

# An Analysis of the Problems of Systematisation of Forensic Examination Theory in the Light of the Doctrine on Forensic Activities

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**Abstract.** *The article considers the problems of formation of forensic examination theory with a view to the processes that currently take place in the Republic of Belarus (creation of unified expert institution, reform of legal regulation, changes in practical activities). The main obstacles to the development of a theoretical model of the forensic examination are outlined by the author. Several approaches to the understanding of forensic activities are analysed, including the general theory of forensic examination and its particular theories. It is argued that the approach to the formation of the system of particular theories on the basis of examinations' classification is imperfect due to the lack of a uniform criterion. Various authors' concepts which present particular theories and other structural elements do not completely meet the requirements for consistency. As a consequence of this, the construction of the existing classifications is based on the generalisation of practice. As a result the appearance of new types of forensic examinations requires reclassification of particular theories. This construction of the system's sections is not practicable, and the shortcomings outlined are caused by the lack of a holistic perception of forensic activities. An approach to structuring forensic activities is elaborated and proposed by the author. It can serve as a means of solving the problems of systematisation of sections and particular theories in the structure of forensic examination theory.*

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It is common knowledge that the theory of forensic examination represents an independent area of scientific knowledge, one of the main tasks of which is to search for an effective model for the organisation of forensic activities. Scientific research of this sort became more topical in the Republic of Belarus due to the implementation of the concept of the independent public policy in this area. Along with this, and after the formation of the State Forensic Examinations Committee of the Republic of Belarus, the reform of the system of forensic institutions and legal foundations of their functioning was completed<sup>1</sup>. In this regard, from the perspective of today, the content of the general theory of forensic examination, as well as the system of its particular theories, seem to be unfinished.

A feature of theoretical models of particular directions of activities of persons and society is their dynamism and ability to respond to changing external conditions.

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<sup>1</sup> Shved A.I., Formirovanie edinogo jekspertnogo vedomstva: rezul'taty i perspektivy. *Sudebnaja ekspertiza Belarusi (=Forensic Examination of Belarus)*, 2015, Issue 1, pp. 8–11.

In this regard the forensic examination theory is no exception. One of the first general theories covering all types of expert studies in legal proceedings — the theory (science) of a forensic expertology — was proposed in the second half of the 20<sup>th</sup> century by A. I Vinberg and N. T Malakhovskaya<sup>2</sup>. Later, this theory influenced the formation of methodological foundations of forensic examination theory, the development of which has for a long time been constrained by problems requiring prompt resolution. Many of these are indicated in the works of T.V Averyanova, I.A Aliyev, V.D Arsenyev, R. S Belkin, S.F Bychkova, A.I Vinberg, A.V Dulov, F.M Javadov, A.M Zinin, Yu. G Korukhov, N.P Maylis, N.T Malakhovskaya, E.R Rossinskaya, A.R Shlyakhov and other authors.

The most significant of the problems hindering the development of forensic examination theory is the insufficient certainty (validity) of:

- the object and subject matter of this theory;
- its objectives and tasks;
- the place of forensic examination theory in the system of sciences, including the nature of its interaction with other sciences;
- the existing approaches to the construction of particular theories and sections.

As to the question of the essence of the object and the subject matter of the forensic examination theory, many authors reveal it in the definition of this theory. For example, A. R Shlyakhov characterised it as the system of knowledge “about expert studies (activities of experts), their objectives, subject matters, objects of the expert studies, methods applied by experts”<sup>3</sup>. A characteristic feature of such an approach was the understanding of forensic activities only in one aspect — as a direct activity of the forensic expert in the conduct of expert research. However, this somewhat one-sided and incomplete approach was subsequently adjusted.

In this regard, the following definition offered by T. V Averyanova seems interesting: the general forensic examination theory is a system of “ideological and praxeological principles both of the theory itself, and also of its object — expert activity, particular theoretical constructions in this field of scientific knowledge, methods of the development of theories and implementation of expert studies, processes and relations, — comprehensive scientific reflection of forensic activities as a whole”<sup>4</sup>. In our opinion, this point of view wholly corresponds to the contents of the theory’s provisions and the list of problems studied by it. However, it needs to be clarified to be more precise. In particular, questions arise whether to include in the object of the study the organisation of expert activities (including scientific,

<sup>2</sup> Vinberg A.I, Malahovskaja N.T, Sudebnaja jekspertologija (obshheteoreticheskie i metodicheskie problemy sudebnyh jekspertiz), Volgograd: Izd-vo VSSh MVD SSSR, 1979. See also: Vinberg A.I, Malahovskaja N.T, O zakonornosti nauchnyh osnov sudebnyh ekspertyz. *Socialisticheskaja zakonnost'*, 1976, Issue 1, pp. 62–64. See also: Vinberg A.I, Malahovskaja N.T, Sudebnaja ekspertologija — novaja otrasl' nauki. *Socialisticheskaja zakonnost'*, 1973, Issue 11, pp. 49–51.

<sup>3</sup> Vinberg A.I, Vinberg A.I (Ed.), Slovar' osnovnyh terminov sudebnyh jekspertiz. M.: VNIISJe, 1980, p. 11.

<sup>4</sup> Aver'janova T.V, Sudebnaja jekspertiza. Kurs obshhej teorii. Moscow: Norma Infra-M, 2014, p. 43.

methodological and other types of support) and other forms of activity of forensic experts on the basis of their special knowledge? It should be noted that the answers to these issues are reflected in the contents of modern scientific research, and their results, achieved in the course of a comprehensive study, can significantly supplement (clarify) many of the elements of the system of forensic examination theory.

Moreover, on the one hand, in some works the synthetic character of forensic examination theory, the comprehensive nature of methods used in the theory, and the borrowing of methods used in other sciences are recognised; on the other hand, arguments are voiced on the necessity to refer these questions to the relevant procedural sciences, management science, etc.<sup>5</sup>. Along with the exclusion of the named items from the subject matter of forensic examination theory, other issues are actively developed within its framework, for example, the problems of managing the activities of a forensic expert institution, scientific organisation of expert work<sup>6</sup>. Thus, in the absence of clear boundaries of the object of the theory, its subject matter is also not sufficiently defined.

It seems that the most acceptable approach is the one which considers the subject matter of science as a group of studied patterns in the composition of the objects. There are reasons to believe that the results of a complete generalisation of the patterns allocated in the object will make it possible to further specify the subject matter. Thus, the solution of a question on the contents of forensic expert activities as an object of forensic examination theory appears to play a crucial role in the designation of its subject matter.

An essential problem with the system of forensic examination theory is the insufficiency of the methodology which is considered in the framework of particular theories. This situation is due to the fact that a significant part of the particular theories is related not to the general theory of forensic examination, but to individual classes and kinds of examinations, certain forms and directions of forensic expert activity. Meanwhile, the distinguishing of particular theories of kinds, types and even subtypes of examinations is generally accepted and is implemented in the concepts proposed by some authors<sup>7</sup>. However it is difficult to agree with the very idea of the formation of particular theories of kinds, types or subtypes of examinations, and so one has to admit that in this part the proposed concepts of the system of the forensic examination theory are insufficiently justified.

It should also be assumed that existence of any doctrine within the kind, the type or subtype of examinations hardly gives grounds for recognising it as a particular theory. Such doubts arise, for example, when considering a question of the classification of examinations. The classifications currently used by various authors are created simultaneously on three bases: subject matter, object and methods of forensic examination.

However, such an ambiguous approach seems imperfect and requires serious justification, as it can reflect the specific state of forensic activities only

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<sup>5</sup> *Ibid.*, pp. 34–59.

<sup>6</sup> *Ibid.*, pp. 48–50. *See also*: Rossinskaja E.R [et al], *Teorija sudebnoj jekspertizy*, Moscow: Norma Infra-M, 2011, pp. 46–47. *Also*: Sorokotjagina D.A, Sorokotjagin I.N, *Teorija sudebnoj jekspertizy*. Rostov na Donu: Feniks, 2006, p.15.

<sup>7</sup> Aver'janova T.V, *op. cit.*, pp. 401–403.

in a certain period, taking into account the development of the theory and the practice of forensic examination. As some authors note, the classification has practical value in questions of the organisation of training and retraining of forensic experts<sup>8</sup>. In the Republic of Belarus, the organisation of specialities of retraining is more focused on kinds and types of examinations which are stipulated in the lists of expert specialities. Classification of examinations is also reflected in the names of structural expert units. However, these classification systems are the result of a generalisation of the practice. Being mostly nominal in nature, they may change over time, in particular with the emergence of new areas of expert research. In this regard, T. V Averyanova rightly notes that “the synthetic nature of the general theory of forensic examination allows the removal of the labels which we put on different kinds and types of examinations and to treat any kind and type of examination simply as a forensic examination”<sup>9</sup>.

Thus, the construction of systems of particular theories on a movable base — on classifications of the kinds of examinations — calls into question their sustainable methodological character. As R. S Belkin reasonably remarks, the particular theory has to have the cross-cutting methodological character that relates to all elements of the theory<sup>10</sup>.

The system of sections and particular theories in the forensic examination theory is not completely formed, which is largely caused by the insufficient development of the doctrine of forensic activities. It is the individual aspects of this activity that can serve as the basis for distinguishing particular theories.

It is hardly possible to consider as a sufficient methodological basis the fact of the existence of its own, though developed, terminology in forensics, as well as some existing generalisations without disclosure of their contents (specific patterns). The following elements in the structure of the general forensic examination theory can be attributed to the said generalisations of the accumulated theoretical knowledge: the theories of the subject of expert activity and objects of expert activity, the mathematisation of expert activity<sup>11</sup>. However, as has already been mentioned, there is no acceptable definition of forensic activities for the formation of such elements of theory.

Besides, following the generalisation of individual manifestations of a subject matter of forensic examination theory, the synthesis of the methodology is not fully carried out. It should be noted that the methodology of forensic examination theory is its controlling element, the function of which is to determine further development of the theory. It is evident that, in relation to forensic examination theory, specific tasks must be formulated. And not only of a theoretical but also of an applied nature.

In addition to the general forensic examination theory, the practical block should include specific means and methods of forensic activities, based, among other things, on the main tasks and functions that are assigned to the expert divisions

<sup>8</sup> Rossinskaja E.R (Ed.), *Ekspertiza v sudoproizvodstve: uchebnik dlja bakalavrov*. Moskva: Prospekt, 2016, p. 144.

<sup>9</sup> Aver'janova T.V, *op. cit.*, p. 318.

<sup>10</sup> Belkin R.S, *Kurs kriminalistiki*. Moscow: JuNITI-DANA, Zakon i pravo, 2001, p. 456.

<sup>11</sup> Aver'janova T.V, *op. cit.*, p. 62.

(bodies). In criminalistics, for example, the separation of criminalistic equipment, tactics, and techniques provides almost a complete coverage of decisions at various levels of crime investigation activities. At the same time, the questions of expert tactics, legal, scientific, material and other support, the organisation (including management) of forensic activities currently do not find a place in the proposed concepts of the theory of forensic examination. A peculiarity of the development of forensic activity is its organisation at a higher level in the form of the system of public state bodies.

In the solution to the problems indicated in respect of a system of forensic examination theory it is the development of the doctrine of forensic activities that perhaps has the most significant value. This doctrine would allow specifying an object and a subject matter of the theory, defining the grounds for a specification of its methodology and applied components, identifying the areas that deserve the role of particular theories, and also forming the structure of its sections.

As a practical way for optimisation of the system of the theory, it is necessary to consider the broad approach in defining forensic activities, taking into account the various levels on the basis of the systematic, including functional, analysis.

The concept of forensic activities should be based on the philosophical idea of performing actions as social activities. The application of the activity approach also presumes a systematic approach that is specified in relation to social systems.

In this regard, it is natural to recognise that performance of actions when viewed as a social activity has the property of developing systems with a complex structure for which self-organisation is a specific. The structure of the forensic activities can be considered at different levels:

- action (technique, technical operation);
- forensic examination (technology of expert studies);
- a complex of forensic examinations and studies;
- an activity of forensic institution (division);
- an activity of the state forensic bodies system;
- implementation of a uniform state policy in the field of forensic activities.

It is obvious that the circle of participants (subjects) of forensic activities at various levels will differ significantly in a number of characteristics. If at the first level the subject is a forensic expert, then at higher levels the subject structure will become more complicated, supplemented by collective entities, including in the form of a system of state bodies. At the same time, it is only at the lower level that an object and unilateral orientation of activity can be clearly identified in the structure of activity since in other cases there is a mutual complex nature of influence (interaction) which requires a serious and comprehensive study.

The main advantage of the proposed systematisation of the object of the forensic examination theory is the ability to build a stable structure of a theoretical model which does not depend on trends in the practical sphere, as in case of systematisation of particular theories on the basis of classification of classes, kinds, and types of examinations. Besides, this model of forensic activities can cover the whole range of problems currently being studied in theory and provide systematisation of its applied results. This approach can be an effective tool in the solution of problems of creation of a system of the forensic examination theory.

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**Streszczenie.** Artykuł przedstawia problematykę tworzenia teorii badań kryminalistycznych w kontekście procesów zachodzących obecnie w Republice Białorusi (tworzenie jednolitej instytucji eksperckiej, reforma regulacji prawnych, zmiany w działaniach praktycznych). Autor omawia główne przeszkody towarzyszące opracowaniu teoretycznego modelu badań kryminalistycznych. Przeanalizowano kilka podejść do zrozumienia działań kryminalistycznych, w tym ogólną i poszczególne teorie badań kryminalistycznych. Twierdzi się, że podejście do tworzenia systemu poszczególnych teorii na podstawie klasyfikacji badań kryminalistycznych jest niedoskonałe ze względu na brak jednolitego kryterium. Różne koncepcje autorów, prezentujące poszczególne teorie i inne elementy konstrukcyjne, nie do końca spełniają wymagania spójności. W związku z tym, konstruowanie istniejących klasyfikacji opiera się na uogólnieniu praktyki. W rezultacie, pojawienie się nowych rodzajów badań kryminalistycznych wymaga przeklasyfikowania poszczególnych teorii. Taka konstrukcja elementów systemu nie jest praktyczna, a przedstawione niedociągnięcia wynikają z braku całościowego postrzegania działań kryminalistycznych. Autor opracował i zaproponował podejście do zorganizowania działań kryminalistycznych. Może ono służyć jako sposób rozwiązywania problemów systematyzacji elementów i poszczególnych teorii w strukturze teorii badań kryminalistycznych.

**Резюме.** В статье рассматриваются проблемы формирования теории судебной экспертизы с учетом процессов, которые в настоящее время происходят в Республике Беларусь (создание единого экспертного учреждения, реформа законодательства, изменения в практической деятельности). Автор рассматривает основные препятствия, связанные с разработкой теоретической модели судебной экспертизы. Были проанализированы несколько подходов к пониманию

судебно-экспертной деятельности, включая общие и отдельные теории судебной экспертизы. Утверждается, что подход к созданию системы индивидуальных теорий, основанный на классификации судебных экспертиз, несовершенен из-за отсутствия единого критерия. Различные концепции авторов, представляющих отдельные теории и другие структурные элементы, не полностью отвечают требованиям согласованности. В связи с этим, создание существующих классификаций основано на обобщении практики. В результате этого, возникновение новых видов судебной экспертизы требует реклассификации отдельных теорий. Такое формирование элементов системы нецелесообразно, и недостатки, о которых идет речь, вызваны отсутствием понимания судебно-экспертной деятельности как единого целого. Автор разработал и предложил подход к организации судебно-экспертной деятельности. Это может служить способом решения проблем систематизации элементов и отдельных подходов в теории судебной экспертизы.

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