



UDC 342.9

DOI: 10.31548/law2021.04.14

Administrative responsibility for offences related to expert activity in Ukraine

Lyusya V. Gbur*

PhD in Law, Assistant
National University of Life and Environmental Sciences of Ukraine
03041, 15, Heroiv Oborony Str., Kyiv, Ukraine

Olena V. Artemenko

PhD in Law, Associate Professor
National University of Life and Environmental Sciences of Ukraine
03041, 15, Heroiv Oborony Str., Kyiv, Ukraine

Article's History: Abstract

Received: 2.8.21
Revised: 7.10.21
Accepted: 5.11.21

One of the crucial means of establishing the truth in cases of administrative offences is expertise. As evidenced by judicial practice, the explanations of the individuals involved in the case are quite often contradictory, and only by appointing and conducting a forensic examination it is possible to establish certain circumstances of the case that require the use of special knowledge, which the court must evaluate accordingly. The purpose of this study was a comprehensive analysis of administrative responsibility for violating the procedure for conducting and organizing expert examinations in Ukraine. The principal methods for investigating this issue were the functional method, the logical analysis approach, and the synthesis method. The paper examined the specific features of administrative responsibility for offences related to the sphere of expert activity.

Suggested Citation:

Gbur, L., & Artemenko, O. (2021). Administrative responsibility for offences related to expert activity in Ukraine. *Law. Human. Environment*, 12(4), 108-116. doi: 10.31548/law2021.04.014.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

It was found that the organization and conduct of expertise, as a basic category of expert activity, usually does not require the involvement of a wide range of people. However, the concept of expertise is not always limited only to forensic expertise, which is usually appointed based on a corresponding decision of a court or other authorized body. It was found that expert activity is not defined at the level of a separate legislative act, and therefore there are difficulties in forming general categories for understanding the essence of such a concept. In general, regulations define the requirements for experts, the stated expert opinions, the rights and obligations of experts, as well as responsibility for violating the procedure for conducting expert examinations. That is, the regulations mainly relate to the conduct of forensic expertise, as one of the components of expert activity. Furthermore, the current Code of Ukraine on Administrative Offences does not contain any administrative legal norms concerning administrative liability for offences that may arise in expert activity in general and forensic examinations in particular. It was concluded that the priority actions aimed at improving the institution of administrative responsibility for offences related to the field of expert activity in Ukraine should be as follows: firstly, the field of organization and conduct of non-judicial expertise requires legislative definition and statutory regulation; secondly, considering the fact that the current Code of Ukraine on Administrative Offences does not contain any administrative legal norm that concerns responsibility for offences related to the field of expert activity, namely the implementation of judicial and non-judicial examinations, it is necessary to amend the current Article 185-16 of the Code of Criminal Procedure of Administrative Offences with the following wording: "Violation of the procedure for conducting examinations by authorized individuals entails the imposition of a fine of one to two hundred minimum tax-free wages of citizens". The materials of this paper are of practical value for subsequent research, solving issues and finding gaps in the Code of Ukraine on Administrative Offences

Keywords: expert examination, forensic examination, non-judicial examination, administrative responsibility, expert

Results and Discussion

The procedure for conducting and organizing expert examinations in Ukraine is mainly limited to forensic examinations and is regulated according to the Law of Ukraine "On Forensic Examination" [1]. Separate provisions are also contained in the Order of the Ministry of Justice of

Ukraine No. 53/5 dated 08.10.98 "On the approval of the Instructions on the appointment and conduct of forensic examinations and expert studies and Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies" [2].

Notably, forensic expertise, albeit one of the most common types of expertise, is not the only one. Thus, as non-judicial expertise, one can recognize scientific and scientific-technical expertise prescribed by the Law of Ukraine "On Scientific and Scientific-Technical Expertise" [3], expertise on environmental impact assessment, expertise of human living conditions, expertise of a complex information protection system, expertise product samples, etc.

As for the very concept of expertise, according to A.V. Furman, this concept covers:

- consideration, research of any case or specific issue to obtain the correct conclusion, establish the correct assessment;
- professional examination of physical evidence or facts to clarify the circumstances and provide appropriate conclusions;
- assessment of the state of an object or process by reputable specialists, including the cause of an event or its possible consequences, as well as the prospects for using things, resources, or making particular decisions;
- the social procedure for psychological assessment of certain situations, achievements of human activity or personality, which is carried out according to the tasks (request) set by the customer, requires an in-depth study of certain psychosocial problems or issues by an expert, and therefore their thorough theoretical and methodological training and functional literacy;

➤ the method of substantiation of the real state of affairs in a certain sphere of public life by an expert, clarification of the thoroughness of solving factual problems by a certain scientific discipline (sociology, didactics, psychology), as well as assessment, which "is associated with the construction of a system of features for recognition, classification, and analysis of complex innovations, the development of means of measuring the studied objects when the environment changes" [4].

Thus, it can be concluded that expertise in the legal field is a multi-meaning category aimed at the analysis and research of processes and phenomena important for an appropriate legal decision.

A forensic expert is a participant in proceedings in cases of administrative offences; however, their involvement in such proceedings is not widely reflected in the studies of administrative scientists. Fragmentary coverage of the issue of involving an expert in proceedings on cases of violation of customs rules, when it is considered appropriate to use special knowledge on the specified category of cases at the stage of consideration of a case on violation of customs rules. In some cases, considering the specific circumstances of the case, the possibility of an expert's involvement at the stage of initiating a case on violation of customs rules, when verifying the content of the protocol by a higher official of the customs body, is not excluded. It is also possible for an expert to take part in the consid-

eration of a complaint against a decision in a case of violation of customs rules.

Article 14 of the Law of Ukraine "On Forensic Expertise" states that "a forensic expert may be brought to legal responsibility on the grounds and according to the legislatively prescribed procedure" [1]. Notably, until 2017, the said Article had a different wording, namely "a forensic expert may be brought to disciplinary, material, administrative, or criminal responsibility on the grounds and according to the legislatively prescribed procedure". Thus, the legislator did not determine the exact list of types of expert liability, leaving explanations in the relevant codified acts concerning liability.

According to statistical data, the number of offences committed by experts over the past three years is almost the same; thus, in 2018 – 876 protocols on administrative offences committed by experts were entered into the unified state register and 431 were brought to administrative responsibility; in 2019, respectively, the number of drafted protocols was 825 and 445 – experts brought to administrative responsibility, while in 2020 – 789 drafted protocols and 397 people received administrative fines for the committed offence [5].

Expert examinations in administrative proceedings are classified according to two main criteria: organizational and procedural, and industry-specific. Forensic examinations can be divided into branches of knowledge, considering the

totality of the following essential features: the subject, object, methodology of expert research and the nature of special knowledge, which play a dominant role in solving the problems of this type of expertise [6].

In the theory of administrative law, until now, scientists have not been able to agree on the exact goals of administrative responsibility. Thus, Ye.V. Shulha points to the prevention of the commission of new offences both by the offenders themselves and by other individuals, some consider the education of the offender's personality to be the primary and main goal of administrative responsibility, while others consider punishment as an affirmation of justice [7].

This position can be considered quite acceptable because all this helps optimize the process of bringing to administrative responsibility in a certain way, which in turn can increase the effectiveness of applying this type of responsibility [8].

The application of administrative liability is always preconditioned by the commission of an administrative violation, the consequence of which is the imposition of a sanction (administrative penalty) or the application of administrative coercive measures to a person suspected of committing a misdemeanour. Each of the types of administrative punishment must correspond to the degree of public danger of an administrative offence and make provision for the application of legally authoritative measures to the violator.

In the procedural aspect, the activity of an expert is consolidated in certain legal norms that determine its role in legal proceedings, decide how it is involved in conducting an expert examination, etc. However, the Code of Ukraine on Administrative Offences, for instance, does not have such regulation. It is possible to entirely agree with the opinion of O.M. Kliuiev, who fairly notes that Article 246 of the Code of Ukraine on Administrative Offences defines two types of entities that make decisions in cases of administrative offences: courts and other authorized bodies (officials). This norm clearly defines that the procedure for proceedings in cases of administrative offences by bodies (officials) authorized to consider cases of administrative offences, as in district, district in the city, city, or municipal courts, are determined by this Code and other laws of Ukraine. Evidently, there is a requirement to regulate the procedure for considering these cases through the application of the Code of Ukraine on Administrative Offences. However, there are not always enough reasons to claim that it is fully implemented. This applies to gaps in legal regulation in the Code of Ukraine on Administrative Procedure and norms on forensic expertise. In general, there is no such definition as forensic examination in the said Code. However, this Code includes some rules regarding the involvement of an expert in the consideration of cases of administrative offences, although they are clearly insufficient [9].

If one analyses the Code of Ukraine on Administrative Offences, then Article 273 prescribes that "An expert is appointed by the body (official) in whose proceedings the case on an administrative offence is pending, in the event that there is a need for special knowledge, including for determining the amount of property damage caused by an administrative offence, as well as amounts of money received as a result of committing an administrative offence, which will be subject to confiscation. The expert shall be obliged to appear on the summons of the body (official) and give an objective opinion on the questions put to them. The expert is entitled to familiarize themselves with the materials of the case relating to the subject of the examination, to make a request to provide them with added materials necessary for giving a conclusion; with the permission of the body (official) in whose proceedings the case of an administrative offence is pending, to ask the person who is being prosecuted, the victim, the witnesses, questions related to the subject of the examination; to be present during the consideration of the case". As for the responsibility of the expert itself, Article 185-4 prescribes responsibility for "malicious evasion of a witness, victim, expert, translator from appearing before the pre-trial investigation bodies or the prosecutor during the pre-trial investigation" [10].

Thus, the administrative responsibility for offences that may arise in carrying out expert activities also applies to forensic examination.

However, item 2.4 of the Order of the Ministry of Justice of Ukraine “On the approval of the Instructions on the appointment and conduct of forensic examinations and expert studies and Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies” states that “For providing a knowingly false opinion, for refusing without valid reasons from the fulfilment of the duties assigned to them, as well as for the disclosure of data that became known to them during the examination, the expert shall bear criminal responsibility according to the current legislation; For malicious evasion of appearance before pre-trial investigation bodies or the court, the expert bears administrative responsibility according to the current legislation. For violations committed during the examination that do not entail criminal or administrative liability, the expert may be brought to disciplinary responsibility according to the current legislation” [2].

Therefore, it is only possible to assume that for violation of the procedure for conducting and organizing the examination, the person who carried out such an examination may be subject to disciplinary liability.

However, the authors of this paper believe that this approach of the legislator concerning the insignificance of the act regarding the examination procedure is debatable and requires a corresponding revision in terms of the introduction of administrative responsibility.

Conclusions

Having comprehensively analysed administrative liability for offences related to expert activity, it is possible to conclude the following: firstly, the field of organization and conduct of non-judicial examinations requires legislative definition and statutory regulation; secondly, considering the fact that the current Code of Ukraine on Administrative Offences does not contain any administrative legal norm that concerns responsibility for offences related to the field of expert activity, namely the implementation of judicial and non-judicial examinations, it is necessary to supplement Article 185-16 of the current Code of Ukraine on Administrative Offences with the following content: “Violation of the procedure for conducting examinations by authorized persons entails the imposition of a fine of one to two hundred tax-free minimum wages of citizens”.

References

- [1] Law of Ukraine No. 4038-XII “On forensic examination”. (1994, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12#Text>.
- [2] Order of the Ministry of Justice of Ukraine No. 53/5 “On the approval of the Instructions on the appointment and conduct of forensic examinations and expert studies and Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies”. (1998, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0705-98#Text>.
- [3] Law of Ukraine No. 51/95-VR “On scientific and scientific and technical expertise”. (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/51/95-вр#Text>.
- [4] Furman, A.V. (2009). *Psychodidactic examination of modular development textbooks*. Ternopil: Ekonomichna dumka.
- [5] The state of administration of justice in criminal proceedings and cases of administrative offenses by courts of general jurisdiction in 2020. Statistics. (2020). Retrieved from https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Stan_Pravosuddya_Criminal_2020.pdf.
- [6] Kachurin, S.G., & Moroz, V.O. (2009). Forensic expertise in the administrative judiciary of Ukraine. *Constitutional and legal principles of administrative reform in Ukraine: materials Ukrainian science and practice conf. to the 100th anniversary of Volodymyr Dahl East Ukrainian National University* (pp. 96-102). Severodonetsk: Volodymyr Dahl East Ukrainian National University.
- [7] Shulga, E.V. (2013). Determining the effectiveness of imposing an administrative penalty for committing offenses in the field of use and protection of natural resources. *Scientific bulletin of National University of Life and Environmental Sciences of Ukraine of Ukraine*, 182 (Part 1), 244-248.
- [8] Artemenko, O., & Lytvyn, N. (2020). Separate aspects of administrative responsibility for violations in the field of land relations. *Law. Human. Environment*, 11(2), 133-139.
- [9] Klyuev, O.M. (2016). Legal regulation of forensic examination in cases of administrative offenses: current state and prospects for development. *Theory and practice of forensic examination and criminology*, 143.
- [10] Code of Ukraine on Administrative Offenses (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>

Адміністративна відповідальність за правопорушення, пов'язані зі сферою експертної діяльності в Україні

Люся Володимирівна Гбур

Кандидат юридичних наук, асистент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Олена Вікторівна Артеменко

Кандидатка юридичних наук, доцент
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

Одним із важливих засобів встановлення істини в справах про адміністративні правопорушення є експертиза. Як свідчить судова практика, пояснення осіб, які беруть участь у справі, досить часто є суперечливими, і тільки шляхом призначення й проведення судової експертизи можливо встановити ті чи інші обставини справи, що потребують застосування спеціальних знань, які суд має відповідно оцінити. Метою даного дослідження виступає комплексний аналіз адміністративної відповідальності за порушення порядку проведення та організації експертиз в Україні. Провідними способами для дослідження цієї проблеми є функціональний метод, підхід до логічного аналізу та метод синтезу. У статті досліджуються особливості адміністративної відповідальності за правопорушення, пов'язані зі сферою експертної діяльності. Визначено, що організація та проведення експертизи, як базової категорії експертної діяльності, зазвичай не потребує залучення широкого кола осіб. Проте, варто зазначити, що не завжди поняття експертизи обмежується лише судовою експертизою, яка зазвичай призначається на підставі відповідного рішення суду чи іншого уповноваженого органу. З'ясовано, що експертна діяльність не визначена на рівні окремого законодавчого акту, а тому виникають труднощі при формуванні, в першу чергу, загальних категорій щодо розуміння сутності такого поняття. Загалом, нормативно-правовими актами визначаються: вимоги до експертів, викладених висновків експертизи, прав та обов'язків експертів, а також

відповідальність за порушення порядку проведення експертиз. Тобто, стосуються переважно проведення судової експертизи, як однієї із складових експертної діяльності. Крім того, чинний Кодекс України про адміністративні правопорушення не містить жодної адміністративно-правової норми щодо адміністративної відповідальності за правопорушення, що можуть виникати у процесі здійснення експертної діяльності загалом та судових експертиз, зокрема. Зроблено висновки, що першочерговими діями спрямованими на удосконалення інституту адміністративної відповідальності за правопорушення, пов'язані зі сферою експертної діяльності в Україні, мають стати: по-перше потребує законодавчого визначення та нормативно-правового врегулювання сфера організації та проведення несудових експертиз; по-друге, зважаючи на те, що чинний Кодекс України про адміністративні правопорушення не містить жодної адміністративно-правової норми, яка стосується відповідальності за правопорушення, що пов'язані зі сферою експертної діяльності, зокрема здійснення судових та несудових експертиз, необхідно доповнити чинний КУпАП ст. 185-16, наступного змісту, а саме «Порушення уповноваженими особами порядку проведення експертиз, тягне за собою накладення штрафу від ста до двохсот неоподатковуваних мінімумів доходів громадян». Матеріали статті становлять практичну цінність для наступних досліджень, вирішенні питань та знаходження прогалин у Кодексі України про адміністративні правопорушення

Ключові слова: експертиза, судова експертиза, несудова експертиза, адміністративна відповідальність, експерт
