

UDC 342.951:321

DOI <https://doi.org/10.32849/2663-5313/2022.2.15>**Ruslan Topolia,***PhD in Law, Doctoral Student at the Scientific Institute of Public Law, 2a, H. Kirpy street, Kyiv, Ukraine, postal code 03035, Topolia@gmail.com***ORCID:** 0000-0002-0673-0616Topolia, Ruslan (2022). Scope of the administrative support of expert activities in Ukraine. *Entrepreneurship, Economy and Law*, 2, 97–100, doi <https://doi.org/10.32849/2663-5313/2022.2.15>

## SCOPE OF THE ADMINISTRATIVE SUPPORT OF EXPERT ACTIVITIES IN UKRAINE

**Abstract. Purpose.** The purpose of the article is to find out, based on the theory of administrative law, the theory of forensics, the theory of expert science, scientists' doctrinal provisions in this field and current legislation, the scope of administrative and expert activities in Ukraine. **Results.** The article underlines that in a democratic legal State, the rights, freedoms, and interests of individuals are broad, not exhaustive, and are not formally limited by positive legislation. In other words, they are wide. Accordingly, their effective protection by legal arbitrators requires specialised expertise in many branches, fields and sectors of professional knowledge. In the legal literature and practice of judicial, law enforcement and public-legal activities, such actors are briefly named "experts" and their work on analysis and qualified conclusions – "expert activities". Like any other socially useful public activity, it objectively needs the administrative and legal support. The article reveals the scope of administrative and legal support of expert activities in Ukraine. It is proved that this is social space of objective special existence of legal matter, limited by the purpose and tasks to provide sufficient quantity and quality of legally significant specific information, necessary for a fair and lawful resolution of individual legal cases. It is underlined that public administration in a broad sense is implemented in all forms of State power (not only executive, but also legislative, because of the public nature of rulemaking, judicial, because of the public position of judges, the functioning of judicial management bodies and other judicial administrators). The Government and its subordinate bodies are central public administrators, but the individual powers of the Verkhovna Rada of Ukraine and the judicial administration should not be limited either. **Conclusions.** It is concluded that the administrative and legal support of expert activities in Ukraine is social space of objective special existence of legal matter, limited by the purpose and tasks to provide sufficient quantity and quality of legally significant specific information, necessary for a fair and lawful resolution of individual legal cases.

**Key words:** administrative and legal support, expert activities, individual legal case, scope, limitations, legal matter, social space, justice.

### 1. Introduction

The existence of society in legal reality requires the rule of law, where human and civil rights are well protected by preventive means, in the event of a violation, legal, judicial and administrative remedies are effectively available.

Accordingly, their effective protection by legal arbitrators requires specialised expertise in many branches, fields and sectors of professional knowledge. In the legal literature and practice of judicial, law enforcement and public-legal activities such actors are briefly named "experts", and their work on analysis and qualified conclusions – "expert activities". Like any other socially useful public activity, it objectively needs the administrative and legal support.

The administrative and legal support for expert activities in Ukraine has been under

focus by V. Averianov, V. Atamanchuk, V. Basai, P. Bilenchuk, V. Halahan, V. Halunko, A. Hirniak, A. Danylenko, F. Dzhavadov, O. Yeshchuk, A. Ivanyshchuk, V. Kovalova, A. Lazebnyi, O. Oliinyk, I. Pyrih, V. Revaka, O. Sabynin, M. Sehai, E. Simakova-Yefremian, H. Strilets, A. Furman, V. Shepitko, V. Yurchyshyn, V. Yusupov, O. Yara, and others. However, their research did not directly address the most common special or related challenges.

The purpose of the article is to find out, based on the theory of administrative law, the theory of forensics, the theory of expert science, scientists' doctrinal provisions in this field and current legislation, the scope of administrative and expert activities in Ukraine.

### 2. Significance of expertise in society

According to the *Dictionary of the Ukrainian language*, one of the meanings of the word "scope" is understood as a space limited by

something (Bilodid, 1972). In turn, space is one of the main objective forms of the existence of matter, characterised by length and volume, or the absence of any restrictions, obstacles in something (Bilodid, 1972).

Expert activities are a specific type of human activities, which is based on practical and theoretical scientific knowledge; has a cognitive, research character; can be carried out in different fields of social activities; uses methods and techniques that do not contradict the law and norms of morality and are based on modern achievements of science; pursues the goal of comprehensive, complete, objective, complex research of objects, processes or phenomena; presents new information and conclusions. Expert activities are a specific kind of human activity based on scientific knowledge, the content of which is the study of certain objects, processes or phenomena by special methods with the aim of making scientifically sound conclusions (Pyrih, 2015).

Encyclopedic sources prove that “expertise” (from French *expertise*) is the consideration, study by an expert of any cases, issues requiring special knowledge (e.g. medical, accounting, forensic examination) (Melnychuk, 1975); “content” is: 1) what is said or told somewhere, what is described or depicted: the essence, the inner feature of something; 3) certain properties, characteristic features that distinguish this phenomenon, an object from similar phenomena, objects, etc.: 4) a reasonable basis, the aim, the purpose of something; 5) the list of sections, parts, stories, etc. of books, collections, manuscripts, etc., mostly indicating the pages on which they are placed (Bilodid, 1972); “support” means supplying something in sufficient quantity, meeting someone’s needs; providing someone with sufficient material means of subsistence, create a secure environment for doing something; guarantee something; protect someone, protect something from danger (Bilodid, 1972).

The Law of Ukraine *On Forensic Examination* reveals that forensic examination is the examination by an expert on the basis of special knowledge of material objects, phenomena and processes, containing information about the circumstances of the case, which is under focus of proceeding by the bodies conducting the initial inquiry, pre-trial and judicial investigation. Forensic activities are carried out by specialised State institutions and, in cases and terms established by the legislation in force in Ukraine, by judicial experts who are not employees of such institutions (Law of Ukraine *On Forensic Examination*, 1994). Since its initiation and at all stages of its development, forensic examination has been seen as an important

tool of justice necessary for the correct resolution of a case both at the investigation stage and in the court, and the expert has been considered a scientific witness (Dmytrenko, 2015).

For example, in cases of economic crimes, judges have great respect for the findings of experts. The opinion of the forensic economist serves as the central proof in the judge’s decision. The importance of forensic and economic expertise in considering cases in court cannot be overestimated. The Forensic expert opinion stands out among other sources of evidence because it is difficult to disagree with it, since the disapproval must be motivated and reasoned (Dmytrenko, 2015).

Regarding the broader category under analysis, A. Furman argues that the *examination* (from Lat. *expertus* “experienced”) – is: a) professional study of the physical evidence or facts in order to clarify the circumstances and making the corresponding assessment; b) consideration, investigation of a case or issue to obtain a correct conclusion, making a correct assessment; c) the social procedure for psychological assessment of certain situations, human activities or personal assets, in accordance with the customer’s tasks (requests), requires in-depth study by the expert of certain psychosocial problems or issues, and then its thorough theoretical and methodological training and functional literacy; r) assessment by authoritative experts of the object or process, the cause of the event or its possible consequences, as well as the prospects for the use of things, resources or specific decisions; d) the method of substantiation by the expert of the real state of affairs in a certain sector of public life, clarification of the solidity of solving actual problems by a particular scientific discipline (sociology, didactics, psychology), as well as assessment that is connected with constructing the system of features for recognition, classification and analysis of complex innovations, development of means of measurement of objects under study in case of environment change (Furman & Hirniak, 2009).

For example, forensic examination of physical evidence studies various objects of biological origin (blood, sperm, hair, saliva, urine, sweat, excretion from breasts, bones, organs and tissues, etc.), and various objects (clothes, weapons, instruments of injury, vehicles, etc.) on which traces of biological origin have been found. The task of the forensic expert is to assist the relevant authorities in identifying such exhibits, their proper removal, description, packing and sending to an expert institution. Moreover, possible questions for the expert to decide should be coordinated with the relevant expert, enabling the proper selection of the unit

of the Forensic Bureau, experts thereof will be appointed to carry out the examinations, and consideration of the possibilities of the most complete and qualitative examination of expert samples (N.d., 2018).

### 3. Definition of the basic principles of expert activities

From the perspective of doctrinal knowledge, it should be noted that expert activities have specific legal features: 1) It is a specific form of human activity, differing from others by attitudes to the environment; 2) It is cognitive research; 3) It can be carried out in different fields of social activity; 4) It uses methods and techniques that do not contradict the law and morality and are based on modern achievements of science; 5) It has the purpose of comprehensive, complete, objective, complex research of objects, processes or phenomena; 6) It results in new findings and conclusions. It is a specific kind of human activity, the content of which is the knowledge of certain objects, processes or phenomena by special methods for the purpose of providing scientifically based opinions (Pyrih, 2015).

For example, scientists conduct scientific and expert assessments of the results of scientific and scientific-technical significance of various scientific works. This is carried out in accordance with the Regulations on the Ministry of Education and Science of Ukraine Competition of scientific works and scientific and technical (experimental) developments of young scientists working (studying) in higher education institutions and scientific institutions under the Ministry, the continuation of these works and developments from the general fund of the State budget (N.d., 2016).

Regarding the issue of the theory of the content of administrative and legal support for higher education in Ukraine, it should be noted that public support for higher education in Ukraine means to provide quality public services according to certain rules and standards. The administrative and legal support is a system of principles, tools and procedures of public administration, targeted regulatory and organizational impact of provisions of administrative law, which develop and clarify the constitu-

tional provisions that determine the theoretical and legal basis for the functioning of this field of public relations to make an enabling environment for private persons to exercise their public rights, freedoms and interests. According to its content, the administrative and legal support is a system of provisions of administrative law, fundamental principles (concepts, doctrines and principles of legal regulatory mechanism), administrative and legal relations and administrative instruments (forms and methods of administration and administrative procedures), which together form a certain complex institution of administrative law, filled with numerous vertical and horizontal ties, unite homogeneous social relations (Yara, 2019).

From the perspective of the theory of administrative law, it should be noted that public administration in a broad sense is implemented in all forms of state power (not only executive, but also legislative, because of the public nature of rulemaking, judicial, because of the public position of judges, the functioning of judicial management bodies and other judicial administrators). The Government and its subordinate bodies are central public administrators, but the individual powers of the Verkhovna Rada of Ukraine and the judicial administration should not be limited either. Public administration includes the provision of uninterrupted, stable, high-quality services, respect for the rule of law and other necessary social security measures for both society and the ordinary citizen. The State should not only identify problems in a timely manner, respond immediately to them and find optimal solutions, but also take measures in general to prevent their occurrence. The development and implementation of such schemes are another important public administration function (Danylenko, 2020).

### 4. Conclusions

Therefore, the scope of administrative and legal support for expert activities in Ukraine is social space of objective special existence of legal matter, limited by the purpose and tasks to provide sufficient quantity and quality of legally significant specific information, necessary for a fair and lawful resolution of individual legal cases.

### References:

- Bilodid, I.K.** (1972). *Slovník ukraínskoi movy [Dictionary of the Ukrainian language]*. Kyiv : Nauk. Dumka. (in Ukrainian).
- Danylenko, A.** (2020). *Zasady publicznego administruvannya v Ukraini [Principles of public administration in Ukraine]*. *Candidate's thesis*. Kyiv (in Ukrainian).
- Dmytrenko, Ye.** (2015). *Ekspertni ekonomichni doslidzhennia ta sudova ekspertyza podatkovoho obliku [Expert economic research and forensic examination of tax accounting]*. *Visnyk – Herald, 33* (in Ukrainian).
- Furman, A., & Hirniak, A.** (2009). *Psykhodydaktychna ekspertyza modulno-rozvyvalnykh pidruchnykiv [Psychodidactic examination of modular development textbooks]*. TNEU, «Ekonomichna dumka» (in Ukrainian).

**Melnychuk, O.** (Eds.). (1975). *Slovník inštomovnykh slov [Dictionary of foreign words]*. Kyiv: Kyivska knyzhkova fabryka (in Ukrainian).

**N.d.** (2016). Naukovo-ekspertnyi vysnovok za rezultaty naukovoi ta naukovo-tekhnichnoi ekspertnyz z otsiniuvannya proektu na provedennia naukovoi roboty [Scientific-expert opinion on the results of scientific and scientific-technical expertise on the evaluation of the project for scientific work]. *Yuryst onlan – Lawyer online*, 31 (in Ukrainian).

**N.d.** (2018). *Ekspertyzy v sudochynstvi Ukrainy [Expertise in the judicial process of Ukraine]*. 2018. Kyiv: Yurinkom Inter (in Ukrainian).

**Pyrh, I.** (2015). *Teoretyko-prykladni problemy ekspertnoho zabezpechennia dosudovoho rozsliduvannya [Theoretical and applied problems of expert support of pre-trial investigation]*. Dnipropetrovsk: DDUVS (in Ukrainian).

**Yara, O.** (2019). Poniattia administratyvno-pravovoho zabezpechennia vyshchoi yurydychnoi osvity v Ukraini [The concept of administrative and legal support of higher legal education in Ukraine]. *Naukovyi visnyk publichnogo ta pryvatnoho prava – Scientific Bulletin of Public and Private Law*, 1, 25-32 (in Ukrainian).

**Zakon Ukrainy Pro sudovu ekspertyzu** vid 25 liut. 1994 r. № 4038-XII [Law of Ukraine On Forensic Examination from February 25, 1994 № 4038-XII]. (1994). *zakon.rada.gov.ua*. Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (in Ukrainian).

### **Руслан Тополя,**

*кандидат юридичних наук, докторант, Науково-дослідний інститут публічного права, вулиця Георгія Кірпи, 2а, Київ, Україна, індекс 03055, E-mail Topolia@gmail.com*

**ORCID:** 0000-0002-0673-0616

## **МЕЖІ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ЕКСПЕРТНОЇ ДІЯЛЬНОСТІ В УКРАЇНІ**

**Анотація. Мета.** Мета статті полягає в тому, щоб на основі теорії адміністративного права, теорії криміналістики, теорії експертології, доктринальних положень у цій сфері вчених та чинного законодавства з'ясувати межі адміністративно-правового забезпечення експертної діяльності в Україні. **Результати.** У статті наголошено, що в правовій демократичній державі права свободи та інтереси приватних осіб є широкими, невичерпними та формально не обмеженими позитивістським законодавством. Іншими словами, вони є широкими. Відповідно, для забезпечення їх ефективного захисту юридичними арбітрами існує нагальна необхідність користуватися послугами вузьких спеціалістів у багатьох галузях, сферах та секторах професійних знань. В юридичній літературі та практиці судової, правоохоронної та публічно-правової діяльності такі суб'єкти отримали лаконічну назву «експерти», а їхня робота з аналізу та наданням кваліфікованих висновків – «експертна діяльність». Як і будь-яка інша суспільно-корисна публічна діяльність, вона об'єктивно потребує адміністративного правового забезпечення. У статті розкрито межі адміністративно-правового забезпечення експертної діяльності в Україні. Доведено, що це є соціальний простір об'єктивного спеціального існування правової матерії з обмеженою метою та завданнями щодо надання в достатній кількості та якості юридично значимої специфічної інформації, необхідної для справедливого та законного вирішення індивідуальних юридичних справ. Наголошено, що публічне адміністрування у широкому розумінні реалізується у всіх формах державної влади (не лише виконавчої, а й законодавчої – через публічний характер нормотворчості, судової – через публічне становище суддів, функціонування органів суддівського врядування та інших суб'єктів, що здійснюють судове адміністрування). Уряд та його підпорядковані органи є центральними реалізаторами публічного адміністрування, однак і обмежуватись окремими повноваженнями Верховної Ради України та судової адміністрації теж не слід. **Висновки.** Зроблено висновок, що межами адміністративно-правового забезпечення експертної діяльності в Україні є соціальний простір об'єктивного спеціального існування правової матерії з обмеженою метою та завданнями щодо надання в достатній кількості та якості юридично значимої специфічної інформації, необхідної для справедливого та законного вирішення індивідуальних юридичних справ.

**Ключові слова:** адміністративно-правове забезпечення, експертна діяльність, індивідуальна юридична справа, межі, обмеження, правова матерія, соціальний простір, справедливість.

*The article was submitted 10.03.2022*

*The article was revised 30.03.2022*

*The article was accepted 21.04.2022*