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FORENSIC ADMINISTERING: HISTORICAL STAGES OF THE FORMATION, DEVELOPMENT AND FUNCTIONING

The basic historical stages of formation and development of forensic examination are studied. It has been proven that, at various historical times, forensic expertise was administered by either law enforcement or health authorities. The basic stages of the emergence of the terms «specialist» and «expert» are outlined. The current state of public administration of forensic activity has been analyzed and the main problems in this field have been identified, including the control of forensic expertise by law enforcement, justice and health authorities, as well as significant shortcomings of the legislation regulating forensic activity.

Key words: public administration; judicial examination; forensic activity; expert; legislation; code.

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СУДОВО-МЕДИЧНЕ АДМІНІСТРУВАННЯ: ІСТОРИЧНІ ЕТАПИ ФОРМУВАННЯ, РОЗВИТОК ТА ФУНКЦІОНУВАННЯ

В статті вивчено основні історичні етапи становлення та розвитку судово-медичної експертизи. Починаючи з античних часів досліджувалося питання тяжкості різних тілесних ушкоджень з метою встановлення причини смерті. Зазначено, що у період пізнього середньовіччя було зафіксовано вимоги до суду здійснювати огляд трупа за участю лікарів та обов'язково складати висновок, який міг бути підставою для винесення вироку. Таким чином, вперше було сформовано інститут судової експертизи. Після чого прокоментовано, що у часи Російської імперії вперше зафіксовано на законодавчому рівні відповідальність за вбивство та передбачалося обов'язкове проведення судово-медичної експертизи для встановлення причин смерті, що дало поштовх для накопичення практичних знань та розвитку судової медицини як окремої науки.

На думку автора, розвиток судово-медичного адміністрування припадає на дореволюційний період, спочатку судово-медична служба належала до сфери управління Міністерства внутрішніх справ і була тісно пов'язана з адміністративним апаратом губернських управлінь. Після революції службу судової медицини виключили зі складу зазначеного Міністерства та перевели до відомства охорони здоров'я.

Доведено, що в різні історичні часи, судово-медична експертиза знаходилась у підпорядкуванні або органів внутрішніх справ, або органів охорони здоров'я. Окреслено основні етапи зародження понять «спеціаліст» та «експерт». Проаналізовано сучасний стан державного управління судово-медичною діяльністю та визначено основні проблеми, що існують в цій сфері, зокрема здійснення контролю за судово-медичною експертизою з боку органів внутрішніх справ, юстиції та охорони здоров'я, а також виявлено суттєві недоліки законодавства, що регламентує судово-медичну діяльність.

Ключові слова: державне управління; судово-медичне адміністрування; судова експертиза; судово-медична діяльність; експерт; законодавство; кодекс.

Постановка
проблеми

Forensic expertise is an important part of human rights protection. Forensic examination is one of the key issues in the evidence base of litigation. Forensic examination is a component of forensic examination. The foremost task of forensic examination is to assist law enforcement agencies in cases (criminal and civil) related to crimes against life, health, dignity and health of the general population. Therefore, the level of forensics plays a key role in the provision of adequate health and medical care in the country.

At different times of its existence, forensic reports were subordinated to various bodies of state power, now the bureaus of forensic expertise belong to the sphere of management of the Ministry of Health of Ukraine, but this was not always the case. Forensics and forensic experts have been subordinate to justice for quite some time. And nowadays, the question of the expediency of managing

these institutions by the Ministry of Justice of Ukraine is being raised, and therefore it is necessary to study in depth the historical stages of formation and development of the state management of forensic activity at different times of its existence and to identify contemporary problems.

Аналіз
останніх
досліджень
і публікацій

Problems of regulation of managerial relations in the field of forensic activity in the scientific literature are rarely considered, most of the works of domestic scientists are devoted to the management of forensic expertise.

For example, P.Repeshko studied the particular issues of management of judicial and expert institutions in the conditions of their reformation, and the role of the state administration of judicial and expert activity in ensuring the protection of human rights in Ukraine was investigated by

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V.Fedchyshyn, and V.Lukyanyenko considered the historical and legal aspect of the development of management of specialized institutions of judicial expertise in Ukraine. With regard to forensic examination, it is worth noting that in the scientific literature, attention is mostly paid to legislative issues, for example, N.Ergard studied the shortcomings of the regulation of forensic examination, but some historical stages of the development of forensic examination are considered mainly in educational handbooks in the discipline of Forensic Medicine, but not in terms of public administration.

Виділення
невирішених
раніше
частин
загальної
проблеми

Highlighting the historical aspect of legal regulation and practical activity in the relationship between the forensic service and pre-trial investigation bodies.

Мета

The purpose of the article is to study the main historical stages of formation, development and current state of public administration of forensic activity in Ukraine.

Виклад
основного
матеріалу

Medical knowledge in the justice process began to be used earlier by all specialized knowledge. Hippocrates, who was born about 460 BC, studied the severity and mortality of various injuries. His knowledge is

now successfully used in forensic medicine. In ancient documents of the Roman Empire, references are made to how a medical examination of the body of the murdered Julius Caesar (44 BC) was carried out, and one of the twenty-one wounds that caused the death was found among the twenty-three wounds [5].

In the late Middle Ages, the most significant step in the development of forensic research can generally be considered some of the provisions of the «Carolina» – the German penal code of 1532, which operated in all German and dependent countries until 1870. This document has had a significant impact on the development of criminal and criminal procedure law in many states. Although in Carolina, known persons (surgeons, doctors) were still regarded as credible witnesses and reviewers, nevertheless, in this Code (Article 149) the requirements for a court were recorded: to carry out a review troupe with the participation of doctors and be sure to make a report on the examination of wounds, injuries, injuries. That is, the doctors at the examination acted as a specialist (in the modern sense), their conclusion was taken into account by the court and it could be the basis for sentencing. Article 146 of the same convention, which deals with unintentional homicide, recommended that informed persons be consulted for clarification [5]. It was this prototype of the examination of the corpse with the participation of a specialist in the field of forensic medicine that formed the basis of the Military Statute of Peter I, and later the Statute of the Criminal Court in 1864. Thus, Carolina established at the legislative level the institute of forensic examination, at the same time identifying the doctor as one of the possible experts [3, p. 138].

According to domestic scientists, for example, Gusachenko E. [2], in the territory of our country the question of the appointment and holding of examination as a peculiar form of use of special knowledge was first normatively regulated by the decree «On the procedure

for the study of signatures on serfs» from 1699. First, it established that the expertise can be produced («hands testify») only by knowledgeable persons and identified the objects of study (serfs). Secondly, the law states the need for mandatory examination in certain circumstances. Further expansion of the legislative regulation of the use of special knowledge was made by Peter the Great in an article in the military in 1715. According to the historian V.Kleandrova, for the first time in the history of Russian law, this article establishes responsibility for the murder and provides for compulsory forensic examination to establish the reasons death, examination procedure (body dissection), procedural issues, expert's responsibility, determination of the expert himself [5]. Outlining the specific problems faced by physicians involved in forensic examinations has given impetus to the accumulation of practical knowledge in this field and to the development of forensic science as a separate science.

Until 1917, the Russian Empire and its provinces carried out forensic research in the medical departments of the provincial departments, the departments of forensic medicine of universities, the conclusions were made by medical officers, and in the hospitals – by police doctors. Chemical, bacteriological laboratories of universities and medical institutions were used as needed [13]. Prior to the revolutionary events of 1917, the forensic service belonged to the sphere of administration of the Ministry of Internal Affairs and was closely connected with the administrative apparatus of provincial administrations. After the revolution, the forensic service was expelled from the Ministry and transferred to the health department [1].

Since 1918, the Soviet authorities have been trying to regulate the involvement of experts in criminal justice. From the point of view of the history of forensic examination, the most interesting normative act here is the decision of the People's Commissariat of Health of January 28, 1919 «On the Rights and Responsibilities of State Medical Experts». It was in this ruling that the view of the expert as a scientific judge was enshrined. The same year, the Rules on the Procedure for Carcassing and Laboratory Research were introduced. Thus, from the first steps of building Soviet health, the forensic expertise of the internal affairs system was subordinated to the health authorities. Since 1923 have received the legal regulation of activity of the Kiev, Odessa and newly created Kharkov Regional Offices of the Scientific and Judicial. The main tasks of the Cabinet were «... exposing crimes and all kinds of traces that may contribute to the identification of the crime, to the indictment of the culprit and to find out the innocence of the suspect, as well as to assist the investigative authorities and the report in the transfer of activities requiring special technical expertise» [4].

At the same time, subordination of forensic expertise to health authorities triggered a longstanding problem of dual control of the forensic service. It was believed that a forensic expert, while serving in the health care system and at the same time acting as a state expert, would be objective, uninterested, ineligible, and independent of the investigative bodies. Instead, there is a unique situation for forensics in general, where a forensic expert is dependent on both the health care service as a doctor and the law enforcement agencies as a participant in criminal proceedings. At the same time, the activity of the forensic expert was regulated by legislative acts on both these

spheres of activity, which led to legislative contradictions and misunderstandings.

The Code of Criminal Procedure of the Soviet authorities in 1922 for the first time legislated this type of evidence as expert opinions (Article 62), and if there was doubt in court or investigator, examination was considered compulsory (Article 67). The forensic findings were recognized as one of the pieces of evidence in a criminal case. At the same time, the Criminal Procedure Code of the Soviet authorities in 1922 enshrined two forms of use of specialized knowledge: forensic examination and expert participation in investigative actions, but so far without a clear distinction between those forms. This situation was conditioned by the lack of procedural order for the appointment and conduct of examination and domination at the same time of two views on forensic examination. According to the first, the examination was considered as independent evidence, which is evaluated by the court together with all other evidence. According to the second view, the medical expert was regarded as a scientific judge of fact, that is, his conclusion in the case was decisive. Representatives of the forensic and forensic and psychiatric sciences were supporters of this view, and in this divergence of views we again see a conflict between the forensic experts' view of their professional activity and the place which was given them legislation in the judicial process [3]. The Criminal Procedure Code of the Ukrainian SSR of 1927 provided for articles 66, 162, 190 only for some specialists (translators, doctors and educators) during investigative activities [7].

In 1949, A. Vinberg, for the first time in the Soviet Union, raised the issue of bringing a person, such as a specialist, into the criminal process, with functions that would be different from those of an expert [10, p. 19]. In 1960, a new Criminal Procedure Code was adopted in the Ukrainian SSR – again without taking into account the practice requirements for the use of special knowledge by experts and specialists. I continue to assign expertise in many cases where it was possible to involve a person with specialist knowledge, not an expert. However, in Articles 191, 194 of the Code of Criminal Procedure, the term «specialist» has its status in procedural forms [11], and by the Decree of the Presidium of the Supreme Soviet of the USSR of August 30, 1971, the Code of Criminal Procedure was supplemented by Art. 128 note «Specialist involvement in investigative activities.» Thus, the legislation of that time already considers two different procedural forms of the use of specialized knowledge: expertise and participation of a specialist in investigative actions.

With the acquisition of Ukraine's independence, a new stage of judicial expertise development in the country has begun. By a resolution of the Verkhovna Rada of Ukraine of February 25, 1994, for the first time among the countries of the post-Soviet space, the Law of Ukraine «On Forensic Expertise» was enacted, which defined the legal, organizational and financial bases of forensic expertise. According to Article 7 of the Law of Ukraine «On Forensic Expertise», judicial and expert activity in criminal proceedings is carried out by state specialized institutions, and in other cases also by judicial experts who are not employees of the said institutions, and other specialists (experts) in the relevant fields of knowledge in order and under the conditions laid down in this Law. State specialized institutions include, but are not limited

to, research institutes of forensic expertise, forensic and forensic psychiatric establishments of the Ministry of Health of Ukraine. Only specialized state institutions carry out forensic activities related to forensic, forensic and forensic psychiatric examinations [9].

Pursuant to Articles 9 and 16 of the above Law, the decrees of the Ministry of Justice of Ukraine approved: «Regulations on the State Register of Certified Forensic Experts», «Regulations on Expert Qualifications and Certification of Forensic Experts», «Regulations on the Qualification Classes of Forensic Experts», «Regulations Coordination Council on Problems of Forensic Expertise at the Ministry of Justice of Ukraine », etc.

At the same time, expert institutions have actively developed in independent Ukraine. In particular, the resolution of the Cabinet of Ministers of Ukraine of January 25, 1995 No. 52 established: in Odessa – the Odessa Research Institute (hereinafter – SRI) of forensics on the basis of the Odessa Forensic Laboratory of Forensic Expertise (established in 1951 after the reorganization of the Institute); in Lviv – Lviv Forensic Research Institute based on the Lviv Branch of the Kiev Forensic Research Institute; in Donetsk – Donetsk Forensic Research Institute based on the Donetsk Branch of Kharkiv Forensic Research Institute. In 2002, the Crimean Forensic Research Institutes were created on the basis of the Crimean Branches of the Kharkiv Forensic Research Institute.

Approval and implementation of the Instructions on the Appointment and Conduct of Forensics and the Scientific and Methodological Recommendations on the Preparation and Assignment of Forensics, which was approved by the order of the Ministry of Justice of October 8, 1998, were of great importance for the work of the judicial examination institutions. No. 53/5 to ensure a unified approach to the conduct of forensic assessments and to improve their quality. The Instruction provides for the appointment of forensics and expert studies to forensic experts of state specialized research institutions of forensic expertise of the Ministry of Justice of Ukraine and certified forensic experts who are not employees of state specialized institutions, their duties, rights and responsibilities [8].

It should be noted that the appearance of the Criminal Procedure Code of Ukraine in the 2012 edition changed the role of a specialist in criminal proceedings. In particular, experts are now involved not only in investigative (investigative) actions, as provided for in the Criminal Procedure Code of 1960, but also in unspoken investigative (investigative) and judicial actions, as well as other procedural actions, including the selection of samples for examination. Thus, the use of specialist knowledge in criminal proceedings is enshrined in two forms: when experts are involved in individual investigative (judicial) actions and within the limits of expertise [6].

Thus, at present, the conduct of judicial examination is governed by the Law of Ukraine of February 25, 1994 «On Judicial Expertise», the Criminal Procedure Code of Ukraine and the Civil Procedure Code of Ukraine [6; 9; 12]. Examination shall be conducted by an expert institution, expert or experts involved by the parties to the criminal proceedings or by an investigating judge at the request of the party of defense in the cases and procedure stipulated by the Criminal Procedure Code of Ukraine, if special knowledge is needed to ascertain the circumstances relevant to the criminal proceedings [6].

Special knowledge includes any knowledge and skills of objective nature obtained as a result of higher professional training, scientific activity, practical experience, which correspond to the modern scientific and practical level.

The Law of Ukraine «On Forensic Expertise» defines the concept of forensic expertise as a research based on specialized knowledge in the field of science, technology, art, craft, etc. of objects, phenomena and processes in order to give a conclusion on issues that are or will be the subject of litigation. The law stipulates that state-specialized institutions, including research institutes of forensic examinations, forensic and forensic and psychiatric establishments of the Ministry of Health of Ukraine [9], carry out judicial-expert activity by organizational form. But in addition to the general legal rules that apply to all forensic experts, forensic experts are also guided in their practical activity by the «Instruction on forensic examination», approved by the Decree of the Ministry of Health of Ukraine on January 17, 1995 No. 6 and agreed with The Supreme Court of Ukraine, the Prosecutor General's Office of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine. Although the relationship between the forensic service and the bodies of pre-trial investigation is determined generally by the criminal procedural legislation, in practical terms, their interaction differs in a large variety of forms and multilevel nature, which is further complicated by the existing significant contradictions between the divisiveness of the court. Order No. 6 of the Ministry of Health and new provisions of the CPC of Ukraine.

An analysis of the forensic history shows that it has evolved as a result of the accumulation of medical and forensic data. At the same time, the practice of involving doctors in investigative activities and

forensic science were formed. It can be said that forensic medicine and forensic expertise were different independent systems of knowledge, one of which remained purely medical for a long time and the other purely forensic. In the early 20th century, these two trends merged, and as a result of their actual semantic association, a forensic expertise emerged, the activity of which is regulated, with the exception of legislative acts, regulations of the Ministry of Health, the Ministry of Internal Affairs and the Ministry of Justice. By the way, the Ministry of Justice of Ukraine is the Holder of the Register of Certified Forensic Experts, and the structural subdivision of the Ministry of Justice of Ukraine, which is entrusted with the functions of the holder of the Register, provides organizational and administrative support for forensic expert activities, incl. forensic. All three ministries also control the activities of forensic experts, which contradicts the provisions of the legislation of Ukraine on the independence of expert opinion.

Further research and discussion requires improving the legal regulation of forensic activity in Ukraine, as well as defining ways of introducing into national legislation foreign experience of functioning of similar services and managing them.

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