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ЕЖЕМЕСЯЧНЫЙ НАУЧНЫЙ ЖУРНАЛ

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**ЕЖЕМЕСЯЧНЫЙ НАУЧНЫЙ ЖУРНАЛ
ТБИЛИСИ - НЬЮ-ЙОРК**

GMN: Georgian Medical News is peer-reviewed, published monthly journal committed to promoting the science and art of medicine and the betterment of public health, published by the GMN Editorial Board and The International Academy of Sciences, Education, Industry and Arts (U.S.A.) since 1994. **GMN** carries original scientific articles on medicine, biology and pharmacy, which are of experimental, theoretical and practical character; publishes original research, reviews, commentaries, editorials, essays, medical news, and correspondence in English and Russian.

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2. Size of the article, including index and resume in English, Russian and Georgian languages must be at least 10 pages and not exceed the limit of 20 pages of typed or computer-printed text.

3. Submitted material must include a coverage of a topical subject, research methods, results, and review.

Authors of the scientific-research works must indicate the number of experimental biological species drawn in, list the employed methods of anesthetization and soporific means used during acute tests.

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3. სტატიაში საჭიროა გაშუქდეს: საკითხის აქტუალობა; კვლევის მიზანი; საკვლევი მასალა და გამოყენებული მეთოდები; მიღებული შედეგები და მათი განსჯა. ექსპერიმენტული ხასიათის სტატიების წარმოდგენისას ავტორებმა უნდა მიუთითონ საექსპერიმენტო ცხოველების სახეობა და რაოდენობა; გაუტკივარებისა და დაძინების მეთოდები (მწვავე ცდების პირობებში).

4. სტატიას თან უნდა ახლდეს რეზიუმე ინგლისურ, რუსულ და ქართულ ენებზე არანაკლებ ნახევარი გვერდის მოცულობისა (სათაურის, ავტორების, დაწესებულების მითითებით და უნდა შეიცავდეს შემდეგ განყოფილებებს: მიზანი, მასალა და მეთოდები, შედეგები და დასკვნები; ტექსტუალური ნაწილი არ უნდა იყოს 15 სტრიქონზე ნაკლები) და საკვანძო სიტყვების ჩამონათვალი (key words).

5. ცხრილები საჭიროა წარმოადგინოთ ნაბეჭდი სახით. ყველა ციფრული, შემაჯამებელი და პროცენტული მონაცემები უნდა შეესაბამებოდეს ტექსტში მოყვანილს.

6. ფოტოსურათები უნდა იყოს კონტრასტული; სურათები, ნახაზები, დიაგრამები - დასათაურებული, დანომრილი და სათანადო ადგილას ჩასმული. რენტგენოგრამების ფოტოასლები წარმოადგინეთ პოზიტიური გამოსახულებით **tiff** ფორმატში. მიკროფოტოსურათების წარწერებში საჭიროა მიუთითოთ ოკულარის ან ობიექტივის საშუალებით გადიდების ხარისხი, ანათალებების შედეგების ან იმპრეგნაციის მეთოდი და აღნიშნოთ სურათის ზედა და ქვედა ნაწილები.

7. სამამულო ავტორების გვარები სტატიაში აღინიშნება ინიციალების თანდართვით, უცხოურისა – უცხოური ტრანსკრიპციით.

8. სტატიას თან უნდა ახლდეს ავტორის მიერ გამოყენებული სამამულო და უცხოური შრომების ბიბლიოგრაფიული სია (ბოლო 5-8 წლის სიღრმით). ანბანური წყობით წარმოდგენილ ბიბლიოგრაფიულ სიაში მიუთითეთ ჯერ სამამულო, შემდეგ უცხოელი ავტორები (გვარი, ინიციალები, სტატიის სათაური, ჟურნალის დასახელება, გამოცემის ადგილი, წელი, ჟურნალის №, პირველი და ბოლო გვერდები). მონოგრაფიის შემთხვევაში მიუთითეთ გამოცემის წელი, ადგილი და გვერდების საერთო რაოდენობა. ტექსტში კვადრატულ ფხიხლებში უნდა მიუთითოთ ავტორის შესაბამისი N ლიტერატურის სიის მიხედვით. მიზანშეწონილია, რომ ციტირებული წყაროების უმეტესი ნაწილი იყოს 5-6 წლის სიღრმის.

9. სტატიას თან უნდა ახლდეს: ა) დაწესებულების ან სამეცნიერო ხელმძღვანელის წარდგინება, დამოწმებული ხელმოწერითა და ბეჭდით; ბ) დარგის სპეციალისტის დამოწმებული რეცენზია, რომელშიც მითითებული იქნება საკითხის აქტუალობა, მასალის საკმაობა, მეთოდის სანდოობა, შედეგების სამეცნიერო-პრაქტიკული მნიშვნელობა.

10. სტატიის ბოლოს საჭიროა ყველა ავტორის ხელმოწერა, რომელთა რაოდენობა არ უნდა აღემატებოდეს 5-ს.

11. რედაქცია იტოვებს უფლებას შეასწოროს სტატია. ტექსტზე მუშაობა და შეჯერება ხდება საავტორო ორიგინალის მიხედვით.

12. დაუშვებელია რედაქციაში ისეთი სტატიის წარდგენა, რომელიც დასაბეჭდად წარდგენილი იყო სხვა რედაქციაში ან გამოქვეყნებული იყო სხვა გამოცემაში.

აღნიშნული წესების დარღვევის შემთხვევაში სტატიები არ განიხილება.

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FORENSIC MEDICAL AND FORENSIC PSYCHIATRIC EXAMINATION: SOME ISSUES OF LEGAL REGULATION

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Issues related to forensic examinations in the field of health care are urgent and particularly difficult to implement and enforce at the current stage for Ukraine, given the significant gaps and controversies in legal regulation. Every medical case, that is, a case involving professional offenses committed by health-care professionals in the provision of medical care, has a direct touch on the examination, so the issue of the adherence and admissibility of evidence arises every time. Equally dissonant is the field of forensic psychiatry in terms of legislative support, so problems with evidence will emerge again. Especially the issues of examination were exacerbated with the adoption of the Law of Ukraine “On Amendments to the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Judiciary of Ukraine and other legislative acts” as of 03.10.2017, which had also amended Art. 7 of the Law of Ukraine “On Forensic Examination”, which clearly stipulates that only specialized state institutions can carry out forensic activities related to conducting forensic, forensic medical and forensic psychiatric examinations.

The objective of the research is to expose the issues of legal regulation of forensic examinations under national legislation, to clarify foreign experience of regulation of outlined issues, as well as to crystallize tips to improve the current national regulatory framework, which may be useful for the authorities of Ukraine and for foreign states, in order to not repeat statutory mistakes.

Material and methods. The research is based on an analysis of the regulatory framework of Ukraine; the authentic explanations of the MOH of Ukraine, which were obtained in particular in connection with individual legal practice in the field of examination; legislation of foreign countries, as well as research papers, in particular those by Bednarski L., Berent J., Driscoll J., Hutorova N.O., Kovalevska E., Kulich R.J., Orekhova O.P., Paramonova L.F., Pashkov V.M., Prescott J.S., Rich B. The following methods of scientific cognition have been used: dialectical (has been used throughout the research and allowed to reveal trends in forensic examinations institute development and the formulation of proposals for the legislation in the said field improvement); comparative (for the study of the foreign experience in regulating the field of forensic examination); formal-legal (for the comprehensive description of the legislation in the analyzed area); interpretation of law (for the study of the content of the relevant legal regulations and the essence of evaluative concepts); jurisprudence study (to summarize law enforcement practice).

Results and discussions. For the purpose of a comprehensive research of the issues outlined, two different types of forensic examinations shall be examined in order to identify the issues that professionals face in practice, given the shortcomings of the current legislation.

Forensic medical examination

In medical cases, commission forensic medical examination is based on the Rules of conducting forensic medical examina-

tions in the bureau of forensic medical examination, approved by the Order of the MOH of Ukraine as of 17.01.1995 No. 6 (hereinafter referred to as the Rules). It is difficult to overestimate the role and importance of such evidence as the opinion of a medical expert, given the legal position of the European Court of Human Rights in *Benderskyi v. Ukraine* (2007) [1]. The Court stated that the resolution of cases concerning the provision of medical care to a patient, the medical conclusion is undoubtedly crucial. That is why courts should pay particular attention to the powers, qualifications of such experts, and the reliability of their conclusions [2].

According to Art. 94 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CrPC of Ukraine), no evidence has pre-established force, but according to paragraph 10 of Art. 101 of the CrPC of Ukraine, the expert's opinion is not binding for the person or agency conducting the proceedings, but disagreement with the expert's opinion shall be motivated in the relevant decree, judgment, sentence. The legislator also has a similar opinion in civil proceedings, because the Art. 89, 110 of the Civil Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) stipulates that the expert's opinion for the court has no pre-established force and is evaluated by the court together with other evidence, but the court's rejection of the expert's opinion should be motivated in the judgment. Thus, at the statutory level, the special role of expert opinion as evidence has been outlined. According to Ye. Kovalevska, there should be the possibility of involving persons with special medical knowledge to the conclusion of the investigator or the court (investigating judge) on the examination of such conclusion [6, p. 12]. However, this position is quite disputable because the regulation of Art. 356 of the CPC of Ukraine, which states that the court has the right to call an expert for questioning to clarify the expert's opinion is optimal, and the assessment is carried out on the internal conviction of the competent person (Article 94 of the CrPC of Ukraine).

Among the pressing legal issues of forensic examination, let us focus on the following.

1. The issue of who can conduct forensic medical examination is one of the most difficult ones. In Part 2 of Art. 7 of the Law of Ukraine “On Forensic Examination” provides a comprehensive list of specialized state institutions, including forensic medical and forensic psychiatric institutions of the MOH of Ukraine. According to the above the issue of the legality of conducting forensic medical examinations at the territorial bureaus of forensic medical examinations? Territorial bureaus are classified as objects of communal property, in accordance with the List of state property of Ukraine, transferred to the property of administrative-territorial units (communal property), approved by the Decree of the Cabinet of Ministers of Ukraine “On the demarcation of state property of Ukraine between state-owned (republic) property -territorial units (communal) property” as of 05.11.1991 No 311.

The Letter of MOH of Ukraine as of 06.02.2018 No 3.49-K-23816/1856-зв [10] states that the State institution "Main Bureau of Forensic Medical Examination of the MOH of Ukraine" is in the sphere of management of the MOH of Ukraine and its forensic activity meets the requirements of Art. 7 of the Law of Ukraine "On Forensic Examination". Thus, a comprehensive analysis of the Ukrainian legislation regulations and the provisions of the mentioned letter of the MOH of Ukraine give grounds to claim that the only institution that has the right to carry out forensic medical examinations in Ukraine is the State Institution "Main Bureau of Forensic Medical Examination of the MOH of Ukraine". The Regulations on the Bureau of Forensic Medical Examination of Health Departments of Regional Executive Committees and the Republican Bureau (Autonomous Republic of Crimea), approved by the Decree of the MOH of Ukraine as of 17.01.1995 No. 6, stipulates that territorial bureaus are specialized state institutions, which are included to the structure of healthcare institutions of Ukraine. The Letter of the MOH of Ukraine as of 12.04.2018 № 3.22 - K - 5228/4926 [11] states that the Order of the Ministry of Health of Ukraine as of 17.01.1995 No. 6 does not currently meet the international requirements for forensic medical examination and is morally outdated. Given that fact, MOH of Ukraine is currently working on a draft revision of this order. However, in the Letter as of 06.02.2018, the MOH of Ukraine had indicated that it is working on initiating the development of a normative-legal act before the Cabinet of Ministers in order to bring the activity of the institutions of forensic medical and forensic psychiatric examination in compliance with the legislation of Ukraine.

It should be noted that, according to Part 5 of Art. 13 of the Law of Ukraine "On Higher Education", letters, instructions, methodological recommendations, other documents of executive bodies, except for the orders registered by the Ministry of Justice of Ukraine and documents regulating the internal activity of the agency, are not normative legal acts and cannot establish legal regulations. In view of the legislative shortcomings, the MOH of Ukraine has been acting for a long time following the chosen tactic of replacing qualitative statutory drafting with letters preparation. However, even the letters of the MOH of Ukraine show a lack of uniformity of position regarding the future reform of the expert field, in particular in the aspect of a clear understanding of the subject of drafting. It should be emphasized that according to paragraph 8, Part 4 of the Regulation on the MOH of Ukraine, approved by the Cabinet of Ministers of Ukraine Decree No. 267 as of 25.03.2015, approval of the order of forensic medical and forensic psychiatric examination fall into the scope of powers of the MOH of Ukraine. From the foregoing analysis, it follows that such evidence as the opinion of a forensic expert in medical cases does not meet such a requirement as the admissibility of evidence, since it is obtained with violation of the law.

The unified definition of entities, responsible for conducting forensic medical examinations is essential for establishing the European principle of legal certainty. For example, Georgian legislation clearly defines the scope of such entities, limiting it to duly certified physicians operating on the basis of authorized healthcare facilities (namely, in accordance with the requirements of the special law on licensing) [4]. Thus, the legislator does not impose too severe restrictions in this area, while defining the basic requirements for forensic experts.

The legislation of Latvia contains a number of detailed requirements for institutions and methods of forensic medical examination [16]:

1) forensic medical examination institutions are subject to mandatory accreditation by the Latvian National Accreditation Bureau;

2) the methods used in the course of the laboratory forensic medical examination should be properly validated. Validation has the dual purpose of: (a) confirming the qualifications of the personnel concerned and (b) compliance with the particular methods used according to the nature of the research;

3) mandatory quality control of the research carried out.

2. The issue of the requirements for forensic experts (according to the Art. 10 of the Law of Ukraine "On Forensic Examination", professionals who have relevant higher education, educational qualification level not lower than a specialist, have undergone appropriate training and have received the qualification of a forensic expert in a particular specialty) is of equal importance. Let us focus on such a segment of requirements as obtaining a forensic medical expert's qualification, which is the most controversial because practically all commission examinations include among their members specialists without forensic expert's qualification, who are professionals in particular fields of medicine (obstetrics, surgery, anesthesiology, etc.) Section 4 of the Rules provides that, depending on the nature of the examination, the commission may be composed of specialists only in the field of forensic medical examination, as well as specialists in other medical and non-medical specialties. In accordance with their procedural position, they are all experts in the examination. Section 1.5. of the Instruction on conducting forensic medical examination, approved by the Order of the MOH of Ukraine as of 17.01.1995 No. 6 (hereinafter referred to as the Instruction), stipulates that, without additional agreement with the person who appointed the examination, for the participation in conducting forensic examinations as experts may professors and teachers of the departments of forensic medicine, specialists of health care institutions and other departments may be involved. It seems that the outlined professionals are equated to the experts, as evidenced by the linguistic element "as", by the by-laws. However, in our opinion, it is clear that such by-laws do not correlate with Art. 10 of the Law of Ukraine "On Forensic Examination" and again give the reason to doubt the "quality" of the evidence, which in practice raises many problems (from delaying the consideration of the case with all new requests for the appointment of repeated examinations to the recognition of the proof as inadmissible). In Western research, equating healthcare professionals to experts is a significant risk, as this may make them so-called professional expert witnesses. Such a situation in turn adversely affects their direct activity as healthcare professionals, if they devote more than 5-10% of their working time to expert activity [3].

Attention should be drawn to the judgment of the Kyiv Administrative Court of Appeal as of 24.12.2013, Case No. 826/1759/13-a, which considered the appeal against the judgment of the District Administrative Court of the City of Kyiv as of 13.04.2013 [17] in the case of the suit Person_4 to MOH of Ukraine on the non-compliance with the legal acts of the highest legal force and invalidity of the provisions of Clause 4 of the Rules and Clause 1.5. of the Instruction. Leaving the appeal without satisfaction, the court stated: "Having analyzed the above provisions of the Law of Ukraine "On Forensic Examination" and resolving the issue of compliance of these provisions with the Rules and Instruction, the panel of judges notes... The Law of Ukraine "On Forensic Examination" was adopted by the Verkhovna Rada of Ukraine on 25.02.1994. For the implementation of the said Law the MOH of Ukraine by its order as of

17.01.1995 No 6 approved the Instruction on conducting forensic medical examination and Rules for conducting commission forensic medical examination at the forensic bureau. Having analyzed the norms of the above mentioned Law of Ukraine “On Forensic Examination” and by-laws, the panel of judges concluded that they did not contain any inconsistencies with each other at the time of their adoption. However, on April 3, 2003 and September 9, 2004, the Law of Ukraine “On Forensic Examination” was amended. It can be seen, for example, from the Final Provisions of the Law of Ukraine “On Amendments to the Law of Ukraine “On Forensic Examination” as of 09.09.2004, the Cabinet of Ministers of Ukraine should have submit to the Verkhovna Rada proposals for bringing legislative acts of Ukraine in accordance with this Law within three months after this Law came into force; to ensure that ministries and other central executive bodies bring their normative legal acts into conformity with this Law. All in all, in essence, if the central executive agency has not made changes to the by-laws in connection with the change in the legislation, it is necessary to evaluate the actions of such officials (their inaction), and not to recognize the by-laws as not in compliance with the legal acts of higher legal force, since such by-laws at the time of adoption fully comply with the requirements of the legislation. In this case, the actions (inactivity) of the officials of the subject of power in relation to the non-compliance with the Law of Ukraine “On Forensic Examination” of the by-laws are not challenged by the plaintiff ... Therefore, in the opinion of the panel of judges, the plaintiff has chosen an improper way of protecting the violated rights”.

This judgment clearly illustrates the problems of rights enjoyment and enforcement, but no regulatory changes have been made, and the MOH of Ukraine has not yet decided who exactly should develop and adopt such changes [12].

With regard to foreign experience on the researched subject, for example, in Latvia the activity of forensic medical experts is governed by a special law that establishes requirements for these subjects [7]. Forensic experts are subject to mandatory certification and their data are entered in a special register [15]. Certification rules are defined by a by-law and provide the following requirements, on the basis of which the certificate is issued [8]:

1) the candidate’s professional knowledge and skills of writing and presenting expert opinion;

2) knowledge of the legal framework;

3) passing the relevant exam.

Forensic psychiatric examination

The issue with persons who can conduct forensic psychiatric examination is similar to the mentioned above. Section 3 of the Procedure for Forensic Psychiatric Examination, approved by the Order of the MoH of Ukraine as of 08.05.2018 No. 865 (hereinafter hereinafter referred to as the Procedure), stipulates that forensic psychiatric examinations are conducted by specialized state forensic psychiatric institutions of the MoH of Ukraine. The Instruction on filling in the form of the primary accounting documentation №100 / o “The conclusion of the forensic psychiatric expert № ___”, approved by the Order of the MoH of Ukraine as of 28.07.2014 No 527, states that the form 100 / o is filled in for the person in respect of whom the forensic psychiatric examination is carried out. This form is obligatory for all health care institutions in which the examination is carried out by a physician-forensic psychiatric expert alone or as a member of ambulatory (inpatient) forensic psychiatric expert committees. Therefore, it is clear that such establishments can be and, of course, are mainly communal property and, therefore, cannot be specialized state institutions.

In order to show the full extent of the problem and the controversial nature of departmental regulation, the attention should be drawn to the issue of institutions authorized to conduct forensic psychiatric examinations. On August 2, 2019, the MoH of Ukraine issued a letter of explanation No 03.2-22 / 37268/2 [9], which states that state specialized forensic psychiatric institutions of the MoH of Ukraine refer to the authorized state institutions of forensic examinations. The MoH also draws attention to the need to comply with the requirements of the Law of Ukraine “On Forensic Examination”. Therefore, of the 32 institutions in which forensic psychiatric examination can be theoretically carried out, only one remains, namely, the State Institution “Center for Mental Health and Drug and Alcohol Monitoring of the MoH of Ukraine”. The analysis of the Articles of Association of the State Institution “Research Institute of Psychiatry of the Ministry of Health of Ukraine”, approved by the order of the MoH of Ukraine as of 14.08.2018 No 1462, gives grounds to claim that this institution is deprived of the right to conduct forensic psychiatric examinations. In such circumstances, there is a threat of monopolization of forensic psychiatric examinations in Ukraine by only one institution. Art. 4 of the Law of Ukraine “On Forensic Examination” provides for the possibility of appointing a forensic repeated examination as a guarantee of the independence of the forensic expert and the correctness of his/her conclusion. Therefore, there is a threat to legalize the violation of the right to repeated examination, as there would be no other institution in Ukraine authorized to conduct such examination.

Recent changes in forensic psychiatry cannot but raise questions: from why only the forensic psychiatric examination and only fragmentary has become subject to statutory amendments to why the MoH of Ukraine does not have such peremptory positions regarding the subject of forensic medical examination, provided that in the letters analyzed above, the MoH of Ukraine allow forensic examinations at the territorial bureaus, which are in fact local establishments. Such double standards lead to the system producing evidence that can be declared inadmissible, and in combination with other factors such a legislative foundation, the activity of the authorities leads to the threat of human rights violations.

The problem created by the CrPC of Ukraine, namely, that this law does not contain the delimitation of the examinations on procedural grounds, which gives grounds for claiming that it is impossible to carry out, for example, additional or repeated examination under the CrPC of Ukraine remains common for both types of forensic examinations. However, another procedural code provides for this possibility, defining in Part 2 of Art. 103 of the CPC of Ukraine that, if necessary, the court may order several examinations, additional or repeated examinations. Different types of examinations are defined by the by-laws as well, for example, paragraph 8 of the Procedure and paragraph 2.2 of the Instruction fix the possibility of conducting primary, additional and repeated examinations. The procedural way out of the situation of legislative dissonance is to apply Art. 4 of the Law of Ukraine “On Forensic Examination”, in which the independence of the forensic expert and the correctness of his/her conclusion are ensured, in particular, the possibility of forensic repeated examination. Therefore, in criminal proceedings the request for repeated examination should be based on the Law of Ukraine “On Forensic Examination”, bylaws, and not on the CrPC of Ukraine. This situation is unacceptable because it again affects the admissibility of the expert’s conclusion as evidence in the case.

In paragraph “й” Art. 6, Art. 73 of the Law of Ukraine “Fundamentals of the legislation of Ukraine on health care” provides the right to carry out alternative medical examination in case of disagreement of the citizen with the conclusions of the state medical examination and in other cases provided by law. In the case of alternative examination, the citizens independently select the expert institution and experts. In practice, this human right cannot be exercised, since there is a clear state monopoly, and there are no institutions for alternative examination. For example, in view of the above analysis, forensic examination in Ukraine is lawfully and without any alternative conducted by only one institution: the Main Bureau of Forensic Examination of the MoH of Ukraine.

The attention shall be drawn to one more regulatory disparity. The Rules provide for the possibility of conducting forensic medical examinations on an entrepreneurial basis with the instruction that it should be conducted according to the Law of Ukraine “On Forensic Examination”. It should be noted that the current version of the Law does not contain such a provision, but in the primary maternal context it was envisaged in Art. 7, that forensic activity can be carried out on an entrepreneurial basis with a special permit (license), as well as by citizens under one-time contracts.

The research of L.F. Paramonova [14] is devoted to the study of the development of the private forensic examination institute based on comparative legal analysis. In particular, the author has illustrated the spectrality of different national regulatory bases and noted the dependence of the catalyst of the development of such an institute, the number of private experts on the statutory basis of each state. For example, the researcher noted that the Law of the Republic of Moldova “On Forensic Examination and the Status of Forensic Expert” provides for the possibility of private experts, but given the regulatory changes related to the prohibition of extending such practice to the examinations in criminal cases on life, health, freedom and dignity of the person, the number of experts decreased and in general there were questions about the expediency and request for the functioning of such.

It is very important for Ukraine at the stage of spectral reform being carried out by the MoH of Ukraine to choose the right model, first and foremost, for the subjects of forensic examination. In this context the experience of the Republic of Belarus, in particular the Law “On the State Committee for Forensic Examination of the Republic of Belarus” as of 15.07.2015, is relevant. It determines that in spite of this Committee, the State Security Committee, the State Border Committee, the State Customs Committee, as well as legal entities, sole proprietors licensed to carry out forensic activities have the powers to conduct forensic examinations. In addition, examinations can be carried out in a single order by persons with specialist knowledge. According to researcher A.P. Orekhova, it is important for the Republic of Belarus to adopt the Law on forensic examination in order to streamline forensic expert activity and determine its subjects [13].

According to the Law of the Republic of Belarus “On the State Committee for Forensic Examination of the Republic of Belarus” [5], the State Committee for Forensic Examination is a centralized system of state agencies, which, in accordance with the legislative acts, have jurisdiction in the field of forensic expert activity, subordinated to the Republic. One of the main principles of its operation is the independence from the activities of other state agencies, political parties, other public associations and other organizations, officials in the exercise of their powers. It should be noted at the outset that in our country there can be no question of independence from the authorities, be-

cause in the named field there is dependence, first of all, on the MoH of Ukraine. The powers of the State Committee include the analyzed areas of activity, in particular: overseeing the quality of health care delivery by healthcare institutions regardless of ownership and departmental subordination, informing interested state agencies about identified deficiencies in the organization and delivery of health care to the population at the territory of the Republic of Belarus, conduction of forensic medical and forensic psychiatric examinations.

Also, this Law includes Chapter 8 “Supervision of quality of health care delivery”, which enshrines the framework of supervision of inspections, monitoring of quality of care and other preventive measures. The Committee’s officials are responsible, for example, for the transmission inspection materials in due course to pre-trial investigation agencies and courts, and to keep secret protected by legal acts.

Statutory framework of Belarus determines the right to receive information which is a medical secret without the consent of the patient or the persons defined by Art. 18 of the Law of Belarus “On health care”, if necessary, for example, to conduct forensic medical and forensic psychiatric examination, to supervise the quality of the health care. In contrast, paragraph 16 of the Procedure provides that the expert is obliged to obtain from the agency (person) who appointed the examination(s), the consent of the person for whom forensic psychiatric examination was appointed, to the use of information about his/her health status, facts of applying for health care, diagnosis, intimate and family aspects of life, as well as other information obtained during medical examination. However, the regulations do not determine how the authorized persons should act in the absence of such consent, neither the form of expert’s request nor the form of the person’s consent.

Results and discussion. It is necessary to point out the urgent need for the formation of national model of expert activity, which should enshrine the following: subjective composition of expert activity, maximum independence of forensic experts and requirements for them, clarity of regulation in the procedural codes, in particular in the CrPC of Ukraine on amendments and consolidation of procedural signs of forensics. Priority measures include: 1) clear regulation at the Law of Ukraine “On Forensic Examination” of state institutions that have the right to conduct forensic and forensic psychiatric examination list; 2) determination of the status and legal nature of the territorial bureaus of forensics for their activity to be carried out in accordance with the law; 3) bringing the by-laws and regulations in the field of forensic examination in compliance with the laws of Ukraine. In order to build a national concept, it is necessary to study the foreign experience of forensic examinations functioning and to form domestic one, implemented in the legal system of Ukraine, aimed at compliance with the standards of the rule of law principle.

Conclusions. Current national legislation in the field of forensic examination is riddled with numerous lacunae and conflicts, partly given in the study, filled with Letters of the MoH of Ukraine instead of regulatory decisions, and thus, acute legal uncertainty creates difficulties in legal implementation and execution, which negatively affects the protection of human rights and violates the rule of law standards. In view of the spectral transformation processes in Ukraine, we consider it expedient that the newly created Commission on Legal Reform, approved by Presidential Decree No. 584/2019 as of 07.08.2019, put on the agenda the issue of reforming forensic examination, which can play a significant role in the administration of justice in the light of best international statutory practice.

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SUMMARY

FORENSIC MEDICAL AND FORENSIC PSYCHIATRIC EXAMINATION: SOME ISSUES OF LEGAL REGULATION

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The article deals with the issues of legal regulation of forensic and forensic psychiatric examinations in Ukraine. Issues related to forensic examinations in the field of healthcare are urgent and particularly difficult to implement and enforce nowadays in Ukraine, given the significant gaps and controversies in legal regulation. The rights of patients and medical professionals may be violated in course of the named examinations provision.

Current national legislation in the field of forensic examination is riddled with numerous lacunae and conflicts, partly given in the study, filled with Letters of the MoH of Ukraine instead of regulatory decisions, and thus, acute legal uncertainty creates difficulties in legal implementation and execution, which negatively affects the protection of human rights and violates the rule of law standards. In view of the spectral transformation processes in Ukraine, we consider it expedient that the newly created Commission on Legal Reform, approved by Presidential Decree No. 584/2019 as of 07.08.2019, put on the agenda the issue of reforming forensic examination, which can play a significant role in the administration of justice in the light of best international statutory practice.

Keywords: forensic examination; forensic psychiatric examination; professional offense; healthcare provision; rule of law.

РЕЗЮМЕ

СУДЕБНО-МЕДИЦИНСКАЯ И СУДЕБНО-ПСИХИАТРИЧЕСКАЯ ЭКСПЕРТИЗА: НЕКОТОРЫЕ ВОПРОСЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ

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В статье рассматриваются вопросы правового регулирования проведения судебно-медицинской и судебно-психиатрической экспертизы в Украине. Вопросы, связанные с судебно-медицинскими экспертизами в области здравоохранения, являются актуальными и особенно сложными для

внедрения и обеспечения соблюдения, учитывая значительные пробелы и противоречия в правовом регулировании. Права пациентов и медицинских работников могут быть нарушены в ходе проведения указанных экспертиз.

Действующее национальное законодательство в области судебно-медицинской экспертизы содержит многочисленные пробелы и конфликты, частично приведенные в исследовании, заполненные письмами Минздрава Украины вместо нормативных решений, и, таким образом, острая

правовая неопределенность создает трудности в правореализации и правоисполнении, что негативно сказывается на защите прав человека и нарушает принцип верховенства права. С учетом процессов спектральной трансформации, авторы рекомендуют включить в повестку дня Комиссии по правовой реформе вопрос реформирования судебно-медицинской экспертизы, что сыграет значительную роль в развитии правосудия в направлении международной законодательной практики.

რეზიუმე

სასამართლო-სამედიცინო და სასამართლო-ფსიქიატრიული ექსპერტიზის სამართლებრივი რეგულაციის ზოგიერთი საკითხი

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სამოქალაქო და პროცესუალური სამართლის კათედრა;

⁴ზაკარპატივის საოლქო ადმინისტრაციული სასამართლო, უგოროდი, უკრაინა

სტატიაში განხილულია სასამართლო-სამედიცინო და სასამართლო-ფსიქიატრიული ექსპერტიზის ჩატარების სამართლებრივი რეგულაციის საკითხები უკრაინაში. თანამედროვე პერიოდში უკრაინაში ჯანდაცვის სფეროში სასამართლო-სამედიცინო ექსპერტიზასთან დაკავშირებული საკითხები აქტუალური და განსაკუთრებით რთულია დანერგვისა და განხორციელების უზრუნველყოფის თვალსაზრისით; გასათვალისწინებელია მნიშვნელოვანი ხარვეზები და წინააღმდეგობები სამართლებრივი რეგულაციის მიმართულებით. შესაძლოა, აღნიშნული ექსპერტიზების ჩატარების დროს პაციენტებისა და მედიცინის მუშაკების უფლებების დარღვევას ჰქონდეს ადგილი.

ავტორები მიიჩნევენ, რომ სასამართლო-სამედიცინო ექსპერტიზის სფეროში მოქმედი ეროვნული კანონ-

მდებლობა მოიცავს მრავალ ხარვეზს და კონფლიქტს. ამგვარი სამართლებრივი გაურკვეველობა წარმოქმნის სირთულეებს სამართალრეალიზებისა და სამართალდარღვევების ჭრილში, რაც უარყოფითად აისახება ადამიანის უფლებების დაცვაზე და არღვევს კანონის უზენაესობის პრინციპს. უკრაინაში სპექტრული ტრანსფორმაციის პროცესების გათვალისწინებით, მიზანშეწონილია სამართლებრივი რეფორმის ახლადშექმნილმა კომისიამ (პრეზიდენტის ბრძანება №584/2019, 07.08.2019) დღის წესრიგში დააყენოს სასამართლო-სამედიცინო ექსპერტიზის რეფორმირების საკითხი, რამაც შესაძლოა მნიშვნელოვანი როლი შეასრულოს მართლმსაჯულების განვითარების საქმეში საუკეთესო საერთაშორისო საკანონმდებლო პრაქტიკის მიმართულებით.

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