

FORENSIC ACTIVITY IN THE CONTEXT OF ARMED CONFLICT: ORGANIZATIONAL AND PRACTICAL ASPECTS

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The article analyzes the practical aspects of the appointment and conduct of forensic expertise in the context of a modern armed conflict. Particular attention is paid to the specific functioning of state forensic institutions and the activities of private forensic experts under conditions of increased workload, limited material and technical resources, transformation of procedural mechanisms, and the need for prompt responses to emerging forensic and legal challenges. The study examines the organization of forensic activities in the investigation of crimes related to armed conflict, as well as mechanisms aimed at enhancing the effective use of specialized knowledge.

The authors investigate the organizational and methodological challenges faced by the forensic expert community, including the lack of specialized methodologies for examining certain categories of objects, the shortage of unified guidelines and recommendations, and difficulties in the professional training of experts for work under emergency conditions and in combat zones. Special attention is devoted to the adaptation of forensic practice to new categories of objects arising in the context of armed conflict, as well as to the need for improving the legal and regulatory framework governing forensic expert activities during emergencies and military operations.

The article emphasizes the importance of conducting comprehensive forensic assessments aimed at determining the extent of actual damages and lost profits suffered by citizens, business entities, infrastructure facilities, industrial sectors, and other areas of the economy.

Keywords: armed conflict, forensic expert activity, organizational aspects, explosives examination, commodity examination, construction and technical examination, forensic economic assessment of actual damages.

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Introduction.

Amid the turbulence of military conflicts that have engulfed many countries in recent times, issues regarding the effective use of forensic expertise - a key tool of the justice system - are increasingly drawing the attention of scholars and practitioners. This article has been prepared to analyze certain practical aspects of organizing forensic expertise that expert institutions in Ukraine have encountered, with the aim of sharing experiences with colleagues and drawing attention to the issues raised herein.

The transformation of the international landscape observed since early 2022 has prompted a re-evaluation and reallocation of key priorities within societal demands, judiciary and law enforcement agencies regarding a significant expansion of the expert tasks facing forensic experts and state forensic institutions.

The loss of territories, buildings and structures, the need for an urgent assessment of the costs of restoring property and property rights that have suffered devastating damage as a result of armed conflict, and the expansion of active combat zones necessitate qualified expert opinions from forensic experts regarding the assessment of damage and the extent of losses suffered not only by individual enterprises but also by entire territories, communities, and regions, including the industrial, agricultural, and construction facilities, production infrastructure (trade, transport, communications), non-production infrastructure (service sector), electronic communications networks, etc.

Aim.

The aim of the study is to analyze the practical aspects of organizing forensic expert activities in the context of armed conflict and to formulate proposals aimed at improving the effective use of specialized knowledge in the investigation of war crimes.

Discussion.

According to the Law of Ukraine “On Forensic Examination,” the entities engaged in forensic expert activities are state specialized institutions, their territorial branches, expert institutions under municipal ownership, as well as forensic experts who are not employees of the aforementioned institutions, and other specialists (experts) in relevant fields of knowledge, in accordance with the procedures and conditions established by this Law.

State-specialized institutions include:

- scientific research institutions of forensic expertise of the Ministry of Justice of Ukraine;
- scientific research institutions of forensic expertise, forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine;
- expert services of the Ministry of Internal Affairs of Ukraine, the Ministry of Defense of Ukraine, the Security Service of Ukraine, and the State Border Guard Service of Ukraine.

Forensic expert activities related to the conduct of criminalistic, forensic medical, and forensic psychiatric examinations are carried out exclusively by state-run specialized institutions [1].

The developments that commenced suddenly and rapidly in February 2022 became a trigger for the entire system of state specialized institutions in Ukraine, which have different lines of authority, regulatory frameworks, and organizational structures.

The main research institutes for forensic examinations within the system of the Ministry of Justice of Ukraine:

1. Kyiv Scientific Research Institute of Forensic Expertise (KSRIFE);
2. National Scientific Center “Institute of Forensic Expertise named after Honored Professor M.S. Bokarius” (NSCIFE);
3. Lviv Scientific Research Institute of Forensic Expertise (LSRIFE);
4. Odesa Scientific Research Institute of Forensic Expertise (OSRIFE);
5. Dnipropetrovsk Scientific Research Institute of Forensic Expertise (DSRIFE);
6. Research Center for Forensic Expertise in Information Technology and Intellectual Property;
7. Scientific Research Center for Independent Forensic Expertise.

Functions of the institutions: conducting forensic examinations and expert studies; scientific activities in the field of forensic science and criminalistics; developing research methodologies; certification and professional development of forensic experts.

Thus, due to a lack of preparedness for force majeure circumstances in February 2022, the forensic research institutions of the Ministry of Justice of Ukraine, located in Kyiv, Kharkiv, Odesa, and Dnipro, proved to be organizationally vulnerable.

The issues and challenges faced by forensic institutions can be summarized as follows:

- a rapid exodus of professional staff due to evacuation abroad and to safer regions;
- protection of buildings, high-value property, and professional equipment from the risks of fire, damage, and destruction;
- disruptions in the supply of electricity, heat, communications, postal services, the internet, and fuel for motor vehicles;
- occupational safety and fire safety of premises;
- preservation and relocation of archival records, physical evidence, and cases currently under investigation to safer locations;
- operating procedures for institutions during air raid alerts and missile attacks.

The management of these institutions dealt with the overwhelming flood of the aforementioned organizational issues—which arose practically around the clock—on the fly, taking into account the security situation in the region, the intensity of airstrikes, and the need to preserve available human and material resources. It should be noted, however, that

ongoing expert work continued uninterrupted thanks to the courage of the staff at these institutions.

As for the work of private forensic experts, to alleviate state “pressure” amid the uncertainty, a separate order from the Ministry of Justice of Ukraine 1) suspended scheduled inspections of the activities of certified forensic experts not employed by state-run specialized forensic institutions, unscheduled inspections of the activities of forensic experts and workplace compliance inspections for the period up to and including the last calendar day of the month in which martial law is suspended or lifted. This suspension interrupts the inspection period and does not require any additional decisions by the Ministry of Justice of Ukraine, as the state body responsible for overseeing the organization of forensic experts’ activities, or its interregional territorial bodies; 2) Scheduled inspections of the activities of certified forensic experts not employed by state-run specialized forensic institutions, which were to begin during the period starting February 24, 2022, have been postponed in accordance with the revised inspection schedule [2].

In the context of armed conflicts, an important task has been added to the scope of responsibilities: the conduct of forensic examinations performed by expert institutions to establish the circumstances of war crimes, other crimes against humanity, and violations of international humanitarian law. Expert examinations may be conducted by both national and international forensic institutions. National judicial authorities conduct expert examinations at the request of investigative bodies or courts. International judicial bodies, such as the International Criminal Court (ICC), may also order expert examinations.

Forensic examinations in the context of protracted armed conflicts are highly complex to organize. The number of comprehensive and panel-based examinations is rapidly increasing. This is because it is often difficult to collect evidence in such conflicts. Evidence may be damaged or destroyed as a result of hostilities. Such challenges increase the organizational burden on the institution, requiring the involvement of highly qualified specialists from relevant fields of expertise and the coordination of their efforts. Despite these difficulties, forensic examinations play a crucial role in investigating war crimes, as they help establish the truth, hold perpetrators accountable, and assist in compensating victims for their losses.

In general, a forensic examination is necessary to:

- Establish the circumstances of a case that cannot be determined by other means. For example, a forensic examination may be ordered to determine the cause of death, the mechanism of an incident, the authenticity of a document, the identification of a person, etc.;
- Identify and collect the evidence necessary for a proper resolution of the case;
- Ensure the objectivity and impartiality of the evidence.

The use of international standards and methodologies, such as the Berkeley Protocol, helps improve the quality and reliability of the evidence base. During such an investigation, it is necessary not only to prove that crimes were committed but also to link them to specific perpetrators, bring well-founded charges against them, and hold them accountable [3].

During military conflicts, the focus and structure of forensic examination areas shift, with certain areas being less in demand during peacetime. Thus, the following forensic examinations take priority. Accordingly, disciplines that were less prominent in a peaceful context have gained precedence. Specifically, forensic medical examinations involve the examination of the bodies of deceased or injured individuals. Forensic medical examinations can be used to determine the cause of death, the mechanism of injury, and other factors. Postmortem forensic genetic examination is the analysis of a deceased person's DNA, conducted pursuant to a court order or an investigator's decision to establish kinship (paternity) or to identify bodies of those killed in traffic accidents or during combat operations. Biological materials (blood, tissues, exhumed remains) are examined, or samples from relatives are compared. DNA testing to locate people who have died or gone missing DNA samples are collected from the biological parents or children of the missing person, and molecular genetic testing is conducted only upon an investigator's order and free of charge. Samples may be collected directly at the forensic medical laboratory branches upon the order of the investigator handling the missing persons case, who submits a corresponding motion to the court. Subsequently, pursuant to the court's decision, the collection, verification, and determination of the presence or absence of a match in genomic information will take place. The relative's DNA profile is sent to the centralized automated registry of human genetic markers, where DNA profiles are compared automatically. If a match is found, the authority that ordered the examination and is conducting the pre-trial investigation, as well as the relatives of the deceased, are notified. It is important to emphasize, that such examinations should be conducted by specialized forensic medical institutions of the Ministry of Health of Ukraine, rather than being scattered among various agencies.

As we have emphasized previously, despite the challenges posed by martial law, the state forensic institutions of the Ministry of Justice of Ukraine have continued to operate at full capacity. At the same time, the leadership of the Kyiv Scientific Research Institute of Forensic Expertise of the Ministry of Justice of Ukraine has made significant efforts to secure specialized equipment that is critically needed for daily use in forensic practice. The trust of foreign partners in the Institute was built on the institution's long-standing scientific cooperation and the active recognition of the KSRIFE significant achievements by the professional community in various countries around the world, from Japan to the United States and Europe.

Thus, with the active assistance of the leadership of the KSRIFE, Luxembourg sent 30 3D scanners to Ukraine, which can be used to scan large areas and collect evidence of war crimes. It is noted that, according to reports by the organization Presute Russian War Crimes, at least 39,000 violations of the Geneva Conventions were identified in the liberated territories previously occupied by Russian troops. Ukrainian authorities are investigating these reports, hoping that this task will be made easier thanks to Luxembourg's logistical support [4].



Fig. 1 Receipt of equipment in Luxembourg City from the Luxembourg Minister of Defense

Since evidence collection constitutes a critically important stage of this process, Luxembourg supplied Ukraine with 30 3D scanners, the use of which enables the documentation of evidence without direct physical contact with the examined objects, thereby contributing to the formation of an evidentiary basis for subsequent judicial proceedings.

The Minister of Defence of Luxembourg, François Bausch, noted that the 3D scanners were delivered directly to the war-affected regions of Ukraine. According to his statement, the equipment is equipped with software capable of scanning extensive territories together with all objects located within them, followed by computerized data processing, which is of significant importance for the documentation and investigation of war crimes. He also emphasized that the total cost of the project amounted to EUR 1.3 million and expressed confidence in its substantial benefit for Ukraine.

Overall, according to Luxembourg's Minister of Defense, Since the beginning of the military conflict in Ukraine., Luxembourg has provided Kyiv with material support and weapons worth 74 million euros. He also promised further assistance in the next fiscal year.

"This is a decisive stage, and that is why it is so important that we support these people. They are truly fighting for the rest of Europe," he noted. As reported by Ukrinform, Luxembourg previously froze €5.5 billion in assets belonging to Russian individuals and

legal entities, which accounts for about one-third of all Russian assets blocked within the European Union [4].

Also, in the context of a protracted military conflict, forensic ballistics examinations are becoming increasingly relevant - these are designed to address a wide range of identification and diagnostic tasks related to the examination of firearms, ammunition, and gunshot residue. The objects of forensic ballistics examination include firearms, ammunition, their components, and gunshot traces. When solving identification tasks, a specific firearm can be identified based on fired bullets, cartridge cases, or shot, as well as on traces left on these items by firearm components (barrel, locking mechanism, chamber, etc.).

Explosives examination is in high demand; it investigates explosive devices and their components, the mechanism of the explosion and its consequences, the conditions of the explosion, and the causes that led to it. Explosive ordnance examination covers factory-made explosive devices (projectiles, mines, explosives, etc.), the circumstances of the explosion, remnants of explosive substances and projectiles, and traces of the combustion of explosive substances. Explosive technical examinations determine the exact cause of a particular destruction: what type of missile was launched, where it came from, and its specific model.

There is a growing demand for specialized information analysis. The examination of documents, photographs, videos, and other materials can be used to verify the authenticity of information, detect forgeries, and so on.

At the same time, technical examinations (automotive, electrical, and computer) also constitute a significant portion of the investigations conducted in the context of a protracted military conflict.

The number of trace evidence examinations is increasing, and their results can be used to determine how an event occurred, who was present at the scene, and what took place.

Forensic commodity examination holds a special place in the context of military conflict. Forensic commodity examination involves studying the properties of products to determine their actual condition and value. Any military operations involve some degree of destruction. However, given the large-scale destruction of civilian infrastructure, residential buildings, educational institutions, and the like, the extent of the damage has become particularly significant. Consequently, there is a need not only to document the destruction and damage but also to assess the cost of their restoration. In doing so, experts often have to travel to areas bordering zones of intense combat operations to assess the extent of the destruction, which puts their lives and health at heightened risk. Forensic commodity expertise makes it possible to determine the extent of the damages. After receiving the relevant documents confirming ownership of the property, experts visit the site. They photograph and scan the property, and then determine the extent of the damage. If a

building, warehouse, property complex, or residential building has been destroyed, it is necessary to organize and conduct a construction and technical examination.

Expert assessments that determine lost profits from economic activities are particularly specific and essential for investigating war crimes. These circumstances have created significant demand for experts with competencies such as commodity specialists, automotive commodity specialists, civil engineers, and economists.

Thus, it is precisely economic expertise—when addressing issues related to the assessment (determination of the amount) of actual losses, which require specialized knowledge in the fields of accounting and tax accounting, economics, analysis, and financial control—that is becoming increasingly essential in today's conditions. As a result, a pressing issue has arisen regarding the shortage of specialists who, in a given situation, can quickly and professionally conduct an expert investigation and assess the extent of damage and losses inflicted on the region as a whole, the community as a whole, industries, sectors of the national economy, specific economic regions, and so on. That is, these two factors—the need for prompt, qualified expert assessment and, at the same time, the shortage of specialists who specialize specifically in assessing and investigating damages at the level of an industry, sector of the national economy, region, individual economic regions, and communities—in our view, can be a significant barrier for the state and economic entities in determining the costs necessary to restore the operations of industrial, agricultural, infrastructure, and business facilities that have suffered as a result of the armed conflict [5].

In addition, there is an urgent need for a mechanism, established by regulatory acts, for the training (or retraining) of specialists in the relevant field of expertise, one that takes into account the specific nature of activities in this area: the assessment of harm caused or losses incurred. Thus, in order to more fully meet the needs of the state, investigative, and judicial practice regarding the resolution of issues requiring the application of specialized knowledge, it is proposed to consider the establishment of a new expert specialty, namely: Economic Expertise in Assessing Caused Harm/Incurred Losses (or – Economic Expertise in Determining the Amount of Actual Losses) [5]. The purpose of establishing the specialty “Economic Expertise in Determining the Amount of Actual Damages” is to introduce a modern, improved mechanism for determining the amount of harm caused, actual losses, lost profits, and the assessment of restoration needs for enterprises, institutions, and organizations, as well as other business entities of all forms of ownership, territories, communities, regions, industries, and sectors of the national economy, and the state, developed on the basis of national and international valuation standards. Scope of application: applies when determining the amount of actual losses incurred by enterprises, institutions, and organizations, as well as other business entities of all forms of ownership, territories, communities, regions, industries, sectors of the national economy, and the state as a result of the loss, destruction, or damage to their property in connection with the

armed aggression of the Russian Federation; determining the amount of lost profits resulting from the inability or obstacles to conducting economic activities by the aforementioned business entities; as well as assessing the needs for the restoration of business entities' property. In addition, the scope of this specialty should include determining the amount of losses incurred by a business entity during the investigation of economic crimes, as a result of emergencies caused by natural disasters, etc. The purpose of loss assessment is to: determine the amount of actual losses; determine lost profits; and determine the costs necessary to restore property and property rights that have suffered destructive effects as a result of prolonged armed conflict.

In addition, to improve forensic activities under martial law, it is important to organize training for forensic experts on the use of the latest equipment to enhance their qualifications and confidence in utilizing new technologies. It is also necessary to expand international cooperation and attract foreign assistance to secure modern technical resources and facilitate the exchange of expertise. The production of domestic equivalents of technical equipment should be a priority to ensure their availability and reduce dependence on imported supplies. State support and funding for the development of forensic activities are key to ensuring the effective work of experts under martial law [6].

Conclusion.

The challenges of the times and the conduct of forensic examinations in conditions of military conflict indicate that new areas of research have emerged: DNA analysis, drone analysis, etc., and that traditional types of forensic examinations are adapting to the demands of clients, requiring transformation in terms of their organization, subject matter, use of the latest equipment, and refinement of research methods.

A significant portion of expert research consists of comprehensive assessments aimed at determining the extent of actual losses and lost profits for citizens, businesses, communities, and industries. Such tasks require economic experts to possess advanced professional competence in conducting comprehensive studies in collaboration with experts from other fields: engineers, technologists, commodity specialists, etc. Thus, it is precisely economic expertise related to determining the amount of actual losses that resolves issues requiring specialized knowledge in the fields of accounting and tax accounting, economics, and the analysis of economic activity—both at the enterprise level and for the industry as a whole—and in the current context of military conflicts, it is becoming increasingly relevant and necessary.

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ԴԱՏԱԿԱՆ ՓՈՐՁԱԳԻՏԱԿԱՆ ԳՈՐԾՈՒՆԵՈՒԹՅԱՆ ՀԻՄՆԱԽՆԴԻՐՆԵՐԸ ՌԱԶՄԱԿԱՆ ՀԱԿԱՄԱՐՏՈՒԹՅԱՆ ՊԱՅՄԱՆՆԵՐՈՒՄ. ԿԱԶՄԱԿԵՐՊՉԱԿԱՆ և ԳՈՐԾՆԱԿԱՆ ԱՍՊԵԿՏՆԵՐ

Կովալենկո Օ.Վ., Նեստոր Ն.Վ.

Հոդվածում վերլուծվում են ժամանակակից զինված հակամարտության պայմաններում դատական փորձաքննությունների նշանակման և իրականացման գործնական կողմերը: Առանձնահատուկ ուշադրություն է դարձվում պետական

դատափորձագիտական հիմնարկների գործունեության առանձնահատկություններին և մասնավոր դատական փորձագետների աշխատանքին՝ պայմանավորված ծանրաբեռնվածության աճով, նյութատեխնիկական ռեսուրսների սահմանափակությամբ, դատավարական մեխանիզմների վերափոխմամբ և նոր քրեագիտական ու իրավական մարտահրավերներին օպերատիվ արձագանքելու անհրաժեշտությամբ: Քննարկվում են զինված հակամարտության հետ կապված հանցագործությունների քննության ընթացքում փորձագիտական գործունեության կազմակերպման առանձնահատկությունները, ինչպես նաև հատուկ գիտելիքների կիրառման արդյունավետության բարձրացմանն ուղղված մեխանիզմները:

Հեղինակների կողմից ուսումնասիրվել են կազմակերպչական և մեթոդական այն դժվարությունները, որոնց բախվում է փորձագիտական համայնքը, ներառյալ առանձին կարեգործիայի օբյեկտների հետազոտման համար մասնագիտացված մեթոդական մոտեցումների բացակայությունը, միասնականացված հանձնարարականների պակասը, ինչպես նաև արտակարգ պայմաններում և ռազմական գործողությունների գոյններում աշխատելու համար փորձագետների մասնագիտական պատրաստվածության հետ կապված խնդիրները: Առանձնահատուկ ուշադրություն է դարձվել զինված հակամարտության պայմաններում ի հայտ եկող հետազոտության նոր տեսակի օբյեկտներին՝ դատափորձագիտական պրակտիկայի հարմարվողականության հարցերին, ինչպես նաև արտակարգ իրավիճակների և ռազմական գործողությունների ժամանակահատվածում դատափորձագիտական գործունեությունը կարգավորող նորմատիվ-իրավական բազայի կադրելագործման անհրաժեշտությանը:

Հոդվածում ընդգծվում է նաև համալիր փորձագիտական գնահատումների իրականացման կարևորությունը, որոնք ուղղված են քաղաքացիներին, ձեռնարկատիրական գործունեության սուբյեկտներին, ենթակառուցվածքային օբյեկտներին, արդյունաբերական և տնտեսության այլ ճյուղերին պատճառված փաստացի վնասի և բաց թողնված օգուտի չափի որոշմանը:

Բանալի բառեր. ռազմական հակամարտություն, դատափորձագիտական գործունեություն, պայթյունատեխնիկական փորձաքննություն, ապրանքագիտական փորձաքննություն, շինարարատեխնիկական փորձաքննություն, փաստացի վնասի դատափորձագիտական փորձաքննություն:

СУДЕБНО-ЭКСПЕРТНАЯ ДЕЯТЕЛЬНОСТЬ В УСЛОВИЯХ ВООРУЖЕННОГО КОНФЛИКТА: ОРГАНИЗАЦИОННЫЕ И ПРАКТИЧЕСКИЕ АСПЕКТЫ

Коваленко О.В., Нестор Н.В.

В статье анализируются практические аспекты назначения и проведения судебных экспертиз в условиях современного вооружённого конфликта. Особое внимание уделяется специфике функционирования государственных судебно-экспертных учреждений и деятельности частных судебных экспертов в условиях повышенной нагрузки, ограниченности материально-технических ресурсов, трансформации процессуальных механизмов и необходимости оперативного реагирования на новые криминалистические и правовые вызовы. Рассматриваются особенности организации экспертной деятельности при расследовании преступлений, связанных с вооружённым конфликтом, а также механизмы, направленные на повышение эффективности использования специальных знаний.

Авторами исследуются организационные и методические трудности с которыми сталкивается экспертное сообщество, включая отсутствие специализированных методических подходов к исследованию отдельных категорий объектов, дефицит унифицированных рекомендаций, а также проблемы профессиональной подготовки экспертов для работы в чрезвычайных условиях и в районах ведения боевых действий. Отдельное внимание уделено вопросам адаптации судебно-экспертной практики к новым видам объектов исследования, возникающим в условиях вооружённого конфликта, а также необходимости совершенствования нормативно-правовой базы, регулирующей судебно-экспертную деятельность в период чрезвычайных ситуаций и военных действий.

В статье подчёркивается важность проведения комплексных экспертных оценок, направленных на определение размера фактического ущерба и упущенной выгоды, причинённых гражданам, субъектам предпринимательской деятельности, объектам инфраструктуры, промышленным и иным отраслям экономики.

Ключевые слова: *военный конфликт, судебно-экспертная деятельность, организационные аспекты, взрывотехническая экспертиза, товароведческая экспертиза, строительно-техническая экспертиза, судебно-экономическая экспертиза фактического ущерба.*

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