведенні ґрунтовного дослідження щодо регламентації процесуальної форми призначення та проведення судово-медичної експертизи у кримінальному процесі, визначення Європейських стандартів гарантій прав людини при призначенні та проведенні судово-медичної експертизи в кримінальному процесі нами проаналізовано тридцять п'ять рішень Європейського суду з прав людини, двадцять сім рішень Верховного Суду України та судову статистику. Під час оцінювання та систематизації результатів дослідження слід зазначити, що права людини можуть порушуватися у процесі проведення судових експертиз. Такі порушення можуть стосуватися таких конвенційних норм: статті 3 Конвенції (в частині поводження, що принижує гідність людини); статті 6 Конвенції (в частині права на справедливий суд); статті 8 Конвенції (право на повагу до приватного і сімейного життя); статті 13 Конвенції (право на ефективний засіб правового захисту).

Результати. Знання та розуміння судової практики Європейського суду з прав людини (ЄСПЛ) визначає, наскільки впевнено Україна та її правова система наближаються до європейських стандартів. За статистикою ЄСПЛ за 2023 рік, протягом року до Суду надійшло загалом 34 650 заяв (у порівнянні з 45 500 у 2022 році), що є найнижчим показником за останні 10 років. Серед них 2 531 заява була подана проти України. Середня кількість заяв на 10 000 мешканців становить 0,41, тоді як в Україні цей показник – 0,56. Для порівняння: у Польщі – 0,5, у Молдові – 2,6, у Бельгії – 1,13, в Естонії – 0,75. У 2023 році Суд розглянув 38 260 заяв, з яких 67% було визнано неприйнятними, а лише 18% завершилися винесенням рішення. Тобто з 38 260 заяв було ухвалено 6 931 рішення. У 2022 році 79% заяв було визнано неприйнятними, а у 2021 році – 76% [1].

Висновки. Українська судово-експертна діяльність повинна відповідати міжнародним і національним стандартам та принципам. Всі учасники кримінального провадження повинні мати можливість реалізації своїх прав, зокрема і права на правничу допомогу, гідне поводження, на повагу до приватного і сімейного життя та справедливий суд. Такий підхід повинен бути обов'язковим, щоб висновок українського експерта мав однакову юридичну і фахову силу у порівнянні із аналогічними висновками експертів інших країн, і навпаки, складені висновки експертами іншої країни повинні мати силу доказу для українських судів.

Ключові слова: **судово-медична експертиза, медичне освідування, кримінальний процес, європейські стандарти, права людини, потерпілий, підозрюваний**

Received: 25 September 2024
Accepted: 27 January 2025