

**THE POWERS OF A FORENSIC EXPERT IN PREVENTING (PROPHYLAXIS)  
THE COMMISSION OF CRIMINAL OFFENCES AGAINST THE FOUNDATIONS  
OF NATIONAL SECURITY BY MEANS OF FORENSIC SCIENCE**

**ПОВНОВАЖЕННЯ СУДОВОГО ЕКСПЕРТА У ЗАПОБІГАННІ  
(ПРОФІЛАКТИЦІ) ВЧИНЕННЮ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ  
ПРОТИ ОСНОВ НАЦІОНАЛЬНОЇ БЕЗПЕКИ ЗАСОБАМИ КРИМІНАЛІСТИКИ**

**Batiuk O.V., Doctor of Legal Sciences, Assistant Professor,  
Professor at the Department of National Security**

*Lesya Ukrainka Volyn National University  
ORCID ID: 0000-0002-2291-4247*

**Tserkunyk L.V., PhD in Law,  
Assistant Professor at the Department of Criminal Law and Procedure**

*Uzhorod National University  
ORCID ID: 0000-0002-6306-2650*

In the provisions of the scientific article, the author examines the current legal acts of Ukraine regulating the powers of a forensic expert in preventing (prophylaxis) the commission of crimes against the foundations of national security by means of forensic science. By analysing the opinions of scholars and practitioners, the author expresses his own views on two forms of preventive activities of forensic institutions: procedural and non-procedural. According to the author, the subjects of expert prevention and prevention of criminal offences against the foundations of national security by means of forensic science include: a forensic expert and the head of a forensic institution. The tasks that are solved by the theory of expert prevention and prevention of criminal offences against the foundations of national security are divided into two groups: general and special. The general task of this theory is to assist in the fight against crime by developing scientific provisions for the use of forensic science in the prevention of criminal offences against the foundations of national security. Special tasks in conducting expert research in the process of investigating criminal offences against the foundations of national security include: – establishing circumstances that contribute to the commission of criminal offences against the foundations of national security (for example, collaboration); development of methods and means of obtaining reliable knowledge that provide forensic experts with new opportunities to establish conditions conducive to the commission of criminal offences against the foundations of national security (sabotage); development and improvement of measures to improve the interaction of subjects of forensic activities; development of expert prevention in criminal, civil, arbitration, administrative proceedings, etc.

**Key words:** state, sabotage, expert, prevention, collaboration, offence, prophylaxis, institution, espionage.

У положеннях наукової статті автор досліджує чинні нормативно правові акти України, які регулюють повноваження судового експерта у запобіганні (профілактиці) вчиненню злочинів проти основ національної безпеки засобами криміналістики. Шляхом аналізу думок науковців та практиків, автор визначає власні погляди на дві форми профілактичної діяльності експертно-криміналістичних установ: процесуальну і не процесуальну. На думку автора, до суб'єктів експертної профілактики та запобігання вчиненню кримінальних правопорушень проти основ національної безпеки засобами криміналістики можемо віднести: судового експерта та керівника судово-експертної установи. Завдання, які вирішуються теорією експертної профілактики та запобігання вчиненню кримінальних правопорушень проти основ національної безпеки, поділяються на дві групи: загальні та спеціальні. Загальним завданням цієї теорії є сприяння в боротьбі зі злочинністю шляхом розробки наукових положень по використанню судово-експертної діяльності у попередженні кримінальних правопорушень проти основ національної безпеки. До спеціальних завдань при проведенні експертних досліджень у процесі розслідування кримінальних правопорушень проти основ національної безпеки відносяться: – встановлення обставин, які сприяють скоєнню кримінальних правопорушень проти основ національної безпеки (наприклад колабораційна діяльність); розробка методів та засобів отримання достовірних знань, які надавали судовим експертам нові можливості по встановленню умов, що сприяють вчиненню кримінальних правопорушень проти основ національної безпеки (наклад диверсії); розробка та вдосконалення заходів щодо поліпшення взаємодії суб'єктів судово-експертної діяльності; розробка експертної профілактики в кримінальних, цивільних, арбітражних, адміністративних процесах і т.п.

**Ключові слова:** держава, диверсія, експерт, запобігання, колаборація, правопорушення, профілактика, установа, шпигунство.

The relevance of the topic is due to the fact that, according to the official data of the Prosecutor General's Office, in 2023, 4,743 criminal offences against the foundations of national security were registered, including: actions aimed at the violent change or overthrow of the constitutional order or the seizure of state power – 103, encroachment on the territorial integrity and inviolability of Ukraine – 573, financing of actions committed with the aim of violent change or overthrow of the constitutional order or seizure of state power, changes in the boundaries of the territory or state border of Ukraine – 99, high treason – 739, collaboration – 2320, aiding the aggressor state – 521, attempt on the life of a state or public figure – 2, sabotage – 30, espionage – 37, obstruction of the lawful activities of the Armed Forces of Ukraine and other military formations – 140, unauthorised dissemination of information on deployment, movement of weapons, armaments and ammunition to Ukraine, movement, relocation or deployment of the Armed Forces of Ukraine or other military formations established in

accordance with the laws of Ukraine, committed under martial law or a state of emergency – 179 criminal offences. In the first month of 2024, the statistics totalled 654 criminal offences [1]. These statistics demonstrate the special need to conduct state measures to prevent criminal offences against the foundations of national security committed under martial law by state bodies, public organisations, social groups, officials or citizens, by developing and implementing measures to anticipate, limit and eliminate the causes and conditions of crime in general, and, in particular, against the foundations of national security, and to prevent the commission of criminal offences at various stages of the crime. It should be noted that the subjects of crime prevention traditionally include, in a broad sociological sense, society as a whole, collectives, groups, individuals; in a socio-political sense, the state as a whole, state bodies, public organisations, citizens [2].

In criminological literature, it is noted that conducting expert preventive research in the field of knowledge in which

the expert (specialist, professional) performs examinations, although not a procedural duty of the expert (specialist, professional), is considered his or her professional duty. An inspection of the content of expert methodologies by some authors shows that many of them do not provide for research procedures aimed at establishing the circumstances of a preventive nature by expert research of the provided objects. This situation excludes from the attention of experts the need for their participation in the circumstances that contributed (or could have contributed) to the commission of a criminal offence. This reduces the effectiveness of expertise in the preventive activities of law enforcement and other government agencies. The inclusion of expert preventive research in the structure of expert technologies makes the setting of preventive tasks mandatory when conducting examinations in forensic institutions [3, p. 227-228].

**Analysis of recent research and publications.** Expert and preventive activities are a socially significant element, since if they are properly implemented, they can prevent the commission of criminal offences. It is worth agreeing with K. Dikevych that at present, the theory of expert prevention is not given enough attention by scientific researchers. At the same time, when solving the problems of legal regulation, expert and preventive work in general can significantly improve the level of law enforcement system [4]. In the scientific literature, the following scholars and practitioners have paid attention to certain issues of expert prevention and crime prevention: Azarov Y. I. [5], Gora I. V. [7], Gurina D. P. [8], Dikevych K. G. [4], Zhuravel V. A. [6], Konovalova V. O., [6], Pecherska I. O. [9], Rafalskyi E. O. [5], Samoiloova O. F., Shepitko V.Y. [6] However, it should be noted that at present, the science of criminology and forensic science still does not address the issues of expert prevention and prevention of criminal offences against the foundations of national security, which has determined the need for this scientific research.

**The purpose of the article** is to study the current legislation of Ukraine and other regulatory legal acts, the views of scholars and provisions of the science of forensics, data of forensic and expert practice regarding the powers of a forensic expert in preventing criminal offences in general, and on this basis to develop the author's own view and proposals for improving the current legislation of Ukraine regarding the activities of an expert as a subject of prevention of criminal offences against the foundations of national security.

**Presentation of the research material and its main results.** According to Art. 242 of the Criminal Procedure Code of Ukraine, hereinafter referred to as the CPC, an expert examination is conducted by an expert at the request of a party to criminal proceedings or on behalf of an investigating judge or court if special knowledge is required to clarify circumstances relevant to criminal proceedings [10]. Also, the powers of an expert, his or her rights and obligations, and the procedure for conducting an expert study are set out in the Law of Ukraine "On forensic examination" and the Instruction on the procedure for appointing and conducting examinations and expert studies [11, 12]. It should be noted that the CPC of Ukraine entitles the expert, if it is in the interests of clarifying the circumstances relevant to criminal proceedings, to go beyond the scope of the received expert report and to set out in its conclusion the information discovered during the course of the examination, about which he was not asked questions (clause 4, part 3, article 69 of the CPC of Ukraine) [10].

Clause 3-1 of part 4 of article 71 of the CPC of Ukraine defines the right of a person who has special knowledge and skills and can provide consultations and opinions during the pre-trial investigation and court proceedings on issues requiring relevant special knowledge and skills, to also state in the opinion information relevant to criminal proceedings and in respect of which he or she was not asked questions. It is worth noting that part 3 of article 102 of the CPC of Ukraine

also declares that in situations where the expert discovers information relevant to criminal proceedings and about which no questions were asked, the expert has the right to indicate it in his/her conclusion [10].

It is the above-mentioned legal acts that regulate expert and preventive activities through: firstly, the activities of an expert who identifies during expert research the circumstances that contributed (could contribute) to the commission of criminal offences; secondly, through the participation of an expert in investigative actions as a specialist, as well as participation in the examination of the scene and reconstruction of the situation and circumstances of the event; thirdly, through the providing of expert (specialist) advice on the suppression of criminal offences, which can sometimes be provided by a specialist in the process of conducting operational and investigative activities (for example, recommendations on operational photography); fourthly, through specific examinations, generalisation of expert practice, development of research topics, thematic work and legal propaganda, i.e. related to all areas of activity of expert institutions.

It should be noted that in the science of forensics, the subject of forensic prevention consists of such elements as: studying the patterns of specific criminal acts of various types, the mechanism of their trace reflection; identifying and researching the features of typical investigative situations arising during the investigation, which allow identifying areas of prevention activities for taking preventive measures. In our opinion, scholars Zhuravel V.A., Konovalova V.O., Shepitko V.Y. have quite accurately defined that expert prevention is the activity of an expert to identify the circumstances that contributed to the commission of a crime (offence) and to develop measures to eliminate them [6].

We agree with D. P. Hurina that two forms of preventive activities of forensic institutions can be distinguished: procedural and non-procedural. The procedural form of preventive activity of employees of expert institutions includes the participation of an expert in investigative actions as a specialist, as well as participation in the inspection of the scene and reconstruction of the situation and circumstances of the event. Specialist consultations on the suppression of crimes can sometimes be provided by a specialist in the course of operational search activities (for example, recommendations on taking photographs of non-commodity documents in an operational manner) [8, z. 148].

Azarov Y. I. and Rafalskyi E. O. quite correctly note that the main feature of the participation of a forensic expert in investigative (search) and other procedural actions is that the purpose of such participation is limited, subordinated and determined by the tasks of the examination entrusted to this expert. This leads to other characteristic features of an expert's participation in procedural actions. A forensic expert, unlike a specialist, is an independent subject of criminal proceedings, endowed with procedural independence during the conduct of procedural actions. Therefore, when participating in investigative (search) actions, the expert is guided by his or her own convictions based on the tasks of the examination entrusted to him or her, and therefore acts at his or her own discretion, not limited by the opinion of other participants, including the investigator. An important point is that based on the preventive activities of procedural subjects, primarily the investigator and the expert, patterns are formed that are manifested in their interaction, which leads to mutual enrichment with new knowledge. The expert, acting as an assistant consultant in order to obtain as much information as possible from the investigator about the scene or things located or found during the inspection, provides information on the most optimal ways to inspect, detect, describe (record) and seize it, as well as provides information on possible examinations that should be assigned to the investigator, formulates appropriate questions to ask the expert to obtain the most effective result [5, c. 94].

It is worth agreeing with expert Dikevych K.G. that the non-procedural form of expert prevention is essential for optimising forensic activities and includes the analysis and generalisation of forensic practice in order to prepare preventive recommendations.

In general, the following stages of preventive activities can be distinguished:

1) identification and analysis of the circumstances that contributed to the commission of the crime;

2) development of preventive measures and proposals to improve the existing ones;

3) implementation of the developed measures in practice.

Thus, forensic expert prevention can be carried out by indicating the circumstances that contributed to the commission of a crime (offence) in the expert's conclusion, drawing up an expert report on the circumstances that contributed to the commission of a crime (offence) or a preventive recommendation; drawing up a report to the competent authorities on the identified circumstances as a result of generalisations of practice and/or scientific research that contributed to the commission of a crime (offence) and possible measures to eliminate them, as well as/or participation of an expert in legal advocacy. Therefore, first of all, the importance of expert prevention lies in identifying the circumstances that contributed to the commission of crimes, as well as in developing preventive measures in the form of proposals and recommendations aimed at preventing crimes. In some cases, it is the use of specialised knowledge that allows us to establish the causes and conditions that contributed to the commission of crimes. Expert prevention, being one of the subsystems of forensic prevention, actively contributes to the implementation of the national crime prevention task. The level of interaction with the initiator and organiser of the expert study affects the effectiveness of preventive activities, since the expert's competence does not allow launching and implementing the mechanism of preventive measures, the expert is only competent to develop proposals, the implementation of which, in many cases, depends on the decision of other officials, for example, the investigator. At the same time, the proposals should be based only on the factual data established within the framework of the expert study, if necessary, confirmed by the results of expert experiments; be economically justified, and actually implemented at this level of development of science and technology. The demonstrability and validity of the proposed measures increasing the availability of relevant detailed information, diagrams, drawings, photographs, and other illustrative material [4, p.52-53].

In our opinion, the subjects of expert prophylaxis and prevention of crimes against the foundations of national security by means of forensic science include: a forensic expert and the head of a forensic institution.

The tasks that are solved by the theory of expert prophylaxis and prevention of commission of crimes against the foundations of national security are divided into two groups: general and special. The general task of this theory is to assist in the fight against crime by developing scientific provisions for the use of forensic science in the prevention of crimes against the foundations of national security.

Special tasks in conducting expert research in the investigation of crimes against the foundations of national security include:

– establishing circumstances that contribute to the commission of crimes against the foundations of national security (for example, collaboration activities that may be manifested by a citizen of Ukraine carrying out propaganda in educational institutions regardless of type and form of ownership in order to facilitate the commission of armed aggression against Ukraine, establish and confirm the temporary occupation of part of the territory of Ukraine, avoid responsibility for the commission of armed aggression

against Ukraine by the aggressor state, as well as actions of citizens of Ukraine aimed at implementing of education standards of the aggressor state in educational institutions);

– development of methods and means of obtaining reliable knowledge that provided forensic experts with new opportunities to establish conditions conducive to the commission of crimes against the foundations of national security (sabotage committed by means of explosions, arson or other actions aimed at mass destruction of people, causing bodily injury or other damage to their health, destruction or damage to objects of important national economic or defence importance, as well as committing actions aimed at radioactive contamination, mass poisoning, spread of epidemics, epizootics or epiphytotics for the same purpose);

– development and improvement of measures to improve the interaction between the subjects of forensic activities;

– development of expert prophylaxis in criminal, civil, arbitration, administrative proceedings, etc.

It is worth agreeing with scholars who believe that an important means of collecting evidence in the investigation of criminal offences against the foundations of national security is forensic examination, which involves the examination by an expert on the basis of special knowledge of material objects, phenomena and processes containing information about the circumstances of criminal proceedings. Thus, conducting a forensic examination is a procedural action that involves an expert's examination of material evidence and other materials on behalf of an investigator or court in order to establish the facts and circumstances relevant to the proper resolution of criminal proceedings. One of the most common forensic examinations conducted in the investigation of criminal offences of collaboration is a phonoscopic examination, the purpose of which is to identify a person by oral speech, as well as for technical examination of data storage media and recording equipment. Sound traces allow to obtain evidentiary information, confirm the data obtained in the course of operational and investigative activities, as well as to identify the offender [13, p. 28].

In our opinion, the main types (subtypes) of forensic examinations that should be carried out in the investigation of criminal offences against the foundations of national security include:

firstly, forensic examination and its subtypes, namely:

handwriting examination (for example, in the investigation of espionage or collaboration)

linguistic examination of speech (for example, in the investigation of collaboration);

technical examination of documents (for example, in investigating the financing of actions committed with the aim of violent change or overthrow of the constitutional order or seizure of state power, changes in the boundaries of the territory or state border of Ukraine);

examination of weapons and traces and circumstances of their use (for example, in the investigation of an attempt on the life of a state or public figure);

photographic, portrait (for example, in investigating actions aimed at violent change or overthrow of the constitutional order or seizure of state power);

video, sound recording (for example, when investigating collaboration activities);

explosive (for example, in the investigation of sabotage);  
man-made explosions (for example, when investigating sabotage);

materials, substances and products (for example, when investigating sabotage);

the presence of harmful substances (pesticides) in the environment (for example, when investigating sabotage);

potent and poisonous substances (for example, when investigating sabotage);

secondly, psychological expertise (for example, when investigating the unauthorised dissemination of information



on the sending, movement of weapons, armaments and ammunition to Ukraine, movement, relocation or deployment of the Armed Forces of Ukraine or other military formations established in accordance with the laws of Ukraine, committed under martial law or a state of emergency);

thirdly, environmental expertise (for example, in the investigation of sabotage committed by polluting water areas (sections of rivers, lakes, reservoirs); pollution of airspace, atmospheric air, water, soil, selected as part of anthropogenic environmental pollution); intentional damage to production and warehouse facilities of industrial, municipal and other enterprises and organisations, their treatment facilities, gas cleaning and dust collection plants, etc.; intentional damage to machinery, equipment, their units and parts from the site of the environmental emergency);

fourthly, military expertise (for example, in investigating obstruction of the lawful activities of the Armed Forces of Ukraine and other military formations by establishing the circumstances of the use and actions of military formations; establishing the circumstances that led to serious consequences, death of people (military personnel, employees of the Security Service of Ukraine, the Armed Forces of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine and other representatives of ministries and agencies, civilians), loss of weapons, military equipment, government facilities and infrastructure, personal property of citizens during the use of military formations; establishing compliance of actions (inaction) of officials with the requirements of governing documents (assigned duties).

**As a conclusion,** it should be noted that the powers of a forensic expert in preventing (prophylaxis) the commission of crimes against the foundations of national security by means of forensic science should be considered exclusively through practical activities, which include

firstly, identifying during the expert examination the circumstances that contributed (could have contributed)

to the commission of a criminal offence and determining the content of measures to eliminate them (expert prevention);

secondly, the expert initiative should be considered not only as the right to reflect something in the conclusion, but also the right, and in some cases (when the safety of life, human life, security of society and the state depends on it) – and the obligation to indicate preventive measures;

thirdly, by proposing topics for the research work of expert institutions to address problematic issues of forensic science, including improving examination methods, solving organisational and regulatory problems in ensuring professional activity;

fourthly, through the adoption of the Law of Ukraine “On prevention of criminal offences”, which includes an expert and the head of an expert institution as subjects of prevention, and the adoption of the Law of Ukraine “On forensic expert activity in Ukraine”, which provides for the prophylaxis of offences by means of forensic examination;

fifthly, by discussing expert proposals aimed at overcoming the causes and conditions of crimes against the foundations of national security, which should be based on the results of their expert research and their generalisation, be scientifically substantiated, specific and reasoned;

sixthly, in the current legislation of Ukraine, we consider it expedient to adopt a norm that would define the process of optimising the records of criminological, criminalistic and forensic information, as this will subsequently expand the preventive capabilities of law enforcement agencies, as well as affect the effectiveness of the implementation of the strategy of reducing the possibility of committing crimes (for example, unauthorised dissemination of information on the sending, movement of weapons, armaments and ammunition to Ukraine, movement, movement or deployment of the Armed Forces of Ukraine or other military formations established in accordance with the laws of Ukraine, committed under martial law or a state of emergency, etc.).

#### REFERENCES:

1. Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування. Офіс генерального прокурора України. URL: <http://surl.li/bnzkm> (дата звернення 18.12.2023)
2. Лукашевич С. Ю. Об'єкти та суб'єкти запобігання в кримінології та правоохоронній діяльності. 2022. URL: <http://surl.li/qtzxy> <https://doi.org/10.30525/978-9934-26-185-5-6> (дата звернення 20.11.2023)
3. Моїсєєв О. М. Експертна профілактика в умовах протидії розслідуванню. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*. 2010. № 23. С. 225–227.
4. Дікевич К.Г. Особливості судово-експертної профілактики злочинності. *Процесуальне та техніко-криміналістичне забезпечення досудового розслідування*. Харків, 2019, С. 51-53. URL: [https://univd.edu.ua/general/publishing/konf/28\\_11\\_2019/pdf/15.pdf](https://univd.edu.ua/general/publishing/konf/28_11_2019/pdf/15.pdf) (дата звернення 18.12.2023)
5. Азаров Ю. І., Рафальський Є. О. Особливості взаємодії слідчого з експертом (спеціалістом) на початковому етапі досудового розслідування. *Юридична наука*. 2014. № 10. С. 87–96.
6. Журавель В.А., Коновалова В.О., Шепітько В.Ю. Навчально-методичний посібник для самостійної роботи та практичних занять з навчальної дисципліни «Експертна профілактика». Нац. ун-т «Юрид. акад. України ім. Ярослава Мудрого», 2012. 22 с.
7. Гора І. В. Залучення спеціаліста й експерта адвокатом за Кримінальним процесуальним кодексом України. *Вісник Академії адвокатури України*. 2013. Число 1. С. 156-162. URL: [http://nbuv.gov.ua/UJRN/vaau\\_2013\\_1\\_26](http://nbuv.gov.ua/UJRN/vaau_2013_1_26) (дата звернення 18.12.2023)
8. Гуріна Д. П. Експертна профілактика: форми реалізації та способи фіксації. *Вісник Академії адвокатури України*. 2009. № 1 (14). С. 146–151
9. Самойлова О.Ф., Печерська І.О. Експертна профілактика як одна з форм судово-експертної діяльності і роль судового експерта в цій сфері. *Молодий вчений*. 2022. № 2 (102). URL: <https://doi.org/10.32839/2304-5809/2022-2-102-12> (дата звернення 18.12.2023)
10. Кримінальний процесуальний кодекс України. прийнятий 13 квітня 2012 року № 4651-VI в редакції від 01.01.2024, підстава – 3509-IX, 3513-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (дата звернення 20.11.2023)
11. Про судову експертизу: Закон України (з чинними змінами та доповненнями). *Відомості Верховної Ради України*. 1994. № 28. Ст. 232. URL: <http://zakon3.rada.gov.ua/laws/show/4038-12>. (дата звернення 20.11.2023)
12. Інструкція про порядок призначення та проведення експертиз та експертних досліджень: Затверджена наказом Міністерства юстиції України від 08 січня 1998 р. № 53/5 (у редакції наказу Міністерства юстиції України від 26 груд. 2012 р., № 1950/5) URL: <http://zakon1.rada.gov.ua/laws/show/z0705-98/print1392286538612149> (дата звернення 20.11.2023)
13. Тетерятник Г., Мудрецька Г., Резніченко Г. (2023) Актуальні проблеми при розслідуванні кримінальних проступків, пов'язаних з колабораційною діяльністю : методичні рекомендації. Одеса : Видавництво «Юридика», 2023. 40 с. URL: <http://surl.li/qumzv> (дата звернення 18.12.2023)