

CHAPTER 3.

DEFINITION AND CLASSIFICATION OF SPECIAL KNOWLEDGE IN THE PREPARATION OF APPLICANTS FOR SPECIALITIES 251 STATE SECURITY and 262 LAW ENFORCEMENT

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Abstract. The article provides a generalisation of scientific knowledge and understanding of specialised knowledge in the current legislation of Ukraine and scientific views of scientists on the issue of unity in the definition of specialised knowledge. The scientific views on the definition of special knowledge are presented, which is understood as a set of modern knowledge in a particular field of science, technology, art and craft obtained as a result of special training or professional experience and used for the purpose of investigating crimes, organising operational and search activities, and performing expert and forensic research. The authors present their own understanding of specialised knowledge as a whole system of information from the field of science, technology and other areas of human activity, as well as a system of techniques and skills acquired by a subject as a result of purposeful, volitional activity with significant costs of time and intellectual effort, which can, in accordance with the procedure established by law, assist the authorities conducting criminal proceedings in the detection and investigation of crimes and in making a lawful, reasonable and fair decision in a criminal case.

The detailed classification of specialised knowledge is carried out, which allows to distinguish the subjects of its application, namely: translator, specialist and expert. In the provisions of the scientific article, the legal status (rights and obligations) is analysed and the basis for compliance of a translator, specialist and expert under the current legislation of Ukraine are described.

Having classified specialised knowledge, the authors conclude that the forms of application of specialised knowledge in criminal proceedings can be classified as follows: through research (pre-expert, including audit, and expert); through the use of technical and applied form (application of specialised knowledge in the conduct of procedural actions); through operational and search activities; through the use of sign and linguistic form (translation) and the advisory form of application of specialised knowledge (recommendations).

Keywords: special knowledge, expert, specialist, state, security, law enforcement, martial law.

The relevance of the topic is caused by the fact that the urgent need to train applicants in the specialities 251 State Security and 262 Law Enforcement in higher education institutions was the signing of the Decree of the President of Ukraine No. 64/2022 "On the introduction of martial law in Ukraine"¹ on 24 February 2022, which stipulates that in connection with the introduction of martial law in Ukraine, temporary restrictions on the rights and legal interests of a person and a citizen may be imposed for the period of martial law, the constitutional rights and freedoms of man and citizen provided for in Articles 30 - 34, 38, 39, 41 - 44, 53 of the Constitution of Ukraine may be restricted, as well as temporary restrictions on the rights and legitimate interests of legal entities may be introduced to the extent necessary to ensure the possibility of introducing and implementing measures of the legal regime of martial law provided for in part one of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law".

The topic of the study is due to the fact that the significant socio-economic and political transformations taking place in our country have revealed the urgent need for changes in the field of legal regulation. The scale of illegal activity poses a real threat to the interests of individuals, the state and national security. Crime in Ukraine is becoming increasingly organised and sophisticated. In committing crimes, scientific and technical means, weapons, and information systems are used. The successful fight against crime requires a set of modern means and methods of detecting, solving and investigating crimes that should exceed the sophistication and technical equipment of criminals.

The problems of using specialised knowledge in pre-trial criminal proceedings have been relevant for decades. At one time, various aspects of this problem were studied: Y.P. Alenin, R.S. Belkin, V.I. Goncharenko, I.V. Hora, O.V. Dulov, A.A. Eisman, V.A. Zhuravel, V.S. Zelenetskyi, P.P. Ishchenko, V.O. Konovalova, V. A. Kolesnyk, O. M. Kolisnychenko, M. P. Kuznetsov, V. K. Lysychenko, V. I. Makhov, Y. K. Orlov, M. V. Saltevsy, M. Y. Sehai, V. Y. Shepitko, and others.

Despite the fact that, in general, the understanding of the essence of the procedural forms of use of special knowledge in criminal proceedings has been achieved, however, the unity of views on the use of the very concept of special knowledge remains controversial.

It is in order to ensure compliance with the requirements of Ukrainian legislation on the legal regime of martial law that the need to train students in the specialities 251 State Security and 262 Law Enforcement has become acute, namely by the Order of the Cabinet of Ministers of Ukraine of 28 February 2022 No. 190-r "On the Early Graduation of Cadets (Students) of the Final Year of Higher Military Education Institutions, Military Training Units of Higher Education Institutions and Institutions of Professional Higher Military Education, Higher Education Institutions with Specific Conditions of Education Belonging to the Sphere of Management of the Ministry of Internal Affairs and the State Emergency Service" of 28 February 2022, it was decided to carry out early graduation with the award of military ranks to graduates, special ranks of mid-level police officers and mid-level civil defence officers with appointment to relevant positions².

In accordance with the approved standard of higher education in the speciality 251 State Security of the field of knowledge: 25 Military Sciences, National Security, State Border Security, first (bachelor's) level of higher education dated 16.08.2023, Order of the Ministry of Education and Science of Ukraine No. 996, the learning objectives are: mastering the theories and methods of response of state special forces and military formations with law enforcement functions to crisis situations that threaten state security; acquiring the ability to solve complex specialised problems and solve practical problems in the field of state security or in the process of education³. We believe

¹Presidential Decree No. 64/2022 "On the introduction of martial law in Ukraine" of 24.02.2022. URL: <https://www.president.gov.ua/documents/642022-41397> (date of access 29.10.2023.)

² By the Order of the Cabinet of Ministers of Ukraine of 28 February 2022 No. 190-p "On the early graduation in 2022 of cadets (students) of the final year of higher military education institutions, military training units of higher education institutions and institutions of professional pre-higher military education, higher education institutions with specific conditions of education that belong to the sphere of management of the Ministry of Internal Affairs and the state emergency service". URL: <https://ips.ligazakon.net/document/KR220190> (date of access 29.10.2023)

³ Standard of higher education in the speciality 251 State Security in the field of knowledge: 25 Military sciences, national security, state border security, first (bachelor's) level of higher education. Order of the Ministry of Education

that achievement of this learning objective is impossible without mastering special (professional) competencies, such as the ability to apply knowledge of the legal principles of state functioning and legal regulation in the field of state security of Ukraine in the context of European and Euro-Atlantic integration, as well as social and legal protection of the security and defence sector of Ukraine, which cannot be applied without mastering special knowledge that forms the basis of legal knowledge in the field of state security of Ukraine.

It is also worth to note that in accordance with the approved standard of higher education in the specialty 262 Law Enforcement, field of knowledge 26 Civil Security, first (bachelor's) level of higher education, dated 30.04.2023, by the Order of the Ministry of Education and Science of Ukraine No. 578, the learning objectives are: training of highly qualified law enforcement specialists capable of solving complex specialised tasks and practical problems of law enforcement, characterised by complexity and uncertainty of conditions.⁴ We believe that the achievement of this learning objective is impossible without the acquisition of special (professional) competencies, such as the ability to take measures to prevent, detect and suppress administrative and criminal offences, measures aimed at eliminating threats to the life and health of individuals and public safety, which cannot be applied without the acquisition of special knowledge that forms the basis of law enforcement knowledge in the field of public order and security.

Considering the problem of the concept and classification of specialised knowledge in the training of students majoring in 251 State Security and 262 Law Enforcement, it should be noted that the forming and development of the rule of law, ensuring human rights and expression of will, the responsibility of the state to citizens and citizens to society are inextricably linked to the strengthening of the legal framework of the state and public life, the strict observance of the rule of law, and the improvement of the fight against crime. The judicial and legal reform being carried out in Ukraine should bring the judicial system, as well as all branches of law, into line with the Constitution and the social and economic changes taking place in society⁵. A qualitative change in crime towards secrecy of its activities, involvement of specialists from various fields of science and technology in committing crimes requires an adequate response from law enforcement agencies. The detection of crimes, their investigation and trial are currently impossible without the widespread use of specialised knowledge, which is generally understood as knowledge in the field of science, technology and art used to obtain evidence by specially trained persons⁶.

Specialised knowledge used in criminal proceedings is characterised by scientific validity, reliability, and the possibility of applying its results to solve the problems facing justice. Establishing the truth in a criminal case is a complex multi-stage procedure that involves the use of a large arsenal of information of all kinds: not only evidential, but also other information that is orientating. The reality of the modern period shows that most of such information comes to the investigator's disposal from persons with special knowledge.

From this point of view, specialised knowledge is divided, firstly, into knowledge developed by a particular science, and, secondly, into methods of obtaining information necessary for the successful investigation of crimes and resolution of criminal cases in courts. Specialised knowledge in criminal proceedings is used to search for, identify, obtain, and fix factual data (information) to be established in the course of proof.

and Science of Ukraine No. 996 of 16.08.2023. URL: <https://mon.gov.ua/storage/app/media/vishcha-osvita/zatverdzeni%20standarty/2023/16.08.2023/251-Derzhavna.bezpeka-996.vid.16.08.2023.pdf>

⁴ Standard of higher education in the specialty 262 Law Enforcement in the field of knowledge 26 Civil Security, first (bachelor's) level of higher education, dated 30.04.23 Order of the Ministry of Education and Science of Ukraine No. 578 URL: <https://mon.gov.ua/storage/app/media/vishcha-osvita/2022/Standarty.Vyshchovi.Osvity/Zatverdzeni.Standarty/01/31/262-Pravookhor.diyaln-bak.31.01.22.pdf> (дата звернення 30.10.2023)

⁵ The Constitution of Ukraine was adopted at the fifth session of the Verkhovna Rada of Ukraine on 28 June 1996. revised on 01.01.2020, basis- 27-IX URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date of access 30.10.2023)

⁶ Goncharenko V.G. Use of data of natural and technical sciences in criminal proceedings. Kiev. - Vishcha Shkola. - 1980. - 254 p.

In the theory of criminal procedure, there is no single definition of specialised knowledge. Nor does the current criminal procedure legislation have a rule-definition defining specialised knowledge. The criminal procedure legislation of Ukraine provides for the use of specialised knowledge in the form of expert examination, participation of an expert and specialist in investigative (detective) actions and covert investigative (detective) actions (Chapter 20 and Chapter 21 of the Criminal Procedure Code of Ukraine, hereinafter referred to as the CPC)⁷.

It should be noted that the forms of use of specialised knowledge in criminal proceedings do not allow defining the very essence of this phenomenon. Therefore, in order to correctly define specialised knowledge, its significance and forms of application in criminal proceedings, it is advisable to analyse the literature and provisions of the criminal procedure legislation of Ukraine. Thus, Article 69 of the CPC of Ukraine stipulates that an expert in criminal proceedings is a person who has scientific, technical or other special knowledge, has the right to conduct an examination in accordance with the Law of Ukraine "On Forensic Expertise" and is entrusted with the task of conducting a study of objects, phenomena and processes containing information about the circumstances of a criminal offence, and to give an opinion on issues arising in criminal proceedings and relating to the scope of his or her knowledge.⁸

Also, in the provisions of Article 71 of the CPC of Ukraine, when defining the concept of a specialist, it is determined that a specialist in criminal proceedings is a person who has special knowledge and skills and can provide consultations, explanations, certificates and conclusions during the pre-trial investigation and trial on issues requiring relevant special knowledge and skills⁹.

The provisions of Article 95 of the CPC of Ukraine, paragraphs 6 and 7, stipulate that the conclusion or opinion of a person giving evidence may be recognised by the court as evidence only if such conclusion or opinion is useful for a clear understanding of the testimony (part of it) and is based on specialised knowledge within the meaning of Article 101 of the CPC of Ukraine.

If a person giving testimony has expressed an opinion or conclusion based on specialised knowledge within the understanding of Article 101 of the CPC of Ukraine, and the court has not declared it inadmissible evidence in accordance with the procedure provided for in part two of Article 89 of the CPC of Ukraine, the other party has the right to question the person in accordance with the rules for questioning an expert.

The provisions of Article 101 of the CPC of Ukraine regulating expert testimony in part 2 stipulate that each party to criminal proceedings has the right to submit to the court an expert opinion based on its scientific, technical or other specialised knowledge¹⁰.

In addition, the provisions of Article 242(1) of the CPC of Ukraine, which regulate the basis for conducting an expert examination, stipulate that an expert examination is conducted by an expert institution, expert or experts engaged by the parties to the criminal proceedings or the investigating judge at the request of the defence in cases and in the manner prescribed by Article 244 of the CPC of Ukraine, if special knowledge is required to clarify the circumstances relevant to the criminal proceedings. It is not allowed to conduct an expert examination to clarify issues of law¹¹.

The question arises as to what is meant by "special knowledge". Many proceduralists understood the importance of clarifying the meaning of the term "special knowledge" and therefore disclosed its meaning.

⁷The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (date of access 30.10.2023)

⁸The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (date of access 30.10.2023.)

⁹The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (дата звернення 30.10.2023 р.)

¹⁰The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (дата звернення 30.10.2023 р.)

¹¹The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (дата звернення 30.10.2023 р.)

V. I. Goncharenko believes that it is knowledge of science, technology, art or craft used to obtain evidential information.¹² Such definitions cannot be considered satisfactory for the reason that they do not contain an indication of the need for theoretical and practical training of persons appointed as experts.

V. M. Galkin defines special knowledge as knowledge acquired as a result of professional education or professional experience¹³.

According to H. M. Nadhornyi, specialised knowledge is the knowledge gained as a result of professional training in scientific, engineering, industrial specialities, as well as other generally known knowledge necessary to resolve issues in the case¹⁴. Such an approach to understanding the term "special knowledge" also does not fully reveal its content, since it says nothing about the areas in which it is used and the difference between this knowledge and all other knowledge.

A. V. Dulov concluded that special knowledge is knowledge that is not sufficiently possessed by the investigator and judge¹⁵. This opinion is objectionable, since it makes the very concept of special knowledge uncertain and does not correspond to the procedural nature of the expert's opinion, since the investigator or court cannot appoint or not appoint an expert examination depending on whether they have the relevant knowledge.

Thus, when a number of authors disclose the concept of "special skills (knowledge)", different terminological shades are revealed, because they, of course, single out one or another, in their opinion, essential feature as the main and defining meaning of the term, taking into account special skills. However, this approach leads to one-sided definitions and does not contribute to the accurate and correct clarification of the meaning of this feature of the expert opinion.

In our opinion, specialised knowledge is knowledge that is not generally known, not generally available, and not widely disseminated; in other words, it is knowledge possessed by a limited number of specialists, and it is obvious that deep knowledge in a field, such as physics, is specialised for a biologist in this sense.

The above definition is one of the first attempts to define the concept of specialised knowledge, launched after the adoption of the CPC of Ukraine in 1961. V. N. Makhov believes that A. A. Eisman correctly emphasised the essential feature of special knowledge, namely, that it is not publicly available and not generally known¹⁶. Thus, specialised knowledge should be distinguished from everyday knowledge, i.e., publicly available and generally known. Everyday knowledge in its totality forms everyday consciousness, which is the practical life consciousness of people (mass and individual) that goes beyond any highly specialised, professional field and is the main everyday cognitive activity and regulator of human behaviour and communication. Thus, everyday consciousness, being a set of everyday knowledge, has the following features:

a) it is a practical consciousness, i.e. a set of knowledge gained as a result of human activity in society;

b) it is not acquired within a highly specialised framework, but outside of it - in society;

c) no special training is required to acquire everyday knowledge - it is the result of any person's life activity and is formed in the course of accumulation of life experience;

d) everyday knowledge is accumulated on a daily basis, often regardless of the will and desire of the subject.

Based on the above, the definition of specialised knowledge should include features that distinguish it from everyday knowledge.

Describing the special knowledge used in criminal proceedings, A. A. Eisman points out that knowledge in the field of legislation and the science of law, otherwise - legal knowledge, does

¹²Goncharenko V.I. Use of data of natural and technical sciences in criminal proceedings. Kiev. - Vishcha Shkola. - 1980. - 254 p.

¹³ Galkin V.M. Means of proof in the Soviet criminal process. VNIIE. - 1968, part 2 - p.8-15.

¹⁴Nadgorny G.M. Gnoseological aspects of the concept of "special knowledge". - In Collected Works: Criminalistics and Forensic Expertise. Kiev, Higher School, vol. 21, - 1980.- p.35 - 43.

¹⁵ Dulov A.V. Questions of the theory of forensic expertise. Minsk: Izd vo Belarus. un., - 1959. - 316 p.

¹⁶Makhov V.N. The use of knowledge of knowledgeable persons in the investigation of crimes: Monograph. - Izd-vo RUDN, 2000. - 296 p.

not belong to special knowledge in the sense in which this concept is used in the law. The composition and level of specialised knowledge are fluid. It is also necessary to distinguish specialised knowledge from the professional knowledge and experience of the investigator himself¹⁷.

Clarifying this statement of A. A. Eisman, Z. M. Sokolovskyi rightly noted that the concept of special knowledge cannot be made dependent on whether specific persons, such as investigators and judges, possess it, and therefore an attempt to define special knowledge only by contrasting it with common life, commonly understood, commonly known¹⁸. Specialised knowledge should be understood as a set of information obtained as a result of professional training, which enables its holder to resolve issues in a particular field.

Specialised knowledge is usually understood as knowledge possessed by a person in a particular field, as V. I. Goncharenko points out and emphasises that "specialised knowledge should be much broader and deeper than knowledge in similar fields of other persons; specialised knowledge does not include knowledge that is generally known and publicly available".¹⁹

Probably, based on such, in our opinion, insufficiently accurate definitions of the concept of special knowledge, some scholars argue that the knowledge and practical experience that proved to be necessary for a comprehensive, complete and objective clarification of the circumstances that are the subject of proof in a criminal case in criminal proceedings is commonly referred to as special knowledge.

According to the above definition, the professional knowledge of an investigator is special knowledge, since it is primarily necessary for a comprehensive, complete and objective clarification of the circumstances that are the subject of proof. It is true that following this definition, although not denying it, scholars have presented the following understanding: "The concept of "special knowledge" in criminal procedure has emerged and is used as a counterdictor to the concept of "knowledge". The term is used to refer to any possible set of knowledge (practical experience, skills), except for the generally known knowledge, as well as knowledge in the field of law, in particular, without taking into account the training and practical skills related to the criminal law assessment of the actual circumstances of the case and the resolution of procedural issues". It should be noted that this definition and the comments to it do not mention the essential feature of special knowledge used in the investigation of crimes: it is knowledge acquired in the course of preparation for a particular work activity and mastered in the course of this activity, required in a particular profession; in short, it is professional knowledge, except for the professional knowledge of the investigator himself.

Many scholars emphasise the professionalism of specialised knowledge used in legal proceedings. They believe that the term "special" usually refers to the field of professional knowledge used by experts and specialists, which is not generally known, accumulated in the everyday life experience of a person, and is not legal. The main emphasis in the definition is placed on the fact that specialised knowledge is that which is obtained as a result of professional training and experience in a particular activity.

There is also a definition in procedural science that "Special knowledge in civil procedure means such knowledge that is beyond the scope of generally known generalisations arising from human experience". As for the special knowledge used in criminal proceedings, we believe that it should be understood as a set of modern knowledge in a particular field of science, technology, art and craft obtained as a result of special training or professional experience and used for the purpose of investigating crimes, organising operational and search activities, performing expert and forensic

¹⁷ . Eisman A.A. Expert's Conclusion. Structure and scientific substantiation. "Yuridicheskaya Literatura", 1967. - 147 p..

¹⁸ Sokolovsky Z.M. The concept of special knowledge; to the question of the basis for the appointment of expertise. In book: Criminalistics and Forensic Expertise, vol.6 Kiev; ed. Izd. Department of the Ministry of Internal Affairs of the Ukrainian SSR, 1969. - P.199-206.

¹⁹Goncharenko V.I. Use of data of natural and technical sciences in criminal proceedings. Kiev. - Vishcha Shkola. - 1980. - 254 p.

research.

In this definition, in our opinion, there are some inaccuracies. In particular, it does not clearly state the purpose of using specialised knowledge. The purpose here, in our opinion, is to assist the investigator and the court in establishing the truth in the case in the instances and in the manner prescribed by law.

Activities related to the investigation of criminal cases and their consideration in court, including those related to the use of specialised knowledge, are clearly regulated by law. The use of specialised knowledge outside the cases and procedure established by law in certain situations is useful for putting forward versions, developing tactical decisions, but has no evidentiary value. It causes violations of the provisions of the Criminal Procedure Code, hereinafter referred to as the CPC, and the loss of information that could be of evidentiary value.

Specialised knowledge used in the fight against crime also includes knowledge in the field of operational and investigative activities. In criminal proceedings, this activity is subordinate to the criminal procedure activity, and it is not regulated by the criminal procedure legislation. Therefore, V. N. Makhov objects to the inclusion of this activity in the composition of special knowledge implemented in criminal proceedings²⁰. Proceeding from the correct reference to the fact that operational and investigative activities are regulated by another law, and not by the criminal procedure law, V. N. Makhov concludes that it is impossible to use the data obtained as a result of operational and investigative activities in a procedural manner. However, the current legislation regulating the procedure for conducting the ORD allows, under certain conditions, to use the data obtained as a result of its conduct in criminal proceedings²¹.

H. V. Sibilova also notes the need to develop clear criteria for the admissibility of evidence based on data obtained during operational and investigative activities²².

In our opinion, it is necessary to define certain criteria for their admissibility, for which it is necessary to establish:

- whether the unit or body authorised to do so (Article 5 of the Law of Ukraine On Operational and Investigative Activities) carried out the operational and investigative activity: National Police - criminal and special police units; State Bureau of Investigation - operational, operational and technical, internal control, ensuring personal security; Security Service of Ukraine - operational units of the Central Directorate, regional bodies and military counterintelligence bodies; Foreign Intelligence Service of Ukraine - agent intelligence, operational and technical, internal security; State Border Guard Service of Ukraine - intelligence body of the central executive body that implements state policy in the field of state border protection(agent intelligence, operational and technical, internal security), units of internal security and personal security, operational documentation, operational and search and operational and technical; the State Protection Department - a unit of operational security exclusively for the purpose of ensuring the security of persons and objects subject to state protection; bodies and institutions of penitentiary and pre-trial detention centres of the State Criminal Executive Service of Ukraine; the intelligence agency of the Ministry of Defence of Ukraine - operational, operational and technical, personal security; the National Anti-Corruption Bureau of Ukraine - detectives, operational and technical, internal control; the Bureau of Economic Security of Ukraine - detective units, operational and technical units²³;

It is important to note that it is prohibited for other units of the above bodies, units of other ministries, departments, public and private organisations and individuals to conduct operational and investigative activities.

²⁰ Makhov V.N. The use of knowledge of informed persons in the investigation of offences: Monograph. - Izd-vo RUDN, 2000. - 296 p.

²¹ Makhov V.N. Use of knowledge of informed persons in crime investigation: Monograph. - PFUR Publishing House, 2000. - 296 p.

²² Sibileva N.V. Admissibility of evidences in the Soviet criminal process. - K. 1990. - 114 p

²³ The Law of Ukraine "On Operational and Investigative Activities" of 18 February 1992 No. 2135-XII. Revised on 31.03.2023, basis - 2849-IX. URL: <https://zakon.rada.gov.ua/laws/show/2135-12#Text> (date of access 30.10.2023.)

- whether this information was obtained by means of methods, an exhaustive list of which is provided for in Article 8 of the Law of Ukraine "On Operational and Investigative Activities", namely

decision-making on conducting operational and investigative measures, submission and consideration of relevant petitions, conducting operational and investigative measures, recording and using their results, conducting these measures before the investigating judge's ruling and other issues of their conduct are regulated in accordance with the provisions of Chapter 21 of the Criminal Procedure Code of Ukraine, taking into account the specifics established by this Law regarding the purpose of conducting operational and investigative measures, the subject of initiating and conducting these measures, justification of the petition for their conduct and the basis for its satisfaction by the investigating judge, use of the results of operational and investigative measures and other issues related to the specific purpose of their conduct. Decision-making on operational and investigative measures that do not require the permission of the investigating judge or the decision of the prosecutor is carried out by the head of the relevant operational unit or his deputy with notification of the decision to the prosecutor.

- whether there was a court permit for such operational and investigative actions as covert entry into a residential premises, visual surveillance in it; removal of information from communication channels; control of telegraphic and postal items (Article 8 of the Law of Ukraine "On Operational and Investigative Activities").

Covert inspection of publicly inaccessible places, housing or other property of a person, audio and video control of a person, audio and video control of a place, surveillance of a person, collection of information from electronic communication networks, electronic information networks, seizure of correspondence, its inspection and confiscation, and identification of the location of an electronic device are carried out on the basis of a ruling of an investigating judge issued at the request of the head of the relevant operational unit or his/her deputy, agreed with the prosecutor. These measures are used exclusively for the purpose of preventing the commission of a serious or especially serious crime, preventing and suppressing terrorist acts and other attacks by special services of foreign states and organisations, if it is impossible to obtain information in any other way²⁴.

We cannot agree with the opinion of V. N. Makhov, who excludes from the definition of specialised knowledge used in criminal proceedings the use of specialised knowledge in the conduct of the investigative and pre-trial investigation. This is why the definition of specialised knowledge proposed by this author is incomplete, namely: "Special knowledge in criminal proceedings is knowledge inherent in various types of professional activity, except for knowledge that is professional for the investigator and judge, used in the investigation of crimes and examination of criminal cases in court in order to facilitate the establishment of the truth in the case in instances, forms and procedure determined by the criminal procedure law"²⁵. V. N. Makhov emphasises that knowledge is professional knowledge obtained as a result of special, professional training. In our opinion, such a statement is not entirely acceptable for criminal proceedings. After all, the profession, as is well known, is understood as a type of labour activity (knowledge) that requires certain training and is a source of livelihood (in other definitions - "usually a source of livelihood"). This notion implies three features of a profession: occupation, certain training and material income. However, a profession as a human activity cannot be outside the social sphere, since it accumulates work experience and contains a sequence (continuity) in training. Therefore, it also has a social content, which is carried by specific people. They form the micro-environment and relationships in it, maintain and develop the prestige of their profession and team, develop professional vocabulary and professional ethics. This leads to the fourth feature of the profession - the connection of an individual with the social and professional environment.

²⁴The Law of Ukraine "On Operational and Investigative Activities" of 18 February 1992 No. 2135-XII. Revised on 31.03.2023, basis - 2849-IX. URL: <https://zakon.rada.gov.ua/laws/show/2135-12#Text> (date of access 30.10.2023)

²⁵Makhov V.N. The use of knowledge of informed persons in the investigation of crime: Monograph. - Izd-vo PFUR, 2000. - 296 p.

Within the concept of profession, such categories as "speciality" and "qualification" exist and are being formed. The former includes a set of theoretical knowledge and practical skills that enables a person to do a certain job, while the latter determines the quality of a specialist's training in general. This is important to take into account, as these concepts are necessary in the analysis of professionalism.

From the above considerations, it is easy to see that professional training, as a result of which a subject acquires special knowledge, is associated with the acquisition of a certain profession and qualification. As for criminal proceedings, the specialised knowledge used in them is not necessarily acquired by the holders of this knowledge as a result of professional training. Knowledge used in criminal proceedings may be acquired as a result of a hobby. This applies, for example, to knowledge in the field of philately, bonistics, etc. This knowledge is not professional, although it is undoubtedly special, as it requires special theoretical training and practical experience in this area of human activity. Thus, not all specialised knowledge used in criminal proceedings is professional knowledge, although a significant part of specialised knowledge is indeed professional knowledge.

At the same time, as already mentioned, specialised knowledge in criminal procedure differs from everyday knowledge. Their main difference is that to acquire everyday knowledge, it is enough to live in society. As a rule, no purposeful efforts are required to acquire it. Specialised knowledge, regardless of whether it is related to professional training or not, requires targeted and purposeful efforts to acquire it, as well as significant time expenditure by the subject.

Thus, special knowledge in criminal proceedings is the knowledge of a subject acquired as a result of purposeful, volitional activity, with significant costs of time and intellectual efforts, capable of providing officials and bodies conducting criminal proceedings with assistance in establishing the circumstances for the successful resolution of criminal proceedings in accordance with the procedure established by law.

The preceding statement shows that procedural scholars speak about the involvement of persons with special knowledge in the investigation and consideration of criminal cases, and use the terms "special knowledge" and "special cognition". Comparing these terms, G. M. Nagorny believes that the term "special knowledge" is more consistent with the conceptual apparatus of modern epistemology, which distinguishes between the concepts of "knowledge" (a product of labour and social life of people) and "cognition" (the process of reflection, reproduction of reality in human thinking)²⁶. The same opinion is shared by some scholars who define special knowledge in criminal procedure as a system of information obtained as a result of scientific and practical activities in certain fields and recorded in scientific literature, methodological manuals, instructions, etc., and special knowledge as knowledge obtained by the relevant persons as a result of theoretical and practical training in a certain type of activity, in which they also acquired the necessary skills to carry out it. It is difficult to agree with the latter. Neither the legislator nor the law enforcer is interested in how a person engaged as an expert or specialist acquired special knowledge. They are primarily interested in whether they have this knowledge and whether they can apply it in criminal proceedings.

Therefore, we should proceed from the methodological position that there are two interdependent aspects of cognition: 1) the system of knowledge; 2) the activities of specialists aimed at increasing, obtaining new knowledge and applying it²⁷.

In this regard, the position of T. V. Sakhnov, who believes that the totality of knowledge is more accurately reflected by the term "knowledge", while cognition covers the process of achieving knowledge. Therefore, special knowledge as a procedural category implies its use for legal purposes in a certain procedural form²⁸. Moreover, in criminal proceedings, both specialised knowledge is used, for example, when a specialist participates in investigative actions, and specialised cognition -

²⁶ Nadgorny G.M. Gnoseological aspects of the concept of "special knowledge". - In Collection: Criminalistics and Forensic Expertise. Kiev, Higher School, vol. 21, - 1980.- P.35 - 43.

²⁷ Forensic examination: legal regulation and scientific commentary: Study guide. - Kharkiv, 2004. 414 p.

²⁸ Sakhnova T.V. Forensic expertise. - Gorodets. 1999. - 236 p.

when conducting an expert examination. Therefore, the term "knowledge" in criminal proceedings should be used to refer to the availability of a certain amount of knowledge and skills, and "cognition" should be understood as the process of applying the knowledge that a person possesses to solve the tasks of criminal proceedings.

One more point should be emphasised. It is unlikely that the use of specialised knowledge should be limited to proving. After all, proof is a special case of cognition. The use of the concept of "cognition" rather than "proof" in determining the forms of use of special knowledge is due to the fact that the establishment of objective truth in a case is ensured not only in the course of proof, as a special case of cognition, which has a clearly defined procedural form, but also by carrying out various actions by a wide range of persons, the results of which, from the point of view of criminal proceedings, have no evidentiary value.

Taking into account this criterion, specialised knowledge can be of both procedural and non-procedural nature. In the procedural form, specialised knowledge may be used by persons vested with procedural powers or relevant procedural rights and obligations. Thus, the subjects of the use of specialised knowledge are: 1) officials and bodies conducting criminal proceedings (person conducting the inquiry, investigator, prosecutor, court); 2) persons with special knowledge in the field of science, technology or art involved in criminal proceedings (experts, specialists, translators) 3) participants in criminal proceedings (suspect, accused, defendant, defence counsel, victim, civil plaintiff, civil defendant and their representatives); 4) other persons involved in criminal proceedings (witnesses, court clerk, etc.). The ways of obtaining specialised knowledge by the above-mentioned persons may vary. For example, an investigator acquires knowledge of legal disciplines in the course of studying at a higher education institution. However, this does not exclude the acquisition of specialised knowledge, and not only legal knowledge, in the course of professional activity, as well as through self-education. An expert also has a certain amount of special knowledge gained in the course of study, but in the course of professional activity he or she may acquire new special knowledge that is the product of professional experience, as well as communication with persons conducting criminal proceedings.

Specialised knowledge used in criminal proceedings can also be subdivided depending on the science from which it is obtained. This includes data from natural, technical and human sciences. The division of sciences into these three groups is based on the ratio of objective and subjective in them. Objectivity prevails in the natural sciences. Their task is to identify and formulate the laws of nature. Therefore, natural sciences are based on empirical research using mathematical and other "exact" methods. The laws formulated by these sciences are intended to reflect objective phenomena, processes, and conditions.

The technical sciences develop ways and methods of influencing the environment in order to obtain a favourable social result. Therefore, the technical sciences have approximately equal proportions of objective and subjective aspects.

As for the humanities sciences, they study such a complex and historically changing object as a human being, his or her relations with other people and society as a whole, his or her needs and interests. Therefore, the subjective component prevails in the humanities.

An analysis of the relevant provisions of the Criminal Procedure Law leads to the conclusion that the legislator's main objective is to regulate the procedure for application of knowledge gained in natural and technical sciences in criminal proceedings. It is assumed that such knowledge may be possessed by an expert and a specialist.

Expertise is appointed to: determine the cause of death; determine the severity and nature of bodily injuries; determine the mental state of the suspect in the presence of information that raises doubts about his or her sanity, limited sanity; determine the age of the person, if it is necessary to decide whether to bring him or her to criminal liability, and it is impossible to obtain this information in any other way; determine the amount of material damage if the victim cannot determine it and has not provided a document confirming the amount of such damage, the amount of non-property damage, environmental damage caused by a criminal offence (part 1 of Article 242 of

the CPC of Ukraine)²⁹.

The literature has rightly drawn attention to the fact that in order to appoint an expert examination, there should be a need to use not any, but only scientific knowledge³⁰. P. F. Pashkevych, specifying the basis for the appointment of an expert examination, wrote: "Expertise is appointed in cases where the circumstances relevant to the case cannot be identified without special scientific research, accompanied by an expert opinion on their results"³¹. The fact that expertise is a research is mentioned by some scholars³².

At the same time, these authors do not disclose the concept of "research", which allows to clearly distinguish expertise from other forms of application of special knowledge in criminal proceedings.

As a rule, research is understood as the process of developing new knowledge, one of the types of cognitive activity. The purpose of examination, as a type of cognition, is to identify the essential aspects of the object of study, which is understood as the main determinant of the subject, due to the deep necessary internal connections and development trends and cognised at the level of theoretical thinking³³. Therefore, we can talk about the need to appoint an expert examination to identify "hidden" information, i.e. information that is not available for direct perception³⁴. Having identified the essential aspects of the subject of research, the expert, being a specialist in a particular field of knowledge, explains them in his/her opinion, using both empirical and theoretical thinking methods.

It seems that research activity is characteristic only of expertise and is absent in all other forms of application of specialised knowledge in criminal proceedings. Therefore, we cannot agree with Y. K. Orlov, who believes that a specialist participating in investigative actions also conducts research, which differs from expert research in the visibility of facts that are perceived, are publicly available and understandable to all participants in investigative actions³⁵. The actions of a specialist in this case cannot be recognised as research, since they do not reveal the essential characteristics of the object. The specialist only explains publicly available facts that are perceived by everyone, although such perception is sometimes ensured by technical means. Specialist knowledge is knowledge of phenomena, not essence; it is empirical in nature. The explanatory function performed by an expert, unlike that of a specialist, allows us to understand the essential, significant "internal" qualities of an object. They (essential qualities) become available to the subjects of criminal proceedings only with the help of an expert opinion, which sets out the essence of the object of study in verbal forms accessible to non-specialists. Thus, the expert's activity is aimed at establishing the essential, special, individually specific features of objects, processes, phenomena, conditions of objective reality through the application of scientifically sound methods in combination with empirical and theoretical forms of implementation of scientific knowledge³⁶. The specialist, using his/her special knowledge and skills, is obliged to assist the investigator in identifying, securing and confiscating evidence during the conduct of investigative actions (Art. 128¹ of the CPC of Ukraine). The current status of crime and the need to combat it require further improvement of the procedural position of a specialist.

We believe that, first of all, the possibility of involving a specialist in criminal proceedings

²⁹The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (date of access 30.10.2023.)

³⁰ Sokolovsky Z.M. The concept of special knowledge; to the question of the basis for the appointment of expertise. In book: Criminalistics and Forensic Expertise, vol.6 Kiev; ed. Izd. Department of the Ministry of Internal Affairs of the Ukrainian SSR, 1969. - P.199-206.

³¹ Pashkevich P.F. Procedural law and efficiency of criminal proceedings. Yurid. lit. 1984. - 176 p.

³² Arseniev V.D. Zablotsky V.G. The use of special knowledge in establishing the actual circumstances of a criminal case. - Krasnoyarsk University - 1986. - 153 p.

³³ Essence and phenomenon. - K.: "Naukova Dumka". 1987. - 486 p.

Sheifer S.A. Collecting evidence in the Soviet criminal process. methodological and legal problems. Saratov: Saratov University Publishing House. 1986. - 171 p.

³⁵ Orlov Y.K. Expertise production in criminal proceedings. - Yurid. lit. 1982. - 83 p.

³⁶ Filin D.V., Knyazev V.A., Zinchenko V.N. On the issue of forms of using special knowledge in criminal proceedings. Problems of socialist lawfulness. № 26. Kharkov. - 1991. - P.110-115

at any stage of the criminal process, starting with the pre-trial investigation, a stage of criminal proceedings that begins from the moment the information about a criminal offence is entered into the Unified Register of Pre-trial Investigations, should be enshrined in law. Currently, specialists do not participate in this stage, but Article 214 of the CPC of Ukraine does not contain a direct indication of such a possibility.

Practice shows that investigators quite often seek the assistance of a specialist not only in conducting investigative but also other procedural actions, as well as for advice on issues in which the specialist is knowledgeable. It seems advisable to legislate the possibility of obtaining expert advice not only by the investigator, prosecutor, court, but also by other participants in the process.

During the examination of evidence, the court has the right to use verbal consultations or written explanations of the expert provided on the basis of his/her special knowledge.

The expert may be asked questions about the essence of the oral consultations or written explanations provided. The person at whose request the specialist was engaged is the first to ask questions, followed by other persons involved in the criminal proceedings. The court presiding officer has the right to ask the expert questions at any time during the examination of evidence³⁷.

V.M. Bykov believes that a specialist's research is based only on an external inspection of the object³⁸. However, as mentioned above, the expert does not conduct any research, his opinion is advisory.

Therefore, Chapter 4 of the CPC of Ukraine, Evidence and Proof, defines evidence in criminal proceedings as factual data obtained in accordance with the procedure provided for by this Code, on the basis of which the investigator, prosecutor, investigating judge and court establish the presence or absence of facts and circumstances relevant to criminal proceedings and subject to proof.

Procedural sources of evidence include testimony, material evidence, documents, and expert opinions.

Relevant evidence is evidence that directly or indirectly confirms the existence or absence of circumstances that must be proved in criminal proceedings and other circumstances relevant to criminal proceedings, as well as the reliability or unreliability, possibility or impossibility of using other evidence.

Evidence is deemed admissible if it is obtained in accordance with the procedure established by the CPC of Ukraine.

Inadmissible evidence cannot be used in making procedural decisions and cannot be relied upon by the court in making a judgement.

It is worth emphasising the inadmissibility of evidence obtained as a result of a significant violation of human rights and freedoms.

Evidence obtained as a result of a material violation of human rights and freedoms guaranteed by the Constitution and laws of Ukraine, international treaties ratified by the Verkhovna Rada of Ukraine, as well as any other evidence obtained through information obtained as a result of a material violation of human rights and freedoms, is inadmissible.

The court is obliged to recognise the following acts as significant violations of human rights and fundamental freedoms:

- 1) carrying out procedural actions that require prior permission of the court without such permission or in violation of its essential conditions;
- 2) obtaining evidence as a result of torture, cruel, inhuman or degrading treatment or threats of such treatment;
- 3) violation of a person's right to defence;
- 4) obtaining testimony or explanations from a person who has not been informed of his/her right to refuse to testify and not to answer questions, or obtaining them in violation of this right;
- 5) violation of the right to cross-examination;

³⁷The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (дата звернення 30.10.2023 р.)

³⁸Bykov V.M. Specialist's conclusion and testimony as new types of evidence // Law and Politics - 2006. - №3. - P. 134.

We emphasise that inadmissible evidence is also obtained:

- 1) from the testimony of a witness who was later recognised as a suspect or accused in the criminal proceedings;
- 2) after the criminal proceedings have been initiated by the pre-trial investigation or prosecutor's office exercising their powers not provided for by the CPC of Ukraine to ensure pre-trial investigation of criminal offences;
- 3) during the execution of the decision on the permission to search a person's dwelling or other property in connection with the non-admission of the advocate to this investigative (search) action. The advocate shall prove the fact of non-admission to participate in the search in court during the court proceedings;
- 4) during the execution of the decision on the permission to search a person's dwelling or other property, if such a decision is made by the investigating judge without full technical recording of the meeting.

The evidence provided for in this Article shall be declared inadmissible by the court in any court proceedings, except for proceedings where the issue of liability for the commission of the said significant violation of human rights and freedoms as a result of which such information was obtained is being decided.

It is worth noting that during martial law, the provisions of this Article shall be applied with due regard to the peculiarities set forth in Article 615 of the CPC of Ukraine.

It is worth noting that the inadmissibility of evidence and information relating to the identity of the suspect or accused is determined by the following provisions: Evidence relating to the criminal record of the suspect or accused or the commission of other offences that are not the subject of this criminal proceeding, as well as information about the nature or individual character traits of the suspect or accused are inadmissible to prove guilt.

Evidence and information provided for in part one of this article may be recognised as admissible if:

- 1) the parties agree that this evidence is admissible;
- 2) they are submitted to prove that the suspect, accused acted with a certain intent and motive or had the opportunity, training, knowledge necessary for the commission of the relevant criminal offence, or could not have been mistaken about the circumstances under which he or she committed the relevant criminal offence;
- 3) they are submitted by the suspect or accused;
- 4) the suspect or accused used such evidence to discredit the witness.

Evidence of a certain habit or usual business practice of the suspect, accused is admissible to prove that a certain criminal offence was consistent with this habit of the suspect, accused³⁹.

The current CPC of Ukraine in Article 88-1 regulates the inadmissibility of evidence obtained in cases of recognition of unjustified assets and their recovery for the benefit of the state, as well as in the procedure of a one-time (special) voluntary declaration.

Evidence obtained from the defendant in the proceedings for the recognition of unjustified assets and their recovery for the benefit of the state cannot be used to prove the guilt of a suspect or person accused of committing criminal offences.

Documents submitted by a person as part of a one-time (special) voluntary declaration in accordance with subsection 9-4 "Peculiarities of application of one-time (special) voluntary declaration of assets of individuals" of Section XX of the Tax Code of Ukraine, in particular, a one-time (special) voluntary declaration, cannot be used to prove the guilt of a suspect accused of committing criminal offences under Articles 212, 212-1 of the Criminal Code of Ukraine, within the scope and value of the declared assets, specified in the one-time (special) voluntary declaration as the basis for the calculation of the one-time (special) voluntary declaration fee.

It is worth noting that only the court decides on the admissibility of evidence during its evaluation in the courtroom when making a court decision.

³⁹The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis- 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (date of access 30.10.2023.)

If the obvious inadmissibility of evidence is established during the trial, the court declares this evidence inadmissible, which leads to the impossibility of examining such evidence or termination of its examination in court, if such examination has been initiated.

The participants in criminal proceedings, the victim, and the representative of the legal entity in respect of which the proceedings are conducted have the right to submit petitions for the recognition of evidence as inadmissible during the trial, as well as to raise objections to the recognition of evidence as inadmissible.

A decision of a national court or an international judicial institution that has entered into force and establishes a violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine has prejudicial effect for the court that decides on the admissibility of evidence⁴⁰.

It is clear that documents drawn up by a specialist must have a clearly developed procedural form and contain: an introductory part with the name of the document, date, indication of the place of drawing up this document, in which case and at whose request it was drawn up; a descriptive part and a resolution part, including the conclusions of the specialist⁴¹.

The investigator himself or herself may also use special knowledge in conducting criminal proceedings. Firstly, this is legal knowledge, which includes knowledge of the law and the procedure for its application, possession of ways and methods of using knowledge of applied legal sciences: forensic accounting, legal psychology, etc. At the same time, the investigator uses knowledge in the field of applied legal sciences to make decisions on the appointment of examinations and evaluation of their conclusions, as well as in the conduct of certain investigative actions, such as interrogations, searches, inspections, etc.

With regard to the use of specialised knowledge by participants in criminal proceedings and persons involved in criminal proceedings, they have the right to use this knowledge, as well as technical means, only with the permission of the officials conducting the criminal proceedings.

The current criminal procedure law does not contain an exhaustive list of specialised knowledge used in criminal proceedings. V. Goncharenko, defining specialised knowledge (before knowledge in the field of science and technology) and knowledge in the field of art⁴². It seems that the path chosen by V. Goncharenko is not the best one. It is simply impossible to list all types of specialised knowledge; they are clearly not limited to knowledge in science, technology and art. It can be, for example, non-scientific, though hardly accessible knowledge, which includes some types of hobbies, etc. With this in mind, the legislative work on the development of the new CPC is indicative.

Articles 68, 69 and 71 of the CPC are devoted to the subjects of criminal proceedings with specialised knowledge - an interpreter, specialist, expert.

If it is necessary to translate explanations, testimony or documents in criminal proceedings, the parties to the criminal proceedings or the investigating judge or court shall engage an appropriate interpreter (sign language interpreter).

The interpreter has the right to:

- 1) ask questions for the purpose of clarification for the purpose of correct interpretation
- 2) to get acquainted with the protocols of procedural actions in which he/she participated and to submit comments to them
- 3) to receive reward for the translation performed and compensation for expenses related to his/her involvement in criminal proceedings;
- 4) apply for security in cases provided for by law.

An interpreter is obliged to:

- 1) appear when summoned by the investigator, prosecutor, investigating judge or court;

⁴⁰ The Code of Criminal Procedure of Ukraine was adopted on 13 April 2012 No. 4651-VI. Revised on 24.08.2023, basis - 3341-IX. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (date of access 30.10.2023.)

⁴¹ Danilov L.S., Gromov N.A. On the universality of the term "specialist". Law and Politics. - 2006. - №2 - P.81.

⁴² Goncharenko V.G. Use of data of natural and technical sciences in criminal proceedings. Kiev. - Vishcha Shkola. - 1980. - 254 p.

2) recuse himself/herself in the circumstances provided for by this Code;
3) make a complete and correct translation, certify the correctness of the translation with his/her signature;

4) not to disclose without the permission of the investigator, prosecutor or court information directly related to the essence of the criminal proceedings and procedural actions performed (performed) during them, which became known to the interpreter in connection with the performance of his/her duties.

Prior to the commencement of the procedural action, the party to the criminal proceedings that engaged the interpreter, or the investigating judge or court, shall verify the identity and competence of the interpreter, ascertain his/her relationship with the suspect, accused, victim, witness, and explain his/her rights and obligations.

For deliberately incorrect translation or for refusing to perform their duties without valid reasons, the interpreter shall be liable as established by law.

An expert in criminal proceedings is a person who has scientific, technical or other specialised knowledge, is entitled to conduct an expert examination in accordance with the Law of Ukraine "On Forensic Examination" and is entrusted with the task of examining objects, phenomena and processes containing information about the circumstances of a criminal offence and giving an conclusion on issues arising in criminal proceedings and relating to his or her area of expertise.

Persons who are in official or other dependence on the parties to criminal proceedings or the victim may not be experts.

The expert has the right to:

1) to get acquainted with the materials of criminal proceedings related to the subject matter of the study;

2) file a request for additional materials and samples and perform other actions related to the examination;

3) to be present during the performance of procedural actions related to the subjects and objects of research;

4) to state in the expert's report the information revealed in the course of its conduct that is relevant to the criminal proceedings and about which he/she was not asked questions;

5) to ask questions related to the subject and objects of the study to persons involved in criminal proceedings;

6) to receive reward for the work performed and compensation for expenses related to the examination and summons to provide explanations or testimony, if the examination is not the official duty of the person involved as an expert;

7) file a request for security in cases provided for by law;

8) exercise other rights provided for by the Law of Ukraine "On Forensic Expertise".

The expert has no right to collect materials for the examination on his/her own initiative. The expert may refuse to give an opinion if the materials submitted to him/her are insufficient to perform his/her duties. The application for refusal must be motivated.

The expert is obliged to:

1) personally conduct a full investigation and give a reasoned and objective written opinion on the questions posed to him/her, and, if necessary, explain it;

2) appear in court and answer questions during interrogation;

3) ensure the safety of the object of examination. If the study involves the complete or partial destruction of the object of examination or a change in its properties, the expert must obtain permission from the person who engaged the expert;

4) not to disclose without the permission of the party to the criminal proceedings that engaged him/her or the court the information that he/she has become aware of in connection with the performance of his/her duties, or not to inform anyone other than the person who engaged him/her or the court about the course of the examination and its results;

5) recuse himself/herself in the circumstances provided for by this Code.

The expert shall immediately notify the person who engaged him or her or the court that commissioned the examination of the impossibility of conducting the examination due to the lack of necessary knowledge or without the involvement of other experts.

In case of doubt as to the content and scope of the assignment, the expert must immediately file a request with the person who appointed the expert or the court that ordered the expert to clarify it or notify the person who appointed the expert of the impossibility of conducting the expert examination on the question posed or without the involvement of other persons.

An expert shall be liable for knowingly giving a false conclusion, refusing to perform his/her duties in court without valid reasons, or failing to perform other duties as prescribed by law.

A specialist in criminal proceedings is a person who has special knowledge and skills and can provide consultations, explanations, certificates and conclusions during the pre-trial investigation and court proceedings on issues requiring relevant special knowledge and skills.

A specialist may be engaged to provide direct technical assistance (photographing, drawing up diagrams, plans, drawings, taking samples for examination, etc.) by the parties to the criminal proceedings during the pre-trial investigation and by the court during the trial, as well as to provide conclusions in cases provided for in paragraph 7 of part four of this Article.

The parties to criminal proceedings have the right to file a motion during the trial to involve a specialist or to use his/her explanations and assistance.

The expert has the right to:

1) ask questions to the participants of the procedural action with the permission of the party to the criminal proceedings that engaged him/her or the court;

2) use technical means, devices and special equipment

3) draw the attention of the party to the criminal proceedings that engaged him/her or the court to the specific circumstances or features of things and documents;

-1) to give information in the conclusion that is relevant to the criminal proceedings and in respect of which he/she was not asked questions;

4) to get acquainted with the protocols of procedural actions in which he/she participated and to submit comments to them;

5) receive reward for his work and compensation for expenses related to his involvement in criminal proceedings;

6) apply for security in cases provided for by law;

7) to provide conclusions on issues within his/her area of expertise during pre-trial investigation of criminal offences, including in cases provided for in part three of Article 214 of the CPC of Ukraine;

8) to provide certificates on issues within his/her area of expertise in cases stipulated by part three of Article 245-1 of the CPC of Ukraine.

The specialist is obliged to:

1) arrive when summoned by the investigator, coroner, prosecutor, court and have the necessary technical equipment, devices and instruments;

2) to follow the instructions of the party to the criminal proceedings that engaged him/her or the court and give explanations on the questions asked;

3) not to disclose information that directly relates to the essence of criminal proceedings and procedural actions that are being carried out (were carried out) during it, and which became known to the expert in connection with the performance of his/her duties;

4) recuse himself/herself in the circumstances provided for by this Code.

In case of failure to appear in court without valid reasons or failure to notify the court of the reasons for failure to appear, the court shall bear all expenses related to the adjournment of the court session..

For a knowingly false conclusion, the expert is liable under the law.

It is necessary to note one more undeniable advantage of the CPC of Ukraine, which specifies not only the special knowledge possessed by the specialist, but also his/her special skills. This is understandable, since one of the duties of a specialist is to use scientific, technical and

forensic means in the course of investigative and judicial actions.

Unfortunately, the current CPC does not contain a definition of specialised knowledge. We have analysed in detail the points of view on the definition of specialised knowledge and provided the most general definition. Now, taking into account the provisions of the CPC, we will try to give a detailed definition of specialised knowledge.

We believe that specialised knowledge used in criminal proceedings is a system of information from science, technology and other areas of human activity, as well as a system of techniques and skills acquired by a subject as a result of purposeful, volitional activity with significant costs of time and intellectual effort, which can, in accordance with the procedure established by law, assist the bodies conducting criminal proceedings in the detection and investigation of crimes and the delivery of a lawful, reasonable and fair decision in a criminal case.

The proposed definition, in our opinion, covers all the features of specialised knowledge.

The issue of the form of application of specialised knowledge in criminal proceedings is not without controversy. First of all, it should be noted that some scholars associate the use of special knowledge mainly with the use of scientific, technical and forensic means. P. S. Elkind points out the differences between scientific and technical means, and forensic and technical means. Scientific and technical means, she notes, have a regulatory basis in the form of permission to use them, which implies that they are not prohibited by the law⁴³. Given that P. S. Elkind's monograph was published in 1976, when the problem of general permissions and general prohibitions was not sufficiently developed, we note the inconsistency of her views with the current state of legal theory. S. S. Alekseev emphasises that the general prohibition applies to the activities of officials and bodies vested with state power, which certainly include persons conducting criminal proceedings⁴⁴. Therefore, subjects of criminal proceedings are entitled to use only those scientific and technical means that are expressly mentioned in the law or permitted by it. No other means may be used in criminal proceedings.

As for the technical and forensic means, they are not enshrined in the law and therefore can be used if it does not contradict the law. Here, P. S. Elkind is absolutely right, emphasising that with regard to technical and forensic means, it cannot be said that only what is directly provided for by law is lawful⁴⁵.] The direct enshrining of such means in the legislation is not a prerequisite for the use of all technical and forensic means in criminal proceedings.

The use of technical and forensic means in accordance with the procedural law means that they cannot contradict the rules of criminal procedure law, must meet the requirements of judicial ethics, have forensic recommendations, and be used within the framework of the procedure regulated by the criminal procedure law.

With regard to the implementation of special knowledge and the use of these tools, the literature indicates that they can be used by: a) an investigator; b) a specialist during investigative actions; c) an expert; d) an interpreter. Other authors narrow down the possibility of using specialised knowledge even further. They believe that special knowledge is used only by an expert and a specialist.

We cannot agree with these views. Firstly, because here we are talking not about the forms of implementation of special knowledge, but about the subjects who possess such knowledge. Secondly, the use of specialised knowledge is narrowed to the use of scientific and technical means, and forensic and technical means. Indeed, the use of these means requires the subject to have special knowledge, but the implementation of the latter goes far beyond the use of instrumental means.

In our opinion, when analysing the forms of implementation of specialised knowledge in criminal proceedings, we should not use terms which are not known to modern criminal procedure

⁴³Elkind P.S. Goals and means of their achievement in the Soviet criminal process. L.: LSU Publishing House. - 1976. - 143 p..

⁴⁴ Alekseev S.S. General permissions and general prohibitions in Soviet law. - Yurid. lit. 1989. - 288 p.

⁴⁵ Elkind P.S. Goals and means of their achievement in the Soviet criminal process. L.: LSU Publishing House. - 1976. - 143 p.

law. These are the so-called informed persons. An attempt to resuscitate the subject mentioned in the Statute of Criminal Procedure of 1864 can only, at best, clarify the circle of subjects with special knowledge, but adds nothing to the definition of the forms of implementation of this knowledge.

Based on the foregoing, we believe that the classification of procedural forms of use of specialised knowledge should not be based on the subjective composition of its source, but should take into account the procedural methods of its implementation (practical application).

The forms of application of specialised knowledge in criminal proceedings can be classified as follows:

- 1) research (pre-expert, including audit, and expert);
- 2) technical and applied form (application of specialised knowledge in the conduct of procedural actions);
- 3) operational and search form;
- 4) sign and linguistic form (translation);
- 5) consulting form.

Conclusion. It should be noted that - based on the study of special literature and law enforcement practice, the concept of special knowledge used in criminal procedure is formulated: special knowledge is a set of any knowledge at the current stage of its development in the field of science, technology, art, craft, obtained as a result of professional training and professional education, with the exception of professional legal knowledge of the subject of proof (inquiry body, investigator, prosecutor, court) used for the purpose of detection and investigation of crimes in the manner prescribed by the criminal procedure law.

We believe that due to the practical difficulties associated with the use of this concept, it is proposed to supplement the CPC of Ukraine with the definition of special knowledge in the above wording.

The author makes a proposal to distinguish between the concepts of "special cognition" and "special knowledge" and to use the concept of "special cognition" correctly in relation to the knowledge possessed by a specialist.

A theoretical generalisation of the peculiarities of criminal proceedings is provided and the forms of use of special knowledge at these stages are considered:

- the author identifies the peculiarities of the use of special knowledge when registering information in the Unified Register of Pre-trial Investigations and in this regard concludes that the activities of a specialist at this stage are procedural (when verifying statements and reports of a crime, conducting preliminary research, consultations), and the factual data (material evidence, specialist certificates, explanations) obtained with his/her assistance, subject to the requirements adopted at the stage of criminal proceedings, have the status of evidence;

- the classification of the forms of use of special knowledge in criminal proceedings is clarified, and an attempt to classify the forms of use of special knowledge in the pre-trial stages of criminal proceedings is made:

Procedural - regulated by the CPC (requesting the necessary materials, obtaining explanations, conducting audits at the request of the investigating authority, inspection of the scene of an incident; seizure of correspondence and removal of information from communication channels) not regulated by the CPC, but which are procedural in content and purpose (preliminary research, consulting and reference activities, documentary checks; forensic and medical examination of a corpse; requesting and using documents drawn up by specialists in the course of their official activities; computer modelling); and non-procedural (activities of a specialist to assist in the implementation of operational and investigative measures); critically analysed proposals to include testimony of informed witnesses, translation activities, as well as the involvement of a specialist in the preparation for an investigative action in independent forms of using special knowledge.

In order to improve the legislation, we propose to introduce a new form of application of special knowledge in the investigation of crimes in the form of a special investigative team, and

therefore supplement the CPC of Ukraine with the following article:

Article _____ Investigation of crimes by a special investigative team.

In the investigation of serious and especially serious crimes, if there are bases to believe that without the constant use of special knowledge it will not be possible to solve the crime, as well as to establish all its circumstances and the perpetrators, the prosecutor (head of the investigative department) shall, by his/her resolution, create a special investigative group, which includes an investigator and a specialist (specialists) with the knowledge or skills necessary for an effective investigation.

The investigator is appointed as the head of the investigative team and takes over the case.

A specialist who is a member of the special investigative group is obliged to provide the investigator with technical, advisory and other assistance both in the course of individual investigative actions and in the criminal case file.

The specialist, on behalf of the investigator, may independently take technical actions aimed at ensuring the effectiveness of the investigative actions. If the specialist disagrees with the investigator's actions, he or she shall state his or her objections in the protocol of the investigative action or in a separate statement.

We consider it expedient to supplement the Law of Ukraine "On Forensic Expertise" and propose to introduce a separate chapter "Use of Specialised Knowledge" into the CPC of Ukraine.

We consider it expedient to raise a number of legal questions before the expert, except for those related to: the guilt of persons; qualification of their actions; sufficiency, admissibility and relevance of evidence in the case; application of criminal and procedural law that excludes criminal liability or punishment.

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