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MONOGRAPH

THE APPLICATION OF SPECIALIZED KNOWLEDGE IN THE CIVIL PROCEDURE OF UKRAINE

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The monograph presents the author's concept of the application of specialized knowledge in the civil procedure of Ukraine. The work analyzes the procedural statuses of the subjects of the application of specialized knowledge, the forms of their procedural activities, the evidentiary value and features of the procedural consolidation of the results of their activities.

For teachers, postgraduate students, students, researchers, judges, attorneys and lawyers.

ISBN

INTRODUCTION

In view of the rapid development of science and technology, the application of specialized knowledge in the civil procedure of Ukraine is of great importance for the adoption of a lawful and reasonable judgment. Given the fact that today a significant number of civil cases cannot be resolved on the merits without the application of some form of specialized knowledge, the issue of studying and improving the legal regulation of the institute of application of specialized knowledge is becoming increasingly relevant.

As a result of the reform of civil procedure legislation, the institute of the application of specialized knowledge has undergone a number of significant changes, but this has not resolved all the problems related to the procedural status of the subjects of application of specialized knowledge, and the forms of their procedural activities, as well as the evidentiary value of the results of their activities. Thus, the novelty of the Civil Procedure Code of Ukraine is the legislative consolidation of the procedural status of such a trial participant as a legal expert, as well as the definition of a new method of appointing a forensic examination at the request of the case parties, which requires further thorough scientific and practical research.

For a long time, the civil procedural legislation actually defined forensic examination as the only form of application of specialized knowledge. But, as the court practice shows, today, in order to consider and resolve certain categories of civil cases, there is a need to apply a wider range of forms of application of specialized knowledge.

Specialist advice and technical assistance are becoming increasingly important. However, despite the development of the institute of application of specialized knowledge and the emergence of new forms of its application, forensic examination remains the main and the most regulated form, which leads to a well-founded practical need to improve the legal regulation of other forms of application of specialized knowledge.

In this regard, there is a scientific and practical need for a thorough study of the procedural statuses of such trial participants as an interpreter, legal expert, state authorities and local governments, psychiatrist, psychologist, and pedagogue.

The problems of the legal nature of specialized knowledge in the civil procedure of Ukraine, procedural statuses of the subjects of its application, forms of application of specialized knowledge, peculiarities of procedural consolidation and evidentiary value of their results have been the subject of scientific researches by such national proceduralists as S. S. Bychkova, Zh. V. Vasylieva-Shalamova, V. V. Gansetska, D. H. Glushkova, V. H. Honcharenko, O. O. Grabovska, K. V. Husarov, O. S. Zakharova, O. O. Karmaza, N. O. Kireeva, V. A. Kroytor, T. M. Kucher, O. M. Lazko, Y. Y. Ryabchenko, S. Y. Fursa, A. S. Stefan, M. Y. Stefan, M. M. Yasynok.

The purpose of the study is to provide a comprehensive general theoretical analysis of the institute of application of specialized knowledge on the basis of the current civil procedural legislation of Ukraine, and court practice, and also to identify the main scientific and practical issues of application of specialized knowledge in civil procedure, and also to formulate doctrinal provisions and practical recommendations for improving the legal regulation of procedural statuses of the subjects of application of specialized knowledge, and also the evidentiary value of the results of their procedural activities and procedural forms. In order to achieve this goal, the author sets the following main objectives:

- to define the concept, characteristics of specialized knowledge, and also the limits of its application in the civil procedure of Ukraine;

- to determine the list of subjects of application of specialized knowledge and to formulate a system of their attributes;

- to classify the forms of application of specialized knowledge;

- to analyze the peculiarities of the procedural status of such subjects of application of specialized knowledge as an interpreter and a legal expert;

to define the concept and signs of the grounds for the application of specialized knowledge, and to classify them;

- to analyze the international standards of civil procedure in the field of application of specialized knowledge;

- to reveal the content of forensic examination as a form of application of special knowledge;

- to study the procedure of appointing a forensic examination on the basis of a court ruling;

- to analyze the procedure of appointing a forensic examination at the request of the case parties;

- to study the procedural status of an expert as a trial participant and to determine the significance of his or her activities for the process of proving the case;

- analyze the characteristics of the expert conclusion as a means of proof, its structure and content;

- to determine the characteristics of the examination of the relevance, admissibility and reliability of the expert conclusion;

- to characterize the procedural status of a specialist as a trial participant;

- to study the peculiarities of the forms of procedural activity of a specialist and the evidentiary value of the results of his/her activity;

- to identify and analyze the criteria of correlation of the procedural statuses of an expert and a specialist;

- to develop practical proposals and recommendations for improvment of the current civil procedure legislation within the framework of regulation of the institute of application of specialized knowledge in civil procedure.

The object of the study are civil procedural legal relations which arise, change and terminate in connection with the use of specialized knowledge in the course of consideration of a case on the merits.

The subject of the study are the procedural features of the application of specialized knowledge in the course of consideration of a case on the merits by the subjects of the application of specialized knowledge in the relevant procedural forms.

Taking into account the object and subject of the study, and in line with the set goals and objectives, a comprehensive range of both general scientific and specific research methods were employed throughout the study:

- dialectical - used to study, analyze and substantiate the fundamental categories used in writing the monograph(Chapters 1, 2, 3);

- formal legal method - used in the process of interpreting the legal regulations applicable to the application of specialized knowledge in civil proceedings (Sections 1, 2, 3);

- comparative legal method - used to correlate the provisions of the current Civil Procedure Code of Ukraine and previous versions of the Civil Procedure Code of Ukraine for the purpose of formulating scientific and practical provisions and proposals for improvment of the current civil procedural legislation (Sections 1, 2, 3);

- classification and grouping - used to classify the forms of application of specialized knowledge, the grounds for the application of specialized knowledge (Sections 1, 2);

- systematization - was used to summarize the legal framework and scientific literature in accordance with the topic of the dissertation research (Sections 1, 2, 3).

The theoretical basis of the research is the scientific works of domestic scientists in the field of civil procedure, civil law, international private law and legal theory.

The regulatory framework of the research is based on the provisions of the Constitution of Ukraine, the Civil Procedure Code of Ukraine, the Civil Code of Ukraine, the Convention on the Protection of Human and Civil Rights, the Convention on the Rights of the Child, the Law of Ukraine "On Forensic Expertise", the Law of Ukraine "On Private International Law", and other by-laws.

The empirical basis of the study is formed by case law materials, including judgments and rulings of courts of first instance and appellate courts, judgments of the Supreme Court of Ukraine, and judgments of the European Court of Human Rights.

The scientific novelty of the obtained results lies in the fact that this research is the first comprehensive study of the issues of the application of specialized knowledge in civil procedure in the national science of civil procedure. Based on the results of the

study, a number of new scientific, practical and theoretical provisions, conclusions, proposals and recommendations for improving the current legal regulation of the application of specialized knowledge have been formed and proposed:

For the first time:

1. A general theoretical study of the procedure of appointment of an expert examination at the request of the case parties was carried out at the monograph level and it was proposed to:

1) to provide in the civil procedural legislation for the prohibition of forensic psychiatric, forensic medical, forensic genetic and forensic criminalistic examination at the request of the case parties;

2) to determine that the deadline for filing a party's application for the grounds for recusal of an expert who prepared an conclusion the request of the case parties should correspond to the deadlines for recusal provided for in Part 3 of Article 39 of the Civil Procedure of Code Ukraine.

In the course of the analysis of the procedure of appointing a forensic examination at the request of the case parties, the following was established:

1) there is a justified need to conduct a forensic examination at the request of the case parties in cases related to compensation for damages;

2) submission of an expert conclusion at the request of the cas parties is carried out in accordance with the rules of submission evidence provided for in Article 83 of the Civil Procedure Code of Ukraine.

2. Based on the general theoretical analysis of the procedural status of a legal expert, the following proposals are formulated at the monograph level:

1) during the admission of a legal expert to the proceedings, to verify whether the subject matter of the dissertation research or the area of scientific activity corresponds to the content of the issues on which a conclusion should be given;

2) to apply to a legal expert the general and special grounds for recusal provided for in Articles 36 and 38 of the of Civil Procedure Code of Ukraine;

3) to establish the obligation to submit an expert conclusion in the field of law in writing and to determine the structure of an conclusion in the field of law, which should consist of the following parts: introductory, descriptive and conclusions;

4) to introduce liability of a legal expert for failure to appear in court;

5) to define this participant in the trial as a "legal specialist" and the relevant conclusion as an expert conclusion in the field of law.

3. The author proposes to define special grounds for disqualification of such a party to a court proceeding as an interpreter and to include the following:

1) he/she was or is in official or other dependence on the case parties;

2) he/she does not have sufficient knowledge of the language required for interpretation.

4. It is determined that an additional examination should be entrusted to the same expert who conducted the initial examination, since this expert is already familiar with the case file and can reasonably fill in the gaps and provide a complete answer to the questions posed, taking into account the comments. If it is not reasonably possible for the same expert to carry out the forensic examination, the additional examination may be entrusted to another expert.

5. The author substantiates the necessity to establish disciplinary liability for disclosure of information, which became known to the expert in the course of conducting a forensic examination in civil proceedings, and to enshrine this disciplinary offense in the Law of Ukraine "On Forensic Examination";

6. It is established that if a specialist's advice or technical assistance is related to activities that require obtaining appropriate permits or certificates, the specialist must additionally submit these documents to confirm his or her competence in a particular area.

Improved:

1. Approaches to understanding the limits of the application of specialized knowledge. It was established that the following knowledge in the field of law should be considered as specialized knowledge:

1) knowledge of foreign legislation, international legal acts, case law of the European Court of Human Rights;

2) knowledge of the practice of applying analogy of statute and analogy of law in relation to specific disputed legal relations;

3) knowledge of legal acts relating to a specific area of activity of the subject of the application of specialized knowledge;

2. Formulation of the procedural grounds for the appointment of forensic examination provided for in Part 1 of Article 103 of the Civil Procedure Code of Ukraine, given that in the course of the analysis of the relevant regulatory provision:

1) it was found that it is necessary to provide that forensic examination is appointed exclusively at the initiative of the case parties in the cases of action proceedings. In cases of separate proceedings, the court has the right to appoint a forensic examination on its own initiative;

2) the author clarifies that the need to use special knowledge in the form of forensic examination arises when there is a need to conduct a special study to establish the circumstances of the case;

3) the author substantiates that an expert may use regulatory legal acts in the course of forensic examination, and therefore the wording "specialized knowledge in a field other than law" should be excluded;

4) the author determines that clause 2 of Part 1 of Article 103 of the Civil Procedure Code of Ukraine should be excluded. Based on these provisions, the author proposes the following wording of Part 1 of Article 103 of the Civil Procedure Code of Ukraine: the court shall appoint an expert examination in a case at the request of the case parties if, in order to clarify the circumstances relevant to the case, specialized knowledge in the form of a special study is required, without which it is impossible to establish the relevant circumstances. In cases of separate proceedings, an expert examination may be appointed on the initiative of the court;

3. Amendments to Part 1 of Article 74 of the Civil Procedural Code of Ukraine in order to:

1) clarify the wording that "a specialist is a person who has specialized knowledge and skills necessary for the application of technical means", since the activities of a specialist are related to the process of evidence, but cannot be limited to the application of technical means;

2) addition to the list of activities of a specialist of such types as sound and video recording.

The following wording of Part 1 of Article 74 of the Civil Procedure Code of Ukraine is proposed: "A specialist is a person who possesses specialized knowledge and skills necessary to provide advice and technical assistance during the performance of procedural actions related to the recording, examination and research of evidence, as well as the application of technical means (photography, sound and video recording, making diagrams, plans, drawings, taking samples for examination, etc.).

4. Scientific approaches to determining the list of subjects of the application of specialized knowledge. In the course of the scientific analysis of the procedural statuses of individual trial participants, the author proposes to include the following subjects of the application of specialized knowledge: an expert, a specialist, a legal expert, an interpreter, a psychologist, a pedagogue and a psychiatrist.

5. Classification of the forms of application of specialized knowledge and proposed to classify the forms of application of specialized knowledge according to the following criteria:

1) by the purpose of their use;

2) by the subject of use;

3) by the evidentiary value of the results of the subject's activity using specialized knowledge;

4) by the content of activity;

6. Scientific approaches to defining the system of rights and obligations of an expert are outlined, and it is proposed to define the right of an expert to refuse to provide an opinion in case of insufficient materials for conducting research as an obligation;

7. Provisions on the procedural status of an interpreter, during the analysis of which it was proposed that:

1) only a person with a higher linguistic education in the specialty of "Interpretation" may be involved in the process of interpretation during the consideration of the case on the merits, which will ensure a high professional character of the relevant procedural function;

2) the following should be considered as mandatory grounds for the involvement of an interpreter in the process presence in the case file of documents written in a foreign language for which the case parties have not provided an official translation; participation in the case of persons with physical disabilities (deaf, mute, deaf-and-dumb); participation in the case of a person who does not fluent in the language of the proceedings;

3) to ensure the access of the trial participants to information about court interpreters by introducing a register of court interpreters;

4) the circle of entities entitled to initiate the participation of an interpreter in the proceedings should include all trial participants as well as the court;

8. Scientific provisions on the procedural status of a specialist, in the course of analysis of which it is proposed to:

1) to establish the obligation to draw up a specialist's conclusion in writing;

2) to provide for the obligation of a specialist to draw the court's attention to the specific circumstances or features of evidence in Part 3 of Article 74 of the Civil Procedure Code of Ukraine;

3) to establish the obligation to confirm the qualifications of a specialist by submitting to the court a state standard document which certifies that the latter has a higher education in a particular specialty, as well as other documents required for certain types of activities;

4) to grant the specialist the right to ask questions to the case parties and the court.

Acquired further development:

1. Scientific rules for determining the procedural status of a psychologist, pedagogue and psychiatrist:

1) it is established that these trial participants should be classified as other trial participants and subjects of the application of specialized knowledge;

2) it is proposed to establish in the civil procedural legislation that the interrogation of minor and juvenile witnesses shall be conducted with the mandatory participation of a child psychologist;

2. Scientific approaches to clarification and supplementation of the expert conclusion, the analysis of which indicates that the expert's supplementation of the expert conclusion should have clear limits:

1) in order to provide relevant supplementation, the expert does not need to conduct additional research, otherwise it is necessary to appoint an additional examination;

2) the supplementation to be provided by the expert relates to the research already conducted and is a direct result of it.

The author determines the evidentiary value of the expert explanations and additions. It is established that the information provided by the expert in the course of explanations and additions may be of significant importance for the resolution of the case on the merits, therefore, if the court positively evaluates it, it should be considered as a part of the expert conclusion;

3. Scientific provisions on the criteria for correlation of the procedural statuses of an expert and a specialist, which are proposed to include:

1) availability of requirements and completeness of legal regulation of the procedural status;

2) the way of involvement in the process;

3) legal nature of the forms of procedural activity and procedural functions;

4) evidentiary value and peculiarities of consolidation of the results of activity;

5) liability;

6) legal nature of specialized knowledge.

SECTION I. GENERAL PRINCIPLES OF THE APPLICATION OF SPECIALIZED KNOWLEDGE IN THE CIVIL PROCEDURE OF UKRAINE

1.1. The concept, characteristics of specialized knowledge and the limits of its application in the civil procedure of Ukraine

The application of specialized knowledge in civil proceedings in Ukraine is crucial to ensure lawfull and reasonable judgment. The Institute of the application of specialized knowledge plays an important role in this matter. In the midst of fast-paced scientific and technological development, a number of civil cases require the application of specialized knowledge for their resolution. Despite the reforms of the civil procedural law, many questions concerning the application of specialized knowledge in civil proceedings have not been resolved. Therefore they remain relevant and require extensive scientific and theoretical research.

The legal status of specialized knowledge in civil proceedings, the procedural status of those who apply it, the modes of its application, and the distinct procedural consolidation of its results have become the subject of scientific researches by such national scholars as S.S. Bychkova, Zh.V. Vasilyeva-Shalamova, V.V. Gansetska, D.G. Glushkova, V.G. Goncharenko, O.O. Grabovska, K.V. Husarov, O.S. Zakharova, O.O. Karmaza, N.O. Kireeva, V.A. Kroitor, T.M. Kucher, O.M. Lazko, Yu.Yu. Ryabchenko, S.Ya. Fursa, A.S. Shtefan, M.Y. Shtefan, and M.M. Yasinok.

The definition of " specialized knowledge" remains a subject of scholarly debate, despite the existence of extensive research on the application of specialized knowledge in civil procedure. There is also no legislative definition of the concept of specialized knowledge. This issue is only reflected at the doctrinal level in the works of researchers. However, specialized knowledge is essential to determine the procedural status of the subjects, who possess specialized knowledge. The list of these subjects depends on the specific understanding of the concept of "specialized knowledge".

It is essential to establish the position of specialized knowledge within the overall knowledge system to avoid challenges in its application during civil proceedings**.**

According to the Philosophical Encyclopedic Dictionary: "Knowledge is a particular form of comprehending cognitive findings (the process of reproducing reality), characterized by the consciousness of truth [1, pp. 228-229].

Knowledge is a product of the cognitive process. In this way, an individual acquires knowledge in a particular field. This knowledge can then be applied to one's daily routine and professional activities. Theoretical and empirical knowledge are distinguished in general philosophical doctrine. According to V.T. Kirilchuk, the terms "empirical" and "theoretical" are often used to describe different types of activities: "empirical" denotes all practical endeavors, while "theoretical" refers to cognitive and scientific activities [2, p. 171].

We agree with the scientific position of Zh. V. Vasylyeva-Shalamova, who asserts the interdependence and interrelation of practical and scientific knowledge. On one hand, practical knowledge serves as the foundation for applying scientific knowledge, while on the other hand, some practical knowledge is scientifically validated through research and incorporated into scientific knowledge. Additionally, certain specialized knowledge can be acquired through centuries of accumulated practical experience, separate from scientific endeavors [3, p. 73-74].

We believe that specialized knowledge should be characterized as a fusion of practical and scientific knowledge. In this connection, O.O. Grabovska identifies the following features of specialized knowledge 1) specialized knowledge is not common knowledge; 2) specialized knowledge is acquired as a result of scientific and/or practical activity [4, p. 9].

According to V. G. Goncharenko, it is essential to differentiate between specialized knowledge obtained through professional training and specific education of individuals, and the specialized knowledge prescribed by procedural laws. The latter is identical in content to the former but is only permitted within the limits established by law [5, p. 24].

The education of individuals in a particular field of knowledge constitutes specialized knowledge. It's a complex, process-driven concept with a high degree of specificity and specialization. We are of the opinion that the category of "specialized

knowledge" should be considered within the administration of justice. Outside of legal proceedings, identical knowledge does not possess the status of specialized knowledge. In this case, there is no requirement to follow a clear legal procedure for its application. Therefore, apart from legal proceedings, this knowledge is used as practical and scientific knowledge and relies entirely on the judgment of the individual implementing it.

As noted by V.M. Fesyunin, E.P. Kurdes and L.V. Svyrydova, in this respect special knowledge is distinguished in the functional aspect. On one hand, professionalism is a product of gaining specialized knowledge and skills through training in a particular field of knowledge. On the other hand, this specialized knowledge is restricted by procedural law to be used only within legal limits, despite being equivalent to the former [6, p. 222].

Specialized knowledge does not include general knowledge. Agree with A. S. Stefan's scientific position that this knowledge is not acquired through general school education or everyday life situations, but through theoretical education and practical activities in the fields of science, technology, art, and crafts [7, p. 294]. We should agree with M. Shcherbakovsky, who states that individuals acquire everyday knowledge spontaneously through life experience. Acquisition of specialized knowledge, including scientific knowledge, occurs through specific cognitive tasks to clarify phenomena's essence and achieve objective truth [8, p. 48].

This means: Specialized knowledge is the result of specialized training. The appropriate level of professionalism in its application is ensured by specialized training by an expert in a particular field. A judge is not an expert in the relevant field of knowledge necessary for the determination of certain circumstances of a case. Therefore, it is necessary to use the specialized knowledge of professionals in a specific field of knowledge in order to adopt a lawful, reasonable and fair judgment. In each case, the court and the parties must determine whether there is a justifiable need for specialized knowledge. Therefore, it is the responsibility of the court to determine the appropriateness of applying specialized knowledge in a particular case.

The definition of specialized knowledge's content varies among proceduralists. I. Kohutych asserts that specialized knowledge includes the systemic and structural elements of theoretical knowledge and practical skills acquired through specialized training and professional experience in a particular field of science, technology, art, or craft. Such knowledge is usually not widely available and is specific to legal requirements, including constitutional, criminal procedure, civil procedure, administrative procedure, economic procedure, customs, tax and others [9, p. 113].

One of the most important characteristics of specialized knowledge is that it is restricted to a select group of individuals. It is not widely available to the general public. Specialized knowledge is acquired through specific training and pertains to the subjects clearly outlined in the Civil Procedure Code of Ukraine.

V. Vasilyeva-Shalamova states, that definitions based on the criteria of "publicity" and "public accessibility" are not precise, because they are abstract and it is almost impossible to clearly determine what information is public or not, and how many people are aware of it [10, p. 108].

M. Nadizhko's position aligns with the idea that global informatization erases knowledge boundaries in the modern world. Formerly classified as specialized knowledge, it is now commonly known and reveals the subjective nature of the term "common knowledge" [11, p. 26].

The procedural requirements imposed by procedural law on individuals applying specialized knowledge should also be considered. Specialized knowledge should be used strictly according to civil procedure. Thus, compliance with civil procedural form requires a proper subject, appropriate procedures to involve relevant parties in civil proceedings, and sufficient grounds warranting the use of specialized knowledge in each specific case.

According to Zh. V. Vasilyeva-Shalamova, special knowledge is a collection of professional knowledge, skills, and abilities acquired through special education and/or work experience that align with the present-day advancements of specific industries, sciences, technologies, arts, or crafts. These must be sufficient for effectively resolving critical legal issues in a given court case [12, p. 18]. However, it is important to note,

that the definition of specialized knowledge should be based on special training rather than special education, as this is explicitly outlined by the law. For example, an expert must be certified and registered in the State Register of Certified Experts, and a legal expert must have a scientific degree. As noted by I. Zemtsova, special knowledge refers to a system of theoretical knowledge and practical skills within a specific field of science, technology, art, or similar areas. Specialists acquires such knowledge through extensive training or professional experience, and it necessary to resolve issues arising in the course of legal proceedings [13, p. 33].

In civil procedure, specialized knowledge is applied for specific purposes. Streamlining the process of providing evidence is the purpose of applying specialized knowledge in civil litigation. Through the application of specialized knowledge, it is possible to identify the unique characteristics of a particular piece of evidence or to generate new evidence through expert examination. This simplifies the process of rendering a lawful, reasonable, and fair judgment.

In light of the aforementioned principles, we present the author's definition of specialized knowledge. Thus, specialized knowledge is a legal category that includes practical and scientific knowledge limited to a small number of individuals. Specialized knowledge is acquired through the completion of specific training and/or the achievement of a relevant level of educational qualification or scientific degree. Specialized knowledge is applied by designated individuals according to a transparent procedural framework. This streamlines the evidence process for civil cases as required by law.

On the basis of this definition, it is possible to identify a system of distinguishing features for specialized knowledge:

1) it contains both practical and scientific knowledge. It highlights the complexity of this legal category;

2) It is exclusively used for the purposes of justice;

3) the purpose of the application of specialized knowledge is to facilitate the process of proving the case;

4) specialized knowledge is applied with meticulous adherence to the rules of civil procedure;

5) specialized knowledge is applied exclusively by a limited number of individuals in the forms specified in the Civil Procedure Code of Ukraine. These individuals must have appropriate educational backgrounds, academic degrees, or specialized training.

In recent years, the issue of defining the boundaries of specialized knowledge has become increasingly relevant. The integration of legal knowledge into the domain of specialized knowledge is a controversial issue. The inclusion of a legal expert in the judicial process has resumed the scholarly debate on this issue.

In order to clearly determine the limits of the application of specialized knowledge, it is necessary to thoroughly examine the legal nature of the legal expert's knowledge. It is important to note that the legislator does not identify a legal expert as a person who applies specialized knowledge.

Therefore, it is essential to consider the purpose of a legal expert's procedural activity when determining their knowledge's legal status. The function of a legal expert in civil proceedings is to facilitate the administration of justice and the process of proving a case. This function is achieved through the use of scientific knowledge acquired by the individual through the pursuit of a scientific degree and the conduct of scientific research.

In view of the changes in social relations and the recent reforms in civil procedure law, the fixed boundaries of specialized knowledge cannot remain unchanged and stable. In this regard, I. I. Kohutych notes that professionals do not perceive their field of work as unique or specialized. Only fields of practice or theoretical knowledge that require professional training in other knowledge areas or practical applications can be recognized as such [9, p. 117-118].

The scientific attitude that has been described above needs to be called into question. For instance, familiarity with the legal system of a foreign country falls under the legal field, but it cannot be considered as part of a judge's professional knowledge. A judge specializes in the legal framework of their own country, where they are a citizen and where they hold authority within its jurisdiction. In this context, knowledge

of foreign laws should be considered a specialized field. A lack of such knowledge and improper application may lead to unlawful and irrational judgment.

In this context, we agree with K. V. Legkykh's scientific position that the knowledge of judges, prosecutors, and investigators in the legal field is a multifaceted concept which can intersect with other legal knowledge areas. The knowledge necessary for procedural personnel to carry out their tasks, which surpasses their primary professional knowledge, must be considered as specialized [14, p. 57].

It is important to note this in context, that the legal knowledge of a legal expert is regarded as specialized knowledge, but only to a limited extent. A legal expert cannot qualify disputed legal relations. In today's context, the assertion that specialized knowledge encompasses both scientific and practical knowledge from diverse fields outside of law lacks relevance and justification.

However, there is a difference between a legal expert's knowledge of the law and a expert examination of legal issues. According to Part 2 of Art. 102 of the Civil Procedure Code of Ukraine [15], expert examination of legal issues is not provided for by the civil procedure law. Legal experts do not conduct expert examinations. The unique role of a legal expert in the proceedings is to provide an impartial scientific opinion on a limited set of issues, with the aim to assist in a fair and lawfull judgment. A specific set of these issues is outlined by the legal system. No special study in the form of a expert examination is required in this case. According to Part 1 Article 115 of the Civil Procedure Code of Ukraine, the expert conclusion in the field of law shall not mean evidence.

However, in the course of conducting a expert examination, an expert often needs to use the provisions of legal acts to resolve the issue raised by the court. And in fact, the expert does not resolve legal issues in the context of qualifying disputed legal relations, but uses knowledge in certain areas of law.

Thus, in accordance with paragraph 1.4 of the Instruction on Forensic Examination Appointment and Performance (hereafter referred to as "the Instruction"), experts use appropriate research methods, methods of performing forensic examinations, and regulatory acts and normative documents (including international, national, and

industrial standards, technical specifications, rules, regulations, provisions, instructions, recommendations, lists, and guidelines of the State Consumer Standard of Ukraine) when conducting expert studies to fulfill an expert task. [16]

We concur with A. S. Shtefan's scholarly perspective that knowledge in a specific legal field and specialized knowledge are not inherently separate categories but can instead complement each other. Furthermore, in certain cases, this conjunction of specialized and legal knowledge is crucial in determining case circumstances and is eminently reasonable [17, p. 16]. Thus, A.S. Stefan gives a reasonable example of intellectual property protection cases, namely that in such cases, a large part of expert research is directly related to the analysis of legal norms in search of an answer to the question whether a certain object contains the signs and essential characteristics defined by law for the relevant object of intellectual property rights [7, p. 296].

In this connection, the scientific position of I.M. Popovych is justified that the question: "Does the trademark for goods and services meet the requirements for legal protection?" is a question of law and is decided by the court. However, the main task in resolving the question: "Is the trademark such that it lacked distinctiveness at the time of filing the trademark application?" is to determine the characteristics of the trademark. Therefore, this falls within the purview of an expert's competence, rather than a legal matter. A positive response to this inquiry provides the foundation for determining that the trademark does not satisfy the requirements for receiving legal protection [18, p. 200].

The study of regulatory legal acts is necessary not only in the expert examination of intellectual property. For instance, clause 5.1 of the Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examinations and Expert Studies (hereafter referred to as the Scientific and Methodological Recommendations) stipulates that one of the tasks of construction and technical expertise is to ascertain whether the developed design, technical, and estimate documentation conforms to the regulatory legal acts governing construction [16].

However, in this regard, construction and technical aspects take precedence, specifically analyzing the design and technical documentation, and identifying the

appropriate approach for dividing the real estate property according to technical construction standards. During a expert examination, the expert applies their legal knowledge to analyze the provisions of regulatory legal acts objectively. However, it is crucial to emphasize that this conclusion does not focus on legal matters specifically. Therefore, in this situation, familiarity with construction-related regulatory laws is an essential complement to the specialized knowledge of the expert performing the relevant construction and technical examination.

Therefore, the legislator's position that expert examination cannot be linked to legal matters is justifiable, but needs further clarification. Thus, the expert conclusion establishes certain circumstances that are relevant to the case. However, the expert cannot provide a legal assessment of these circumstances. In light of this, we believe it is essential to establish precise rules regarding the application of legal knowledge during expert examinations. An expert can use the necessary legal acts to answer the questions posed during a expert examination, however:

1) an expert cannot qualify disputed legal relations;

2) an expert cannot assess the conformity of the behavior of the subjects of the disputed legal relationship to specific legal norms;

3) an expert cannot provide interpretation of the rules of law;

4) an expert cannot explain the procedure for applying a specific rule of law;

5) an expert cannot express his/her position on the application of a certain type of penalty to a person;

6) an expert cannot determine in his/her conclusion the procedure and result of the case on the merits.

According to Yu. Ryabchenko, the precise definition of the subject of proof ensures the comprehensive determination of legal and evidential facts, while the precise definition of the limits of proof ensures the reliability of the obtained knowledge about these facts [19, p. 86]. Therefore, questions directed to the expert should be relevant to the subject of proof. However, it should be noted that in the context of determining the limits of proof in a particular case, an expert conclusion cannot establish facts of a legal nature.

In this context, we agree with the scientific position of A.S. Stefan, who notes that the expert cannot be asked questions on the merits of the claim, satisfaction of claims or their dismisssal; the expert is not permitted to draw conclusions regarding the presence or absence of indications of rights violations by one party in the actions of another party, cannot give explanations on which legal norm should be applied to the relevant legal relationship [20, p. 20].

Thus, the expert conclusion cannot be relevant to issues of law, qualification of disputed legal relations and resolution of the case on the merits. Providing legal qualification to disputed legal relations and establishing legal facts is exclusively within the jurisdiction of the court. However, in the course of conducting a expert examination, an expert may address issues related to legal matters and apply regulations to provide an expert conclusion.

Taking into account the above-mentioned, it can be concluded that specialized knowledge includes the following knowledge in the field of law:

1) knowledge of foreign legislation, international regulatory acts, case law of the European Court of Human Rights;

2) knowledge of the practice of applying analogy of the law to certain disputed legal relations;

3) knowledge of relevant regulatory legal acts related to the subject's of the application of specialized knowledge specific field of activity.

Thus, the study of the concept and limits of the application of specialized knowledge plays an important role in improving the legal regulation of the modes of its application and the legal status of the subjects of its application. The activities of the subjects of the application of specialized knowledge play an important role in the implementation of the process of proving the case. Therefore, a clear understanding of specialized knowledge's concept depends on the overall effectiveness of its application for justice. Specialized knowledge is a complex procedural phenomenon, so this type of knowledge should be used exclusively within the framework of justice and in a clear civil procedural form. The content of specialized knowledge includes practical and

scientific knowledge, including legal knowledge, but with certain limitations of application.

1.2. Subjects and modes of application of specialized knowledge in the civil procedure of Ukraine

In the course of the study of the Institute of specialized knowledge application in civil proceedings, a thorough analysis of the procedural status of the subjects applying specialized knowledge is of great importance. The procedural activities of the relevant subjects ensure a lawful, reasonable and fair judgment. In procedural literature, there are different approaches to defining the list of subjects applying specialized knowledge. According to Art. 72 of the Civil Procedure Code of Ukraine and Art. 74 of the Civil Procedure Code of Ukraine, the main subjects of the application of specialized knowledge are an expert and a specialist. However, the question of whether an interpreter, state and local authorities, legal experts, psychologists, teachers and psychiatrists are also considered as subjects of the application of specialized knowledge remains controversial. In order to prevent difficulties in the process of consideration of certain categories of cases on the merits, there is a scientific and practical need to determine an accurate and clear list of participants in the trial, who may apply specialized knowledge in the course of their procedural function.

The activities of the subjects of the application of specialized knowledge are important for civil proceedings, as they are directly associated with the process of proving the case. Since the judge and the case parties do not possess specialized knowledge in a particular field, certain circumstances of the case can only be established by involving the relevant subjects applying this knowledge and using the necessary mode of application of this knowledge.

The fundamental approach in the civil procedure law doctrine is that the subjects of the application of specialized knowledge in civil proceedings are experts and specialists. It should be noted that the legal nature of specialized knowledge, forms of procedural activity and procedural functions of these subjects are different. It is worth emphasizing

that the primary shared objective among these subjects is to enforce justice and facilitate the process of proving the case. One of the main differences between these trial participants is the evidentiary value of the results of an expert's and a specialist's activities. Thus, an expert conclusion is always a means of proof, unlike the results of a specialist's activities.

An expert is one of the main subjects of the application of specialized knowledge. Part 1 of Article 72 of the Civil Procedure Code of Ukraine clearly states that an expert must possess specialized knowledge.

The expert's procedural activities are extremely important for resolving a case on the merits. As a result of a expert examination, a new piece of evidence is formed - an expert conclusion. The expert is the sole subject in the application of specialized knowledge whose conclusion is legally considered as a means of proof.

The specialist is the next trial participant in the court proceedings, who, according to Article 74 of the Civil Procedure Code of Ukraine, is a subject of the application of special knowledge. However, the procedural activity of a specialist has a different functional direction than that of an expert, as it does not involve conducting expert examinations. This trial participant provides advice and technical assistance, based on the application of specialized knowledge, without conducting a special study. It should be noted that a specialist does not create new evidence through his or her procedural activity, but works with existing evidence. However, the specialist's participation in civil proceedings is closely related to the process of proving the case, as the specialist assists the court in recording and examining evidence. We agree with the scientific position of Y.M. Bysaha and V.V. Zaborovsky, that the specialist's activities are aimed at assisting the court and the other case parties in obtaining, presenting, examining and securing evidence [21, p. 34].

Procedural law scholars do not question the classification of experts and specialists as subjects of the application of specialized knowledge. Therefore, it is important to analyze the procedural statuses of trial participants whose knowledge has not been adequately researched.

Currently, there are scientific discussions regarding the classification of an interpreter as a subject of the application of specialized knowledge. The Civil Procedure Code of Ukraine classifies an interpreter, as well as an expert and a specialist, as a part of the group of other trial participants, which are defined in the procedural doctrine as participants who facilitate the administration of justice.

However, the Civil Procedure Code of Ukraine does not refer to interpreters as subjects of application of specialized knowledge. Therefore, the legal nature of the knowledge applied by an interpreter in the course of performing his/her procedural function remains insufficiently investigated.

In the course of studying an interpreter's procedural status, it should be noted that the language of civil proceedings is one of the fundamental principles of those proceedings. This principle is envisaged by Article 9 of the Civil Procedure Code of Ukraine and Article 14 of the Law of Ukraine "On Principles of the State Language Policy" [22]. The level of its enforcement during the consideration of a case on its merits significantly impacts the guarantee of equality among all trial participants, regardless of their race, color, nationality, or language. In this regard, it can be concluded that a clear understanding of the language applied during the court proceedings, awareness of the content and significance of procedural actions by the trial participants is an important guarantee of the right to judicial protection, fair consideration of the case on the merits, and the adoption of a lawful and reasonable court decision.

We agree with the scholarly perspective of Y.A. Prut, who asserts that an interpreter creates suitable conditions for communication between the parties involved in civil proceedings, as well as between the court and those parties who do not have proficiency in the language of the proceedings [23, p. 36]. Additionally, as stated by S.I. Stepurko, the involvement of an interpreter in legal proceedings serves to equalize the opportunities for safeguarding the rights and interests of individuals, whether they are proficient in the language of the proceedings or not [24, p. 80].

Therefore, the involvement of an interpreter in civil proceedings is a crucial guarantee of adherence to the principle of the language of civil proceedings. Moreover,

the interpreter's activities ensure the implementation of the adversarial principle. Thus, when the case parties have a comprehensive awareness and understanding of the significance of all procedural actions, they have equal opportunities in the process of proving the case. If an individual does not understand the language of the court proceedings, he or she cannot fully exercise all procedural rights and obligations. Considering the aforementioned factors, it is necessary to provide a thorough scientific and practical investigation into the challenges surrounding the involvement of interpreters in civil proceedings. Another important issue is the need to improve the legal regulation of the interpreter's procedural status in the Civil Procedure Code of Ukraine.

According to Part 1 Article 75 of the Civil Procedure Code of Ukraine, the interpreter shall mean a person who is fluent in the language of civil proceedings and another language which is necessary for interpretation or translation from one language to another, as well as a person who is qualified to communicate with the deaf, dumb or deaf-and-dumb.

Thus, it can be concluded that the purpose of the interpreter's procedural activity in civil proceedings is to establish communication between the trial parties and the court, to ensure equality among all trial participants, to facilitate the administration of justice and the process of proving the case.

As mentioned by I.A. Balyuk, the interpreter has no personal interest in the court case and is not an independent participant in the proceedings [25, p. 90].

The interpreter is not a party to a disputed legal relationship and, therefore, has neither a material nor procedural interest in the outcome of the case on its merits. The translator must be independent and impartial. However, we disagree with the statement that a translator is not an independent participant in the court proceedings. An interpreter performs a specific procedural function in civil proceedings, has rights and obligations, as well as responsibility for their actions. This indicates that an interpreter is an independent trial participant with their own procedural status.

According to part 1 of Article 218 of the Civil Procedure Code of Ukraine, the presiding judge shall explain to the interpreter his/her rights and obligations established

by this Code and shall warn the interpreter against a receipt of the criminal responsibility for knowingly incorrect interpretation and for the refusal without a reasonable excuse to perform his/her duties.

In addition, the interpreter takes an oath in which he or she swears to perform the duties of an interpreter in good faith. The interpreter shall sign the text of the oath, and both the text of the oath and the receipt, signed by the interpreter, shall be attached to the case (Article 218 of the Civil Procedure Code of Ukraine).

In view of the above, we agree with the scientific position of I.A. Berezhna regarding the main characteristics that a translator should meet: 1) to be a full-fledged independent participant in the proceedings without performing the functions of another participant in the proceedings; 2) to be fluent in the language of the proceedings and the language spoken by one of the participants, or to possess the technique of communication with the deaf, dumb or deaf-and-dumb, to be proficient in legal terminology; 3) to be uninterested in the outcome of the case (which confirms his/her auxiliary role in the proceedings) [26, p. 200].

Although an interpreter is an independent trial participant, their procedural activities play a subsidiary and supportive role. The interpreter assists individuals who are not fluent in the language of the proceedings in clearly understanding and comprehending all procedural actions performed during the consideration of the case on its merits. R.M. Savchuk highlights the following characteristics of an interpreter as a trial participant:

a) Lack of authority.

b) Not being a part of the court staff.

c) Lack of the right to initiate entry into procedural relations.

d) The possibility of special measures of procedural coercion (replacement) [27, p. 7].

An interpreter lacks authority in civil proceedings. They enter the legal proceedings at the request of the court or the case parties in order to provide professional, qualified interpretation assistance. Therefore, an interpreter cannot express their own initiative to enter the process.

According to part 2 of Article 75 of the Civil Procedure Code of Ukraine, the interpreter shall be allowed by a court ruling upon the case party's application or shall be appointed at the court initiative.

The previous version of the Civil Procedure Code of Ukraine did not grant the court the authority to initiate the involvement of an interpreter during the proceedings. Therefore, this innovation should be viewed as a positive development. The possibility to involve an interpreter in the proceedings at the court's initiative ensures the equal procedural rights of trial participants who are not proficient in the language of the proceedings.

However, in accordance with part 4 of Article 9 of the Civil Procedure Code of Ukraine, the trial participants who are not proficient or insufficiently proficient in the state language shall have the right to make statements, provide explanations, appear in court and put motions in their native language or the language they speak using the services of an interpreter in the manner established by this Code.

This part of the article pertains to not only the case parties, but to all trial participants. For example, a witness may be a citizen of another state and may not be proficient in the language of the court proceedings. In this context, we agree with the scientific position of Zh. V. Vasylieva-Shalamova, that the involvement of an interpreter may be associated with the interpretation of the testimony of a witness who may be a foreigner, stateless person, deaf, dumb or deaf-and-dumb, or belong to minorities [28, p. 106]. In this regard, it can be concluded that the assistance of an interpreter may be necessary for any trial participant. Therefore, it is essential to provide a real opportunity for all trial participants to initiate the involvement of an interpreter in the proceedings. Taking into account the above, we propose to restate part 2 of Article 75 of the Civil Procedure Code of Ukraine as follows: "An interpreter shall be involved in the proceedings by a court ruling upon the trial participant’s application or shall be appointed at the court initiative."

In this context, we believe that it is the court's obligation to ensure adherence to the principle of the language of legal proceedings. That is why, in the course of consideration of the case on the merits, if one of the trial participants is not proficient in

the language of the proceedings, but does not request an interpreter, the court must involve an interpreter on its own initiative.

An important guarantee of interpreter impartiality is the institution of recusal (self-recusal). We agree with the scientific position of V.V. Petryk regarding the necessity of the interpreter's recusal, that its role in the consideration of a civil case is extremely important [29, p. 24].

Thus, Part 1 of Article 38 of the Civil Procedure Code of Ukraine provides for general grounds for recusal of a secretary of the court hearing, expert, specialist and interpreter. Part 2 of Article 38 of the Civil Procedure Code of Ukraine states, that an expert or specialist may also not take part in the proceedings if:

1) he/she was or is in official or other dependence on the case parties;

2) clarification of the circumstances concerning the case is beyond the scope of his/her special knowledge.

We believe that an interpreter, like an expert or specialist, should not be in official or other dependence on the case parties. This may affect their impartiality during the interpretation. In addition, the interpreter’s activities cannot go beyond the scope of his/her specialized knowledge. Thus, part 4 of Article 75 of the Civil Procedure Code of Ukraine states that a translator has the right to refuse to participate in civil proceedings if he/she does not have sufficient knowledge of the language required for interpretation. However, we believe it is necessary to define this right as an obligation and to provide it as a ground for recusal or self-recusal of the interpreter. Therefore, we consider it necessary to supplement Article 38 of the Civil Procedure Code of Ukraine with part 2-1 worded as follows: "2-1. In addition, an interpreter may also not take part in the proceedings if: 1) he/she was or is in official or other dependence on the case parties; 2) he/she does not have sufficient knowledge of the language required for interpretation.

The procedure for determining the inetpreters's level of proficiency in the language of the court proceedings and the language applied for the interpretation should be considered a problematic issue during the examination of the interpreter's procedural status.

The Civil Procedure Code of Ukraine does not provide for a procedure for confirming the interpreter qualifications in the court. The Civil Procedure Code of Ukraine does not provide a procedure for confirming the qualifications of an interpreter in court. For instance, in the case of Ruling No. 479/268/19 dated March 18, 2019, issued by the Kryvoozerskyi District Court of the Mykolaiv region, the application for adoption by U.S. citizens was left without motion on the grounds that the adoption application lacked statements from the case parties regarding the appointment of an interpreter, as well as the necessary documents confirming the interpreter's qualifications and proficiency in the language used by the applicants (as stipulated in Article 75 of the Civil Procedure Code of Ukraine) [30].

An analysis of court practice highlights the importance of confirming the interpreter's qualifications and knowledge when deciding whether to permit an interpreter to the proceedings. We believe that an interpreter must be a specialist in the field of linguistics, have a master's or specialist's degree, which confirms their proficiency in the language required for interpretation. The interpreter must be proficient in legal terminology, as their role is to provide a literal, legally competent, correct, and accurate interpretation. For example, as M.S. Mironova rightly notes, for adequate interpretation of legal terminology from English to Ukrainian, an interpreter must understand term formation principles, possess knowledge of current legislation, have specialized vocabulary, be familiar with the nuances of foreign legal terminology in context, and utilize relevant reference materials [31, p. 655]. That is why an interpreter should consider the specificities of legal terminology when interpreting.

The interpreter's knowledge should be considered as a complex phenomenon, that includes not only fluency in spoken language, but also a profound comprehension of legal terminology.

We agree with the scholarly viewpoint presented by O. Pokreshchuk and S. Fursa, which asserts that interpreters involved in legal proceedings should possess a comprehensive understanding of legal terminology [32, p. 89]. According to V. Kroitor, the interpreter should be proficient in legal terminology [33, p. 129].

Thus, the competence of an interpreter comprises the following elements:

1) fluency in the language of the court proceedings;

2) fluency in the language from which the interpretation is to be conducted;

3) knowledge of legal terminology.

Therefore, an interpreter's qualifications should be verified through the presentation of a higher education diploma in linguistics and a certificate issued by the Ministry of Justice of Ukraine, attesting to their proficiency in legal terminology and qualification for translating in court proceedings. To accomplish this task, a system of specialized examination control for interpreters involved in court proceedings should be implemented. This will ensure that professional interpretation is carried out by highly skilled specialists.

During the consideration of a case on its merits, difficulties often arise in finding an interpreter who can provide high-quality professional interpretation from a specific language. Therefore, it is crucial to provide trial participants with unrestricted access to information about interpreters possessing the required level of qualifications for accurate interpretation. Such access can be guaranteed by establishing a court interpreter registry. This register should contain information on persons who have completed the examination control in accordance with the established procedure, have a higher linguistic education, and are proficient in legal terminology. The establishment of such a registry will ensure timely consideration of the case on the merits. Certainly, if one of the trial participants lacks proficiency in the language of the proceedings, or if the case file contains numerous documents in a foreign language, such a registry would expedite the process of locating and engaging a qualified specialist capable of delivering high-quality interpretation. In this matter, R. Savchuk asserts that only individuals certified by the Ministry of Justice of Ukraine and listed in the Register of Court Interpreters should serve as interpreters, and their certification would indicate their competence. It is in line with this concept that a reference and information register of interpreters was established in Ukraine, the procedure for which was endorsed by the Order of the Ministry of Internal Affairs of Ukraine on March 11, 2013, No. 228 [34, p. 190].

However, it should be noted that to ensure fair administration of justice, the registry of court interpreters must be established by the Ministry of Justice of Ukraine.

Thus, in addition to providing documentation of higher education, entry into the register requires passing a language proficiency examination in the language applied for interpretation, and demonstrating comprehension of legal terminology and the language of court proceedings.

Another controversial issue in studying interpreter competence relates to the educational requirements. As rightly noted by Zh. V. Vasylieva-Shalamova, the question arises whether it is necessary to involve only a professional interpreter in the process or whether a person with a foreign language teacher's qualification can be allowed to participate in the process as an interpreter? Should the interpreter be fluent not only in the language of the court proceedings, but also in the basics of jurisprudence [28, p. 106]. It should be noted that a foreign language teacher specializes in the field of pedagogy. His/her professional skills encompass the application of pedagogical teaching methods for language acquisition courses. However, to ensure accurate interpretation, it is essential to have a skilled and experienced interpreter who can apply various interpretation techniques and objectively convey information in the language of the proceedings. In this regard, we believe that only an individual with a higher education degree in "Interpretation" should be engaged in the interpretation process during the consideration of the case on the merits. This will ensure that the relevant procedural function is performed in a highly professional manner.

An important issue in the study of the interpreter's procedural status is the participation of individuals with disabilities in civil proceedings. These individuals require additional guarantees to ensure equality in the process of proving the case. Such individuals are deaf, dumb or deaf-and-dumb. Due to their physical disabilities, these individuals cannot fully exercise all their rights and obligations in civil proceedings without the assistance of interpreters. Procedural activities of an interpreter in the case of participation of individuals with physical disabilities in the proceedings are not sufficiently regulated. According to subpara. 2, Part 2, Article 75 of the Civil Procedure Code of Ukraine, the participation of an interpreter who is qualified to communicate with the deaf, dumb or deaf-and-dumb is mandatory in the cases, where one of the participants is a person with a hearing impairment. The qualification of such an

interpreter shall be confirmed by the relevant document issued in the manner prescribed by law.

The regulation above does not provide a clear procedure for confirming the qualification of an interpreter skilled in communicating with individuals who are deaf, dumb or deaf-and-dumb. The issue of which document should be applied to confirm a interpreter's competency in communicating with the deaf, dumb or deaf-and-dumb remains unresolved. We believe that, like a foreign language interpreter, an interpreter proficient in communicating with deaf, dumb or deaf-and-dumb should complete an examination, provided by the Ministry of Justice in Ukraine. Afterwards, information about such an interpreter should be entered into the court interpreters register.

Thus, taking into account the above, the requirements for participation of an interpreter in civil proceedings should be considered the following:

- legal capacity;
- complete higher linguistic education in the field of translation;
- a certificate of examination control in the field of court interpretation;
- special court interpreter’s competence (knowledge of the language of proceedings; knowledge of the language from which the interpretation is to be performed; knowledge of legal terminology);
- a court interpreter must be entered in the Court Interpreters Register.

A particular difficulty in the consideration of a case on the merits arises when one of the case parties is a foreign element. In this case, in the course of civil proceedings, it is necessary to take into account the regulatory provisions of the Law of Ukraine "On Private International Law" [35]. As noted by L. M. Kosovskyi, the concept of a "foreign element" in civil proceedings can only qualify as a state-territorial feature for specific legal relations, whose main constituent elements are: 1) subjects - citizens of Ukraine who are abroad, foreign citizens, stateless persons, foreign organizations, foreign states; 2) an object located on the territory of a foreign state; 3) a certain legal fact that creates, changes or terminates legal relations and has taken place or is taking place outside the territory of Ukraine [36, p. 53-54].

Ensuring equality of all trial participants is the procedural function of an interpreter in legal proceedings that involve a foreign element. Among the stages of preparation of a civil case with a foreign element for trial, L.M. Kosovskyi distinguishes the direct involvement of an interpreter in order to prevent different linguistic approaches to the translation of the texts of procedural documents, information in statements of claim and defenses and to prevent the presence of distorted data in the case, which contributes to the formation of a false understanding of the subject of the dispute by the judge [37, p. 185].

When a foreign element is involved in a case, it is important for the court to correctly determine the subject of proof in the case, due to large number of documents drawn up in a foreign language. Also, official documents may be issued by authorized bodies of other states. That is why, for the court and the case parties to correctly understand the meaning of the documents submitted to the court to support their claims or objections and constitute the subject of proof, it is necessary to involve an interpreter in the process. In this case, an interpreter is necessary not only for a particular case party who does not understand the language of the proceedings, but also for the judge in order to understand the content and meaning of documents written in a foreign language, which the case parties refer to as the basis for their claims or objections.

The participation of an interpreter plays an important role and is mandatory when considering cases of adoption of a child by foreign citizens. We should agree with O. Grabovska, who notes that due to the fact that the applicants are foreigners, correct interpretation and a clear explanation of such a dispositive right of the applicants as the withdrawal of the application in order to avoid unwanted adoption is of particular importance [38, p. 12]. In the course of consideration of this category of cases, all procedural documents submitted by the relevant foreign citizens, as well as documents confirming the possibility of adoption of a child by these persons issued by the competent authorities of a foreign state, require translation.

For example, the Ruling of the Rivne District Court of Rivne Region of January 28, 2019 in case No. 570/432/19 states that since the applicants are foreigners who do not proficient in the state language of Ukraine, it is necessary to involve PERSON_4 as

an interpreter (from Ukrainian to Italian / from Italian to Ukrainian), to verify the the interpreter's identity, his qualification, specifically, the diploma of series NUMBER_1 issued on June 27, 2010 on obtaining the qualification of an interpreter from the Italian language at the National Aviation University [39].

In connection with the above, it is necessary to determine the following mandatory cases of participation of an interpreter in civil proceedings:

1) the presence in the case file of documents drawn up in a foreign language for which the case parties have not provided an official translation;

2) participation in the case of individuals with physical disabilities (deaf, dumb, deaf-and-dumb);

3) participation in the case of an individual who does not speak the language of the proceedings. If the person concerned does not file an application for the involvement of an interpreter in the proceedings, this obligation is imposed on the court.

The procedural activities of an interpreter are of great importance for the resolution of the case on the merits, so an interpreter may be involved in civil proceedings at different stages of the case. A novelty of the Civil Procedure Code of Ukraine is such an institution of civil proceedings as settlement of a dispute with the participation of a judge. We agree with the scientific position of N. Kireeva that the purpose of the settlement of a dispute with the participation of a judge is only an attempt for dispute resolution between the parties at the beginning of the civil proceedings in order to save time and money for both the parties and the state, as well as to consider options for dispute resolution [40, p. 96]. N. V. Vasylina notes that the settlement of a dispute with the participation of a judge is first of all a manifestation of the principle of discretionary nature of civil proceedings and the pro rata principle in it [41, p. 13].

According to Part 1 of Art. 203 of the Civil Procedure Code of Ukraine, settlement of a dispute with the participation of a judge shall be carried out in the form of joint and (or) closed meetings. According to part 8 of Article 203 of the Civil Procedure Code of Ukraine, if necessary, an interpreter may be involved in the hearing.

Despite the lack of a clear indication, we believe that an interpreter has the right to participate in both joint and closed meetings of the settlement of a dispute with the

participation of a judge. Due to the high level of confidentiality of the settlement of a dispute with the participation of a judge, the interpreter is the only participant in the court proceedings, apart from the case parties and their representatives, who has the right to participate in this procedure. This indicates that the interpreter is the trial participant whose primary procedural function is to ensure the equality of trial participants regardless of race, color, language, or physical disabilities.

The question of the nature of the knowledge applied by the interpreter in the exercise of his procedural function also remains insufficiently resolved.

According to Zh. V. Vasilyeva-Shalamova, in civil proceedings an interpreter provides technical assistance by applying special knowledge [42, p. 64]. We also agree with the scientific position of R. Savchuk, who notes that it can be concluded that an interpreter is a specialist in the field of special knowledge (linguistic) [34, p. 190].

As noted in the previous subsection, one of the fundamental characteristics of specialized knowledge is that it belongs to a limited circle of people. Specialized knowledge is not generally known and publicly available. In this context, the question arises as to whether the knowledge used by an interpreter fulfills this characteristic. Language knowledge is not characterized by such features, as it is common and accessible to a large number of people. A native speaker of the relevant language usually has an adequate level of language proficiency and is aware of various aspects of language. Knowledge of a language is a means of communication, so it cannot have limited access, it is a way of everyday communication, transferring information from one person to another. However, the knowledge that an interpreter uses in the course of performing his/her procedural function is not limited to language knowledge. An interpreter must also be proficient in the methods of accurate and correct translation, which he or she acquires in the course of obtaining the relevant educational qualification. In addition, the interpreter's knowledge is comprehensive and includes familiarity with legal terminology. In this case, such knowledge is of a professional nature, and therefore not publicly available. In view of the above, we believe that such a trial participant as an interpreter should be considered as a subject of the application of specialized knowledge.

The knowledge of interpreters proficient in communicating with individuals who are deaf, dumb, or deaf-and-dumb should be considered as specialized. We agree with the scientific position of M.M. Yasynok, who notes that some deaf-and-dumb people have an individual vocabulary that is understandable only to a limited circle of people, because their language is still unique [43, p. 107]. Therefore, this communication technique belongs to specialized knowledge, as it requires special training and belongs to a limited circle of people possessing the appropriate specialized skills.

Thus, the main task of an interpreter in civil proceedings is to provide an accurate, correct and legally competent interpretation. The purpose of the interpreter's participation is to ensure that trial participants, who are not fluent in the language of the proceedings, can understand the essence and content of the procedural actions during the consideration of the case on its merits.

There are also different scientific approaches to resolving the issue of classifying state authorities and local governments, as subjects of the application of specialized knowledge. An important and fundamental procedural mode of state authorities and local governments' participation in the civil procedure of Ukraine is the submission of opinions in the case. Thus, in accordance with Part 6 of Article 56 of the Civil Procedure Code of Ukraine, the specialized competence of state authorities and local governments in civil proceedings is the submission of an opinion in certain categories of cases.

In the procedural literature, there are discussions regarding the nature of knowledge applied by these participants in the court proceedings when preparing relevant opinions.

According to Part 1, Article 57 of the Civil Procedure Code of Ukraine, authorities and other persons who have applied to the court in the interests of other persons under Article 56 of this Code shall have the procedural rights and obligations of the person in whose interests they act, except for the right to make a settlement agreement.

Therefore, in view of the above, state authorities and local governments are not subjects facilitating the administration of justice. They possess the rights and obligations of the case participants. In this context, the scientific position of N. S. Novik

is correct that specialists and experts, unlike guardianship authorities, do not belong to the case parties, so the identification of these subjects is incorrect [44, p. 251].

In view of the above, the legal procedural status of these trial participants indicates that they cannot be considered as subjects of the application of specialized knowledge. The subjects of the application of specialized knowledge do not have and cannot have either material or procedural interest in the course of consideration of the case on the merits. State authorities and local governments do not have a material interest, since they are not a party to the dispute legal relations. However, such bodies have a procedural interest and are interested in adoption of a specific judgment, which follows from the tasks and functions of the relevant body. And one of the main requirements for the subjects of the application of specialized knowledge is impartiality, independence and the lack of any legal interest. The subjects of the application of specialized knowledge have no interest in the outcome of the case on the merits; these participants perform only their procedural function properly in order to facilitate the process of proving the case.

The subjects of the application of specialized knowledge assists in the process of proving the case, but cannot be proof subjects, unlike state authorities and local governments, which are proof subjects. We agree with N. S. Koshyn's scholarly position that the guardianship authorities, in all their forms of involvement in the case, are trial participants with procedural interests, rights, and obligations related to proving the case, and all their evidentiary activities aim to confirm or refute their claims, objections, and opinions in the case, rendering them proof subjects [45, p. 121].

When deciding on the inclusion of public authorities and local self-government bodies in the list of subjects of use of specialized knowledge, it is important to determine the nature of knowledge used by these participants in the process of preparing an opinion. In this context, the scientific position of N.S. Novik is extremely well-grounded that the guardianship authorities apply not so much specialized knowledge as experience, the results of surveys of the living conditions of certain subjects when providing an opinion [46, p. 154].

It should be noted that public authorities or local governments cannot directly possess specialized knowledge. The opinion is prepared by an authorized individual acting on behalf of the relevant authority within the scope of their official duties. Thus, state authorities and local governments possess specialized competence rather than specialized knowledge to provide an opinion on specific issues in the course of consideration of the case on the merits. These powers relate to the performance of official duties.

The terms "special knowledge" and "special competence" are different in their meaning. Therefore, state authorities and local governments do not consider to be the subjects of the application of specialized knowledge, but only possess specialized competence to provide an opinion. This specialized competence consists of the implementation of tasks assigned to representatives of a particular state authority or local governments in the course of consideration of the case on the merits.

The novelty of the Civil Procedure Code of Ukraine is the consolidation of the legal regulation of the legal expert's procedural status. The issues of legislative consolidation of the procedural status of a legal expert in civil proceedings are relevant and are being studied by many procedural scholars. The expediency and validity of legal expert participation in civil proceedings has been the subject of active scientific debate for a long time. The primary argument against introducing such a participant to the Civil Procedure Code of Ukraine remains the fact that a judge possesses legal knowledge. This raises questions about the functions, role and purpose of the procedural activities of a legal expert in civil proceedings.

There are terminological discrepancies in the legal regulation of the procedural status of a legal expert in the Civil Procedure Code of Ukraine. Thus, Article 73 of the Civil Procedure Code of Ukraine refers to this participant as a legal expert. However, Section 7 of Chapter 5 of the Code of the Civil Procedure Code of Ukraine refers to the expert conclusion in the field of law. In view of the above, it is necessary to unify these concepts and make appropriate amendments to the Civil Procedure Code of Ukraine.

It should be noted that the use of the term "expert" referring to this procedural figure is incorrect. Such a trial participant as an expert uses specialized knowledge in

the form of a expert examination, which involves conducting a separate special study. The result of an expert examination is the formation of new evidence - an expert conclusion. The powers of a legal expert do not include conducting an expert examination, therefore, no evidence is derived from this participant's activities.

We disagree with the position of N.O. Korotka, who proposes to correlate the "expert" and "legal expert" as general and special trial participants, since some provisions relating to the "expert" also apply to the "legal expert" [47, p. 99].

Thus, it should be emphasized that these trial participants cannot be correlated as general and special trial participants. These are two distinct procedural figures with differing procedural functions and evidentiary value of the results of their activities. In this context, M. Hetmantsev's position is justifiable as they study entirely different objects from a distinctive perspective, thus performing distinct roles in the administration of justice [48, p. 335]. Also, we agree with the scientific position of S. S. Bychkova, who notes that in order to clarify the content of a foreign law rule, it is not necessary to conduct a special study using certain methods, tools, equipment and other things that are a mandatory component of the examination [49, p. 329].

A legal expert does not perform an independent study and is not subject to the requirements applicable to experts. Therefore, this trial participant should be defined as a "specialist in the field of law". The term "specialist in the field of law" better conveys the procedural role and function of this trial participant.

According to Part 1 Article 73 of the Civil Procedure Code of Ukraine, a person with a scientific degree and a recognised specialist in the field of law may be involved as a legal expert. The term "recognized specialist in the field of law" is subjective and can have various interpretations. The Civil Procedure Code of Ukraine does not provide clear criteria for identifying a legal expert as a recognized specialist in the field of law. Also, there is no clear procedure for verifying the competence of a legal expert, no list of documents that an individual must submit to the court to confirm his or her authority to provide an expert conclusion in the field of law. In this regard, difficulties may arise in the course of involving a legal expert in the proceedings. It may also be difficult for the legal expert to exercise his or her procedural right to refuse to take part in the trial if

he/she does not have the relevant knowledge, there is no regulated procedure for verifying the expertise of this trial participant.

As O. O. Karmaza rightly notes, when a court decides to admit a legal expert to participate in the case and attach his/her opinion to the case-file, it is necessary to take into account such criteria as scientific work experience in the field of law; availability of scientific publications in professional journals of Ukraine and foreign countries included in international scientometric databases and published after the award of a scientific degree; availability of a document confirming the award of an academic title; degree of activity in conferences, symposia, round tables, etc. [50, c. 33].

In turn, Y.Y. Ryabchenko points out that excessive formalization of the criteria for involving such a person may hinder the exercise of the person's right to provide explanations to the court [51, p. 299]. Therefore, to confirm the fact that the relevant person is a recognized specialist in the field of law, it is necessary to establish a number of clear criteria. Thus, we believe that the qualifications of a legal expert should be confirmed primarily through a scientific degree diploma. In addition, a legal expert must fulfill a number of requirements related to the publication of articles and scientific activities, which indicates that the person concerned is a truly recognized specialist in the field of law. We believe that for a legal expert to effectively fulfill their procedural function, it is necessary that the subject matter of their dissertation research or scientific activity relates to the content of the issues they must resolve while providing their opinion. Thus, the professional nature of a expert conclusion in the field of law depends on the level of the legal expert's knowledge regarding the specific issue on which the conclusion is to be given. As the court practice shows, in the course of consideration of the case on the merits, it is necessary to check not only the availability of a scientific degree, but also confirmation of competence in a particular area of law. For example, the Ruling of the Babushkinsky District Court of Dnipropetrovsk dated January 18, 2022 in case No. 932/7660/21 states that the legal expert proposed by the defendant's representative, Yevhen Borysovych Titov, is a lecturer at V.N. Karazin Kharkiv National University. However, there is no evidence that this expert is a recognized specialist in the field of federal and state law in the United States. Thus, in the countries

of the Anglo-American legal family, along with the federal element, there is case law and regulations of districts and states. In such circumstances, the conclusion of an expert in the field of law will not be objective and reasonable [52].

Thus, the following requirements for the procedural status of a legal expert should be highlighted: 1) availability of an academic degree, which is confirmed by a relevant document; 2) compliance of the subject matter of the dissertation research or the area of scientific activity with the content of the issues on which an conclusion is required; 3) availability of publications in professional scientific journals; 4) systematic participation in scientific and practical conferences.

The analysis of the provisions of the Civil Procedure Code of Ukraine shows that there is no mechanism for recusal a legal expert. Thus, a legal expert has the right to refuse to take part in the trial if he/she does not have the relevant knowledge to provide a conclusion. However, we believe that in the absence of special knowledge in the field of law, the legal expert is obliged to refuse to take part in the trial. In this regard, we believe that the legislator unjustifiably does not provide for the right of the case parties to declare recusal of the legal expert if there are appropriate grounds.

We believe that the general grounds for recusal (part 1 of Article 38 of the Civil Procedure Code of Ukraine), as well as the special grounds for recusal of an expert and a specialist as subjects of the application of specialized knowledge (part 2 of Article 38 of the Civil Procedure Code of Ukraine), should also apply to a legal expert. Based on the principle of adversarial civil proceedings, the case parties should be guaranteed a real mechanism for protecting their rights and interests by declaring recusal for the legal expert.

Part one of Article 73 of the Civil Procedure Code of Ukraine provides that the judgment to admit a legal expert to participate in the case and attach his/her opinion to the case-file shall be made by the court. In turn, part 1 of Article 114 of the Civil Procedure Code of Ukraine states that the case parties shall have the right to submit to the court expert conclusion in the field of law. It is crucial to clarify and precisely define the entities entitled to engage a legal expert within the framework of Article 73 of the Civil Procedure Code of Ukraine. Such a trial participant should be involved in the

process both at the initiative of the court and at the request of the case parties. However, we believe that the court should have the right to provide a reasoned refusal when there are no reasonable grounds for involving a legal expert in the process. Therefore, the final judgment on the admission of such a participant to the proceedings and the attachment of his or her conclusion to the case file should be made exclusively by the court. In this regard, we propose to supplement Part 1 of Article 73 of the Civil Procedure Code of Ukraine with the following sentence: "A legal expert shall be involved in the proceedings at the request of the case parties or at the initiative of the court."

The form of a legal expert's procedural activity is to provide a conclusion on issues clearly stipulated by the Civil Procedure Code of Ukraine. Thus, in accordance with Part 1 of Article 114 of the Civil Procedure Code of Ukraine, the case parties shall have the right to submit to the court expert conclusion in the field of law on:

1) the application of analogy of statute or analogy of law;

2) the content of the foreign law norms in view of their official or generally accepted interpretation, practice and doctrine in the relevant foreign state.

The content of this conclusion is confined to a rather limited range of issues, so it cannot provide qualification of disputed legal relations, even if the judge has uncertainties regarding the correct application of a particular rule of law. A legal expert cannot resolve legally significant issues, as this is the exclusive prerogative of the court. Thus, in accordance with part 2 of Article 114 of the Civil Procedure Code of Ukraine, the expert conclusion in the field of law may not contain an evaluation of the evidence, instructions on the reliability or unreliability of a particular piece of evidence, the advantages of some pieces of evidence over others, as well as what kind of judgment should be made based on the case. As A.S. Shtefan rightly notes, the expert conclusion in the field of law does not contain an examination relating to the case’s circumstances and is not a source of evidentiary information, but information that may be necessary for the court to qualify the legal relations of the parties and select the legal applicable rule, but is not related to the establishment of the circumstances of the case [53, p. 317]. The precise and accurate application of foreign law to the regulation of specific disputed

legal relations is crucial in the course of consideration of the case on the merits, especially when the case involves a foreign element. However, as noted in the previous subsection, we are of the opinion that knowledge of foreign law is not part of a judge's professional knowledge. We agree with the scientific position of V.V. Krukoves that today in judicial practice it is increasingly necessary to refer to the rules of foreign law, but in order to interpret and apply such rules, special knowledge is required [54, p. 124].

Also, the expert conclusion in the field of law may relate to the application of analogy of statute and analogy of law. The institute of analogy of statute and analogy of law plays an exceedingly important role in the administration of justice, serving as an effective tool for consideration the case on the merits when there is no specific legal regulation for certain disputed legal relations. As noted by D. Bobrova, analogy of law is a means of overcoming gaps in the law, which is reduced to governing not a specific rule of civil law, but only the general principles, the content of civil law, and analogy of statute is the extension to relations that are not directly regulated by law, the legal rules governing such relations [55, p. 42]. In this context, it is justified to consider V.A. Kroitor's perspective, which emphasizes the distinctive characteristics of the institute of analogy: it is a logical method of inference, involving the extension of legal norms and principles of law to relations that are not explicitly regulated by law [56, p. 162].

In such cases, it becomes necessary to regulate these specific legal relations either by applying legal provisions pertaining to similar legal relations or by referring to fundamental legal principles.

An important issue in the study of a legal expert's competence is the application of European Court of Human Rights (ECHR) case law during the consideration of a case on its merits. According to Part 1 of Art. 17 of the Law of Ukraine "On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights", the courts apply the Convention (995_004) and the case law of the Court as a source of law in their proceedings [57]. Part 4 of Art. 10 of the Civil Procedure Code of Ukraine states that when considering cases, the court shall apply the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the protocols thereto

ratified by the Verkhovna Rada of Ukraine and the case law of the European Court of Human Rights as a source of law.

As noted by S.A. Chvankin, the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the judgments of the ECHR, hold fundamental significance in cases where there are gaps in domestic legislation and law enforcement practices during the interpretation of national legislation in line with the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms [58, p. 19]. In this case, the involvement of a legal expert who has conducted research on the ECHR case law on the regulation of a particular type of legal relationship will help the court to obtain information on the ECHR's position on this issue and to make a lawful, reasonable and fair court decision.

In the course of analyzing the court practice, it was established that there is a real need to involve a legal expert in the course of consideration of the case on the merits to provide a conclusion on the application of the analogy of statute and analogy of law. Thus, by the Ruling of the Donetsk Court of Appeal dated July 03, 2019 in case No. 234/16887/18, the motion of the defendant's representative to involve a legal expert in the case was granted. Thus, the Ruling determined to apply to the Yaroslav Mudryi National Law University (61024, Kharkiv, 77 Pushkinska St.), as an institution with legal experts in the field of labor law, for an expert conclusion in the field of law on the following issue: the possibility of applying Art. 119 of the Labor Code, including part. 3, by analogy of the statute, to the defendant's employees who are not military personnel and continued their employment relations in the territory where the state authorities temporarily do not exercise their powers, in particular in the city of Donetsk, and were captured by illegal armed groups, for the period of their captivity? [59]

The analysis of court practice reveals that difficulties arise in the interpretation of the powers of a legal expert, often leading to the involvement of this trial participant in matters that are not within their competence. As a result, the boundaries of specialized knowledge and the proper application of the relevant mode of specialized knowledge are often violated in civil procedure. For example, in a ruling dated May 07, 2018, the Tetiiv District Court of Kyiv Region fully granted the request of the claimant's

representative to involve a legal expert in the case to provide specialized knowledge and clarify a legal conflict of norms related to the regulation of land relations [60].

It is important to emphasize that the responsibilities of a legal expert do not include the resolution of legal conflicts. The resolution of legal conflicts should be exclusively handled by the court, drawing upon its in-depth knowledge of jurisprudence and its experience in law enforcement. Analogy of statute, analogy of law, and legal conflicts are distinct legal categories. We should agree with O.V. Kolotova who notes that in the process of law application such legal phenomena as a legal conflict should be distinguished from gaps in law [61, p. 59].

Thus, as noted by B.V. Malyshev, a legal conflict is a type of legal contradiction arising in the presence of at least two legal norms (normative provisions) which regulate the same social relations, but due to the difference in content of these legal norms, it is impossible to apply them simultaneously, and therefore only one norm should be chosen [62, p. 92].

If there is a need to apply an analogy of statute or an analogy of law, there is no legal regulation of specific disputed legal relations at all. Therefore, the possibility of engaging a legal expert to provide a conclusion on the application of an analogy of statute or analogy of law provided for by the court does not provide for the possibility of resolving issues related to legal conflicts.

According to Part 1 Article 115 of the Civil Procedure Code of Ukraine, the expert conclusion in the field of law shall not mean evidence, but it shall be of an auxiliary (advisory) nature, not binding on the court.

It should be noted that scholars have different positions and approaches to the interpretation or application of legal norms. That is why the expert conclusion in the field of law is a subjective scientific position. In this regard, we believe it is justified that the expert conclusion in the field of law is auxiliary in nature, helping the court to form its position, but it is not and cannot be considered as evidence, as it does not directly contain information about the circumstances of a particular case.

One of the problems in the legal regulation of the legal expert's procedural activities is the absence of requirements for the form and content of the expert conclusion in the field of law provided by them.

As M. Hetmantsev notes, there is every reason to extend to the conclusion of a legal expert all the general requirements for final conclusions based on the results of examinations of different levels, which are, by and large, identical in content [48, p. 335].

As M. Hetmantsev notes, there are valid grounds to apply to the expert conclusion in the field of law all the general requirements for final conclusions, based on the results of examinations of different levels, which are, in essence, identical in content [48, p. 335].

However, we must disagree with the above position in the context of identifying the expert conclusion and the expert conclusion in the field of law. Therefore, the requirements for an expert conclusion cannot be directly applied to the expert conclusion in the field of law, as they are distinct documents with their own specific characteristics and content. Taking into account that a legal expert does not conduct an expert examination, and their conclusion is not considered as a means of proof, it is necessary to establish specific requirements related to this type of conclusion. We believe that such a conclusion must be documented in writing for further examination and consideration by the court. We propose to distinguish the following parts of the expert conclusion in the field of law: introductory, descriptive and conclusions.

The introductory part of the expert conclusion in the field of law must contain the following information: surname, name, patronymic of the person providing the conclusion; information on education and academic degree; information on the subject of dissertation research or area of scientific activity; information on scientific publications and participation in scientific and practical conferences; issues raised for resolution by the legal expert; information on payment for the services of the legal expert.

The descriptive part should directly contain a thorough analysis of the issue that the court has set for the legal expert to resolve. For example, a description of the

specifics of the content of a particular foreign law provision, official and doctrinal approaches to the interpretation of a given regulatory provision, or an analysis of the ECHR case law on a particular issue.

The conclusions should reflect a clear position with reference to the regulatory framework of a foreign state regarding the practice of applying a particular foreign law provision or a generalization of the ECHR's positions on specific issues.

In connection with the above, we propose to supplement Article 114 of the Civil Procedure Code of Ukraine with part three as follows: "The expert conclusion in the field of law shall consist of an introductory, descriptive part, conclusions and shall be set out in writing".

Also, an important issue in the context of studying the procedural status of a legal expert is their liability. According to Part 2 of Article 73 of the Civil Procedure Code of Ukraine, the legal expert shall appear in court upon his/her summons. However, the legislator does not establish liability for non-appearance in court. In this regard, we propose adding legal experts to the list of entities in Article 224 of the Civil Procedure Code of Ukraine who are subject to liability for non-appearance in court.

When studying the list of subjects of the application of specialized knowledge, it's crucial to consider trial participants such as pedagogue, psychologists, and psychiatrists. Based on the analysis of the Civil Procedure Code of Ukraine, it is clear that the procedural status of these trial participants is not legally established. Additionally, there are no guidelines for categorizing these subjects as a specific group of trial participants. However, as V. Kravchuk and O. Uhrynovska correctly point out in this context, other trial participants should also encompass individuals such as pedagogues and medical practitioners [63, p. 156]. The scientific position of Y.A. Prut is in line with the fact that the category of other trial participants can also include, for example, pedagogues and medical practitioners [64, p. 376].

O.V. Hetmantsev outlines the following characteristics that pertain to other trial participants: 1) they constitute an independent type (group, subspecies) of trial participants alongside with the case parties and their representatives; 2) they lack any legal interest in the outcome of the court's consideration and judgment of a civil case (

the court's decision does not and cannot impact their legal status in the future, and it does not entail legal consequences for them); 3) in civil proceedings, they serve a procedural purpose - to provide organizational and technical support for the proceedings or to assist the court in the examination and consideration of cases (clarifying the circumstances (facts) of the case and establishing and examining evidence).

Thus, a psychologist, pedagogue, and psychiatrist contribute to the administration of justice and the process of proving the case, and have neither material nor procedural interest in the outcome of the case on the merits. While performing their procedural function, a psychologist, pedagogue, and psychiatrist apply knowledge that fulfill the requirements of specialized knowledge, since it is acquired through appropriate professional training and is not common. Therefore, we consider it appropriate to refer these participants to the group of other trial participants and to the subjects of the application of specialized knowledge. In connection with the above, we propose to add such trial participants as a psychologist, pedagogue, and psychiatrist to the list of the other trial participants provided for in part 1 of Article 65 of the Civil Procedure Code of Ukraine.

According to Part 1 of Article 232 of the Civil Procedure Code of Ukraine, the interrogation of minor witnesses and, at the discretion of the court, juvenile witnesses shall be conducted in the presence of parents, adoptive parents, guardians, trustees, if they are not interested in the case, or representatives of guardianship authorities, as well as the services for children.

It should be noted that the procedure for interrogation of juvenile and minor witnesses, which is enshrined in the Civil Procedure Code of Ukraine, does not require the mandatory presence of a psychologist or pedagogue, which, in our opinion, is a significant gap in civil procedural legislation. Part 1 of Article 3 of the Convention on the Rights of the Child emphasizes that in all actions involving children, whether undertaken by public or private social welfare institutions, courts, administrative bodies, or legislative authorities, the paramount consideration should be the best interests of the child [66].

However, due to the judge's lack of specialized knowledge in the field of child psychology and a limited understanding of the psychological nuances of minors and juveniles, they may not be able to conduct a qualified interrogation of such individuals. In this regard, the assistance of a psychologist during the interrogation of a minor and a juvenile will ensure that this procedural action is carried out at the proper level and aids the court in obtaining the necessary information from such a witness. In this case, the psychologist or pedagogue not only creates a favorable environment for obtaining specific information from a minor or juvenile witness, but also ensures the protection of the rights and interests of such a person, taking into account his or her age and psychological characteristics.

The psychologist or pedagogue also ensures that the child is not influenced or pressured negatively during the interrogation. In this context, we agree with the scientific position of N.M. Senchenko that during the legal process the characteristics and individual qualities of the child, their psychological state, and the realization of their legal rights and interests should be taken into account [67, p. 164].

That is why we adhere to the position that it is mandatory for a psychologist to participate during the interrogation of a minor or juvenile witness. In our opinion, the presence of a child psychologist is crucial during the interrogation of a minor or juvenile witness. A child psychologist is a specialist in the field of peculiarities and patterns of development of the child's psyche. In turn, a pedagogue is a specialist in the field of children's education. Of course, the pedagogue's knowledge also includes the basics of child psychology, however, this knowledge cannot be compared with the knowledge of a child psychologist. Therefore, it is necessary to conclude that the pedagogue's knowledge may not be sufficient to ensure the child's psychological comfort during interrogation.

That is why the participation of a psychologist should be mandatory during interrogation of a minor or juvenile witness. In turn, a pedagogue may be involved at the court's discretion or on the recommendation of a psychologist in exceptional cases to ensure favorable conditions for the child during the interrogation. For example, in certain situations, a pedagogue from the educational institution attended by the witness

should be involved to establish contact with a minor or juvenile witness. In this case, the involvement of the pedagogue plays a supportive, rather than a primary, role in the interrogation of a minor or juvenile witness. In view of the above, we suggest amending Part 1 of Article 242 of the Civil Procedure Code of Ukraine with the following provision: "Interrogation of minor and juvenile witnesses shall be conducted with the mandatory participation of a child psychologist. In exceptional cases, at the court's discretion, a pedagogue may be involved in the interrogation of a minor or juvenile witness".

Based on the analysis of court practice, it can be concluded that the involvement of a psychologist and a pedagogue not only aids in obtaining the necessary information during the interrogation of a minor or juvenile witness without compromising their psychological well-being, but also contributes to the adoption of a lawful and reasonable judgment.

For example, the Oktyabrsky District Court of Kryvyi Rih in case No. 212/7365/17 involved a pedagogue in the interrogation of a minor. The Judgment of the Zhovtnevyi District Court of June 08, 2018 in this case states that after the interrogation of the minor witness, the pedagogue present explained that the child answered without coercion, there was no pressure on him, the child felt comfortable, and responded candidly, however, the pedagogue, noted that PERSON_8 was afraid to offend both his mother and father. In this case, the minor, PERSON_8, expressed a desire to live with her mother. However, considering her age and the pedagogue's observations during the interrogation, which indicated, that PERSON_8 fear of offending both her father and mother, along with the circumstances established by the court, including the child's relatives and friends in Ukraine, the availability of free education, and participation in out-of-school activities, the court concluded that it could not solely base its judgment on the child's preference regarding which parent to live with. In the court's opinion, this judgment would not be in the best interests of the child [68].

In this case, the judgment was based on the information provided by the pedagogue. In this regard, it can be concluded that the participation of a psychologist and a pedagogue is extremely important in the course of consideration and resolution of

the case on the merits. Therefore, the lack of legal regulation of the participation of psychologists and pedagogue in court proceedings involving minors is a significant gap in civil procedural law. In cases where minors or juvenile persons are involved in certain procedural actions, the activities of a psychologist and a pedagogue can reduce or even eliminate the negative impact on the mental health of such a person and ensure that he or she correctly perceives the significance of the court's procedural actions.

Despite the absence of legal regulation of the procedural status of such a participant in civil procedural law, it is extremely common in court practice to involve a psychologist in the interrogation of minors or juveniles. For example, the Ruling of the Ivano-Frankivsk City Court of June 21, 2018 in case No. 344/6360/17 involved a psychologist in the interrogation of a minor. The court reasoned that in order to respect the rights of a minor, a specialist in child psychology from the Ivano-Frankivsk Center for Practical Psychology and Social Work of the Department of Education and Science of the Ivano-Frankivsk City Council should be summoned [69].

However, the participation of a psychologist in civil proceedings is not limited to the interrogation of a minor or a juvenile. For example, by the judgment of the Ivankiv District Court of Kyiv Region of March 13, 2017 in case No. 366/125/17, the court involved a psychologist in the case in order to provide an opinion regarding whether communication with the father at his residence might be traumatic circumstance for the child, or to assist in determining the most suitable method of communication between the father and son [70].

By the judgment of the Lozova City District Court of Kharkiv Region of 26.04.2018 in case No. 629/3595/17, a psychologist was involved during the consideration of the case on the merits in order to decide whether it was possible to interview the claimant’s and the defendant’s minor children [71].

Thus, it can be concluded that in the aforementioned cases, the psychologist was involved by the court to determine the procedure for communication with one of the parents, to determine the possibility of interrogating minors and to evaluate the psychological readiness of children for certain procedural actions. Therefore, given the above, it is necessary to conclude that in the cases involving minors or juveniles in the

legal process, a psychologist is involved in the process not only to assist during the interrogation of such a person, but also directly during the consideration of the case on the merits in order to ensure their psychological well-being.

During the participation of a psychologist in the interrogation of a minor or juvenile, they provide methodological and organizational assistance to the court. They also directly determines the appropriate interrogation procedure in order to minimize psychological trauma to the person being interrogated and maximize the court's access to the information necessary for adoption of a lawful, reasonable and fair decision. Thus, the psychologist provides the court with information on the techniques and methods for interrogating a minor or juvenile, and facilitate the establishment of psychological contact between the court and such a person.

Based on the above, it can be concluded that the subjects of the application of specialized knowledge should include an expert, specialist, legal expert, interpreter, pedagogue, psychologist and psychiatrist. In this regard, a general system of attributes for the subjects of the application of specialized knowledge in civil proceedings can be formulated: 1) they have specialized knowledge and skills; 2) they are not parties to a disputed legal relationship; 3) they have neither material nor procedural interest in the results of the case resolution on the merits; 4) they are impartial and independent in their procedural activities; 5) the activity of the subjects of the application of specialized knowledge is regulated by procedural legislation; 6) the main purpose of the activity of the subjects of the application of specialized knowledge is to facilitate the administration of justice and the process of proving the case; 7) the way of intervention in a case for these subjects is a court ruling; 8) the inability to intervene in a case on their own initiative.

One of the essential issue of studying the peculiarities of the application of specialized knowledge in the civil procedure of Ukraine is also understanding the modes of its application. The approaches of procedural scholars to the definition of the modes of the application of specialized knowledge are quite diverse, which is directly related to the content of the concept of specialized knowledge and the list of subjects of its application.

As noted by H. Prokopanych, modern procedural science distinguishes three forms of the application of specialized knowledge to solve the tasks facing the judicial system – its application by the proof subjects, expert examination and participation of a specialist [72, p. 61]. We disagree with the allocation of such a mode of the application of specialized knowledge as its application by the proof subjects. Thus, the proof subjects may apply to the court to engage a specific subject of the application of specialized knowledge, but they cannot use specialized knowledge independently during the consideration of the case on the merits.

The current Civil Procedure Code of Ukraine distinguishes only two modes of the application of specialized knowledge, such as expert examination and participation of a specialist in civil proceedings. However, based on the analysis of the legal nature and content of the concept of "specialized knowledge" and the list of subjects of its application, we can conclude that today there is a need to expand the system of modes of the application of specialized knowledge.

We propose classifying the modes of the application of specialized knowledge in Ukrainian civil procedure based on the following criteria.

I. For the purpose of its application: the application of specialized knowledge in order to create new evidence; the application of specialized knowledge in order to obtain advice; the application of specialized knowledge for the purpose of technical assistance in performing procedural actions; the application of specialized knowledge in order to ensure equality of trial participants in the context of understanding the language of the proceedings; the application of specialized knowledge in order to obtain an expert conclusion in the field of law; the application of specialized knowledge in order to ensure the psychological comfort of minors and juveniles.

II. By the subject of its application: application of specialized knowledge by an expert; application of specialized knowledge by a specialist; application of specialized knowledge by an interpreter; application of specialized knowledge by a legal expert; application of specialized knowledge by a psychologist, pedagogue, psychiatrist;

III. According to the evidentiary value of the results the subject’s of the application of specialized knowledge activities: modes that result in the formation of new evidence

(expert examination) and modes with advisory nature (advice, technical assistance of a specialist, interpreter and legal expert activities).

IV. By the content of the activity: expert examination; specialist advice; technical assistance of a specialist; participation of a legal expert in civil proceedings; participation of an interpreter in civil proceedings; participation of a psychologist, pedagogue, psychiatrist in civil proceedings.

According to H.K. Prokopanych, depending on the evidentiary value of the results of the application of specialized knowledge in economic, civil and criminal proceedings, the modes are divided into: procedural forms (application of specialists in the examination of documents, things; application of specialists in the framework of expert examinations, application of special technical and forensic knowledge by the judge himself in the course of his official activities); non-procedural modes (advisory activities of specialists, fulfillment of various instructions of the judge of a technical nature) [73, c. 267].

However, we cannot agree with the above scientific position, since according to the criterion of evidentiary value it is advisable to distinguish between modes of the application of specialized knowledge that result in directly new evidence and those modes that are used to facilitate the process of proving the case, but are of a advisory nature. Also, questions arise regarding the definition of procedural and non-procedural modes of the application of specialized knowledge. We believe that it is inappropriate to differentiate such modes of the application of specialized knowledge as non-procedural. One of the important characterics of the application of specialized knowledge in civil proceedings is the strict adherence to the civil procedural form. Therefore, based on the above, it is necessary to expand the list of subjects of the application of specialized knowledge and modes of its application. Thus, we maintain the position that the subjects of the application of specialized knowledge include experts, specialists, legal experts, interpreters, psychologists, pedagogues, and psychiatrists. Accordingly, the modes of the application of specialized knowledge include expert examination, specialist advice, specialist technical assistance, participation of a legal expert,

participation of an interpreter, participation of a psychologist, pedagogue and psychiatrist in civil proceedings.

1.3. Grounds for the application of specialized knowledge in the civil procedure of Ukraine

The analysis of the grounds for the application of specialized knowledge is of a greate importance, since a clear definition of the list of grounds for the application of specialized knowledge in civil procedural legislation will ensure the effectiveness of their application during the consideration of the case on the merits. It should be noted that currently, the grounds for the application of specialized knowledge are not sufficiently regulated in civil procedural legislation. This lack of regulation leads to difficulties in the process of the application of specific modes of such knowledge.

In practice, there are often cases of unreasonable appointment of expert examination, which in the future leads to a delay of the trial and an increase in court costs. In this regard, the implementation of the basic principles of civil procedure is violated, including the principle of reasonability of time limits for case consideration by the court, which has been repeatedly emphasized by the European Court of Human Rights. Therefore, the application of specialized knowledge, when justified by the court and provided for by the civil procedural law, guarantees timely and effective justice.

We believe that the ground for the application of specialized knowledge is the need for the application of specialized knowledge in a specific form, which is enshrined in the civil procedural legislation and objectively justified by the court, for the purpose of fair, impartial and timely consideration and resolution of the case on the merits.

An important feature of the grounds for the application of specialized knowledge in the civil procedure of Ukraine is its regulatory nature, which follows from the need to comply with a clear procedural form of the application of specialized knowledge in the civil procedure of Ukraine. It should be noted that a close relationship exists between the objective necessity of applying specialized knowledge and the particular form of its

application. In this context, we agree with the scientific position of Zh. V. Vasylieva-Shalamova, who posits that determining the grouns for the appointment and execution of an examination means identifying circumstances that, on the one hand, indicate the need for the application of specialized knowledge, and on the other hand, have a legal framework [12, p. 68].

The grounds for the application of specialized knowledge is a complex concept and can be realized only if the civil procedural form is strictly observed. In other words, a prerequisite for the application of specialized knowledge is the existence of a specific legal provision that provides for the appropriate form of the application of specialized knowledge. The basis for determining and regulating the grounds for the application of specialized knowledge is the objective and real impossibility of establishing the specific circumstances of the case without the application of specialized knowledge in a certain mode.

We can identify the following characteristics of the grounds for the application of specialized knowledge: 1) the ground for the application of specialized knowledge is a reflection of the court's justified need for its application in a certain mode; 2) the ground for the application of specialized knowledge is characterized by its regulatory consolidation in civil procedural legislation; 3) each mode of the application of specialized knowledge determines the corresponding special ground for its application; 4) there is a connection between the justified need, regulatory consolidation and practical possibility of applying a specific mode of the application of special knowledge.

According to V. Fesiunin, the grounds for the application of specialized knowledge are formalized and include substantive and procedural grounds. Their application requires a correct determination by the court of the subject of proof in the case and the identification of the need to apply the knowledge of informed individuals [6, p. 229].

Procedural grounds are specific to each mode of application of specialized knowledge. Different modes of application of specialized knowledge have distinct procedural features which are related to the procedural status of the subject of its application, and the nature of their procedural function and the evidentiary value of their

activities results. Therefore, there is a crucial scientific and practical need to clearly define all procedural grounds for the application of specialized knowledge in each specific mode.

The procedural grounds for the application of specialized knowledge should be stated in the relevant procedural document - a court ruling. According to D.G. Glushkova, the procedural ground for the involvement of both a specialist and an expert in the process is a judgment, respectively, on the involvement of a specialist and on the appointment of examination [74, p. 10]. Also, according to subpara. 2, para. 1.8 of the Instruction, the grounds for conducting an examination in civil, commercial and administrative proceedings is a court ruling on appointment of an examination or an agreement with an expert or expert institution concluded at the request of a case party.

According to O. Bratel, procedural legal facts are certain life circumstances with which the rules of law associate the emergence, change or termination of civil procedural legal relations [75, p. 4]. Therefore, the decision to apply a specific mode of application of certain specialized knowledge is a procedural legal fact that directly gives rise to civil procedural legal relations concerning the involvement of an expert, specialist, interpreter, legal expert, psychologist, pedagogues, psychiatrist in the process. These civil procedural legal relations arise directly between the court and the subject of the application of specialized knowledge. The mandatory subject of civil procedural legal relations is the court. We should agree with the scientific position of O. Zakharova that civil procedural relations emerge from a certain set of procedural actions which are completed by the actions of the court [76, p. 39].

Among the procedural grounds for the application of specialized knowledge, one should distinguish between mandatory and optional ones.

The mandatory grounds for the application of specialized knowledge in civil proceedings include the grounds provided for by:

1. in part 1 of Article 105 of the Civil Procedure Code of Ukraine, which states that the appointment of an expert examination by a court shall be obligatory in the case of a petition for the appointment of an expert examination by both parties. The appointment

of an examination by a court shall be also mandatory at the request of at least one of the parties, if the case requires the establishment of the following:

1) the nature and degree of damage to health;

2) the mental condition of the person;

3) the age of the person, if there are no relevant documents and it is impossible to obtain them.

2. part 1 of Article 298 of the Civil Procedure Code of Ukraine, which states that the court, in the presence of sufficient data on the mental disorder of an individual, shall appoint a forensic psychiatric examination to establish his/her mental condition;

3. part 2 of Article 298 of the Civil Procedure Code of Ukraine, which states in exceptional cases, the court at the court hearing with a psychiatrist may order the forcible referral of an individual to forensic psychiatric expert examination;

4. in part 2 of Article 75 of the Civil Procedure Code of Ukraine, which states that the participation of an interpreter who is qualified to communicate with the deaf, dumb or deaf-and-dumb is mandatory in the cases, where one of the participants is a person with a hearing impairment.

We also believe that the list of mandatory grounds for the application of specialized knowledge should be supplemented by the mandatory participation of a child psychologist in the interrogation of minors or juveniles.

Thus, the mandatory grounds for the application of specialized knowledge are clearly regulated in the Civil Procedure Code of Ukraine. For example, when considering certain categories of cases without an expert examination, it is impossible to make a lawful, reasonable and fair judgment, which is the ground for appealing a judgment under appellate procedure. As N.I. Volkova rightly notes, in order to confirm the fact of a person's mental disorder, the court shall mandatorily appoint a forensic psychiatric examination, which, in case of a person's evasion of participating in it, may be carried out compulsorily [77, p. 126].

Therefore, if the law establishes a mandatory requirement for the court to appoint an expert examination, the case cannot be resolved on the merits without an expert conclusion, as evidenced by the relevant case law. Thus, the decision of the Court of

Appeal of the Transcarpathian region of September 26, 2014 established that the decision of the Uzhhorod City District Court of 16.07.2014 in the case of forensic psychiatric examination to determine the state of mental health of PERSON_2, INFORMATION_1, the implementation of which was entrusted to experts of the Berehovo Regional Psychiatric Hospital, for the time of the examination, the proceedings were suspended (a.p. 24). The appointment of a forensic psychiatric examination in this case is mandatory and the court's actions comply with the specified requirements of the law [78].

In cases where an expert examination is mandatory, the availability of other evidence confirming a particular fact is not sufficient to adopt a lawful, reasonable and fair judgment. In addition, in this case, the rule of admissibility of evidence provided by Part 2 of Article 78 of the Civil Procedure Code of Ukraine is violated.

In turn, the optional grounds give the case parties the opportunity to apply for the appointment of a specific form of specialized knowledge application at their own discretion.

As V.M. Tertyshnyk rightly notes, any expert examination should be appointed only if it is really necessary - when it is impossible to establish the truth without expert research and expert conclusion on a particular issue [79, p. 221].

It should be noted that the main grounds for appointing of an expert examination include:

1) the need to conduct a special scientific study to determine the circumstances relevant to the case, substantiated by the court;

2) the court's inability to establish the circumstances relevant to the case by applying other forms of special knowledge or in any other way.

The procedural grounds for the appointment of an expert examination are provided for in Part 1 of Article 103 of the Civil Procedure Code of Ukraine, Part 1 of Article 105 of the Civil Procedure Code of Ukraine and Part 1 of Article 298 of the Civil Procedure Code of Ukraine.

In turn, the civil procedural legislation does not provide a separate article on the grounds for involving a specialist in the proceedings. Based on the analysis of Article

74 of the Civil Procedure Code of Ukraine, it can be concluded that the fundamental grounds for the participation of a specialist in the proceedings is the need for special knowledge to resolve a specific issue in the course of recording and examining evidence, but there is no need for a thorough investigation in the form of an expert examination. Therefore, in this case, the court may limit itself to the advice or technical assistance of a specialist, depending on the nature of the issue to be resolved during the consideration of the case on the merits. In this context, the scientific position of V.S. Shapiro is justified that the specialist is obliged to answer the questions asked by the court, to give oral advice and written explanations, to draw the court's attention to the specific circumstances or features of the evidence, and, if necessary, to provide technical assistance to the court [80, p. 26].

In connection with the above, the procedural grounds for the involvement a specialist in the proceedings include:

1) the need for the application of specialized knowledge in the form of specialist advice or technical assistance in the course of recording and examination of evidence, justified by the court;

2) the need for a specialist to provide technical assistance, such as photographing, sound and video recording, drawing up diagrams, plans, drawings, taking samples for examination, etc;

3) the court and the case parties do not need to conduct a special scientific research in the form of an expert examination.

The procedural grounds for involving a legal expert in the proceedings are provided by Article 114 of the Civil Procedure Code of Ukraine, which directly defines the content of the issues that may be addressed by the conclusion of this participant in the proceedings. This list of issues is limited and refers to the specific features of the practice of applying foreign law, as well as the interpretation of its content, analogy of statute and analogy of law.

The Civil Procedure Code of Ukraine also lacks clear grounds for involving an interpreter in the proceedings. Based on the analysis of Art. 75 of the Civil Procedure Code of Ukraine, it can be concluded that the procedural grounds for involving an

interpreter in the proceedings include: 1) the presence of a person who is not fluent in the language of the proceedings; 2) the presence of the deaf, dumb or deaf-and-dumb individuals in the proceedings; 3) the presence of documents in the case file drawn up in a foreign language.

The procedural basis for involving a psychiatrist in the proceedings is enshrined in Part 1 of Article 298 of the Civil Procedure Code of Ukraine and provides for the participation of a psychiatrist in cases where it is necessary to appoint a forensic psychiatric examination under compulsion.

As noted in the previous subsection, it is necessary to clearly establish in the Civil Procedure Code of Ukraine the procedural grounds for the participation of a psychologist and a pedagogue during the interrogation of a minor and a juvenile.

The material (special) grounds for the application of specialized knowledge follow directly from the subject of proof and are contained in the substantive law governing the relevant disputed legal relations. For example, according to clause 2 of part 1 of Article 1008 of the Civil Procedure Code of Ukraine, a commission agreement is terminated on the general grounds of termination of the contract, as well as in case of recognition of the principal or attorney as incapable, restriction of his civil capacity or recognition as missing [81].

The aforementioned rule of law provides for a material ground for the application of specialized knowledge in the form of forensic psychiatric examination in order to recognize a person as incapacitated or with limited legal capacity. Thus, in accordance with the aforementioned regulatory provision, a power of commission agreement may be terminated in connection with the recognition of a person as incapable or with limited legal capacity. In civil proceedings, there is a category of cases of separate proceedings on recognition of a person as incapable or with limited legal capacity, which requires the appointment of an expert examination (Part 1 of Article 298 of the Civil Procedure Code of Ukraine).

In this case, there is a close interaction between the substantive and procedural grounds for the application of specialized knowledge. The content of the substantive rule of law implies the need to apply specialized knowledge in a specific form, which is

supported by the existence of a clear procedural regulation of this form. Substantive and procedural grounds cannot be applied separately, which reflects the complex nature of the concept of "grounds for the application of specialized knowledge".

In this regard, we maintain that the following types of grounds for the application of specialized knowledge in civil proceedings should be distinguished:

1. Procedural grounds - grounds established by the civil procedural legislation, individual for each mode of application of specialized knowledge. These grounds are conditioned by the legal nature of a particular made of the application of specialized knowledge, namely, they are determined by the procedural purpose of the respective mode, the procedural status of the subject of its application and the evidentiary value of its activities. Procedural grounds are reflected in the judgment, which is a procedural legal fact.

2. Mandatory - these are procedural grounds that determine the mandatory procedure for applying the relevant mode of the application of specialized knowledge in specific cases.

3. Optional grounds are procedural grounds that allow the application of a certain mode of specialized knowledge at the discretion of the case parties.

4. Substantive (special) grounds are grounds established in the substantive law governing specific disputed legal relations. The need to apply a specific mode of the application of specialized knowledge arises from the content of the disputed legal relationship, which is regulated directly by the substantive law, as well as from the nature of the circumstances to be established by the court.

1.4. International standards of civil procedure in the field of the application of specialized knowledge

International and European standards play an extremely important role in the development of modern civil procedure in Ukraine, as well as the entire legislation in general. The implemention of these standards into Ukrainian legislation requires

aligning all legal acts with the fundamental principles provided for by the relevant standards. The main principle in this context is the rule of law, which should permeate the legal regulation of all spheres of public life. The Institute of Application of Specialized Knowledge is not an exception in the context of the need to build legal regulation with due regard to the international principles of activity of the subjects of its application, as well as the general principles and principles of proving contained in international legal acts and decisions of the ECHR.

As rightly noted by V. Komarov, the rule of law is a central, unifying and initial idea - a principle from which other generally recognized rules and principles of law are derived, which, being initially as elements of the rule of law, were eventually institutionalized as separate generally recognized rules and principles [82, p. 25]. In view of the above, it can be concluded that the principle of the rule of law is primary in relation to other principles of judicial proceedings. All institutions of civil procedure, including the institution of the application of specialized knowledge, should be based on this principle.

We agree with the scientific position of V.V. Krukoves that the international standards of civil procedure are the minimum requirements for the organization of effective civil procedure established by international legal acts, decisions of international judicial bodies and international organizations of judicial self-government, taking into account international and national principles of civil procedure [83, p. 93].

Thus, it is worth noting that international standards provide for the basic principles of civil procedure in order to achieve its efficiency, fairness and accessibility.

I.V. Nazarov identifies the following bases of international standards: a) basic international acts which formulate universal principles of the exercise of judicial power; b) case law of the European Court of Human Rights; c) special international legal framework; d) European Union standards for the construction of judicial systems [84, p. 352].

Thus, it is important to emphasize that the application of international standards is extremely important for ensuring a unified approach to the formation of judicial practice. One of the fundamental international legal acts in the field of administration of

justice is the Convention for the Protection of Human Rights and Fundamental Freedoms. According to Part 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention), everyone has the right to a fair and public hearing, within a reasonable time, by an independent and impartial tribunal established by law, to determine a dispute concerning his rights and obligations of a civil nature or to determine the validity of any criminal charge against him [85].

It is worth noting that in the context of the application of specialized knowledge in civil proceedings, it is the ECHR judgments that are of great importance. Thus, the ECHR judgments belong to the international standards of judicial proceedings and are one of the effective tools for ensuring the unity of judicial practice and the harmonization of civil proceedings in general. For example, the ECHR judgments provide an interpretation of the fundamental principles established in the Convention for the Protection of Human Rights and Fundamental Freedoms. In the course of studying the institution of the application of specialized knowledge, it is worth noting that the ECHR judgments repeatedly raise the issues of conducting expert examination in the context of compliance with the principle of reasonableness of the terms of consideration of a case, as well as the independence and impartiality of experts in the process of consideration of the case on the merits, the effectiveness of expert examination in the context of proving the particular case.

Thus, for example, in the case of Brandstetes v. Austria, the European Court of Human Rights noted that the right to an "adversarial trial" (as part of the broader concept of the right to a fair trial) means that "both parties to the proceedings must be given the opportunity to apply the assistance of specialists with specialized knowledge in specific fields of science and to provide explanations concerning the evidence submitted by the other party" [86].

That is, it can be concluded that the right to a fair trial also includes the availability of a real opportunity to exercise the right to engage a subject of the application specialized knowledge to facilitate the process of proving the case. In this context, we agree with the scientific position of G.I. Berezhansky that the procedural aspect of the

right to a fair trial fully characterizes the scope of procedural opportunities provided to persons enjoying the right to a fair trial. This should include a set of procedural rights and obligations, as well as formal guarantees of a fair trial, including a public hearing, reasonable time limits, legality, etc. [87, p. 194-195].

Thus, the right of a case party to apply for involvement of a specific subject of the application of specialized knowledge is of great importance for the resolution of the case on the merits, since the fundamental purpose of these subjects is to facilitate the process of proving the case. An expert conclusion is a means of proof, and therefore, in the course of an expert examination, specific circumstances that are relevant to the resolution of the case on the merits are established.

In this context, we agree with the scientific position of V.D. Yurchyshyn that the ECHR has developed certain generally recognized approaches (European legal standards) to the procedure for appointing and conducting expert examination, assessing the reliability and validity of expert conclusion, which correspond to the content of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR, when considering complaints, pays attention to the observance of human rights in the process of appointing and conducting expert examinations [88, p. 245].

Expert examination in civil proceedings is one of the main forms of application of specialized knowledge, as it leads to the emergence of new evidence in the case - an expert conclusion. The ECHR case law often raises the issue of the timing of expert examinations in the context of compliance with the principle of reasonableness of the court's consideration of the case.

As noted by S.V. Dyachenko and N.O. Zborovska, in each case there is a problem of evaluation the reasonableness of the term, which depends on certain criteria developed by the ECHR practice. These criteria are the complexity of the case, the applicant's conduct, the conduct of public authorities, and the importance of the issue for the applicant [89, p. 111].

The analysis of case law indicates a prevalent issue of case delays due to non-compliance with procedural requirements for expert examination appointments or

unreasonable appointments in cases not requiring specialized knowledge or requiring the application of other modes of the application of specialized knowledge.

We agree with H.I. Marunych that the delay of civil proceedings by the court occurs in the case of unreasonable appointment of primary, additional and single-discipline examinations [90, p. 78].

In connection with the above, it can be concluded that compliance with the procedures for appointing and conducting an expert examination, appointing of an expert examination only if there are reasonable grounds, depends on compliance with the principle of reasonability of time limits for case consideration by the court.

For example, the ECHR judgment in case Dulsky v. Ukraine states that the court does not agree with the Government's position that the periods during which the proceedings were suspended before the expert conclusion was received should be excluded from the overall period under consideration. The court-appointed expert examination is one of the means of establishing or assessing the factual circumstances of the case and therefore forms an integral part of the court procedure [91].

Also, the issue of violation of the principle of reasonability of time limits for consideration of the case by the court is raised in the ECHR judgment "ZIAJA v. POLAND". This Judgment states that the Court considers that the procedure for obtaining expert conclusion lacked the necessary efficiency. In this regard, the Court reiterates that experts work in the context of court proceedings under the supervision of the judge, who remains responsible for the preparation and expeditious conduct of the proceedings [92].

In particular, in paragraph 47 of the judgment in case Barahona v. Portugal of 1987, the Court noted: "The reasonableness of the duration of the proceedings must be determined in the light of the particular circumstances of the case, taking into account the criteria formulated in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and the relevant public authorities". The criterion of the complexity of the case means the assessment of the complexity of the case, taking into account the circumstances and facts based on the law and having certain legal consequences [93, p. 128].

Thus, it is worth noting that the fact of the appointment of an expert examination cannot but affect the timing of the consideration of the case on the merits, due to the suspension of the proceedings for the period of the expert examination. However, the analysis of the ECHR judgments leads to the conclusion that the task of the court is to control the effective and timely conduct of the expert examination in order to ensure compliance with the principle of reasonableness of the court's consideration of the case.

In connection with the above, we agree with the scientific position of O. Kurylo that the concepts of "fair trial", "reasonable time", "time and opportunities necessary to prepare one's defense" are all to some extent evaluative concepts that can be interpreted by each person in his or her own way, depending on his or her legal consciousness, culture and moral beliefs. That is why the ECHR judgments play an important role in the development of a unified practice at both international and national levels [94, p. 381].

Also, an important issue raised in the ECHR case law regarding the application of specialized knowledge is the issue of expert independence. Thus, the expert has neither material nor procedural interest in the outcome of the case on the merits. He or she must conduct an independent study to establish the circumstances necessary to resolve the case on the merits. In this regard, the institute of challenging an expert is of great importance as a guarantee of independence and impartiality of this subject of use of specialized knowledge.

The ECHR judgment in the case of Tabak v. Croatia states that the opinion of an expert appointed by the competent court to clarify the issues arising in the case is likely to be of significant importance for the court's assessment of the relevant issues. The requirement of independence is especially important when obtaining medical opinions from experts who must have formal and actual independence from persons involved in the events. In its case law, the ECHR has recognized that the lack of impartiality of a court-appointed expert under certain circumstances may lead to a violation of the principle of equality of the parties inherent in the concept of a fair trial [95].

Thus, it can be concluded that a violation of the requirement of independence and impartiality of an expert subsequently leads to non-compliance with the fundamental

principles of civil procedure, including the right to a fair trial. Thus, if the fact of an expert's interest is established, such an expert is subject to recusal. If such a fact is established at the stage when the examination has already been conducted, such an expert conclusion should be considered as inadmissible evidence.

As rightly noted by O. Rogach and V. Fennych, taking into account the case law of the ECHR during the consideration and resolution of civil cases will eliminate the factors that cause the appeal to the Court and will introduce European standards of protection of human rights and freedoms into Ukrainian civil proceedings [96, p. 170].

In view of the foregoing, it can be concluded that international standards of civil procedure in the field of the application of specialized knowledge play an important role in the legal regulation of this institute of civil procedure. Thus, the analysis of the case law of the European Court of Human Rights shows that the observance of a clear procedural form of the application of specialized knowledge, as well as its application only when there are reasonable grounds for it, is one of the guarantees of observance of such fundamental principles as the rule of law, the right to a fair trial and the principle of reasonableness of the court's consideration of the case. The importance of the ECHR case law on the use of expert knowledge lies in the fact that these decisions contain a clear interpretation of the principles of the Convention.

1.5. Peculiarities of the application of specialized knowledge in the civil procedure of Ukraine in conditions of war

On February 24, 2022, in connection with the full-scale invasion of the territory of Ukraine by the Russian Federation, state of war regime was introduced by the Decree of the President of Ukraine No. 64/2022. The introduction of state of war regime in Ukraine is provided for by Part 1 of Article 106 of the Constitution of Ukraine and the regulatory provisions of the Law of Ukraine "On the Legal Regime of State of War". The introduction of state of war regime in Ukraine has resulted in adjustments in all spheres of public life. In this case, the sphere of justice in general, as well as the institution of the application of specialized knowledge in the civil procedure of Ukraine,

in particular, is not an exception. In view of today's new realities, there is a well-founded scientific and practical need for a thorough study of the peculiarities of civil proceedings and the application of specialized knowledge in conditions of the state of war regime.

In this context, we agree with the scientific position of O.G. Pryvydentsev, that the established process of administration of justice in Ukraine cannot be stopped even if the state of war regime is introduced, since destructive changes and violations of the rights and legitimate interests of individuals, legal entities and the state that occur during hostilities require an appropriate response from the state, and the violated rights should be restored, including through civil proceedings [97, p. 54].

The judicial system is in the process of adapting to the conditions of state of war regime. In view of the fact that the proper administration of justice is a constitutional guarantee, the issue of the effective functioning of the judicial system under the state of war regime is of particular relevance. The Institute of the application of specialized knowledge in civil proceedings plays a significant role in ensuring the implementation of the process of proving the case. In turn, the legality, validity and fairness of a court decision based on the results of the case on the merits depends on the proper level of implementation of the process of proving the case.

The main form of the application of specialized knowledge in civil proceedings in Ukraine is an expert examination. As a result of an expert examination, a new piece of evidence is formed in the case, namely, an expert conclusion. Nowadays, an increasing number of civil cases cannot be resolved on the merits without an expert examination. For example, when considering the category of cases of separate proceedings on recognition a person as incapable or partially incapable (Articles 295-300 of the Civil Procedure Code of Ukraine), the appointment of a forensic psychiatric examination is mandatory. That is, the court cannot adopt a judgment in this category of cases on the basis of other means of proof, which in this case will be considered inadmissible evidence. In view of the above, the continuous functioning of expert institutions is of great importance for the effective conduct of civil proceedings.

It should be noted that the legal regime of the state of war has also made adjustments to the activities of expert examination. Thus, in order to ensure the effective functioning of the system of forensic institutions and to guarantee their systemic activity, the Ministry of Justice of Ukraine issued Order No. 1138/5 dated March 14, 2002 "On Certain Issues of Ensuring the Activity of Forensic Experts in the Conditions of War" (hereinafter - the Order). This Order primarily concerns the legal status of an expert, namely the procedure for the examination of certified experts and the renewal of certificates. Thus, this Order provides that:

1. Suspension of scheduled inspections pertaining to the work of certified forensic experts who are not employed by state specialized expert institutions. Suspension of unscheduled control inspections regarding the work of forensic experts and workplace compliance with legally established requirements;

2. Postponement of scheduled inspections related to the activities of certified forensic experts who are not employees of state specialized expert institutions, which, according to the approved schedule, should be carried out from February 24, 2022;

3. Suspension of deadlines for reviewing applications and documents submitted to the Central Expert Qualification Commission under the Ministry of Justice of Ukraine;

4. Extension of the validity of certificates of qualification of forensic experts for specialists who, prior to the introduction of a state of war in Ukraine, submitted applications and documents for certification to the Central Commission of Expert Qualification under the Ministry of Justice of Ukraine for the purpose of extension of the validity of certificates, as well as for certificates of qualification of forensic experts that expired during the period of war or within one month after the termination or lifting of the state of war.

5. To require experts to take measures to extend the validity of a forensic expert's qualification certificate no later than three months after the end or lifting of a state of war according to the prescribed procedure [98].

Given the above, it can be concluded that during conditions of war, a decision was made to implement a simplified procedure for extending the validity of forensic expert

qualification certificates. These actions by the state are intended to support the activities of forensic institutions in conditions of war, allowing forensic experts to concentrate on performing timely and effective expert examinations, and ensuring the proper implementation of the process of proving case. The Order also provides for the suspension of inspections of experts who are not employees of state institutions. This provision also aims to support the activities and development of forensic institutions outside the system of state forensic institutions. The activity of private expert institutions provides for the relief of the state forensic system, as well as the implementation of such a form of expert examination as the appointment of an examination at the request parties of case parties, which has become particularly relevant in conditions of war.

One of the problematic issues in the process of appointing and conducting expert examinations in civil cases is the timing and timeliness of their conduct. Thus, in accordance with paragraph 5, part 1 of Article 252 of the Civil Procedure Code of Ukraine, the court has the right to suspend the proceedings in the case of appointment a expert examination. As the court practice shows, the proceedings are usually suspended for the period of expert examination. In turn, according to the Instruction, the term of expert examination should not exceed 90 days. However, in the majority of cases the term of the examination corresponds to the maximum limit provided by the law, which leads to delay of the trial and violation of the principle of reasonableness of the terms of consideration of the case on the merits. Under the conditions of war, it is necessary to ensure the operational activity of forensic institutions and optimize the timing of expert examinations in order to consider the case on the merits in a timely manner. In this connection, we agree with the scientific position of G.K. Avdeeva that increasing the efficiency of evidence collection through the application of specialized knowledge and shortening the time for conducting expert examinations under martial law would allow to reform the system of expert assistance to justice [99, p. 70].

In connection with the above, it is also important to ensure the activities of private expert institutions, which will increase the efficiency and timeliness of expert

examinations by increasing the number of certified forensic experts who have the right to conduct such research.

Moreover, G.K. Avdeeva rightly emphasizes that in the conditions of war in Ukraine there are problems with the appointment and performance of expert examinations due to the inability of a significant number of state forensic experts to perform their duties, while at the same time the law prohibits non-state forensic experts from performing more than 30 types of expert examinations, as well as forensic medical and forensic psychiatric examinations [99, p. 73].

Thus, in accordance with Article 72 of the Law of Ukraine "On Forensic Examination", the following types of forensic examinations may be conducted exclusively on the basis of state specialized institutions:

- forensic;
- forensic medical;
- forensic psychiatric [100].

This legislative approach is reasonable as the relevant expert examination types are complex, requiring high levels of scientific and practical knowledge from the conducting expert. However, we recognize the need for certain exceptions in exceptional cases during wartime. Therefore, it is reasonable to grant the court the right to appoint a private expert institution to conduct this type of examination if the state expert institutions are overburdened and it is necessary to conduct this type of examination urgently. In this case the court decision should be justified.

As noted by D. Moiseenko, procedural legislation should be improved by supplementing the procedural codes with a separate section regulating the administration of justice in the conditions of war or a state of emergency [101, p. 369]. However, from the point of view of legislative technique, i.e. the rule of logical presentation of the text in legal acts, it is more appropriate to include additional parts of articles in the present Rules, which provide for the peculiarities of implementation of a certain institution of civil procedure in the conditions of war.

Thus, in the conditions of war, the issue of e-justice has become very relevant. As I.A. Yanitska rightly notes in this connection, the main purpose of e-justice is to ensure

the unhindered exercise of the right of citizens to access to justice and to simplify the implementation of many procedural actions. In some cases, especially in the conditions of war, such technologies are the only way to access the court [102, p. 274].

According to Part 7 of Article 212 of the Civil Procedure Code of Ukraine, a witness, translator, specialist, or expert may participate in a court hearing via videoconference only in the courtroom.

Paragraph 10 of the Recommendations of the Council of Judges of Ukraine dated 02.03.2022 on the work of courts in the conditions of war states that if, under objective circumstances, a party to a trial cannot participate in a court hearing by videoconference using technical means specified by the Civil Procedure Code of Ukraine, such party may, as an exception, participate in a videoconference using any other technical means, including its own [103].

In our opinion, this possibility should also apply to the civil proceedings. We believe that in in the conditions of war, it is necessary to make certain adjustments to the wording of this regulatory provision, namely to allow all trial participants in general, as well as experts, specialists and interpreters, in particular, to participate in the hearing via videoconference also outside the court if there are grounds that make it impossible for the relevant subject of the application of specialized knowledge to come to court. In this case, the judicial system must respond dynamically to today's challenges. And the development of electronic justice is a guarantee of proper and timely consideration of cases on the merits in the conditions of war. In view of the above, it can be concluded that the administration of justice in civil cases in war conditions has certain peculiarities that affect all civil procedural institutions. Thus, the institution of the application of specialized knowledge is a guarantee of the implementation of the adversarial principle and the proper level of the evidentiary process. Therefore, for its effective functioning in the conditions of war, it is necessary to actively adapt the regulatory provisions providing for the application of specialized knowledge in the civil procedure of Ukraine to the needs of today. In this regard, we consider it necessary to highlight the following main areas of optimization of the application of specialized knowledge in the conditions of war:

- Introduction of favorable conditions for the activity of forensic experts by providing a simplified procedure for the renewal of qualification certificates;

- Suspension of inspections of experts from private institutions;

- Granting the court the right to entrust criminalistics, forensic medical, forensic psychiatric examinations to private expert institutions in exceptional cases related to war conditions in Ukraine;

- Reconsidering the procedure for participation of persons with specialized knowledge in court hearings by means of videoconferencing and granting the right to connect to court hearings by means of videoconferencing outside the court in exceptional cases.

Conclusions to Section I

This chapter is devoted to the study of the fundamental principles of the application of specialized knowledge, determination of the list of subjects of the application of specialized knowledge, analysis of the grounds for its application in civil proceedings and international standards of civil procedure in the field of application of specialized knowledge.

Specialized knowledge should be used strictly according to civil procedure. Thus, compliance with civil procedural form requires a proper subject, appropriate procedures to involve relevant parties in civil proceedings, and sufficient grounds warranting the use of specialized knowledge in each specific case.

Thus, specialized knowledge is a legal category that includes practical and scientific knowledge limited to a small number of individuals. Specialized knowledge is acquired through the completion of specific training and/or the achievement of a relevant level of educational qualification or scientific degree. Specialized knowledge is applied by designated individuals according to a transparent procedural framework. This streamlines the evidence process for civil cases as required by law.

On the basis of this definition, it is possible to identify a system of distinguishing features for specialized knowledge:

1) it contains both practical and scientific knowledge. It highlights the complexity of this legal category;

2) It is exclusively used for the purposes of justice;

3) the purpose of the application of specialized knowledge is to facilitate the process of proving the case;

4) specialized knowledge is applied with meticulous adherence to the rules of civil procedure;

5) specialized knowledge is applied exclusively by a limited number of individuals in the forms specified in the Civil Procedure Code of Ukraine. These individuals must have appropriate educational backgrounds, academic degrees, or specialized training.

Thus, the expert conclusion establishes certain circumstances that are relevant to the case. However, the expert cannot provide a legal assessment of these circumstances.

In light of this, we believe it is essential to establish precise rules regarding the application of legal knowledge during expert examinations. An expert can use the necessary legal acts to answer the questions posed during an expert examination, however:

1) an expert cannot qualify disputed legal relations;

2) an expert cannot assess the conformity of the behavior of the subjects of the disputed legal relationship to specific legal norms;

3) an expert cannot provide interpretation of the rules of law;

4) an expert cannot explain the procedure for applying a specific rule of law;

5) an expert cannot express his/her position on the application of a certain type of penalty to a person;

6) an expert cannot determine in his/her conclusion the procedure and result of the case on the merits.

It can be concluded that the assistance of an interpreter may be necessary for any trial participant. Therefore, it is essential to provide a real opportunity for all trial participants to initiate the involvement of an interpreter in the proceedings.

The competence of an interpreter comprises the following elements:

1) fluency in the language of the court proceedings;

2) fluency in the language from which the interpretation is to be conducted;

3) knowledge of legal terminology.

It is crucial to provide trial participants with unrestricted access to information about interpreters possessing the required level of qualifications for accurate interpretation. Such access can be guaranteed by establishing a court interpreter registry. This register should contain information on persons who have completed the examination control in accordance with the established procedure, have a higher linguistic education, and are proficient in legal terminology. The establishment of such a registry will ensure timely consideration of the case on the merits.

Only an individual with a higher education degree in "Interpretation" should be engaged in the interpretation process during the consideration of the case on the merits.

This will ensure that the relevant procedural function is performed in a highly professional manner.

Thus, taking into account the above, the requirements for participation of an interpreter in civil proceedings should be considered the following:

- legal capacity;
- complete higher linguistic education in the field of translation;
- a certificate of examination control in the field of court interpretation;
- special court interpreter's competence (knowledge of the language of proceedings; knowledge of the language from which the interpretation is to be performed; knowledge of legal terminology);
- a court interpreter must be entered in the Court Interpreters Register.

It is necessary to determine the following mandatory cases of participation of an interpreter in civil proceedings:

1) the presence in the case file of documents drawn up in a foreign language for which the case parties have not provided an official translation;

2) participation in the case of individuals with physical disabilities (deaf, dumb, deaf-and-dumb);

3) participation in the case of an individual who does not speak the language of the proceedings. If the person concerned does not file an application for the involvement of an interpreter in the proceedings, this obligation is imposed on the court.

State authorities and local governments are not subjects facilitating the administration of justice. They possess the rights and obligations of the case participants.

A legal expert does not perform an independent study and is not subject to the requirements applicable to experts. Therefore, this trial participant should be defined as a "specialist in the field of law". The term "specialist in the field of law" better conveys the procedural role and function of this trial participant. for a legal expert to effectively fulfill their procedural function, it is necessary that the subject matter of their dissertation research or scientific activity relates to the content of the issues they must resolve while providing their opinion. Thus, the professional nature of a expert

conclusion in the field of law depends on the level of the legal expert's knowledge regarding the specific issue on which the conclusion is to be given. As the court practice shows, in the course of consideration of the case on the merits, it is necessary to check not only the availability of a scientific degree, but also confirmation of competence in a particular area of law.

Thus, the following requirements for the procedural status of a legal expert should be highlighted: 1) availability of an academic degree, which is confirmed by a relevant document; 2) compliance of the subject matter of the dissertation research or the area of scientific activity with the content of the issues on which an conclusion is required; 3) availability of publications in professional scientific journals; 4) systematic participation in scientific and practical conferences.

We believe that the general grounds for recusal (Part 1 of Article 38 of the Civil Procedure Code of Ukraine), as well as the special grounds for recusal of an expert and a specialist as subjects of the application of specialized knowledge (Part 2 of Article 38 of the Civil Procedure Code of Ukraine), should also apply to a legal expert.

The analysis of court practice reveals that difficulties arise in the interpretation of the powers of a legal expert, often leading to the involvement of this trial participant in matters that are not within their competence. As a result, the boundaries of specialized knowledge and the proper application of the relevant mode of specialized knowledge are often violated in civil procedure.

We believe that expert conclusion in the field of law must be documented in writing for further examination and consideration by the court. We propose to distinguish the following parts of the expert conclusion in the field of law: introductory, descriptive and conclusions.

We propose adding legal experts to the list of entities in Article 224 of the Civil Procedure Code of Ukraine who are subject to liability for non-appearance in court.

Thus, a psychologist, pedagogue, and psychiatrist contribute to the administration of justice and the process of proving the case, and have neither material nor procedural interest in the outcome of the case on the merits. While performing their procedural function, a psychologist, pedagogue, and psychiatrist apply knowledge that fulfill the

requirements of specialized knowledge, since it is acquired through appropriate professional training and is not common. Therefore, we consider it appropriate to refer these participants to the group of other trial participants and to the subjects of the application of specialized knowledge.

The participation of a psychologist should be mandatory during interrogation of a minor or juvenile witness. In turn, a pedagogue may be involved at the court's discretion or on the recommendation of a psychologist in exceptional cases to ensure favorable conditions for the child during the interrogation.

It can be concluded that the subjects of the application of specialized knowledge should include an expert, specialist, legal expert, interpreter, pedagogue, psychologist and psychiatrist.

We propose classifying the modes of the application of specialized knowledge in Ukrainian civil procedure based on the following criteria:

1) For the purpose of its application;

2) By the subject of its application;

3) According to the evidentiary value of the results the subject’s of the application of specialized knowledge activities;

4) By the content of the activity.

The ground for the application of specialized knowledge is the need for the application of specialized knowledge in a specific form, which is enshrined in the civil procedural legislation and objectively justified by the court, for the purpose of fair, impartial and timely consideration and resolution of the case on the merits.

SECTION II. EXPERT EXAMINATION IN THE CIVIL PROCEDURE OF UKRAINE

2.1. Expert examination as a mode of application of specialized knowledge in the civil procedure of Ukraine

Expert examination is one of the main forms of application of specialized knowledge in the civil procedure of Ukraine. For a long time, the civil procedural legislation established expert examination as the only form of application of specialized knowledge. However, despite the development of the institute of the application of special knowledge and the availability of new forms of its application, forensic examination remains the main most regulated form. An expert examination is carried out by such a specific trial participant as a forensic expert. It should be noted that the procedural literature contains a number of thorough scientific studies devoted to the expert examination and determination of the procedural status of an expert. However, many problematic issues remain unresolved regarding the procedural procedure for appointing an expert on the basis of a court rulinf and at the request of the case parties.

Problematic issues of conducting expert examination, regulation of the procedural status of an expert have been the subject of research by such procedural scientists as S.S. Bychkova, Zh.V. Vasylieva-Shalamova, V. Gansetska, V. Goncharenko, O. Grabovska, K. Husarov, O. Zakharova, N. Kireeva, T. Kucher, O. Lazko, Y. Riabchenko, S. Fursa, A. Stefan, M. Stefan.

One of the main features that distinguishes expert examination from other forms of use of specialized knowledge is the establishment of facts relevant to the case through a thorough investigation and the formation of such new evidence as an expert conclusion.

V.I. Honcharenko defines expert examination as a procedural action aimed at establishing the facts relevant to the case in the manner prescribed by law, using special knowledge, employing an educated person to verify, research and present conclusions [104, p. 124]. However, we believe that it is inappropriate to express the content of the concept of "expert examination" through the concept of procedural act, since the

specific procedural acts performed by the court in this case relate to the procedural form of its appointment and conduct, but do not characterize the content of the expert examination. T.O. Kravchuk, in turn, notes that expert examination is a procedural form of application of specialized knowledge, the essence of which is objective analysis by an expert who conducts an appropriate study of the objects provided to him in order to establish the factual data relevant for clarifying the circumstances [105, p. 8]. Yes, indeed, expert examination refers to the procedural forms of application of specialized knowledge, but this definition also does not reveal the content and essence of expert examination. We believe that the content of expert examination is always a special study.

In this case, we should agree with the scientific position of M.Y. Stefan, who considers the examination as a study at the request of the court of the objects submitted by him, which is carried out by experts with specialized knowledge on a scientific basis in order to obtain data on the facts relevant to the correct resolution of the case [106, p. 307]. M.Y. Stefan reasonably emphasizes that expert examination is conducted on a scientific basis. It is the scientific basis of a special study that is an important feature of expert examination. Thus, the relevant research should be based on the application of scientific methods and techniques and have a high level of scientific validity.

Given the above, we believe that the expert examination should be defined as a special study. Also, an important feature of expert examination, which should be the basis for defining this procedural form of application of specialized knowledge, is the fact that expert examination is conducted with strict adherence to the civil procedural form. In this regard, we believe that expert examination should be defined as a special scientific research conducted in strict compliance with the civil procedural form by a special subject - an expert, by applying specialized knowledge in a particular field in order to establish the circumstances relevant to the case, to form a new evidence in the case - an expert conclusion.

An important issue in connection with the study of the legal nature of expert examination is its object, subject and methods. The object of expert examination should be considered material objects, phenomena, events, specific facts of objective reality,

the study and determination of the characteristic properties of which is of great importance for the consideration of the case on the merits. If the object of expert examination is a general concept referring to such a special study in general, the subject of expert examination is an individualized concept referring to a specific type of examination and specific information to be obtained in the course of its conduct. The subject of expert examination should be considered as a set of circumstances that are relevant to the case and the establishment of which is directly aimed at establishing the expert's research.

The range of questions posed to the expert is important for the formation of the subject of expert research. Pursuant to Part 2 of Article 102 of the Civil Procedure Code of Ukraine, the subject of the expert conclusion may be the study of the circumstances being part of the proof subject and the establishment of which requires the expert's special knowledge.

Therefore, the subject of an expert examination in a particular case cannot go beyond the scope of the proof subject in that case. If the subject of the examination goes beyond the scope of the proof subject, the relevant expert conclusion will be considered improper evidence. In this context, O.M. Solomakhina's position that the subject of the examination is determined by the questions posed to the expert is correct [107, p. 188].

Today there are two forms of expert examination appointments. According to Part 3 of Art. 102 of the Civil Procedure Code of Ukraine, the expert conclusion may be prepared at the request of the case party or by virtue of a court ruling on the appointment of an expert examination.

It is necessary to distinguish three procedural forms relating to expert examination: the procedural form of appointing an expert examination, the procedural form of conducting an expert examination and the procedural form of evaluating and examining an expert conclusion by a court:

1) the procedural form of appointing an expert examination provides for the procedure for selecting an expert or an expert institution, determining the type of expert examination, warning the expert of criminal liability, forming a list of issues to be resolved by the expert, and issuing a ruling on the appointment of an expert

examination. It should be noted that in the case of an expert examination at the request of the case party, the case parties submit to the court a ready-made expert conclusion. Therefore, this procedural form does not apply to the corresponding form of expert examination;

2) the procedural form of conducting an expert examination includes strict observance of the expert's procedural rights and obligations, ensuring his independence and impartiality. Regulation of the specifics of the examination itself is not covered by the relevant procedural form. The court may not determine which scientific methods and techniques to use for the research;

3) the procedural form of evaluation and examination of an expert conclusion includes the process of verification by the court of the compliance of the expert conclusion with the requirements of civil procedural law regarding its completeness, relevance, admissibility, reliability and sufficiency.

Appointment of an expert examination by virtue of a court ruling is the main form of appointment of an expert examination. Thus, in contrast to the appointment of an expert examination at the request of a case party, this form of appointment is characterized by strict adherence to the civil procedural form and a high level of legal regulation.

According to Part 1 of Article 103 of the Civil Procedure Code of Ukraine, the court shall appoint an expert examination of the case under a set of the following conditions:

1) in order to clarify the circumstances relevant to the case, special knowledge in a field other than law is required, without which it is impossible to establish the relevant circumstances;

2) the parties (the party) have not provided the relevant expert conclusions on the same issues or the expert conclusions raise doubts about their correctness.

Thus, Article 103(1)(2) of the Civil Procedure Code of Ukraine states that if the expert conclusion provided by the parties raises doubts about its correctness, the court shall appoint an expert examination by court ruling. The question arises as to the

procedural status of such an examination, namely whether it is of a primary nature or must be defined as a repeated examination.

In this context, we agree with the scientific position of A.S. Shtefan, who notes that duplication in paragraph 2 of Part 1 of Article 103 of the Civil Procedure Code of Ukraine of one of the grounds for the appointment of a repeated examination seems unnecessary, since Part 2 of Article 103 of the Civil Procedure Code of Ukraine refers to this possibility directly: if necessary, the court may appoint several examinations, additional or repeated examination [20, p. 26].

Therefore, we can conclude that in this case, the expert examination is of a repeated nature, since the grounds for its appointment is the existence of doubts about the correctness of the conclusions provided, as provided for in Part 2 of Article 113 of the Civil Procedure Code of Ukraine.

Also, questions arise as to the wording of such a ground, which provides for the appointment of an expert examination, if the parties (a party) have not provided relevant expert conclusions on the same issues. A.S. Stefan points out that the absence of an expert conclusion in the case when it is necessary to establish the circumstances of the case actually refers to the grounds for the appointment of an expert examination discussed above: when the application of specialized knowledge is necessary to establish the circumstances of the case, and the parties have not provided for an expert examination, it is initiated by the court [20, p. 26]. Thus, this ground actually duplicates the ground provided for in paragraph 1 of Part 1 of Article 103 of the Civil Procedure Code of Ukraine. That is, it can be concluded that clause 2 of Part 1 of Article 103 of the Civil Procedure Code of Ukraine should be excluded from Part 1 of Article 103 of the Civil Procedure Code of Ukraine, since it partly repeats clause 1 and partly relates to the scope of the repeated examination.

It should be noted that Article 103 of the Civil Procedure Code of Ukraine, which regulates the procedure of appointment of an expert examination by a court ruling, does not provide for the necessity of a request for appointment of an expert examination by the case parties. In our opinion, this is a shortcoming in the wording of these regulations, since the possibility of appointment of an expert examination in cases of

action proceedings solely on the initiative of the case parties is based on the principle of adversarial proceedings, since the result of an expert examination is a means of proof. Therefore, in cases of action proceedings, the court cannot appoint an expert examination on its own initiative, which should be clearly provided for in Article 103 of the Civil Procedure Code of Ukraine of Ukraine.

In turn, in cases of separate proceedings, the expansion of the court's powers to request evidence and directly appoint an expert examination on its own initiative is justified. As noted by V.P. Fennich, when considering cases of separate proceedings, both the applicant and the interested parties and the court must take active steps to collect evidence [108, p. 117]. For example, in cases of limitation of a person's civil capacity or recognition of a person as incapacitated, the court of its own motion appoints an expert examination (Part 1 of Article 298 of the Civil Procedure Code of Ukraine). In connection with the above, we propose to supplement part 1 of Article 103 of the Civil Procedure Code of Ukraine with the following sentence: "In cases of separate proceedings, an expert examination may be appointed at the initiative of the court".

As O.S. Kofanova rightly notes, the necessity to appoint an expert examination arises whenever during the proceedings it is necessary to apply specialized knowledge to resolve or clarify certain questions, to clarify the circumstances relevant to the case [109, p. 38]. However, it should be clarified that expert examination is appointed not only in case of the need to apply specialized knowledge, but also in case of the need to conduct a special study. The need for specialized knowledge solely is not the ground for the appointment of an expert examination.

Based on the analysis of Clause 1 of Part 1 of Article 103 of the Civil Procedure Code of Ukraine, it can be concluded that the legislator does not specify that the grounds for the appointment of an expert examination is the necessity to apply specialized knowledge in the form of a study. If there is no need to conduct a study and establish certain circumstances of the case, the relevant issues can be resolved by involving a specialist in the process.

Also, in connection with the analysis of Part 1 of Article 103 of the Civil Procedure Code of Ukraine, it is worth to disagree that in the course of conducting an expert examination specialized knowledge in a field other than law is applied, since, as noted in the previous section, certain knowledge in the field of law may be included in the expert's specialized knowledge. In this regard, we propose to reformulate Part 1 of Article 103 of the Civil Procedure Code of Ukraine as follows: "The court shall appoint an expert examination in a case at the request of the case parties if special knowledge in the form of a special study is required to clarify the circumstances relevant to the case, without which it is impossible to establish the relevant circumstances. In the case of separate proceedings, an expert examination may be appointed on the initiative of the court".

As noted by T. O. Kravchuk, when appointing a particular examination, it is necessary to proceed from the actual expediency of obtaining factual data with the help of specialized knowledge, taking into account the current situation, tactical considerations, and the importance of the circumstances to be proved [105, p. 8].

In this regard, the court should be guided by the following facts when deciding whether to satisfy a party's request for an expert examination:

1) the validity of the request of the case party regarding the need to appoint an expert examination;

2) the connection of the circumstance to be established by appointing an expert examination with the subject of proof in the case;

3) the existence of an actual requirement for the application of specialized knowledge and the impossibility of resolving this issue by applying other forms of application of specialized knowledge;

4) the absence of abuse of procedural rights by the parties in order to delay the proceedings by appointing an expert examination without a justified need for a special study;

5) the availability of technical and organizational capabilities to conduct the relevant type of expert examination.

An important issue in the context of appointing an expert examination by the court ruling is the determination of the list of questions to be answered by an expert. According to Part 4, Article 103 of the Civil Procedure Code of Ukraine, the issues subject to the expert examination appointed by the court shall be determined by the court.

Typical questions for different types of examinations are provided in the Scientific and Methodological Recommendations. However, as L.O. Sydorenko rightly notes in this regard, despite the fact that the current scientific and methodological recommendations on the appointment and conduct of an examination provide indicative lists of the most typical questions, quite often the ruling of an investigator or court ruling on the appointment of an expert examination contains questions that do not correspond to these recommendations [110, p. 85].

Thus, given the fact that neither the court nor the case parties have specialized knowledge in the relevant field, it is often difficult to conduct an expert examination and provide an objective and complete expert conclusion due to the inaccuracy of the questions posed. We should agree with the position of O.M. Kliuyev that one of the important parts of the court's ruling on appointment of an expert examination is correctly and comprehensively formulated questions [111, p. 110].

The effectiveness of the expert examination in general depends on the logical and consistent definition of the range of questions posed to the expert, since these questions reflect the expert's task. As M.H. Shcherbakovskyi rightly notes in this connection, the "purpose of the task" is a requirement formulated in the question to the expert [112, p. 7].

According to Part 4 of Art. 104 of the Civil Procedure Code of Ukraine, if necessary, the court may hear an expert on the wording of the issue that needs to be clarified and, at his/her request, provide appropriate clarifications on the issues raised.

In this context, the question arises whether an expert can formulate questions independently if the court incorrectly or inaccurately determines the range of questions necessary to establish a particular fact. According to O. Nesimko, the procedural law does not prohibit such actions, and their use allows to get rid of unnecessary questions,

to exclude those of a legal nature and, ultimately, to shorten the time of the examination [113, p. 469].

An analysis of court practice shows that situations often arise when an expert submits to the court a request for clarification or change in the wording of questions posed to the expert. For example, the ruling of the Vyshhorod District Court of the Kyiv region dated February 26, 2020 in case No. 754/14341/18 granted the expert's request to review the wording of the question set forth in the court's ruling of December 11, 2019, and requested that it be submitted in the following wording: "Is PERSON_1, INFORMATION_1, the biological father of the child PERSON_3, INFORMATION_2, whose biological mother is PERSON_2?" [114]. Also, the Ruling of the Nadvirna District Court of Ivano-Frankivsk Region of March 30, 2022 in case No. 348/2289/21 granted the expert's request to clarify the wording of the questions posed in the court ruling on to appointment of an examination, namely: the expert notes that the establishment of blood relationship in this case is incorrect and asks to reconsider the wording of the questions [115].

In view of the above, it can be concluded that there is a real need to involve an expert in the formulation of questions in practice. However, this power of the expert requires some clarification. Thus, we believe that the expert may provide recommendations on the formulation of questions, as this is a guarantee of the effectiveness of the expert examination. However, certain restrictions should be applied in this context. We believe that the expert cannot change the essence of the questions posed, because in this case the subject of a particular examination is actually changed. Therefore, the expert may clarify the questions without changing their essence, in order to bring them in line with scientific and methodological recommendations. In connection with the above, we propose to supplement part 4 of Article 104 of the Civil Procedure Code of Ukraine with the following sentence: "The expert's clarifications regarding the wording of the question may not relate to its content".

If the expert is asked questions that cannot be answered without changing their content, the expert must inform the court of the impossibility of conducting an expert examination in this regard. Thus, in accordance with part 6 of Article 104 of the Civil

Procedure Code of Ukraine, in case of doubt as to the content and scope of the power-of-attorney, the expert appointed by the court shall immediately submit to the court a request for clarification or notify the court of the impossibility of conducting an expert examination of the raised issues.

The next stage in the appointment of an expert examination is to determine the expert institution or expert who will directly conduct the research, as well as to determine the type of expert examination.

Accotding to Part 3 of Article 103 of the Civil Procedure Code of Ukraine, when the court appoints the expert examination, the expert or expert institution shall be elected by the parties by mutual consent, and if they fail to reach the mutual consent within the period set by the court, the expert or expert institution shall be determined by the court. The court, taking into account the circumstances of the case, shall have the right to determine the expert or expert institution independently. If necessary, several experts may be appointed to prepare one conclusion (single-discipline or multi-discipline expert examination).

The relevant article of the Civil Procedure Code of Ukraine grants the court the authority to select an expert or an expert institution independently. The question arises as to what grounds the court may appoint an expert examination on its own, without being guided by the will of the case parties. We believe that such a power of the court leads to a violation of the adversarial principle. However, as noted above, in the case of separate proceedings, the court may indeed, on its own initiative, request evidence and appoint an expert examination.

In connection with the above, we agree with the scientific position of A.S. Shtefan, who proposes to replace the second sentence of Part 3 of Article 103 of the Civil Procedure Code of Ukraine with the following: "In cases of separate proceedings, the court has the right to determine the expert or expert institution independently" [7, p. 338].

The analysis of the legislation shows that the court may entrust the examination both to a specific expert and to an expert institution. According to Part 2 of Art. 108 of the Civil Procedure Code of Ukraine, if the court has appointed an expert institution to

conduct an examination, the head of such institution shall entrust the expert examination to one or more experts.

As rightly noted by H. Marunych, it is worth noting that in the case of entrusting an expert examination to an expert institution, an important role in ensuring the timeliness of the examination is played by the head of the expert institution, whose powers are currently determined exclusively by the Instruction [90, p. 77].

Thus, in our opinion, from the moment of receiving the court ruling on appointment of an expert examination, the head of the expert institution is obliged to take the following actions within five days:

1) select an expert to conduct the relevant research, taking into account the scope of his/her specialized knowledge;

2) draw up a written order to appoint an expert to conduct an expert examination on the basis of a court order;

3) provide the expert with relevant materials for familiarization and to determine the possibility of conducting the relevant research based on the case file and taking into account the scope of specialized knowledge;

4) Send the order for the appointment of an expert to the court with a cover letter justifying the choice of expert(s).

Part 2 of Article 104 of the Civil Procedure Code of Ukraine states that if the court entrusts the expert examination to several experts or expert institutions, the court shall appoint a leading expert or expert institution in the ruling.

Thus, in the case of an expert examination by several experts or expert institutions, such an examination will be of a commission or comprehensive nature. While a single-discipline expert examination is conducted within one field of knowledge, a multi-discipline expert examination concerns several fields of knowledge or areas of one field of knowledge. Therefore, there may be difficulties in appointing a leading expert or expert institution.

In accordance with clause 3.7. of the Instruction, if the document on the appointment of an examination (engagement of an expert) does not specify the leading expert institution, it shall be determined by agreement between the heads of the

institutions, and in case of disagreement, by the body (person) who appointed the examination (engaged the expert) to conduct a comprehensive examination. According to the Resolution of the Plenum of the Supreme Court of Ukraine No. 8 of 30.05.97 "On Expert Examination in Criminal and Civil Cases", a commission of experts may be established by the court or by the head of a forensic institution upon its decision [116].

Therefore, we believe that if the court has difficulties in appointing the lead expert or the lead expert institution, it may entrust this task to the head of the expert institution. If the court appoints several expert institutions to conduct the examination, the heads of the expert institutions may jointly determine the leading institution and experts to conduct a particular study. In this case, the head of the institution, understanding the specifics of the activities of each expert or departments of the expert institution, can more appropriately determine the lead expert or even the lead department. Subsequently, the head of the expert institution must inform the court in writing and justify the choice of the lead expert or expert department. In case the leading institution is determined by the heads of several institutions, the institution that has been selected as the leading institution shall send a written notice to the court. Such a letter must be sent to the court no later than 5 days after receiving the court ruling on the appointment of the expert examination. Copies of this letter shall also be sent to all case parties by registered letter with acknowledgment of receipt.

In this regard, we propose to restate Part 2 of Article 104 of the Civil Procedure Code of Ukraine as follows: " In case of assignment of an expert examination to several experts or expert institutions, the leading expert or expert institution shall be appointed in the court ruling independently or by its decision by the head of the expert institution or by the heads of several expert institutions by their mutual agreement. Within five days from the date of receipt of the court ruling on the appointment of an expert examination, the head of the expert institution shall notify the court of the appointment of the leading expert or the leading expert institution."

An important stage in the appointment of an expert examination by the court ruling is the actual court ruling on the appointment of an expert examination. S.S. Bychkova points out that the court ruling is the procedural ground for the examination, gives the

direction of the special study, and also determines the moment from which the person entrusted with the examination acquires the status of an expert [49, p. 333].

We are of the opinion that a court ruling on the appointment of an expert examination must include the following information:

1) the initiator of the expert examination;

2) the grounds for the expert examination;

3) the term of the expert examination;

4) the surname, name, patronymic of the expert(s), the full name of the expert institution(s);

5) documents confirming the expert's qualifications;

6) a list of questions;

7) a list of materials submitted for examination;

8) a warning to the expert about criminal liability;

9) the procedure for payment for the expert's services and the party that is directly responsible for payment.

The court in the proceedings cannot appoint an expert examination on its own initiative, but it may refuse to satisfy the request for the appointment of an examination in the absence of a reasonable need for it. However, in the cases provided for in Part 1 of Article 105 of the Civil Procedure Code of Ukraine, the court shall appoint an expert examination if both parties apply for the appointment of an expert examination.

We should agree with the scientific position of S.S. Bychkova, who notes that if both parties request the appointment of an expert examination, the court should not always satisfy such a request. The parties, not knowing the rules for the appointment of expert examinations, may demand their performance even in cases where the examination is not required [117, p. 11].

We agree with the aforementioned scientific position and believe that in order to prevent abuse of procedural rights, the court should be empowered to refuse to satisfy the request for an expert examination from both parties when there is no reasonable need for an expert examination. Therefore, we are of the opinion that this provision

should be excluded from the list of mandatory grounds for the appointment of an expert examination.

A novelty of the Civil Procedure Code of Ukraine is the possibility of appointing an expert examination also at the request of the case parties. Thus, part 1 of Article 106 of the Civil Procedure Code of Ukraine states a case party shall have the right to submit to the court an expert conclusion drawn up at his/her request.

It should be noted that the procedural form of appointing an expert examination by the court ruling does not apply to an expert examination at the request of the case parties. Thus, in the case of an expert examination at the request of the case parties, the court does not participate in the selection of an expert or an expert institution, and does not determine the issues on which the expert examination should be conducted. Also, such an examination is appointed at the participant's discretion, and therefore the court does not issue a ruling in this regard. In this context, O.K. Chernovsky rightly notes that a case party who applies for an expert examination outside the court hearing, at his own discretion, chooses the appropriate expert or expert institution, which will conduct an expert examination, and independently raises questions, which require clarification by the expert [118, p. 29]. It is the lack of court control over the course of the expert examination at the request of the case parties that leads to doubts about the impartiality of the expert conducting such an examination, and therefore about the adequacy, admissibility and reliability of the relevant expert conclusion as a means of proof. Although the content of an expert conclusion at the request of the case parties does not differ from an expert conclusion obtained by the court ruling, in this case the case parties have the opportunity to abuse their procedural rights, which may result in an unlawful, unreasonable and unfair court decision.

The question also arises as to the time limit for submitting such an expert conclusion to the court. We believe that the wording of Part 1 of Article 106 of the Civil Procedure Code of Ukraine, which states that a case party has the right to submit such an expert opinion to the court, refers to the procedure for submitting evidence under Article 83 of the Civil Procedure Code of Ukraine. Thus, a case party has the right to submit an expert conclusion prepared at his or her request, along with all the evidence.

The specific of this form of expert examination appointment is the formation of a contractual relationship between the case party and the expert before the opening of the proceedings. We believe that in the case when the proceedings have already been opened, the appointment of an expert should be carried out solely through a court ruling.

Thus, in subpara. 2 of Part 2 of Article 107 of the Civil Procedure Code of Ukraine states that the expert appointed by court shall not have the right to communicate with the trial participants outside the court hearing, except in cases of other actions directly related to the expert examination.

However, if an expert examination is requested by the case parties, the expert will communicate and agree on the procedure for conducting the relevant research with the requesting party directly. According to O.M. Kliuyev, the legislation provides for the possibility for a case party to apply for an expert examination not to the court, but directly to an expert institution or an expert [111, p. 111].

This procedure for appointing an expert examination presupposes the existence of a contractual relationship between a particular case party and an expert or expert institution and does not include the court in this subject composition.

In our opinion, it is reasonable to conduct an expert examination at the request of the case parties only in exceptional cases in specific categories of cases. Such cases, for example, include cases related to compensation for damage caused by a car accident. In this instance, it is imperative to conduct an automotive expert examination without delay, since any restorative repairs may be inaccurate and hinder the vehicle's future operation. In this case, timely examination ensures the person's right to receive compensation for damage to his or her property.

On the other hand, it is inadmissible to conduct an expert examination at the request of the parties in certain categories of cases. For example, in cases on restriction of civil dispositive legal capacity of an individual, recognition of an individual as incapable, an expert examination must solely be appointed by a court ruling as this procedure ensures the expert conclusion's objectivity and impartiality. Thus, in accordance with Article 7 of the Law of Ukraine "On Forensic Examination", only state specialized institutions carry out forensic activities related to criminalistic, forensic

medical and forensic psychiatric examinations [100]. It should be noted that the Civil Procedure Code of Ukraine does not impose limitations on the expert institutions upon which a case party may request an expert examination.

Therefore, we can conclude that a case party can apply to both state specialized expert institutions and private expert institutions. However, in our opinion, even if a case party submits a forensic psychiatric, forensic medical or forensic genetic examination conducted by a state specialized expert institution, such a conclusion cannot be considered admissible, which should be clearly stated in the Civil Procedure Code of Ukraine. In this regard, we propose to supplement the wording of Part 1 of Article 106 of the Civil Procedure Code of Ukraine with the following statement: "Forensic, forensic psychiatric, forensic medical and forensic genetic examinations cannot not be conducted at the request of the case parties".

Another important issue in the context of studying the peculiarities of expert examination is the categorization of its types. The categorization of expert examination holds significant theoretical and practical value as each type has unique procedural characteristics and specific purpose. Therefore, the quality of legal regulation of the peculiarities of its implementation in general depends on the validity of the division of expert examination into types.

The Instruction states that, according to the procedural legislation of Ukraine, experts perform primary, additional, repeated, single-discipline expert examination and multi-discipline expert examination examinations.

We should agree with the position of Zh. V. Vasylieva-Shalamova, who notes that in determining the characteristics of expert examinations, their qualification by the subject and grounds of the study is of the greatest practical importance [12, p. 52]. M.G. Shcherbakovskyi substantiates the position that the criterion for distinguishing between the genera (types) of examinations is a special object of research (information fields) [8, p. 125]. Thus, according to this criterion, it is worth distinguishing such types of expert examinations as forensic psychiatric, forensic medical, forensic economic, forensic handwriting examinations, etc. This list of examinations is set out in the Instruction and

is not exhaustive, as the legislator cannot predict all life situations that may require specialized knowledge in a particular field.

Depending on the number of specialists involved in the relevant study, distinctions can be made between single, commissioned, and comprehensive examinations. The most difficult type of expert examination in practice is a comprehensive examination. As noted by I.A. Kirichenko, comprehensive examinations are appointed in cases when specialized knowledge of various fields of knowledge, including various expert specialties, is required to solve one or several problems of the case [119, p. 172].

As noted by I.V. Hora, one of the important problems is the development of a general methodology for solving the problems of comprehensive examination, that is, the development of a general algorithm for the actions of experts of different specialties in the process of cooperation of their specialized knowledge in the form of a comprehensive examination [120, p. 150].

Today, conducting comprehensive expert examinations poses significant challenges due to the lack of clear methodologies and recommendations. As E.B. Simakova-Yefremian has rightly noted, at the present stage of development of expert examination the methodological basis of comprehensive research is insufficient - there is a clear lack of methods of comprehensive research, since the theoretical bases of their formation have not been sufficiently developed [121, p. 187]. It should be noted that the methods of comprehensive examinations are formed on the basis of a combination of methods and techniques of several types of expert examinations, which directly form a specific complex study. In this instance, all relevant areas of research are integrated into a single, all-encompassing comprehensive study.

As noted by H. Marunych, the current civil procedural legislation also provides for the possibility of appointing an additional or repeated examination in order to ensure the adoption of a lawful and reasonable decision in the case [90, p. 74]. As a result of evaluating and examining the expert conclusion, it may be established that the answers provided are incomplete.

In addition, certain provisions of the expert conclusion may be challenged or the expert conclusion may be found by the court to be unfounded. In this regard, the

possibility of appointing an additional and repeated expert examination is a guarantee of effective consideration of the case on the merits, ensuring the adversarial principle and the possibility of obtaining a proper and admissible expert conclusion.

If a repeated examination is ordered, another expert is assigned to perform it. This situation is a direct consequence of the re-examination, which was prompted by the unreasonable and contradictory conclusion of a relevant expert conclusion. An additional examination may be assigned to the same or a different expert. However, we believe that given the fact that the grounds for the appointment of an additional examination is the incompleteness of the answers to the questions posed, the lack of clarity of the material presented, it is advisable to entrust it to the same expert who conducted the initial study. This expert is already familiar with the case file and can reasonably fill in any gaps to provide a complete answer to the questions raised. The new expert must become acquainted with the case file and the initial expert conclusion, causing a delay in the expert examination.

In connection with the above, we propose to restate Part 1 of Article 113 of the Civil Procedure Code of Ukraine as follows: "If the expert conclusion is found to be incomplete or unclear, the court may order an additional examination, which shall be entrusted to the same expert(s). If it is reasonably impossible for the same expert to conduct an expert examination, another expert may be appointed to conduct an additional examination".

Thus, expert examination is a fundamental mode of application of specialized knowledge. Due to the rapid development of science and technology, the problems of conducting expert examinations are becoming more and more relevant, as more and more civil cases can only be resolved on the merits through the application of specialized knowledge in the mode of expert examination. An expert examination is a special study carried out by a special subject of expert examination - an expert. This study is outside the procedural regulation of the court, but the issues of the appointment and conduct of the examination are clearly regulated by civil procedural law.

2.2. Procedural status of an expert as a trial participant, the importance of their activities for the process of proving the case

An expert is a mandatory subject of expert examination. One important characteristic of an expert is their possession of specialized knowledge, as outlined in Part 1 of Article 72 of the Civil Procedure Code of Ukraine. Moreover, only an expert can apply specialized knowledge, leading to the formation of new evidence in the case. Therefore, the procedural activity of an expert plays an important role in the process of proving the case in civil proceedings. Although the procedural status of an expert in civil procedural legislation is heavily regulated by law, additional scientific and theoretical research is necessary to fully address this issue.

It is worth noting that an expert has neither a substantive legal interest, since he or she is not a subject of a disputed legal relationship, nor a procedural legal interest, since the expert, by virtue of his or her procedural status, is not interested in the outcome of the case on the merits. The relevant participant must be independent of the interests of the parties. The expert applies his or her specialized knowledge to establish the circumstances necessary to resolve the case on the merits and to provide new evidence - an expert conclusion.

As noted by Y.S. Volynets, an expert in court proceedings may be: 1) a state expert, i.e., an employee of a state expert institution; 2) a non-state expert, who may be either an employee of a non-state expert institution or a private person who has the specialized knowledge necessary to answer the questions of the investigation or the court (a private expert who is professionally engaged in expert activity, and specialists in various fields of activity who are involved, if necessary, to solve expert tasks) [122].

Thus, experts who are not employees of state or municipal expert institutions, as well as other specialists in the relevant fields of knowledge, may be representatives of private institutions. Nevertheless, they must adhere to the same standards as experts from state institutions. However, the provisions on refusal to conduct an expert examination and the provisions of Chapter III of the Law of Ukraine "On Forensic Expertise" do not apply to a specialist in the relevant field of knowledge.

The requirements for an expert as a subject of the application of specialized knowledge and a trial participant are established by the Civil Procedure Code of Ukraine and the Law of Ukraine "On Forensic Examination". Therefore, based on the analysis of the legislation, the following requirements for an expert can be distinguished:

1. Possession of specialized knowledge necessary to clarify the relevant circumstances of the case and the availability of the necessary knowledge necessary to provide an conclusion on the issues under investigation (Part 1 of Article 72 of the Civil Procedure Code of Ukraine, Part 1 of Article 10 of the Law of Ukraine "On Forensic Expertise").

2. Forensic experts may be specialists who have the appropriate higher education, educational qualification not lower than a specialist, have undergone appropriate training and have received the qualification of a forensic expert in a particular specialty (Part 2, Part 3 of Article 10 of the Law of Ukraine "On Forensic Expertise");

3. Registration in the State Register of Certified Forensic Experts (Part 1 of Article 9 of the Law of Ukraine "On Forensic Expertise").

According to S.S. Bychkova, the Civil Procedure Code of Ukraine should not limit the circle of persons who can be appointed as an expert to persons included in the State Register of Certified Forensic Experts, but should establish that a person who has the necessary knowledge in the field of science, technology, art or craft can be appointed as an expert [49, p. 139].

Today, the current legislation does not provide for a mandatory requirement to include an expert in the State Register of Certified Forensic Experts. Part 2 of Art. 9 of the Law of Ukraine "On Forensic Examination" states that a person or body appointing or ordering an expert examination may entrust it to those forensic experts who are included in the State Register of Certified Forensic Experts or other specialists in the relevant fields of knowledge, unless otherwise provided by law.

Also, Article 72 of the Civil Procedure Code of Ukraine, which regulates the procedural status of an expert, does not contain a requirement to include an expert in the State Register of Certified Forensic Experts. As O.O. Grabovska rightly emphasizes,

analyzing the content of the provisions of the Civil Procedure Code of Ukraine, which give an idea of the concept of "expert", it is worth paying attention to the fact that the law does not mention such professional components of a forensic expert as certification and being in the Register as mandatory conditions for the validity of an expert conclusion. However, the Register contributes to clarifying the experts' right to create expert conclusion, i.e. their legitimacy [4, p. 9].

It should be noted that the requirement to include an expert in this register is a guarantee of confirmation of his qualifications and competence in the relevant field, which gives him the right to conduct expert examination. Since an expert is the source of such special evidence as an expert conclusion, any person with specialized knowledge cannot act as a forensic expert.

In this scenario, the court cannot accurately evaluate whether the expert possesses specialized knowledge on the issue relevant to the case. Secondly, possessing specialized knowledge in a certain field does not always imply the capacity to conduct a specific research study.

The State Register of Certified Forensic Experts contains complete information about the expert's qualifications and area of specialized knowledge, which greatly simplifies the process of selecting the appropriate expert and confirms his or her professional level.

However, we agree with the scientific position of T.V. Ruda that the certification is carried out on typical types of expert examinations, and in practice there may be cases when specialized knowledge is required in the field where the certification of forensic experts is not yet carried out [123, p. 117].

Therefore, the legislation should clearly provide for exceptional cases when a specialist who is not included in the State Register of Certified Forensic Experts may be involved in the expert examination. In all other cases, registration in the State Register of Certified Forensic Experts should be a mandatory requirement for the procedural status of an expert. Thus, if the issue of interest to the court cannot be resolved by any of the registered experts, but requires expert examination, we consider it possible to engage an expert in a related field of knowledge or another specialist in this field as a

forensic expert in accordance with Part 2 of Article 9 of the Law of Ukraine "On Forensic Expertise". Such a person may be appointed to conduct an expert examination only by a court ruling in which the court justifies the impossibility of conducting a particular type of examination by one of the registered experts. Therefore, it is not possible to involve such a person in an expert examination at the request of the case parties.

In the civil procedural doctrine, there are different approaches to the definition of "expert". According to V.S. Shapiro, an expert is a person who has the necessary knowledge in the form of higher education and has the right to conduct a specific expert examination, the conclusion of which is an independent source of evidence [80, p. 26].

However, we should disagree with the author that higher education is a form of expert knowledge. In this context, a complete higher education serves as a mere indication of the expert's professional knowledge and is a mandatory requirement for this trial participant.

As noted by E.O. Kharytonov, an expert is a person who has the necessary knowledge, who, in accordance with the procedure established by the Civil Procedure Code of Ukraine, is instructed to provide a conclusion on issues arising during the consideration of the case and relating to the specialized knowledge of this person, by studying material objects, phenomena and processes containing information about the circumstances of the case [124]. We should agree with the position of Zh. V. Vasilyeva-Shalamova that an expert is an individual who has specialized knowledge, has an independent and autonomous procedural status and is competent to conduct a special study on behalf of the court, the results of which should be formulated in the expert conclusion [12, p. 95].

An important aspect of the definition of "expert" is the indication that it is an individual, since even if a court order entrusts the expert examination to a relevant expert institution, the examination itself is carried out by an expert who is personally liable for providing a knowingly false conclusion. Additionally, the definition should account for the specific legal requirements imposed on the expert. Therefore, taking into account the above, we propose the following definition of this concept: an expert is an

individual who undergoes specific qualification training and certification as defined by law, is entered into the State Register of Certified Experts and authorized to conduct a special study, either on behalf of the court or at the request of case parties, due to their specialized knowledge in order to form an expert conclusion.

Given the above, it is necessary to distinguish the following features of an expert as a trial participant:

1) the expert is categorized as the other trial participant in accordance with Article 62 of the Civil Procedure Code of Ukraine;

2) an expert is an individual;

3) an expert has specialized knowledge in a particular field;

4) an expert must undergo qualification training and certification as defined by law;

5) an expert must be included in the State Register of Certified Experts;

6) the rights and obligations of an expert are defined by civil procedural law;

7) an expert conducts a special study by the court ruling or at the request of the case parties;

8) as a result of the expert's procedural activity, a new evidence is formed in the case.

When analyzing the procedural status of an expert, it is important to analyze the competence of this trial participant to perform his or her functions and tasks in civil proceedings.

According to A. V. Ivanov, an expert's competence consists of two aspects - procedural and specialized. Procedural competence is the scope of authority granted to the expert by procedural law. Professional (scientific, specialized) competence is the scope of specialized knowledge and skills that any expert conducting an examination of a particular species, type, subspecies must have [125, pp. 57-58]. In this case, it can be concluded that procedural competence is objective in nature, while professional competence is a subjective reflection of the level of expert's specialized knowledge.

A. V. Dudych's position on the dualistic nature of expert competence aligns with this idea. Thus, the scientist notes that the expert's competence should be divided into

two types: 1) procedural competence of an expert - a set of powers, rights and duties of an expert, which are regulated by procedural legislation and legislation on forensic expert activity; 2) professional competence of an expert, which includes a set of his/her knowledge, skills and abilities in the field of theory, methodology and practice of expert examination within its class, genus, type and subspecies [126, p. 40].

Thus, the above positions on the dual legal nature of expert competence should be supported. It should be noted that while the procedural competence is clearly provided for by law and remains constant, the professional competence is dynamic.

When studying the issue of the procedural status of an expert, it is necessary to consider his or her rights and obligations. According to O. O. Grabovska, the analysis of the provisions enshrined in the Law of Ukraine "On Forensic Examination" and in the civil procedural legislation of Ukraine regulating the rights and obligations of an expert leads to the conclusion that both the scope of rights and the scope of obligations of an expert are limited by the scope (boundaries) of expert research, the legislator in almost every provision emphasizes "questions posed to the expert" [127, p. 416]. Thus, it can be concluded that the rights and obligations of an expert are determined by his procedural status.

It is necessary to distinguish an expert's rights as either fundamental or procedural. Experts, as individuals, possess human and civil rights. The basic principles of respect for the honor and dignity of participants in the judicial process are provided for in Part 1 of Article 6 of the Civil Procedure Code of Ukraine. The fundamental principles of upholding the honor and dignity of trial participants are outlined in Part 1 of Article 6 of the Civil Procedure Code of Ukraine.

Procedural rights are determined by the peculiarity of the procedural activity of a forensic expert. These rights include

1) to get acquainted with the case file (clause 1, part 6, Article 72 of the Civil Procedure Code of Ukraine);

2) to submit a request for additional materials and samples, if the examination is appointed by the court (clause 2, part 6, Art. 72 of the Civil Procedure Code of Ukraine; clause 1, Article 13 of the Law of Ukraine "On Forensic Examination");

3) to include in the expert conclusion the facts found during the course of the examination, which are relevant to the case and about which he has not been asked questions (clause 3, part 6, Article 72 of the Civil Procedure Code of Ukraine; Part 8 of Article 102 of the Civil Procedure Code of Ukraine; clause 2 of Article 13 of the Law of Ukraine "On Forensic Examination");

4) to be present during the performance of procedural actions related to the subject and objects of investigation (clause 4, part 6, Art. 72 of the Criminal Code of Ukraine; clause 3 of Art. 13 of the Law of Ukraine "On Forensic Examination");

5) for the purpose of conducting an examination, to apply for interviews with case parties and witnesses (clause 5, part 6, Article 72 of the Civil Procedure Code of Ukraine);

6) the expert has the right to remuneration for the work performed and to compensation for expenses related to the examination and summoning to court (part 7 of Article 72 of the Civil Procedure Code of Ukraine); 6) to file a complaint against the actions of the person in charge of the case, if such actions violate the rights of the forensic expert (clause 4 of Article 13 of the Law of Ukraine "On Forensic Expertise");

7) to conduct expert examination on issues of interest to legal entities and individuals on a contractual basis, subject to the limitations provided by law (clause 6 of Article 13 of the Law of Ukraine "On Forensic Expertise").

Analyzing the expert's rights system, it can be concluded that the expert is entitled to expert initiative, as stated in clause 3 of Part 6 of Article 72 and Part 8 of Article 102 of the Civil Procedure Code of Ukraine. As stated by Y.M. Chornous in this context, the expert has the right, on his own initiative, to carry out, in addition to the research proposed to him, other researches which, in his opinion, are necessary to establish the facts relevant to the case, but about which the expert has not been asked any questions [128, p. 8]. O.A. Nedashkivska defines the expert's initiative as a category, according to which an expert, while studying certain objects, is convinced of the necessity to go beyond the task formulated by the initiator of the study and realizes this possibility by formulating additional information on the subject of proof [129, p. 204].

This expert's right is important to provide a complete and reasonable conclusion. It is noteworthy that current legislation does not prescribe specific methods of exercising this right. However, we believe that the expert conclusion should clearly separate the information that the expert noted in the course of the expert initiative, since the case parties and the court should be aware of the extent to which the expert went beyond the questions posed to him. For example, paragraph 4.12 of the Instruction provides that the introduction should identify the issues to be resolved by the expert in the course of exercising the right of expert initiative.

It should also be noted that the expert's initiative to include in the conclusion information about the circumstances that he or she has established in the course of the study should have specific limits, namely:

1) the expert's reasoning regarding the circumstances that he considers relevant to the case should relate to the subject of proof;

2) the establishment and examination of the relevant circumstances should be within the scope of the expert's specialized knowledge;

3) the determination of the relevant circumstances should relate to the subject of the examination being conducted and should not require additional research and materials.

The rights of the expert to familiarize himself with the case file and the ability to request additional materials for the study cannot be equated with the collection of materials on his own initiative, as this is a violation of the independence and impartiality of the expert in the process of conducting a special study. The prohibition on collecting materials on one's own initiative, which is provided for in Part 2 of Article 107 of the Civil Procedure Code of Ukraine, is a guarantee of the expert's objectivity. This guarantee is important for the case parties, since the result of the expert examination - the expert conclusion - has evidentiary value and is a means of proof, and therefore plays a significant role in the process of proving the case.

According to Part 8 Article 72 of the Civil Procedure Code of Ukraine, an expert appointed by the court may refuse to provide an opinion if the files provided at his/her request are insufficient to perform his/her duties.

However, it is important to recognize that the aforementioned provision must be regarded as an obligation rather than a right of the expert. Thus, if there is inadequate material for the study, the expert cannot conduct an examination as the expert conclusion in this situation would be incomplete and unsupported.

According to M.G. Shcherbakovsky, the absence of such materials, which, as a rule, are requested by the person or body that appointed the examination, makes it impossible to resolve the issue [130, p. 221].

We believe that an expert cannot refuse to conduct an expert examination on the grounds of insufficient materials unless he or she has previously filed a request for the provision of these materials. In view of the above, we propose to amend Article 72(8) of the Civil Procedure Code of Ukraine as follows: "An expert appointed by the court is obliged to refuse to provide an opinion if, at his request, no additional materials for the study were provided or the materials provided were insufficient to fulfill his duties. The application for refusal must be motivated".

We agree with the scientific position of I.A. Kirichenko, who states that since the expert is not a case party and has no personal legal interest in the resolution of the case, his participation in the proceedings is not conditioned by rights, but by the obligation to give an objective opinion on the issue presented to him. [119, p.19]. Thus, in accordance with Part 3 of Article 72 of the Civil Procedure Code of Ukraine, the expert shall give a reasoned and objective written opinion on the questions posed to him/her.

Based on the analysis of the civil procedural legislation, the following obligations of an expert should be distinguished:

1) to conduct a complete study and provide a reasonable and objective opinion on the questions posed to him (clause 1 of Article 12 of the Law of Ukraine "On Forensic Expertise", Part 3 of Article 72 of the Civil Procedure Code of Ukraine);

2) to appear in court at his request and explain his opinion and answer questions from the court and the case parties (clause 2 of Article 12 of the Law of Ukraine "On Forensic Expertise", Part 4 of Art. 72 of the Civil Procedure Code of Ukraine);

3) ensure the safety of the object of examination (Part 3 Article 108 of the Civil Procedure Code of Ukraine);

4) report the impossibility of conducting an expert examination in the event that the expert does not have the specialized knowledge to conduct a specific specialized study or without the involvement of other experts (Part 3 Article 12 of the Law of Ukraine "On Forensic Examination", Part 7 Article 103 of the Civil Procedure Code of Ukraine).

We also consider it necessary to supplement this list with the following expert's duty, namely 5) to refuse to provide an opinion if, at the request of the expert, no additional materials were provided for the study or the materials provided were insufficient to fulfill the duties assigned to him/her.

An important guarantee of ensuring an independent expert study and the provision of an objective and impartial expert conclusion is the institution of expert recusal. In the context of studying the problems of challenging an expert, it is worth focusing on Part 2 of Article 108 of the Civil Procedure Code of Ukraine, which provides for the possibility of the court to appoint an expert examination not to an individual expert, but to an expert institution. In this case, the obligation to appoint a specific expert is imposed on the head of the institution.

In this instance, it is unclear how parties can exercise their right to recuse an expert if they were appointed by a specialized expert institution.

In this connection, the scientific position of V.V. Petryk is extremely well-founded, because neither the Civil Procedure Code of Ukraine, nor the Law of Ukraine "On Forensic Examination", nor the Instruction on the Appointment and Conduct of Forensic Examination and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Examination and Expert Examination, nor the Resolution of the Plenum of the Supreme Court of Ukraine "On Forensic Examination in Criminal and Civil Cases" provide for the necessity of the head of an expert institution to inform the court the identity of the expert [131, p. 560]. We believe that in this case, the parties cannot exercise their right to recuse the expert because they become aware of the expert's identity only after the examination. We should agree with the position of Zh. V. Vasilyeva-Shalamova, who states in this regard that it is necessary at the legislative level to oblige the head of the expert institution, in case he

chooses the candidacy of an expert (experts), to notify the court of his decision, so that the court can discuss the said candidacy with the persons involved in the case and resolve the issue of possible challenges [12, p. 84].

In connection with the above, we consider it necessary to add the following provision to Part 2 of Article 108 of the Civil Procedure Code of Ukraine "The head of the expert institution is obliged to provide information on the identity of the expert appointed to conduct the expert examination within five days from the date of receipt of the court ruling on the appointment of the expert examination".

Another problematic issue is the exercise of the right to recuse an expert who conducts an expert examination at the request of the case parties. According to Part 3 of Article 39 of the Civil Procedure Code of Ukraine, the recusal shall be motivated and declared within ten days from the date of receipt by a case party of a resolution on commencement of proceedings, but not later on than the beginning of a preparatory hearing or the first court hearing, if a case is considered in accordance with the simplified action proceedings.

Thus, in the case when the expert examination is carried out at the request of the case parties, a particular party submits to the court a ready-made expert conclusion. According to Part 7 Article 106 of the Code of Civil Procedure of Ukraine, upon the case party's application on the existence of grounds for dismissal of the expert who prepared the conclusion on behalf of another person, such conclusion shall not be accepted by the court for consideration if the court recognises the existence of such grounds.

It should be noted that the question arises as to the timeframe for the exercise of the right of recusal in this case, since the expert examination has already been actually conducted. Therefore, we believe that in this case, the deadlines for filing such an application should correspond to the deadlines for applying for a recusal under Part 3 of Article 39 of the Civil Procedure Code of Ukraine. In view of the above, we propose to supplement part 7 of Article 106 of the Civil Procedure Code of Ukraine with the following provision: "This application shall be filed by a case party within the time limit provided for in part 3 of Article 39 of the Code of Civil Procedure of Ukraine".

An important aspect in the study of the legal status of an expert is his or her liability. Based on the analysis of the legislation, it can be concluded that the following types of liability apply to an expert: 1) criminal (Articles 384-385 of the Criminal Code of Ukraine); 2) administrative (183-3 of the Code of Administrative Offenses); 3) disciplinary (clause 2.4 of the Instruction; Article 14 of the Law of Ukraine "On Forensic Examination"); 4) material (clause 2.4 of the Instruction).

Accordingly, in accordance with Part 5 of Art. 104 of the Civil Procedure Code of Ukraine, in the ruling to appoint an expert examination, the court shall warn the expert of criminal responsibility for a knowingly false conclusion and for refusal without the reasonable excuse to perform his/her duties.

However, in the context of studying the criminal liability of an expert for a knowingly false conclusion, it is worth emphasizing that there is a significant difference between an incorrect and a false expert conclusion.

As A. Dudych rightly notes, an expert error differs from a knowingly false expert conclusion in that the error is the result of incorrect reasoning or actions of the expert and is not conscious, as is the case with a knowingly false conclusion [132, p. 134]. The position of M. Romaniuk that the public danger of intentional actions of an expert is that such actions prevent the establishment of the truth in the case is justified [133, p. 110].

That is, an expert's error occurs in the course of the expert's incorrect assessment of materials, which leads to incorrect conclusions, not intentionally, but as a result of lack of relevant knowledge, inattentiveness, insufficient qualifications and professionalism. Therefore, an incorrect expert conclusion is not a ground for bringing the latter to criminal liability for providing a knowingly false conclusion. However, we agree with the scientific position of R.I. Lemekha and V.V. Rubtsov that such actions of an expert should be assessed as a disciplinary offense. In this case, a disciplinary sanction should be applied to him/her (e.g., dismissal, severe reprimand, etc.) [134, p. 114].

In accordance with clause 2.4. of the Instruction, an expert shall be criminally liable, in accordance with applicable law, for providing a knowingly false conclusion,

for refusing to perform his/her obligation without good reason, as well as for disclosing of information that became known to him/her during the examination.

It should be noted that the current Ukrainian Code of Civil Procedure lacks a provision regarding the criminal liability of experts who disclose information obtained during examination. This situation is caused by the fact that the corpus delicti of the crime defined in Art. 387 of the Criminal Code of Ukraine provides for liability for disclosure of data from operational and investigative activities and pre-trial investigation. One of the subjects of this crime is an expert, but the corpus delicti does not cover the act of disclosing information that became known to the expert in the course of a expert examination appointed in civil proceedings.

However, part 2 of Article 107 of the Civil Procedure Code of Ukraine states that an expert has no right to disclose information that he or she has become aware of in connection with the examination or to inform anyone other than the court and the case party on whose request the examination was conducted about its results.

In this regard, we believe that in case of disclosure of information related to the expert examination, the expert should be brought to disciplinary responsibility. Therefore, the list of disciplinary offenses provided for in Art. 14 of the Law of Ukraine "On Forensic Examination" should be supplemented with the following offense:

"13) disclosure of information acquired by the expert during an expert examination that is not related to operational or investigative activities or pre-trial investigations.

Given the above, the following conclusions can be drawn. An expert is a special trial participant who belongs to the group of individuals who facilitate the administration of justice. The peculiarity of the procedural status of this trial participant is the possessing of specialized knowledge, which he applies in the course of research, establishing the circumstances relevant to the case. The significance of the expert's activities for the process of proving the case lies in the fact that the results of such research are reflected by the expert in the expert conclusion, which is a means of proof. Due to the special significance of the results of the expert's activities for the resolution of the case on the merits, the civil procedural legislation establishes requirements for a person who may act as an expert in civil proceedings.

2.3 Expert conclusion as a means of proof in the civil procedure of Ukraine

The peculiarity of expert examination as a form of application of specialized knowledge is that the result of its performance is a means of proof in accordance with Part 2 of Article 76 of the Civil Procedure Code of Ukraine. In the course of conducting a special study, an expert receives evidentiary information and forms a new piece of evidence - an expert conclusion. The expert conclusion plays an important role in the process of proving the case, as it contains information about the circumstances relevant to the case, without which it is impossible to resolve the case on the merits. It should be noted that the law imposes requirements on both the content and the form of this conclusion. The compliance of these elements with the requirements of civil procedure law guarantees the relevance and admissibility of an expert conclusion as a means of proof.

In this regard, we should agree with the scientific position of A.S. Buriak, according to which in the expert conclusion the content (conclusion justified by research, establishment and professional assessment by the expert) and the form (conclusion as an act) should be distinguished [135, pp. 77-78]. Thus, the form of an expert conclusion reflects the procedural aspect, which involves complying strictly with the civil procedural legislation of the procedure for obtaining pertinent evidence and outlining a specific conclusion as a procedural document. The content of the expert's opinion is based on a high level of scientific validity and completeness of the research. The content of the expert conclusion is based on specific scientific methods applied by the expert and directly reflects the level of his or her specialized knowledge in a particular field. The legal nature of the expert conclusion has a dual aspect, which is further exhibited during the research process when verifying adherence to civil procedural form for expert examination and the consistency of the conclusion’s contents.

According to Part 1 Article 102 of the Civil Procedure Code of Ukraine, The expert conclusion shall mean a detailed description of the research conducted by the expert, the resulting conclusions and substantiated experts' answers to the questions he/she was asked, drawn up in the manner prescribed by law.

We cannot agree with the legislative definition of an expert conclusion for the following reasons: 1) an expert conclusion is primarily a procedural written document containing relevant information obtained as a result of an expert examination; 2) this definition does not specify that an expert conclusion is obtained by an expert as a result of the application of specialized knowledge in the course of a special study.

In our opinion, an expert conclusion is a means of proof, which is reflected in the form of a written procedural document, executed in accordance with the requirements of the civil procedural law, containing information about the special study, which the expert has carried out with the application of specialized knowledge, and about the circumstances, which have been established in the course of this study.

We should agree with the scientific position of K.A. Sadchikova that, first of all, the research and provision of a conclusion are carried out by a special subject - an expert. As a person who facilitates the administration of justice, an expert has special rights and obligations that determine his procedural status. Secondly, it is the only means of proof that allows obtaining new evidence with the application of specialized knowledge by a knowledgeable person (expert) in the course of research [136, p. 92].

This means of proof is the result of a special study using appropriate scientific methods and is prepared by a special entity, a forensic expert, who must meet all the requirements set by civil procedural law for such a trial participant. It should be noted that currently there are two ways for the case parties to obtain an expert conclusion: 1) by court ruling; 2) at the request of the case parties.

The new form of expert examination provides for the right of the case parties to submit a ready-made expert conclusion along with all other evidence. In this regard, it can be concluded that the expert conclusion may be formed even before the opening of the proceedings.

Important features of an expert conclusion as a means of proof are its adequacy and admissibility. According to Part 1 of Article 77 of the Civil Procedure Code of Ukraine, evidence containing information about the subject of proof is relevant. As noted by O. Lazko, the expert conclusion must comply with the rules of adequacy, i.e., it must be relevant to the subject of the dispute. This feature depends entirely on the range of issues formulated by the court for the examination [137, p. 110].

In this context, it should be noted that the court partially determines the issue of relevance when establishing the range and scope of questions presented to the expert. That is, the court must ensure and control that the questions posed to the expert are relevant to the subject of proof prior to the examination. A violation of the relevance rule may occur if the expert conclusion includes information that does not answer the specific questions posed. Or if the information provided by the expert in the conclusion in the course of the implementation of the expert's initiative goes beyond the scope of the subject of proof in the case.

As S.Y. Fursa rightly notes, the content of the expert conclusion is directly the answers to the questions posed by the court, a description of the research conducted by the expert [138, p. 458].

A clear, complete and reasonable answer to the questions posed to the expert is a guarantee that the relevant conclusion is appropriate as a means of proof. In case of doubt as to the completeness of the expert conclusion, the case parties may request the appointment of an additional expert examination. As V.M. Tertyshnyk rightly notes, the expert conclusions should provide answers to all the questions posed. The conclusion should be expressed in a clear language that does not allow different interpretations. The conclusions should follow from the research, not be logically contradictory and be verifiable [79, p. 226].

In this regard, it can be concluded that the adequacy of the expert conclusion should be understood as its compliance with the issues raised in the court ruling on appointment of an expert examination, as well as the subject of proof in the case.

On the other hand, in the case of an expert examination at the request of the case parties, the questions to the expert are formulated directly by the requesting party. The

court does not participate in this process, and therefore the formation of questions in this case occurs outside of judicial control. In this regard, we believe that the court should pay particular attention to compliance with the rules of adequacy and admissibility of such evidence in the course of examining an expert conclusion commissioned by the case parties. After all, one of the case parties may inaccurately define the issue or introduce irrelevant issues into their conclusion.

The admissibility of an expert conclusion should be understood as full compliance with the civil procedural form during the appointment and conduct of an expert examination. Therefore, the admissibility of an expert conclusion is affected by the following facts:

1) compliance with the procedural requirements for the content and form of this means of proof;

2) compliance of the procedure of appointing and conducting an expert examination with the requirements provided for in the Civil Procedure Code of Ukraine;

3) the expert's competence to conduct the relevant research.

For example, the resolution of the Grand Chamber of the Supreme Court dated December 18, 2019, No. 522/1029/18, states that case law holds that an expert conclusion is not proper and admissible evidence unless it states that the expert is aware of criminal liability for knowingly false opinions and is prepared to submit it to the court [139].

Part 4 of Art. 102 of the Civil Procedure Code of Ukraine requires that an expert conclusion must be submitted in writing. It should be noted that the written form of the expert conclusion is due to the need to apply, analyze, and study this information by both the court and the case parties during the consideration of the case on the merits.

In accordance with clause 4.12 of Section IV of the Instruction, the expert conclusion consists of three parts: introductory (Introduction), research (Research) and final (Conclusions). According to A.R. Vorobchak, the mandatory parts of the expert conclusion are: 1) introductory, which highlights the organizational aspect of the examination and drawing up the expert conclusion; 2) research, which contains information about the applied methods of expert research, the research conducted and

the results of the expert research obtained on their basis; 3) final, which reflects the conclusions drawn by the expert based on the results of the research [140, p. 8].

It is important to note that the expert's indication of the specific scientific methods and techniques applied in conducting the study and forming the conclusion is a crucial element of the expert conclusion. This information may later be necessary for both the court and the case parties in case of doubts about the completeness of the relevant conclusion, or in the course of establishing the reliability of the information contained in the expert conclusion.

The introductory part of the expert conclusion contains a wide range of information that guarantees the adequacy and admissibility of this means of proof. According to O. M. Dufeniuk, the introductory part of the expert conclusion contains information that can be divided into three blocks: procedural, identification, and methodological [141, pp. 67-68].

The introduction of the expert conclusion shall contain the following basic information:

1) information about the case in the course of which the examination was appointed and the document on the appointment of the expert examination;

2) information about the expert institution or the person of the expert and the date of their involvement;

3) information about the leading expert or expert institution in the case of a comprehensive or commission examination;

4) competence of the expert or expert institution to conduct the relevant research;

5) questions to which the expert must provide a reasonable answer;

6) information on the objects of the expert examination and the materials provided to the expert for expert examination;

7) information on the organizational aspects of the examination, i.e. the list of the expert's requests, information on the persons present during the examination;

8) information on the regulatory legal acts, methods and other recommended literature applied by the expert;

9) information provided by the expert in the course of exercising the right of expert's initiative;

10) warning the expert of criminal liability.

The research part of the expert conclusion is extremely important, because this part of the expert conclusion describes the course of the study. Thus, while in the introduction the expert only lists the scientific methods applied, the research part contains information about the conditions and peculiarities of their application in the course of the study. It is through analyzing the research part of the expert conclusion that the court can determine why the expert arrived at a specific conclusion. Also, if there are doubts about the expert's providing a knowingly false conclusion, the description of the procedure for conducting this study may indicate the presence or absence of the expert's intent. Therefore, this part of the expert conclusion should clearly reflect all the actions of the expert, the methods and techniques apllied by him/her.

Regarding the final part of the expert conclusion, Zh. V. Vasylieva-Shalamova notes that these conclusions are, in fact, reasonable answers to the questions posed by the court to the expert. It should be emphasized that the conclusions should be stated clearly and unambiguously in order to exclude the situation of their ambiguous interpretation [142, p. 115].

Thus, it is the correctness, good faith and consistency of the study that ensures the completeness and validity of the conclusions that will be presented in the final part of the expert conclusion. In this connection, M.P. Klymchuk and S.I. Marko rightly point out that the fact that the expert conclusions are based on scientific knowledge does not exclude the need to assess their authenticity. The reliability of the expert conclusion depends largely on the reliability of the scientific knowledge, the validity of the methodology apllied during the examination [143, p. 85].

The study of the types of expert conclusions deserves special attention. The classification of expert conclusions according to their certainty level holds significant practical importance.

As R.V. Ivaniuk and V.D. Yurchyshyn rightly point out, the most important thing is to divide expert conclusions according to their level of certainty into categorical and probable ones. Categorical conclusions are expert conclusions that take the form of an affirmation or negation of identity. By their content, they are divided into positive and negative. Of course, the admissibility and evidentiary value of categorical conclusions (both positive and negative) is beyond doubt. At the same time, probable conclusions do not contain the necessary certainty [144, p. 72].

According to V.D. Yurchyshyn, reliably established circumstances that contributed to the formation of a probable conclusion can be used as indirect evidence, which should be evaluated on the basis of the principles of evidence evaluation provided by the law [145, p. 446].

Thus, based on the foregoing, it can be concluded that the probable expert conclusion should be considered as indirect evidence. Due to the lack of definitive responses to questions, such an expert conclusion cannot be considered as direct evidence. Therefore, only in conjunction with other evidence, a probable conclusion can confirm or refute the presence or absence of certain circumstances. In turn, the decision to admit as evidence a probable conclusion, as well as any other expert conclusion, is made by the court in the course of its research and evaluation. We agree with T.V. Ruda that indirect (circumstantial) evidence allows only to make assumptions about the presence or absence of a particular circumstance (for example, according to the expert conclusion, it is possible that the cause of the car accident could be a malfunction of the brake system, but it is not possible to establish this unequivocally) [123, p. 103].

In connection with the above, we believe that the importance of a probable expert conclusion for the consideration of a case on the merits cannot be underestimated, as it may contain evidentiary information necessary for the consideration of the case on the merits. Despite the lack of specific reference to particular circumstances, such a conclusion may contain information that allows appropriate conclusions to be drawn from an examination of the totality of the evidence. In this connection, the scientific position of E.V. Simbirska is justified, as she notes that it is obvious that the role of circumstantial evidence in court proceedings cannot be belittled, since this evidence,

although it does not confirm the fact, contributes to additional conviction of the probable existence of this fact [146, p. 90].

In addition, it is important to consider the conclusion on the impossibility of providing a conclusion as a type of expert conclusion based on the level of certainty.

Quite often, in practice, the relevant conclusion is mistakenly identified with an expert's statement of refusal to provide a conclusion. However, these documents are quite different in their content and importance for the consideration of the case on the merits. As noted by O.M. Kaluzhna, the conclusion on the impossibility of providing a conclusion is the result of a full-fledged expert study, it is an inference, which, however, does not carry any information. If the examination is completed by drawing up a conclusion on the impossibility of providing a conclusion, there is every reason to believe that the examination has taken place (was conducted) with all the following consequences [147, p. 194].

That is, the expert conclusion on the impossibility of providing a conclusion is a full-fledged study, during which, however, it was not possible to provide answers to the questions posed. In this case, the expert has all the relevant materials necessary to conduct the study, conducts the study itself, but as a result does not provide answers that have evidentiary value, but justifies the inability to answer the questions posed. Therefore, such an expert conclusion is not evidence because it does not contain information about circumstances relevant to the merits of the case.

In turn, a statement of refusal to provide a conclusion does not include an examination of the materials provided. Thus, an expert may refuse to provide a conclusion if the materials provided are insufficient (Article 72(8) of the Civil Procedure Code of Ukraine) and if there is a lack of relevant specialized knowledge or the impossibility of conducting a specific study without the involvement of other experts (Article 103(7) of the Civil Procedure Code of Ukraine).

If an expert refuses to conduct an expert examination on the ground of the above articles, the expert does not conduct a special study. He/she only analyzes the amount of materials provided to him/her for sufficiency for conducting an expert examination; assesses the compliance of the area of specialized knowledge he/she possesses with the

questions posed or establishes the impossibility of conducting a specific examination alone. Such an expert statement does not contain answers to the questions posed by the court. In fact, the content of this statement is not directly related to the range of questions that the court formed for the expert examination, but only to the reasonable grounds for the impossibility of conducting it.

It is also important to emphasize that the expert conclusion on the impossibility of reaching a conclusion indicates that the relevant information cannot be obtained through an expert examination at all, so that the appointment of a repeated examination is inappropriate. In turn, if the obstacles to the examination specified in the expert's statement are removed, such a study can be fully conducted.

In the context of analyzing an expert conclusion as a means of proof, such aspects as the court's examination and evaluation of this evidence are important. Thus, the expert conclusion, like other evidence, should be examined by the court in compliance with the principle of immediacy. As O.O. Grabovska rightly notes, only a direct examination of written and physical evidence, explanations of the parties, third parties, witness testimony, expert conclusions, etc. brings the court closer to reaching the correct conclusions about the facts and circumstances that are the subject of proof [148, p. 83].

We should agree with the scientific position of Y.A. Loza that in the course of an expert examination, unlike other procedural actions, the facts essential to the case are usually established in the absence of a court. This feature explains why the legislator has provided for a whole system of procedural guarantees, the observance of which is intended to facilitate reliable, complete and objective establishment of facts by the expert and comprehensive verification of his conclusions by the court [149, p. 531]. It is important to understand that the court cannot directly control the process of conducting the study. The relevant special study is carried out outside the court's regulations. However, the Court faces an important task, which consists of a detailed and thorough examination of not only the procedural, but also the substantive scientific component of the expert's conclusion, in order to determine the relevance, admissibility, reliability, and sufficiency of that evidence.

An expert conclusion must be examined by the court in accordance with the general rules of evidence evaluation and, in accordance with Part 2 Article 89 of the Civil Procedure Code of Ukraine, cannot take precedence over other means of proof. The expert's opinion is not binding, and the court may disregard the relevant opinion when deciding the case on the merits if it finds violations of the rules of relevance, admissibility, or reliability of this evidence. However, a proper and thorough examination of the expert conclusion by the court is a guarantee of a lawful, reasonable and fair judgment. Considering the specificity of an expert conclusion as a result of research based on scientific methods, the examination and evaluation of this means of evidence has its own peculiarities. In this context, the scientific position of V.V. Tsyrkal is justified that the expert conclusion can contribute to the resolution of the case on the merits and the adoption by the court of a lawful, reasonable and fair judgment only if it is correctly assessed [150, p. 60].

Thus, the procedure for examination of this means of proof is to check all stages of the formation of this evidence. Yu. M. Miroshnychenko notes that in the course of examination of an expert conclusion, the court must address the following issues: first, it is necessary to check compliance with the requirements of the procedural law regarding the procedure for appointing and conducting an expert examination, and second, to analyze the completeness, reliability, scientific validity of the expert conclusion [151, p. 446].

O. I. Perepichka identifies the following aspects of evaluation of an expert conclusion: 1) the legal aspect (whether the conclusion meets the requirements of the valid legislation); 2) the aspect of presentation (how complete, accessible, clearly presented the information is) and 3) the aspect of evaluation of the identified features (since the court cannot independently determine the value of a certain property, for correct perception it must have a standard on the basis of which it can understand the significance of the identified feature or obtain an evaluation of such property by a specialist) [152, pp. 70-71].

In this connection, the Resolution of the Plenum of the Supreme Court of Ukraine dated 30.05. 97 "On Forensic Examination in Criminal and Civil Matters" states that

when examining and evaluating the conclusion of an expert, the court shall determine: 1) whether the requirements of the law were met when appointing and conducting the examination; 2) whether there were any circumstances that precluded the expert's participation in the case; 3) the competence of the expert and whether he/she went beyond his/her powers; 4) the sufficiency of the objects of the examination; 5) the correctness of the expert conclusions; 3) the competence of the expert and whether he/she exceeded his/her authority; 4) the sufficiency of the objects of study submitted to the expert; 5) the completeness of the answers to the questions posed and their consistency with other factual data; 6) the consistency between the research part and the final conclusion of the examination; 7) the validity of the expert conclusion and its consistency with other case materials [116].

In the process of examining an expert conclusion, the court is obliged to verify compliance with the civil procedural form of appointing and conducting an expert examination. In other words, an expert's opinion cannot be considered admissible evidence if there are violations in the procedure for conducting an expert examination in general. This review focuses exclusively on the procedural requirements governing the appointment and conduct of expert examinations. We agree with the position of N.A. Panko that the evaluation of the admissibility of an expert conclusion is impossible without assessing the competence of the expert, which involves establishing education, practical experience, length of service in a narrow specialization within the profession of an expert [153, p. 733]. That is, an important element of examining the expert conclusion is to establish whether the expert possesses the necessary specialized knowledge to conduct this type of research.

This information can be verified by examining the following components:

1) a higher education degree;

2) a certificate permitting engagement in expert activities;

3) the State Register of Certified Forensic Experts to identify the expert's field of activity.

When examining an expert conclusion, it is essential to verify that the expert has the necessary authorization to conduct an expert examination in the specific proceeding

and that there are no grounds for recusal. Otherwise, such a conclusion cannot be considered admissible.

It should be noted that the court may not always be able to expertly examine and evaluate the scientific validity of the expert conclusion, the completeness of the answers provided by the expert, and the compliance of the information contained in the expert conclusion with the questions directly raised by the court or the case parties. In this case, in order to explain the expert conclusion, the expert may be summoned to the court hearing in accordance with Part 4 of Article 72 of the Civil Procedure Code of Ukraine.

We agree with the scientific position of A.S. Stefan on the need to indicate the issues on which the expert must provide clarifications and/or additions [7, p. 359]. Thus, the court should specify the areas for which the expert must provide clarification in its ruling to ensure the expert's effective execution of this obligation.

However, it is worth noting that while Part 4 of Article 72 of the Civil Procedure Code of Ukraine refers to the provision of clarifications of the conclusion and answers to the questions posed to the expert, Part 4 of Article 239 of the Civil Procedure Code of Ukraine refers to the provision of clarifications and additions of the expert conclusion. In this regard, it should be noted that incompleteness of the expert conclusion is the ground for the appointment of an additional examination, in accordance with Part 1 of Article 113 of the Civil Procedure Code of Ukraine. In this regard, the question arises whether it is possible to provide the additions to the expert conclusion without conducting an additional examination.

As M.P. Klymchuk and S.I. Marko have rightly pointed out, in the legal literature the supplementation of an expert conclusion is understood as the formulation of additional conclusions arising from the research carried out but not reflected in the conclusion, as well as the additional substantiation of the previously drawn conclusions [143, p. 86].

Thus, we believe that the expert's submission of additions to the conclusion should have clear limits:

1) in order to provide the relevant additions, the expert does not need to conduct additional research, otherwise there is a ground to appoint an additional examination;

2) the additions that the expert needs to make relate to the research already conducted and are directly the result of that research.

An important issue is to determine the evidentiary value of the relevant explanations and additions of the expert. Thus, civil procedure does not provide for a means of proof such as expert testimony. However, the information provided by the expert in the course of explanations and additions may be of significant importance for the resolution of the case on the merits, as it is also the result of an expert examination. In connection with the above, we believe that if the Court finds this information to be favorable, it should be considered part of the expert conclusion.

An important aspect of evaluating expert conclusion is determining its reliability. As noted by N. Volkova, reliable evidence will be that evidence which is characterized by accuracy and does not raise doubts about the presence or absence of facts (circumstances) that are the subject of proof [154, p. 330].

In establishing the reliability of an expert's opinion as judicial evidence, a significant role is played by the court's study of the research methods used by the expert during the expert examination. In this regard, the position of I.V. Hora is justified, who notes that conducting expert examinations only on the basis of knowledge in the field of science, technology, art or craft without reference to published methodological works in the field of forensic research is a serious reason to doubt the reliability of the results obtained [155, p. 213].

In connection with the above, the question arises as to whether an expert may apply the author's methodology in the course of conducting an expert examination. In our opinion, in this case, the validity of this methodology should be questioned by the court, since it must be tested and generally recognized. The use of the author's methodology also does not make it possible to verify its reliability in the process of examining the expert's opinion. Therefore, in this case, the study should be conducted applying such scientific methods and techniques that are directly used by experts in

conducting similar studies, have been tested and are included in the Register of Forensic Examination Methods.

Also, we agree with O. Doroshenko's scientific position that the reliability of an expert conclusion is also affected by violations of the established procedure for obtaining items and documents that are the objects of examination. This is due to the deductive nature of this evidence, when a violation at the stage of obtaining such items and documents calls into question the results of the research conducted on their basis [156, p. 22].

We believe that the reliability of an expert conclusion is determined by taking into account a wide range of factors. Thus, the reliability of an expert conclusion is affected by:

1) compliance with the procedural rules for appointing and conducting a expert examination;

2) the competence of the expert to conduct such an examination, namely: the availability of relevant specialized knowledge; the availability of a state-issued certificate of qualification as a forensic expert in a specific field of expert examination; the absence of grounds for recusal of the expert;

3) compliance with the procedural rules for delivery, receipt and storage of forensic objects;

4) scientific validity of the expert conclusion, which is confirmed by reference to official methods of conducting examinations of a particular type;

5) providing full and reasonable answers to the questions posed by the court, and, if necessary, the exercise of the right to expert initiative.

In our opinion, the reliability of the expert conclusion commissioned by the case parties is a controversial issue in view of the following:

1) if a forensic expert is appointed at the request of the case parties, the court does not determine the scope of issues for the expert. That is, the relevant subject of research is formed by a particular case party;

2) there is no procedural relationship between the expert and the court during the course of an expert examination at the request of the case parties. Instead, a contractual

relationship arises between the party commissioning the examination and the expert or expert institution, which may affect their impartiality;

3) during the course of an expert examination at the request of the case parties, most of the fundamental principles of expert examination are not implemented, which further affects the relevance, admissibility, and reliability of such an expert conclusion.

Therefore, based on the above, it can be concluded that an expert conclusion is a separate means of proof, which is characterized by the relevant features. This means of proof is the result of a special study carried out by a special trial participant - a forensic expert. The need for an expert conclusion arises when certain circumstances can only be determined through the application of specialized knowledge in the form of research. Despite the special legal nature of the expert conclusion, it is examined by the court in accordance with the general rules of evidence examination, is not a priority for the court and has no preliminary determined force.

Conclusions to Section II

This section is devoted to the study of the peculiarities of expert examination as a form of application of specialized knowledge, the procedural status of an expert, and the expert conclusion as a means of proof.

Expert examination should be defined as a special scientific research conducted in strict compliance with the civil procedural form by a special subject - an expert, by applying specialized knowledge in a particular field in order to establish the circumstances relevant to the case, to form a new evidence in the case - an expert conclusion.

It is necessary to distinguish three procedural forms relating to expert examination: the procedural form of appointing an expert examination, the procedural form of conducting an expert examination and the procedural form of evaluating and examining an expert conclusion by a court.

The court shall appoint an expert examination in a case at the request of the case parties if special knowledge in the form of a special study is required to clarify the circumstances relevant to the case, without which it is impossible to establish the relevant circumstances. In the case of separate proceedings, an expert examination may be appointed on the initiative of the court.

In this regard, the court should be guided by the following facts when deciding whether to satisfy a party's request for an expert examination:

1) the validity of the request of the case party regarding the need to appoint an expert examination;

2) the connection of the circumstance to be established by appointing an expert examination with the subject of proof in the case;

3) the existence of an actual requirement for the application of specialized knowledge and the impossibility of resolving this issue by applying other forms of application of specialized knowledge;

4) the absence of abuse of procedural rights by the parties in order to delay the proceedings by appointing an expert examination without a justified need for a special study;

5) the availability of technical and organizational capabilities to conduct the relevant type of expert examination.

Given the fact that the grounds for the appointment of an additional examination is the incompleteness of the answers to the questions posed, the lack of clarity of the material presented, it is advisable to entrust it to the same expert who conducted the initial study. This expert is already familiar with the case file and can reasonably fill in any gaps to provide a complete answer to the questions raised. If it is reasonably impossible for the same expert to conduct an expert examination, another expert may be appointed to conduct an additional examination.

In the case of an expert examination at the request of the case parties, the court does not participate in the selection of an expert or an expert institution, and does not determine the issues on which the expert examination should be conducted. Also, such an examination is appointed at the participant's discretion, and therefore the court does not issue a ruling in this regard. This procedure for appointing an expert examination presupposes the existence of a contractual relationship between a particular case party and an expert or expert institution and does not include the court in this subject composition. It is the lack of court control over the course of the expert examination at the request of the case parties that leads to doubts about the impartiality of the expert conducting such an examination, and therefore about the adequacy, admissibility and reliability of the relevant expert conclusion as a means of proof. Although the content of an expert conclusion at the request of the case parties does not differ from an expert conclusion obtained by the court ruling, in this case the case parties have the opportunity to abuse their procedural rights, which may result in an unlawful, unreasonable and unfair court decision. In our opinion, it is reasonable to conduct an expert examination at the request of the case parties only in exceptional cases in specific categories of cases. Such cases, for example, include cases related to compensation for damage caused by a car accident. In this instance, it is imperative to conduct an

automotive expert examination without delay, since any restorative repairs may be inaccurate and hinder the vehicle's future operation. In this case, timely examination ensures the person's right to receive compensation for damage to his or her property.

The expert may make recommendations on the wording of the questions provided for in the court ruling on appointment of an expert examination, but in this context certain restrictions should be applied, namely: 1) the expert may not change the essence of the questions posed, since in this case the subject of a particular examination is actually changed; 2) the expert may clarify the questions in order to bring them into line with scientific and methodological recommendations.

We believe that if the court has difficulties in appointing the lead expert or the lead expert institution, it may entrust this task to the head of the expert institution. If the court appoints several expert institutions to conduct the examination, the heads of the expert institutions may jointly determine the leading institution and experts to conduct a particular study.

If the issue of interest to the court cannot be resolved by any of the registered experts, but requires expert examination, we consider it possible to engage an expert in a related field of knowledge or another specialist in this field as a forensic expert in accordance with Part 2 of Article 9 of the Law of Ukraine "On Forensic Expertise". Such a person may be appointed to conduct an expert examination only by a court ruling in which the court justifies the impossibility of conducting a particular type of examination by one of the registered experts. Therefore, it is not possible to involve such a person in an expert examination at the request of the case parties.

An expert is an individual who undergoes specific qualification training and certification as defined by law, is entered into the State Register of Certified Experts and authorized to conduct a special study, either on behalf of the court or at the request of case parties, due to their specialized knowledge in order to form an expert conclusion.

The expert's initiative to include in the conclusion information about the circumstances that he or she has established in the course of the study should have specific limits, namely:

1) the expert's reasoning regarding the circumstances that he considers relevant to the case should relate to the subject of proof;

2) the establishment and examination of the relevant circumstances should be within the scope of the expert's specialized knowledge;

3) the determination of the relevant circumstances should relate to the subject of the examination being conducted and should not require additional research and materials.

Thus, in our opinion, from the moment of receiving the court ruling on appointment of an expert examination, the head of the expert institution is obliged to take the following actions within five days:

1) select an expert to conduct the relevant research, taking into account the scope of his/her specialized knowledge;

2) draw up a written order to appoint an expert to conduct an expert examination on the basis of a court order;

3) provide the expert with relevant materials for familiarization and to determine the possibility of conducting the relevant research based on the case file and taking into account the scope of specialized knowledge;

4) Send the order for the appointment of an expert to the court with a cover letter justifying the choice of expert(s).

We believe that in case of disclosure of information related to the expert examination, the expert should be brought to disciplinary responsibility. Therefore, the list of disciplinary offenses provided for in Art. 14 of the Law of Ukraine "On Forensic Expertise" should be supplemented with such an offense.

In our opinion, an expert conclusion is a means of proof, which is reflected in the form of a written procedural document, executed in accordance with the requirements of the civil procedural law, containing information about the special study, which the expert has carried out with the application of specialized knowledge, and about the circumstances, which have been established in the course of this study.

It can be concluded that the probable expert conclusion should be considered as indirect evidence. Due to the lack of definitive responses to questions, such an expert

conclusion cannot be considered as direct evidence. Therefore, only in conjunction with other evidence, a probable conclusion can confirm or refute the presence or absence of certain circumstances. In turn, the decision to admit as evidence a probable conclusion, as well as any other expert conclusion, is made by the court in the course of its research and evaluation.

Quite often, in practice, the relevant conclusion is mistakenly identified with an expert's statement of refusal to provide a conclusion. However, these documents are quite different in their content and importance for the consideration of the case on the merits. That is, the expert conclusion on the impossibility of providing a conclusion is a full-fledged study, during which, however, it was not possible to provide answers to the questions posed. In this case, the expert has all the relevant materials necessary to conduct the study, conducts the study itself, but as a result does not provide answers that have evidentiary value, but justifies the inability to answer the questions posed. Therefore, such an expert conclusion is not evidence because it does not contain information about circumstances relevant to the merits of the case. In turn, a statement of refusal to provide a conclusion does not include an examination of the materials provided.

If an expert refuses to conduct an expert examination on the ground of the above articles, the expert does not conduct a special study. He/she only analyzes the amount of materials provided to him/her for sufficiency for conducting an expert examination; assesses the compliance of the area of specialized knowledge he/she possesses with the questions posed or establishes the impossibility of conducting a specific examination alone.

We believe that the expert's submission of additions to the conclusion should have clear limits:

1) in order to provide the relevant additions, the expert does not need to conduct additional research, otherwise there is a ground to appoint an additional examination;

2) the additions that the expert needs to make relate to the research already conducted and are directly the result of that research.

The reliability of an expert conclusion is affected by:

1) compliance with the procedural rules for appointing and conducting an expert examination;

2) the competence of the expert to conduct such an examination, namely: the availability of relevant specialized knowledge; the availability of a state-issued certificate of qualification as a forensic expert in a specific field of expert examination; the absence of grounds for recusal of the expert;

3) compliance with the procedural rules for delivery, receipt and storage of forensic objects;

4) scientific validity of the expert conclusion, which is confirmed by reference to official methods of conducting examinations of a particular type;

5) providing full and reasonable answers to the questions posed by the court, and, if necessary, the exercise of the right to expert initiative.

In our opinion, the reliability of the expert conclusion commissioned by the case parties is a controversial issue in view of the following:

1) if a forensic expert is appointed at the request of the case parties, the court does not determine the scope of issues for the expert. That is, the relevant subject of research is formed by a particular case party;

2) there is no procedural relationship between the expert and the court during the course of an expert examination at the request of the case parties. Instead, a contractual relationship arises between the party commissioning the examination and the expert or expert institution, which may affect their impartiality;

3) during the course of an expert examination at the request of the case parties, most of the fundamental principles of expert examination are not implemented, which further affects the relevance, admissibility, and reliability of such an expert conclusion.

SECTION III. PARTICIPATION OF A SPECIALIST IN THE CIVIL PROCEDURE OF UKRAINE

3.1. Procedural status of a specialist as a trial participant

In the connection with the study of the Institute of specialized knowledge in the civil procedure of Ukraine, it should be noted that the procedural activity of a specialist plays an important role in the course of consideration of the case on the merits. A specialist is a trial participant who has specialized knowledge, but his or her procedural status is different from the procedural status of an expert. For a long period of time, expert examination was considered the only form of application of specialized knowledge in civil proceedings. However, in the course of consideration of certain categories of cases, issues arose that required the application of specialized knowledge, but not in the form of expert examination. This means that in this case there was no need for a special study by a forensic expert. In this regard, it was necessary to introduce a new procedural figure - a specialist - into the civil procedural legislation.

The status of a specialist as a trial participant with a special role was established with the adoption of the Civil Procedure Code in 2004. However, it should be noted that the legislative consolidation of the legal regulation of the status of such an independent subject of civil proceedings as a specialist did not solve all the problems connected with the participation of this participant in the process of consideration of the case on the merits. The issues related to the peculiarities of the involvement of a specialist in the process, forms and evidentiary value of his/her procedural activities remain unresolved. In this regard, the legal regulation of the status of this trial participant requires further research and improvement.

The procedural status of a specialist and the forms of his/her procedural activity have been the subject of research by such national proceduralists as: S.S. Bychkova, Zh.V. Vasylieva-Shalamova, V.V. Gansetska, D.G. Glushkova, V.G. Honcharenko, O.O. Grabovska, K.V. Husarov, O.S. Zakharova, N.O. Kireeva, Y.Y. Riabchenko, A.S. Shtefan, M.Y. Shtefan.

Part 1 of Article 74 of the Civil Procedure Code of Ukraine clearly states that a specialist has specialized knowledge and skills. Just like an expert, a specialist belongs to other trial participants. As S. Vasyliv notes, the main feature of this group of subjects of civil procedural legal relations is the lack of legal interest in the outcome of consideration and resolution of a civil case, but their role and importance in the resolution of the case is also significant [157, p. 181].

Similar to the activities of an expert, the purpose of the procedural activities of a specialist is to facilitate the process of proving the case. However, the specialist performs other forms of procedural activity, which arise from the nature of the specialized knowledge he or she applies. Thus, the specialist's specialized knowledge is aimed at providing technical assistance and carrying out advisory activities. Therefore, this participant in the process does not carry out a special study.

The scientific position of K.V. Husarov is justified by the fact that a specialist uses his specialized knowledge and skills to assist the court in identification, securing and seizure of evidence, draws its attention to the circumstances connected with identification, securing of evidence; gives explanations on special questions arising in the course of court proceedings [158, p. 169].

That is, it can be concluded that the specialist performs his procedural functions mainly directly in the course of specific procedural actions of the court, which ensures both effective and timely consideration of the case on the merits. The participation of a specialist in the proceedings is one of the guarantees of procedural economy, since in case of participation of a specialist in the proceedings, the proceedings in the case are not suspended. That is why the activities of a specialist are characterized by greater efficiency and dynamism compared to the activities of an expert and the appointment of an expert examination, which requires thorough preparation.

We agree with the scientific position of S.S. Bychkova, who notes that a specialist in a civil case is an independent participant in the process [159, p. 25]. If a specialist is involved in the proceedings at the initiative of the parties, the independence and impartiality of that specialist must be guaranteed. Therefore, the specialist must be separated from the interests of the parties and from the activities of the court.

By virtue of his or her independent status, the specialist is endowed with a range of rights and obligations that are determined by the specifics of his or her procedural activities. Like all other trial participants, the specialist has neither material nor procedural interest in the outcome of the case on the merits, and cannot have official relations with either the court or the case parties. In this context, the scientific position of V.A. Kreitor and D.G. Glushkova is correct that a specialist in modern civil proceedings is an individual - a subject of civil proceedings who has specialized knowledge or technical skills, has no legal interest in the outcome of the case, is involved in the process by making a ruling on the court's own initiative or on the initiative of the case parties, to provide the court with advisory and reference or technical assistance [160, pp. 222-223].

According to V.S. Shapiro, a specialist is a person who applies his or her knowledge and skills to assist the court in performing certain actions aimed at identifying, seizing, and preserving evidence [80, p. 28]. In turn, Zh. V. Vasilyeva-Shalamova points out that a specialist is an independent subject of civil proceedings, who is a specialist in the field of specialized knowledge and who is involved by the court in the process to provide advice and reference assistance on issues requiring the application of specialized knowledge and technical assistance (photography, making diagrams, plans, drawings, taking samples for examination, etc.). [12, c. 22].

Therefore, given the above, we believe that a specialist is an individual who has specialized knowledge and skills of an applied nature, who is involved in the process at the initiative of the court or the case parties in order to facilitate the process of proving the case by providing advice or technical assistance.

An important matter in examining the legal status of a specialist is the process of including them in legal proceedings. It should be noted that the Civil Procedure Code of Ukraine does not clearly define the circle of persons who can initiate the participation of a specialist in the proceedings. Thus, Part 1 of Article 74 of the Civil Procedure Code of Ukraine states that a specialist is a person appointed by the court. However, this article does not specify on whose initiative such a party to the proceedings may be involved.

It is important to note that Article 74 of the Civil Procedure Code of Ukraine should define the group of individuals who can request the participation of a specialist in the proceedings. Since the results of a specialist's activities are not a means of proof, it is advisable to provide for the right of the court to involve a specialist in the proceedings on its own initiative, as this will not contradict the principle of adversarial proceedings. The fact that the court has the power to initiate the involvement of a specialist in the process is of fundamental importance for the proper recording, review, and examination of evidence. Also, the right to initiate the involvement of a specialist should be granted to the case parties. In this regard, we propose to supplement Part 1 of Article 74 of the Civil Procedure Code of Ukraine with the following provision: "A specialist shall be involved in the proceedings at the request of the parties to the case or on the initiative of the court."

The only way to involve a specialist in the process is through a court ruling. However, the Civil Procedure Code of Ukraine does not contain any requirements for the content of such a ruling. It should be noted that the court ruling on the involvement of a specialist in the proceedings must contain full information on the purpose of his or her activities in the performance of a particular procedural action. For example, if the court or the case parties need to consult a specialist, the court's ruling must clearly state the specific questions to which the specialist must provide an answer. If a specialist is required to provide technical assistance, the court ruling must clearly state the relevant terms of reference for the specialist's involvement. Similarly to the procedure for appointing an expert, the issues to be resolved by the specialist should be approved by the court. This will increase the efficiency of the specialist's activities, as the specialist will be able to prepare for providing advice or technical assistance.

Thus, the content of the court's ruling to engage a specialist in the proceedings should include the following information:

1) surname, name, patronymic of the specialist;

2) documents confirming his/her qualifications;

3) grounds for involving the specialist in the proceedings;

4) purpose of involving the specialist in the proceedings;

5) questions to be answered by the specialist or terms of reference to be solved by the specialist;

6) warning of liability for failure to appear at the court hearing;

7) information on the distribution of costs associated with the specialist's participation in the proceedings.

An important issue in connection with the study of the legal status of a specialist is his or her rights and obligations. We should agree with D. Glushkova, who notes that giving oral advice and written explanations, as well as providing technical assistance to the court are the main procedural duties of a specialist, which determine his procedural role and the purpose of involvement in the process [161, p. 58].

According to part 4 of Art. 74 of the Code of Civil Procedure of Ukraine, the specialist shall have the right to know the purpose of his/her summons to court, to refuse to participate in the trial if he/she does not have the appropriate knowledge and skills, to draw the court's attention to the characteristic circumstances or features of evidence, as well as the right to remuneration and compensation for the costs related to the summons.

It should be noted that the list of rights of a specialist should be expanded in order to ensure the conditions for the proper performance of his or her procedural function. Thus, we believe that in the course of participation in a procedural action, a specialist should be granted the right to ask questions to the case parties and the court in order to specify his/her task, clarify the information necessary to provide advice or technical assistance.

It should be noted that certain rights of a specialist should be defined as obligations. For example, if a specialist does not have the relevant knowledge and skills, he or she is obliged to withdraw from the trial. Otherwise, the specialist may provide the court or the case parties with false information, which may further affect the legality, validity and fairness of the judgment.

Also, the specialist is obliged to draw the court's attention to the specific circumstances or features of the evidence. Part 4 of Art. 74 of the Civil Procedure Code of Ukraine defines this provision as a right, but in our opinion, the obligation to draw

the court's attention to the characteristic circumstances or features of the evidence revealed in the course of the specialist's procedural activities is important for a complete and comprehensive examination of the evidence. Moreover, such a duty is directly derived from the nature and purpose of the specialist's activity, which is aimed at facilitating the process of proving the case.

In view of the above, we propose to exclude the aforementioned rights from Part 4 of Article 74 of the Civil Procedure Code of Ukraine and to establish them as the duties of a specialist.

A significant gap in the regulation of the procedural status of a specialist is the absence of an obligation and a clearly defined procedure for confirming that a specialist has the specialized knowledge and skills to provide advice or technical assistance. This position of the legislator raises certain concerns, since the availability of specialized knowledge is a mandatory requirement for such a trial participant as a specialist. The lack of regulations confirming the availability of a specialist's knowledge and skills makes it impossible for the court to determine the specialist's competence and the validity of his or her refusal to participate in civil proceedings. In addition, the lack of a procedural procedure for confirming a specialist's qualifications may lead to difficulties with the specialist's disqualification on the grounds of lack of relevant knowledge and skills. In general, the procedural activities of a specialist are important for the resolution of the case on the merits, since the information provided by the specialist may be used by the court as the basis for the reasoning part of the judgment. That is why the process for verifying a specialist's qualifications will guarantee their ability to perform their procedural function at an appropriate level.

The scientific position of P.F. Nemesh is justified, as he believes that it makes sense to provide for the provision of certain documents confirming the availability of specialized knowledge and skills in the legislation [162, p. 20]. The qualification requirements are clearly spelled out for such a trial participant as an expert. In this context, T.M. Kucher notes that a person is an expert by virtue of his or her status, obtained as a result of fulfilling the requirements provided for by law, and a specialist -

in connection with the profession, specialty, qualification, that is, proper confirmation of his or her competence in a particular field or area [163, p. 38].

In view of the above, it is necessary to establish a clear list of requirements for confirmation of a specialist's qualification. Therefore, we believe that a specialist, like an expert, should be a specialist who has an appropriate higher education, a level of education not lower than a specialist. That is, the qualification of a specialist must be confirmed by a state-issued document indicating that the specialist has a higher education in a particular specialty. If the specialist's advice or technical assistance is related to activities that require obtaining appropriate permits or certificates, the specialist must additionally submit these documents to confirm his or her competence in a particular field.

In the course of the analysis of the case law, it has been noted that when engaging a specialist in the proceedings, the court also checks the existence of any qualification certificates for the performance of certain activities. For example, the judgment of the Kozelets District Court of Chernihiv Region dated June 24, 2021 in case No. 734/989/21 granted the expert's request to engage a specialist land surveyor PERSON_5, who holds the Qualification Certificate of a Land Surveyor No. 001517 dated January 23, 2013, issued by the State Agency of Land Resources of Ukraine, and the Certificate of Advanced Training in Agriculture NUMBER_1 dated August 4, 2020, issued by the Qualification Commission of the National University of Chernihiv Polytechnic [164].

In connection with the above, we propose to supplement the wording of Part 3 of Article 74 of the Civil Procedure Code of Ukraine with the following obligations of a specialist

- To refuse to participate in the case if he/she does not have the necessary knowledge and skills;

- To draw the court's attention to the special circumstances or features of the evidence discovered during the specialist’s procedural activity;

- Provide documentation confirming the availability of specialized knowledge on a particular issue.

In order to implement the procedure of verification of a specialist's competence, we consider it necessary to add the following part 5 to Article 74 of the Civil Procedure Code of Ukraine "5. The availability of special knowledge on a particular subject is confirmed by documents on the availability of higher education in the relevant field, as well as other documents required for certain types of activities".

Today, the correlation between the procedural statuses of an expert and a specialist is becoming increasingly important. This situation is due to the fact that the statuses of an expert and a specialist have a number of common features. In this regard, in practice there are situations of inappropriate application of one or the other form of application of specialized knowledge, which subsequently leads to delay of the proceedings and increase of court costs.

In this connection, we should agree with D. Glushkova that a clear definition of the functions and reasons for the participation of these two subjects will be the key to a faster and simplified consideration of the case, will facilitate the work of the court, since the appointment of an expert examination in the absence of reasons for it involves unnecessary time and money [165, pp. 104-105].

It should be noted that despite the existence of a number of common features of these subjects of application of specialized knowledge, their procedural functions in civil proceedings are different.

Thus, in our opinion, the correlation between the procedural statuses of an expert and a specialist should be made according to the following criteria:

1) availability of requirements and completeness of legal regulation of the procedural status;

2) the way of involvement in the process;

3) legal nature of the forms of procedural activity and procedural functions;

4) evidentiary value and peculiarities of consolidation of the results of activity;

5) liability;

6) legal nature of specialized knowledge.

With regard to the criterion of requirements and completeness of legal regulation of the procedural status, it should be noted that, unlike an expert, a specialist is not subject to requirements for confirmation of his or her qualifications.

As rightly noted by Zh. V. Vasylieva-Shalamova, an expert may be a person who has specialized knowledge in a particular field of science, technology, art, has undergone appropriate training, has been qualified as an expert in certain types of examinations and is included in the State Register of Certified Forensic Experts. Whereas to be a specialist, it is enough to have specialized knowledge and skills in the application of technical means [166, p. 108].

In general, the procedural activities of a specialist are less regulated than those of an expert. The procedural activity of an expert is regulated not only by the Civil Procedure Code of Ukraine, but also by a separate Law of Ukraine "On Forensic Examination". In turn, the activity of a specialist is regulated by a limited list of articles of the Civil Procedure Code of Ukraine, which do not provide a full and thorough legal regulation of the procedural status of this trial participant.

The next correlation criterion is the way of involving the relevant subject of the application of specialized knowledge in the proceedings. The way of involving a specialist and an expert in the process is a court ruling. A novelty of the Civil Procedure Code of Ukraine is also the submission to the court of an expert conclusion at the request of the case parties. However, given the fact that an expert conclusion is a means of proof, the court cannot involve an expert in the proceedings on its own initiative, as this would contradict the principle of adversarial proceedings. The exception is cases of separate proceedings, in which the court may request evidence. As for the involvement of an expert, in this situation, the court should be granted the initiative. This situation is due to the fact that the essence of the specialist's activity is to facilitate the recording, review and examination of evidence, it accompanies the procedural actions of the court, and therefore the court's ability to engage a specialist is justified.

The next criterion of correlation is the legal nature of the forms of procedural activity and procedural functions. The form of expert activity is expert examination. A specialist applies his or her specialized knowledge in the form of technical assistance

and advisory activities. It should be noted that the activities of a specialist cannot replace the activities of an expert. In other words, these forms of procedural activity are not only independent, but also have different legal nature. In this context, we agree with the scientific position of O.S. Zakharova and V. Gansetska that a specialist is not authorized by civil procedural law to conduct a study. The only subject of expert examination is an expert [167, p. 560].

Thus, it should be noted that expert examination is a special study that is usually conducted in a laboratory setting. Accordingly, in the course of a expert examination, an expert applies scientific methods in order to form new evidence in the case. In turn, in the course of his procedural activity the expert does not conduct a separate study and does not reveal new information. The expert works with the available evidence and helps the court and the case parties to determine the existing characteristics of the object or phenomenon, to properly collect, record and examine the relevant evidence. Subsequently, the court can use the information received from the expert in the process of making a judgment.

An important criterion for the correlation of the procedural statuses of an expert and a specialist is the evidentiary value and peculiarities of determining the results of their activities. The position of S. S. Bychkova is justified, who notes that the basis for distinguishing between the activities of a specialist and an expert is a different procedural position and unequal evidentiary value of the results of their activities [159, p. 24]. Thus, the expert conclusion, unlike the specialist conclusion, is provided by the Civil Procedure Code of Ukraine as a separate means of proof. This situation is directly caused by the legal nature of the forms of procedural activity of these participants and is connected with the fact that in the course of expert examination a new evidence is formed.

It should also be noted that an expert conclusion must be obtained in a clear procedural form. In this regard, a violation of the procedural requirements for obtaining an expert conclusion may result in the court later recognizing a particular expert conclusion as inadmissible evidence. Therefore, the relevant means of proof may be provided exclusively by a forensic expert and exclusively in the manner prescribed by

the Civil Procedure Code of Ukraine. Moreover, the law also clearly regulates the form, content and structure of this conclusion. In turn, the Civil Procedure Code of Ukraine does not contain requirements for the form and content of the expert conclusion, as well as the procedural form of its submission to the court, which is a significant gap and affects the efficiency of such a trial participant.

One of the basic criteria for distinguishing between the status of an expert and that of a specialist is the legal nature and type of their liability as subjects of the application of specialized knowledge. Thus, an expert is directly responsible for his or her procedural activities related to providing an expert conclusion. This means that if an expert knowingly reaches a conclusion that is not objective, in which the expert intentionally provides false information to the court, he or she will be held criminally liable under the law. In turn, the specialist is not specifically liable for the results of his procedural activities and the proper performance of obligation to provide quality technical assistance or advice. In this regard, the liability of a specialist is purely formal, related to the failure to perform his duties as a trial participant, but not as a subject of the application of specialized knowledge.

The legal status of an expert and a specialist should also be distinguished by determining the legal nature of the specialized knowledge possessed by each of the participants.

As N.O. Kireeva rightly notes, the expert's specialized knowledge is characterized by a combination of theoretical and practical aspects, because the expert in his activity explores the essence of the phenomenon in order to obtain new information that is still unknown to the court, while the specialist provides advice on the existing information, that is, his activity is of a clarifying nature, the specialist does not need to investigate the causal relationships, characteristics, structure of a particular phenomenon [168, p. 139].

Therefore, it can be concluded that despite the existence of a common goal, the specialized knowledge of an expert and a specialist has fundamental differences. Thus, the functional focus of the expert's activities requires the latter to have in-depth scientific and practical knowledge that allows for a special study. In turn, a specialist establishes the characteristic features of existing evidence, helping the court to record,

examine and properly investigate it. In this regard, such a subject of the application of specialized knowledge as an expert requires more thorough training than a specialist, since his or her activities are to establish the circumstances that are relevant to the merits of the case, and also require in-depth knowledge of scientific methods of conducting specific special studies.

In this context, the scientific position of M.M. Nadizhko that the peculiarity of the expert's specialized knowledge is that it is the result of special professional training and education, practical experience and professional skills is extremely well-grounded [11, p. 27].

The nature of expert and specialist specialized knowledge should be clearly defined, which will be a solid criterion for distinguishing the civil procedural status of these trial participants. Specialized knowledge of an expert should be understood as a set of knowledge and skills characterized by a combination of theoretical scientific knowledge and practical skills and applied for a thorough study of phenomena, objects, events in order to establish the circumstances necessary for the resolution of the case on the merits and the formation of new evidence. Specialized knowledge of a specialist should be understood as a set of knowledge and skills of an applied nature that are intended for practical application in the course of recording, examination, investigation of evidence and provision of technical assistance with the application of technical means and are not of a research nature.

Thus, the legislative consolidation of the procedural status of such a trial participant a specialist has contributed to the expansion of the forms of application of specialized knowledge in civil proceedings. However, at present, we can speak of imperfect and incomplete legal regulation of the procedural status of a specialist, which leads to certain difficulties related to the involvement of this participant in the process, as well as to the distinction between his/her status and the status of an expert.

3.2. Forms of procedural activity of a specialist in the civil procedure of Ukraine, their importance for the process of proving the case

In connection with the analysis of the procedural status of a specialist it is important to study the forms of his procedural activity. Thus, a clear definition of the forms of a specialist's procedural activity plays an important role in the course of the process of proving the case, resolution of the case on the merits and adoption of a lawful, reasonable and fair court decision. It is worth emphasizing that the legal regulation of the forms of procedural activity of a specialist requires a thorough scientific and theoretical study. It should be noted that the forms of procedural activity of a specialist are determined by the purpose of involving this participant in the court proceedings, as well as by the nature of his/her specialized knowledge. Thus, the purpose of the procedural activity of a specialist in civil proceedings is to facilitate the administration of justice in general and the process of proving the case in particular. On the other hand, the specialist's knowledge is of an applied nature; he or she does not carry out special research.

According to Part 1 Article 74 of the Civil Procedure Code of Ukraine, a specialist shall mean a person who has special knowledge and skills necessary for the use of technical means, and shall be appointed by the court to provide advice and technical assistance in performing procedural actions related to the use of such technical means (photography, drawing up plans, plans, drawings, sampling for expert examination, etc.).

The aforementioned wording of Part 1 of Article 74 of the Civil Procedure Code of Ukraine raises questions in connection with the determination of forms of procedural activity of a specialist.

Thus, this part of the article states that "a specialist is a person who has specialized knowledge and skills necessary for the application of technical means". However, we do not agree with the statement that the specialized knowledge and skills of a specialist are exclusively aimed at the application of technical means. Despite the applied and practical nature of the specialist's activities, one of the forms of procedural activities of a specialist is an advice, which may relate to issues from various fields of knowledge and areas of human activity. For example, pursuant to Part 1 Article 235 of the Civil Procedure Code of Ukraine, a specialist may be involved in the examination of written

evidence. Also, according to Part 1 Article 237 of the Civil Procedure Code of Ukraine, a specialist may be involved in the examination of physical and electronic evidence.

In other words, the activities of a specialist are certainly related to the process of proving the case, but cannot be limited to the application of technical means. It is also worth noting that Part 1 of Article 74 of the Civil Procedure Code of Ukraine provides for photography among the types of technical assistance, but does not specify that a specialist may also make sound and video recordings.

Taking into account the above, we propose to restate Part 1 of Article 74 of the Civil Procedure Code of Ukraine as follows: "A specialist is a person who possesses the specialized knowledge and skills necessary to provide advice and technical assistance in the course of procedural actions related to the recording, examination and research of evidence, as well as the application of technical means (photography, sound and video recording, drawing up diagrams, plans, drawings, taking samples for examination, etc.). A specialist is involved in the process at the request of the case parties or at the initiative of the court."

Also, we should disagree with the wording of Part 2 of Article 74 of the Civil Procedure Code of Ukraine, which states that the help and advice of a specialist shall not replace the expert conclusion. In this case, the legislator inappropriately uses the concept of "help", since it has a rather broad meaning and may lead to certain difficulties in the course of the specialist's procedural activities. In turn, technical assistance is a form of procedural activity of a specialist. Taking into account the above, we propose to restate Part 2 of Article 74 of the Civil Procedure Code of Ukraine as follows: "Technical assistance and advice of a specialist do not replace the expert conclusion".

Thus, the current civil procedural legislation distinguishes two main forms of procedural activity of a specialist - technical assistance and advice. The technical assistance of a specialist consists of taking photographs, sound and video recordings, drawing up diagrams, plans, drawings, taking samples for examination, etc. In this case, the specialist does not provide advice to the court on a particular issue. In turn, an

advice involves the specialist's analysis of a specific issue and providing a thorough answer to it.

We agree with the scientific position of D.G. Glushkova that the assistance of a specialist during the examination of written and physical evidence is possible in two forms: technical assistance, i.e. the application of technical and forensic means designed to help improve the sensory perception of information contained in the evidence by judges; provision of advisory and reference assistance to facilitate a more complete and qualitative perception of the data contained in the evidence under investigation [74, p. 14].

In order to provide advice or technical assistance, a specialist may participate in the examination of evidence both in the courtroom (Part 3 of Article 229 of the Civil Procedure Code of Ukraine) and during the examination of evidence at the place of its location (Part 3 of Article 85 of the Civil Procedure Code of Ukraine).

The Ruling of the Melitopol City District Court of Zaporizhzhya Region dated 18.02.2019 in case No. 320/4198/18, granted the request to engage a specialist to examine the physical evidence at its location. Thus, according to the ruling, taking into account the stated claims and the evidence available in the case file, as well as considering that the material evidence requested by the claimant's representative to be examined at its location is essential to ensure the completeness and comprehensiveness of the case, the court considers it necessary to schedule an exit hearing at the address of the material evidence [169].

In this case, the participation of a specialist is due to the need to inspect the location of the physical evidence, which is important for the correct resolution of the case on the merits. In this connection, it should be noted, that the procedural activity of a specialist ensures the completeness of the study of a particular piece of evidence, which further assists the court in forming the correct conclusions in a particular case, which will contribute to the adoption of a lawful and reasonable court decision.

We should agree with the scientific position of D.G. Glushkova that during the examination of physical evidence, the involvement of a specialist is possible if the court needs to consult a person with specialized knowledge or skills to better perceive the

evidentiary information. In addition, in the process of performing such a procedural action, photographs or sound or video recording may be made [161, p. 134].

The participation of a specialist in the examination and investigation of evidence is extremely important in the process of considering the case on the merits. Thus, in the course of these procedural actions, the specialist helps the court and the case parties to properly record a particular piece of evidence, to identify its characteristic properties that significantly affect the resolution of the case on the merits. In this case, the specialist provides technical assistance or advice to ensure the effective conduct of the procedural action and the achievement of its purpose.

However, it should be emphasized that in the course of reviewing or examining evidence, a specialist works with existing evidence, does not create new evidence, and analyzes only those characteristics of a particular piece of evidence that can be identified without a thorough investigation.

Analyzing the forms of procedural activity of a specialist, it should be noted that the content of the procedural activity of a specialist is changing, expanding and becoming increasingly important for the consideration of the case on the merits due to rapid technological development. Thus, one of the novelties of the Civil Procedure Code of Ukraine is the implementation of such means of proof as electronic evidence. As T. Ruda rightly notes, a specialist in the field of computer technology can be invited to explain the process of electronic document management, to reproduce electronic documents in court, etc. [117, c. 117].

The specificity of this means of proof determines the peculiarities of its review and examination during the consideration of the case on the merits, which leads to the necessity of involving a specialist in the process. The peculiarity of electronic evidence is that its perception and reproduction is possible only through the application of technical means. In this connection, the scientific position of K.B. Drohoziuk is correct that, unlike an ordinary document, an electronic document can be "read", i.e. transformed into a form accessible to human perception, only with the help of technical means or special programs [170, p. 61].

Given the fact that the judge is not a specialist in the field of information technology, the participation of a specialist in this case is a guarantee of proper, complete and comprehensive examination of such a means of proof. Thus, in accordance with Part 7 of Article 85 of the Civil Procedure Code of Ukraine, under the procedure provided for in this Article, the court may, at the request of a case party or on its own initiative, examine the website (page), other places of data storage on the Internet, in order to establish and record the content thereof. If necessary, the court may engage a specialist to conduct such an examination. According to Part 8 Article 85 of the Civil Procedure Code of Ukraine, the court may appoint an expert examination to establish and record the content of the website (page), other places of data storage on the Internet, provided that this requires special knowledge and cannot be carried out by the court alone or with the involvement of a specialist.

As noted by A. Kalamayko, a specialist can help to examine an electronic document not on a magnetic or paper medium, but directly on the recipient's computer [171, p. 116].

Thus, it is impossible for a court to examine electronic evidence without the participation of a specialist. And based on the analysis of civil procedure law, we can conclude that the participation of a specialist is essential when working with certain types of electronic evidence.

Thus, in the judgment of the Bila Tserkva City District Court of the Kyiv region in case No. 357/657/17 of April 11, 2018 on the claim for protection of honor, dignity, business reputation and compensation for non-pecuniary damage, it was stated that it is virtually impossible to inspect a website without the involvement of a specialist, and access to the original electronic evidence as admissible requires the involvement of a specialist with appropriate technical means with open access to the Internet [172].

The addition of electronic evidence to the list of means of proof has led to an increase in cases involving specialists. Due to the specificity of electronic evidence, proper review and examination requires specialist involvement to obtain the necessary information to resolve the case on its merits.

Also, the activity of a specialist is important if it is necessary to draw up diagrams, plans and drawings. Thus, the Ruling of the Kommunarskyi District Court of Zaporizhzhia dated March 28, 2019 in case No. 333/3446/17 granted the application to engage a specialist. The court justified its position as follows: "Taking into account that in order to conduct a forensic land and technical examination, it is necessary to make a scheme of the location of land plots, which requires specialized knowledge, the court considers it necessary to engage PERSON_7, who has specialized knowledge and skills, as a specialist." [173]

The analysis of case law demonstrates that the procedural activities of a specialist are significant in the process of an expert examination. As O.B. Verba-Sydor correctly notes in this context, sometimes it is necessary to involve, in addition to a forensic expert, a specialist who has in-depth knowledge in a narrow field [174, p. 73].

It is common for an expert to file an application to the court to involve a specialist in the examination. For example, the Ruling of the Obolonskyi District Court of Kyiv of February 06, 2018 in case No. 756/14466/16-ц granted the application to involve a musicologist in conducting an expert examination in a case on a claim for the protection of property rights [175].

Also, by the Ruling of the Kalush City District Court of the Ivano-Frankivsk region dated 03.10.2022 in case No. 750/2331/203, the expert's request to involve a specialist geodetic engineer in the expert examination was accepted. Thus, the Ruling states that the forensic expert, in order to provide a comprehensive and objective conclusion on the issues raised and to restore access to the SLC in terms of obtaining information on the coordinates of the turning points of the boundaries of the SLC objects, the coordinates of buildings and structures, and the delineation of the boundaries of adjacent land plots, needs to involve a geodesic engineer as a specialist [176].

In connection with the above, it can be concluded that the procedural activities of a specialist may be carried out in the course of appointing and conducting an expert examination. Thus, a specialist may take samples for examination, as well as provide technical assistance or advice directly in the course of an expert examination. Therefore,

despite the fact that the result of the specialist's activity is not a means of proof, the specialist's procedural activity has a certain evidentiary value in the context of facilitating the process of proving the case.

The analysis of court practice also shows that there is often a need to engage a specialist to assist the court and the parties in the course of the study of technical documentation. For example, in the Ruling of the Zhovtnevyi District Court of Zaporizhzhya dated December 11, 2020 in case No. 734/989/21, the court concluded that there were grounds to grant the defendant's request to engage a specialist, as there was a need for specialized knowledge when examining the technical documentation for the gas supply system of the house ADDRESS_1 [177].

Also, in the Ruling of the Kovel City District Court of the Volyn Region of February 24, 2021 in case No. 159/4531/19, the court found that, in view of the availability of project technical documentation in the case, it is advisable to involve a specialist - a design engineer proposed by the plaintiff for the duration of the examination of written evidence [178].

The Ruling of the Kovel City District Court of the Volyn Region of March 04, 2020 in case No. 159/5247/19, on the initiative of the court, a specialist was involved. Thus, the Ruling states that, due to the presence of a significant amount of technical documentation in the case, it is advisable to involve a specialist from the Department of Architecture and Urban Planning of the Executive Committee of the Kovel City Council of the Volyn Region for the examination of written evidence [179].

The possibility of involving a specialist in the examination of written evidence is clearly provided for in Part 1 of Article 235 of the Civil Procedure Code of Ukraine. Thus, in the case of examination of technical documentation, which is written evidence in the case, the expert helps the court and the case parties to familiarize themselves with the information that constitutes the content of this documentation. In this case, the expert does not create evidentiary information, but only facilitates the proper examination of the existing evidence.

The analysis of court practice has established the fact that courts often involve a specialist in cases where it is advisable to appoint an expert examination. Thus, the

Ruling of the Dniprovskyi District Court of Kyiv dated March 13, 2019 in case No. 755/19294/17 granted the request to engage a specialist to clarify the issues regarding the damage caused in the car accident of the said vehicle and to provide clarifications on determining the amount of material damage to the owner of the car, including the market value, the amount of loss of commodity value, the utilization value of the damaged car, which is important for the resolution of the case [180].

Also, in the Ruling of the Ivanychi District Court of the Volyn Region dated September 20, 2021 in case No. 156/927/19, it was established that since the subject of the dispute, among other things, according to the claimant's side, is the inability of the deceased PERSON_1 to physically sign the disputed will due to injuries to the extremities of the right hand, it is clear from the medical records of the hospitalized PERSON_1 that the final diagnosis given to her is "traumatic amputation of the nail phalanges 2, 3 and 4 of the tassel", the court concludes that there are grounds to satisfy the request of the defendant's representative to summon a specialist surgeon of the Ivanychi Multidisciplinary Hospital to provide explanations in the field of specialized knowledge in relation to the diagnosis and nature of the injury [181].

We believe that in the aforementioned cases, it was necessary to appoint an expert examination to establish the relevant circumstances, since the result of the work of a specialist is not a means of proof. Thus, in the first case, it was advisable to appoint a forensic automotive examination, and in the second case, the relevant circumstances should have been established by appointing a postmortem forensic examination. However, it is worth emphasizing that in cases of action proceedings, the court does not have the right to appoint the examination on its own initiative. Due to the adversarial principle, the parties have the right to request an expert examination at their discretion. However, in accordance with Part 5 Clause 3 of Article 12 of the Civil Procedure Code of Ukraine, the court, while maintaining objectivity and impartiality, shall, if necessary, explain to the trial participants their procedural rights and obligations, the consequences of performing or failing to perform procedural acts.

In connection with the above, we believe that the court should explain to the case parties the right to request the appointment of an expert examination in cases where it is

necessary to establish certain circumstances relevant to the case. The proper fulfillment of this obligation by the court will contribute to the effectiveness of the application of each specific form of application of specialized knowledge and the adoption of a lawful, reasonable and fair court decision. Therefore, it is not appropriate to involve a specialist in the process when it is necessary to establish specific circumstances and obtain new evidence to resolve the case on its merits.

It is worth noting that there are difficulties in determining the reasonable grounds for involving a specialist in the process. It should be emphasized that the specialist's procedural activities involve the recording, review, and examination of evidence, as well as the application of technical means to offer technical assistance, without the intention of generating new evidentiary information. The specialist does not establish the circumstances of the case, this procedural function belongs to such a trial participant as an expert. In connection with the above, in each case, the court must assess the need to involve a specialist in the process. Since, when there is a need to establish the circumstances relevant to the case, it is necessary to appoint an expert examination.

An important issue in the context of studying the forms of procedural activity of a specialist is the peculiarities of procedural consolidation of the results of the specialist's activity and their evidentiary value.

In the previous version of the Civil Procedure Code of Ukraine, namely, Part 1 of Article 190 of the Civil Procedure Code of Ukraine, it was provided that during the examination of evidence, the court may use oral consultations or written explanations (conclusions) of specialists.

In view of the above, it is necessary to conclude that the legislator has established the right of a specialist to provide consultations both orally and in writing. However, the current version of the Civil Procedure Code of Ukraine does not contain any clear requirements on the form of fixing the results of his/her procedural activities.

The activities of a specialist play an important role in the course of consideration and resolution of a case on the merits, as they help the court and the case parties not only to properly seize and record, but also to fully and comprehensively examine the evidence. We should agree with the scientific position of D.G. Glushkova that the

conclusions and explanations of a specialist, although not having evidentiary force, serve as "the key to understanding the essence of evidence" [161, p. 52].

According to clause 9 of part 2 of Article 250 of the Civil Procedure Code of Ukraine, the information to be indicated in the protocol of a separate procedural action includes consultations and conclusions of specialists.

That is, the civil procedural legislation uses the concept of "specialist conclusion", but does not provide for a clear legal regulation of such a procedural document. In addition, the protocol of the procedural action records only the main content of the advice provided by the specialist. Therefore, the issue of the scope and nature of the information that is directly recorded in the court protocol remains unresolved. Thus, the Civil Procedure Code of Ukraine does not provide clear requirements for the completeness and scope of the specialist's consultations and conclusions in the protocol, which may result in a judge's misinterpretation of the relevant information in the process of drafting the reasoning part of the court decision. Thus, while in the course of providing technical assistance, recording in the protocol the fact of engaging a specialist, the nature of the activities performed by him/her and the list of technical means used by him/her is sufficient information for the judge, in the case of providing a thorough advice by a specialist, the recording of the main content is insufficient.

That is why we adhere to the position that a specialist is obliged to provide his/her advice to the court in writing, since the court may further use this information in the process of drafting the reasoning part of the judgment. In this context, the scientific position of O.O. Grabovska is extremely well-grounded, as she notes that the written form of a specialist consultation will allow, in particular, when appealing judgment, to identify the interconnection of evidence, to conclude that the requirements of the civil procedural law regarding the properties of evidence are met, etc. [127, c. 421].

It should be noted that the specialist conclusion differs in structure and content from the expert conclusion. Since the specialist does not conduct a special study, there is no need to distinguish the research part of such a conclusion. In our opinion, the specialist conclusion should consist of an introductory and descriptive part. The introductory part should contain information about the specialist's identity,

qualifications and issues related to the relevant conclusion. The descriptive part, on the other hand, should relate directly to the analysis of the issues presented to the specialist and the specific advice of the specialist in this regard.

The results of the procedural activities of a specialist are not defined in Part 2 of Article 76 of the Civil Procedure Code of Ukraine as a separate means of proof. We agree with the scientific position of O.O. Grabovska that among the means of proof provided by Part 2 of Article 76 of the Civil Procedure Code of Ukraine there are no explanations of a specialist, however, his/her assistance of a technical nature is an important factor both for proving the facts and circumstances of the subject of proof and for their establishment by the court, and therefore for making a lawful and reasonable judgment [127, p. 421].

Thus, the forms of procedural activity of a specialist play an important role in the course of the proving the case. Due to the rapid development of science and technology, the content of a specialist's procedural activity changes and expands, so the study of the forms of a specialist's procedural activity does not lose its relevance. It is important to note that the result of the specialist’s activity is not a means of proof. The specialist does not establish the merits of the case; his or her activities are aimed at providing advice and technical assistance in the course of recording, reviewing and examining evidence.

Conclusions to Section III

This chapter is devoted to the study of the procedural status and forms of procedural activity of such a subject of application of specialized knowledge as a specialist.

Similar to the activities of an expert, the purpose of the procedural activities of a specialist is to facilitate the process of proving the case. However, the specialist performs other forms of procedural activity, which arise from the nature of the specialized knowledge he or she applies. Thus, the specialist's specialized knowledge is aimed at providing technical assistance and carrying out advisory activities. Therefore, this participant in the process does not carry out a special study.

Since the results of a specialist's activities are not a means of proof, it is advisable to provide for the right of the court to involve a specialist in the proceedings on its own initiative, as this will not contradict the principle of adversarial proceedings. The fact that the court has the power to initiate the involvement of a specialist in the process is of fundamental importance for the proper recording, review, and examination of evidence. Also, the right to initiate the involvement of a specialist should be granted to the case parties.

The content of the court's ruling to engage a specialist in the proceedings should include the following information:

1) surname, name, patronymic of the specialist;

2) documents confirming his/her qualifications;

3) grounds for involving the specialist in the proceedings;

4) purpose of involving the specialist in the proceedings;

5) questions to be answered by the specialist or terms of reference to be solved by the specialist;

6) warning of liability for failure to appear at the court hearing;

7) information on the distribution of costs associated with the specialist's participation in the proceedings.

It should be noted that certain rights of a specialist should be defined as obligations. For example, if a specialist does not have the relevant knowledge and skills,

he or she is obliged to withdraw from the trial. Otherwise, the specialist may provide the court or the case parties with false information, which may further affect the legality, validity and fairness of the judgment.

In view of the above, it is necessary to establish a clear list of requirements for confirmation of a specialist's qualification. Therefore, we believe that a specialist, like an expert, should be a specialist who has an appropriate higher education, a level of education not lower than a specialist. That is, the qualification of a specialist must be confirmed by a state-issued document indicating that the specialist has a higher education in a particular specialty. If the specialist's advice or technical assistance is related to activities that require obtaining appropriate permits or certificates, the specialist must additionally submit these documents to confirm his or her competence in a particular field.

It should be noted that the list of rights of a specialist should be expanded in order to ensure the conditions for the proper performance of his or her procedural function. Thus, we believe that in the course of participation in a procedural action, a specialist should be granted the right to ask questions to the case parties and the court in order to specify his/her task, clarify the information necessary to provide advice or technical assistance.

In other words, the activities of a specialist are certainly related to the process of proving the case, but cannot be limited to the application of technical means. It is also worth noting that Part 1 of Article 74 of the Civil Procedure Code of Ukraine provides for photography among the types of technical assistance, but does not specify that a specialist may also make sound and video recordings.

Taking into account the above, we a consider specialist as a person who possesses the specialized knowledge and skills necessary to provide advice and technical assistance in the course of procedural actions related to the recording, examination and research of evidence, as well as the application of technical means (photography, sound and video recording, drawing up diagrams, plans, drawings, taking samples for examination, etc.).

The participation of a specialist in the examination and investigation of evidence is extremely important in the process of considering the case on the merits. Thus, in the course of these procedural actions, the specialist helps the court and the case parties to properly record a particular piece of evidence, to identify its characteristic properties that significantly affect the resolution of the case on the merits. In this case, the specialist provides technical assistance or advice to ensure the effective conduct of the procedural action and the achievement of its purpose.

However, it should be emphasized that in the course of reviewing or examining evidence, a specialist works with existing evidence, does not create new evidence, and analyzes only those characteristics of a particular piece of evidence that can be identified without a thorough investigation.

It is impossible for a court to examine electronic evidence without the participation of a specialist. And based on the analysis of civil procedure law, we can conclude that the participation of a specialist is essential when working with certain types of electronic evidence.

In connection with the above, it can be concluded that the procedural activities of a specialist may be carried out in the course of appointing and conducting an expert examination. Thus, a specialist may take samples for examination, as well as provide technical assistance or advice directly in the course of an expert examination. Therefore, despite the fact that the result of the specialist's activity is not a means of proof, the specialist's procedural activity has a certain evidentiary value in the context of facilitating the process of proving the case.

The analysis of court practice also shows that there is often a need to engage a specialist to assist the court and the parties in the course of the study of technical documentation.

The analysis of court practice has established the fact that courts often involve a specialist in cases where it is advisable to appoint an expert examination. We believe that the court should explain to the case parties the right to request the appointment of an expert examination in cases where it is necessary to establish certain circumstances relevant to the case. The proper fulfillment of this obligation by the court will contribute

to the effectiveness of the application of each specific form of application of specialized knowledge and the adoption of a lawful, reasonable and fair court decision. Therefore, it is not appropriate to involve a specialist in the process when it is necessary to establish specific circumstances and obtain new evidence to resolve the case on its merits.

It should be emphasized that the specialist's procedural activities involve the recording, review, and examination of evidence, as well as the application of technical means to offer technical assistance, without the intention of generating new evidentiary information. The specialist does not establish the circumstances of the case, this procedural function belongs to such a trial participant as an expert. In connection with the above, in each case, the court must assess the need to involve a specialist in the process. Since, when there is a need to establish the circumstances relevant to the case, it is necessary to appoint an expert examination.

We adhere to the position that a specialist is obliged to provide his/her advice to the court in writing, since the court may further use this information in the process of drafting the reasoning part of the judgment.

The correlation between the procedural statuses of an expert and a specialist should be made according to the following criteria:

1) availability of requirements and completeness of legal regulation of the procedural status;

2) the way of involvement in the process;

3) legal nature of the forms of procedural activity and procedural functions;

4) evidentiary value and peculiarities of consolidation of the results of activity;

5) liability;

6) legal nature of specialized knowledge.

CONCLUSIONS

The conducted scientific research allowed the author to formulate a number of theoretical conclusions and practical proposals for improvement of the current civil procedure legislation of Ukraine. The main scientific findings are as follows:

1. Specialized knowledge is a legal category that includes practical and scientific knowledge limited to a small number of individuals. Specialized knowledge is acquired through the completion of specific training and/or the achievement of a relevant level of educational qualification or scientific degree. Specialized knowledge is applied by designated individuals according to a transparent procedural framework. This streamlines the evidence process for civil cases as required by law.

On the basis of this definition, it is possible to identify a system of distinguishing features for specialized knowledge:

1) it contains both practical and scientific knowledge. It highlights the complexity of this legal category;

2) It is exclusively used for the purposes of justice;

3) the purpose of the application of specialized knowledge is to facilitate the process of proving the case;

4) specialized knowledge is applied with meticulous adherence to the rules of civil procedure;

5) specialized knowledge is applied exclusively by a limited number of individuals in the forms specified in the Civil Procedure Code of Ukraine. These individuals must have appropriate educational backgrounds, academic degrees, or specialized training.

2. An expert can use the necessary legal acts to answer the questions posed during an expert examination, however:

1) an expert cannot qualify disputed legal relations;

2) an expert cannot assess the conformity of the behavior of the subjects of the disputed legal relationship to specific legal norms;

3) an expert cannot provide interpretation of the rules of law;

4) an expert cannot explain the procedure for applying a specific rule of law;

5) an expert cannot express his/her position on the application of a certain type of penalty to a person;

6) an expert cannot determine in his/her conclusion the procedure and result of the case on the merits.

3. Specialized knowledge includes the following knowledge in the field of law:

1) knowledge of foreign legislation, international regulatory acts, case law of the European Court of Human Rights;

2) knowledge of the practice of applying analogy of the law to certain disputed legal relations;

3) knowledge of relevant regulatory legal acts related to the subject's of the application of specialized knowledge specific field of activity.

4. The requirements for participation of an interpreter in civil proceedings should be considered the following:

- legal capacity;
- complete higher linguistic education in the field of translation;
- a certificate of examination control in the field of court interpretation;
- special court interpreter's competence (knowledge of the language of proceedings; knowledge of the language from which the interpretation is to be performed; knowledge of legal terminology);
- a court interpreter must be entered in the Court Interpreters Register.

It is crucial to provide trial participants with unrestricted access to information about interpreters possessing the required level of qualifications for accurate interpretation. Such access can be guaranteed by establishing a court interpreter registry. This register should contain information on persons who have completed the examination control in accordance with the established procedure, have a higher linguistic education, and are proficient in legal terminology.

The author suggests establishing specific grounds of recusal of an interpreter:

1) he/she was or is in official or other dependence on the case parties;

2) he/she does not have sufficient knowledge of the language required for interpretation.

5. The participation of an interpreter in civil proceedings shall be mandatory in the following circumstances:

1) the presence in the case file of documents drawn up in a foreign language for which the case parties have not provided an official translation;

2) participation in the case of individuals with physical disabilities (deaf, dumb, deaf-and-dumb);

3) participation in the case of an individual who does not speak the language of the proceedings. If the person concerned does not file an application for the involvement of an interpreter in the proceedings, this obligation is imposed on the court.

6. However, the knowledge that an interpreter uses in the course of performing his/her procedural function is not limited to language knowledge. An interpreter must also be proficient in the methods of accurate and correct translation, which he or she acquires in the course of obtaining the relevant educational qualification. In addition, the interpreter's knowledge is comprehensive and includes familiarity with legal terminology. In this case, such knowledge is of a professional nature, and therefore not publicly available. In view of the above, we believe that such a trial participant as an interpreter should be considered as a subject of the application of specialized knowledge.

7. Based on the general theoretical analysis of the procedural status of a legal expert, the following proposals are formulated: 1) During the admission of a legal expert to the proceedings, it is necessary to verify if the subject matter of their research or scientific activity is relevant to the issues upon which a conclusion is required. 2) The grounds for recusal a legal expert must be in accordance with Articles 36 and 38 of the Civil Procedure Code of Ukraine. 3) It is essential to impose a requirement for expert conclusion in the field of law to be submitted in writing and to establish a standardized structure, including an introduction, description, and conclusion.

The introductory part of the expert conclusion in the field of law must contain the following information: surname, name, patronymic of the person providing the conclusion; information on education and academic degree; information on the subject of dissertation research or area of scientific activity; information on scientific

publications and participation in scientific and practical conferences; issues raised for resolution by the legal expert; information on payment for the services of the legal expert.

The descriptive part should directly contain a thorough analysis of the issue that the court has set for the legal expert to resolve. For example, a description of the specifics of the content of a particular foreign law provision, official and doctrinal approaches to the interpretation of a given regulatory provision, or an analysis of the ECHR case law on a particular issue.

The conclusions should reflect a clear position with reference to the regulatory framework of a foreign state regarding the practice of applying a particular foreign law provision or a generalization of the ECHR's positions on specific issues.

4) Introduce the legal expert's liability for failing to appear in court.

5) Define the trial participant as a "legal specialist" and clarify that their conclusion as the specialist conclusion in the field of law.

8. Thus, the following requirements for the procedural status of a legal expert should be highlighted: 1) availability of an academic degree, which is confirmed by a relevant document; 2) compliance of the subject matter of the dissertation research or the area of scientific activity with the content of the issues on which an conclusion is required; 3) availability of publications in professional scientific journals; 4) systematic participation in scientific and practical conferences. We believe that the general grounds for recusal (part 1 of Article 38 of the Civil Procedure Code of Ukraine), as well as the special grounds for recusal of an expert and a specialist as subjects of the application of specialized knowledge (part 2 of Article 38 of the Civil Procedure Code of Ukraine), should also apply to a legal expert. Based on the principle of adversarial civil proceedings, the case parties should be guaranteed a real mechanism for protecting their rights and interests by declaring recusal for the legal expert.

9. A psychologist, pedagogue, and psychiatrist contribute to the administration of justice and the process of proving the case, and have neither material nor procedural interest in the outcome of the case on the merits. While performing their procedural function, a psychologist, pedagogue, and psychiatrist apply knowledge that fulfill the

requirements of specialized knowledge, since it is acquired through appropriate professional training and is not common. Therefore, we consider it appropriate to refer these participants to the group of other trial participants and to the subjects of the application of specialized knowledge. The participation of a psychologist should be mandatory during interrogation of a minor or juvenile witness. In turn, a pedagogue may be involved at the court's discretion or on the recommendation of a psychologist in exceptional cases to ensure favorable conditions for the child during the interrogation.

10. The subjects of the application of specialized knowledge should include an expert, specialist, legal expert, interpreter, pedagogue, psychologist and psychiatrist.

In this regard, a general system of attributes for the subjects of the application of specialized knowledge in civil proceedings can be formulated: 1) they have specialized knowledge and skills; 2) they are not parties to a disputed legal relationship; 3) they have neither material nor procedural interest in the results of the case resolution on the merits; 4) they are impartial and independent in their procedural activities; 5) the activity of the subjects of the application of specialized knowledge is regulated by procedural legislation; 6) the main purpose of the activity of the subjects of the application of specialized knowledge is to facilitate the administration of justice and the process of proving the case; 7) the way of intervention in a case for these subjects is a court ruling; 8) the inability to intervene in a case on their own initiative.

We propose classifying the modes of the application of specialized knowledge in Ukrainian civil procedure based on the following criteria:

1) For the purpose of its application;

2) By the subject of its application;

3) According to the evidentiary value of the results the subject’s of the application of specialized knowledge activities;

4) By the content of the activity.

11. The ground for the application of specialized knowledge is the need for the application of specialized knowledge in a specific form, which is enshrined in the civil procedural legislation and objectively justified by the court, for the purpose of fair, impartial and timely consideration and resolution of the case on the merits.

We can identify the following characteristics of the grounds for the application of specialized knowledge: 1) the ground for the application of specialized knowledge is a reflection of the court's justified need for its application in a certain mode; 2) the ground for the application of specialized knowledge is characterized by its regulatory consolidation in civil procedural legislation; 3) each mode of the application of specialized knowledge determines the corresponding special ground for its application; 4) there is a connection between the justified need, regulatory consolidation and practical possibility of applying a specific mode of the application of special knowledge.

12. The analysis of the case law of the European Court of Human Rights shows that the observance of a clear procedural form of the application of specialized knowledge, as well as its application only when there are reasonable grounds for it, is one of the guarantees of observance of such fundamental principles as the rule of law, the right to a fair trial and the principle of reasonableness of the court's consideration of the case.

13. The court should be guided by the following facts when deciding whether to satisfy a party's request for an expert examination:

1) the validity of the request of the case party regarding the need to appoint an expert examination;

2) the connection of the circumstance to be established by appointing an expert examination with the subject of proof in the case;

3) the existence of an actual requirement for the application of specialized knowledge and the impossibility of resolving this issue by applying other forms of application of specialized knowledge;

4) the absence of abuse of procedural rights by the parties in order to delay the proceedings by appointing an expert examination without a justified need for a special study;

5) the availability of technical and organizational capabilities to conduct the relevant type of expert examination.

Given the fact that the grounds for the appointment of an additional examination is the incompleteness of the answers to the questions posed, the lack of clarity of the material presented, it is advisable to entrust it to the same expert who conducted the initial study. This expert is already familiar with the case file and can reasonably fill in any gaps to provide a complete answer to the questions raised. If it is reasonably impossible for the same expert to conduct an expert examination, another expert may be appointed to conduct an additional examination.

14. The expert may make recommendations on the wording of the questions provided for in the court ruling on appointment of an expert examination, but in this context certain restrictions should be applied, namely 1) the expert may not change the essence of the questions posed, since in this case the subject of a particular examination is actually changed; 2) the expert may clarify the questions in order to bring them into line with scientific and methodological recommendations.

15. In the case of an expert examination at the request of the case parties, the court does not participate in the selection of an expert or an expert institution, and does not determine the issues on which the expert examination should be conducted. Also, such an examination is appointed at the participant's discretion, and therefore the court does not issue a ruling in this regard. This procedure for appointing an expert examination presupposes the existence of a contractual relationship between a particular case party and an expert or expert institution and does not include the court in this subject composition. It is the lack of court control over the course of the expert examination at the request of the case parties that leads to doubts about the impartiality of the expert conducting such an examination, and therefore about the adequacy, admissibility and reliability of the relevant expert conclusion as a means of proof. Although the content of an expert conclusion at the request of the case parties does not differ from an expert conclusion obtained by the court ruling, in this case the case parties have the opportunity to abuse their procedural rights, which may result in an unlawful, unreasonable and unfair court decision. In our opinion, it is reasonable to conduct an expert examination at the request of the case parties only in exceptional cases in specific categories of cases. Such cases, for example, include cases related to compensation for

damage caused by a car accident. In this instance, it is imperative to conduct an automotive expert examination without delay, since any restorative repairs may be inaccurate and hinder the vehicle's future operation. In this case, timely examination ensures the person's right to receive compensation for damage to his or her property.

On the basis of the monographic study of the procedure of appointment an expert examination at the request of the case parties, the authors proposes 1) to provide in the Civil Procedure Code of Ukraine for the prohibition of forensic, forensic psychiatric, forensic medical and forensic genetic examinations at the request of the case parties; 2) to determine that the time limit for filing a party's application on the existence of grounds for recusal an expert who has prepared an expert conclusion at the request of the case parties should be the same as the time limit for filing an application provided for in Part 3 of Article 39 of the Civil Procedure Code of Ukraine.

In analyzing the procedure for appointing an expert examination at the request of case parties, it was determined that: 1) there is a valid need for an expert examination in cases pertaining to compensation for damages; and 2) submitting an expert conclusion at the request of case parties follows the evidence submission rules outlined in Article 83 of the Civil Procedure Code of Ukraine.

16. Given the above, it is necessary to distinguish the following features of an expert as a trial participant:

1) the expert is categorized as the other trial participant in accordance with Article 62 of the Civil Procedure Code of Ukraine;

2) an expert is an individual;

3) an expert has specialized knowledge in a particular field;

4) an expert must undergo qualification training and certification as defined by law;

5) an expert must be included in the State Register of Certified Experts;

6) the rights and obligations of an expert are defined by civil procedural law;

7) an expert conducts a special study by the court ruling or at the request of the case parties;

8) as a result of the expert's procedural activity, a new evidence is formed in the case.

In case of disclosure of information related to the expert examination, the expert should be brought to disciplinary responsibility. Therefore, the list of disciplinary offenses provided for in Art. 14 of the Law of Ukraine "On Forensic Expertise" should be supplemented with the such an offense.

17. If the issue of interest to the court cannot be resolved by any of the registered experts, but requires expert examination, we consider it possible to engage an expert in a related field of knowledge or another specialist in this field as a forensic expert in accordance with Part 2 of Article 9 of the Law of Ukraine "On Forensic Expertise". Such a person may be appointed to conduct an expert examination only by a court ruling in which the court justifies the impossibility of conducting a particular type of examination by one of the registered experts. Therefore, it is not possible to involve such a person in an expert examination at the request of the case parties.

18. The expert's initiative to include in the conclusion information about the circumstances that he or she has established in the course of the study should have specific limits, namely:

1) the expert's reasoning regarding the circumstances that he considers relevant to the case should relate to the subject of proof;

2) the establishment and examination of the relevant circumstances should be within the scope of the expert's specialized knowledge;

3) the determination of the relevant circumstances should relate to the subject of the examination being conducted and should not require additional research and materials.

19. The adequacy of the expert conclusion should be understood as its compliance with the issues raised in the court ruling on appointment of an expert examination, as well as the subject of proof in the case.

The admissibility of an expert conclusion should be understood as full compliance with the civil procedural form during the appointment and conduct of an expert examination. Therefore, the admissibility of an expert conclusion is affected by the

following facts: 1) compliance with the procedural requirements for the content and form of this means of proof; 2) compliance of the procedure of appointing and conducting an expert examination with the requirements provided for in the Civil Procedure Code of Ukraine; 3) the expert's competence to conduct the relevant research.

The reliability of an expert conclusion is affected by:

1) compliance with the procedural rules for appointing and conducting an expert examination;

2) the competence of the expert to conduct such an examination, namely: the availability of relevant specialized knowledge; the availability of a state-issued certificate of qualification as a forensic expert in a specific field of expert examination; the absence of grounds for recusal of the expert;

3) compliance with the procedural rules for delivery, receipt and storage of forensic objects;

4) scientific validity of the expert conclusion, which is confirmed by reference to official methods of conducting examinations of a particular type;

5) providing full and reasonable answers to the questions posed by the court, and, if necessary, the exercise of the right to expert initiative.

20. The expert's submission of additions to the conclusion should have clear limits:

1) in order to provide the relevant additions, the expert does not need to conduct additional research, otherwise there is a ground to appoint an additional examination;

2) the additions that the expert needs to make relate to the research already conducted and are directly the result of that research.

The information provided by the expert in the course of explanations and additions may be of significant importance for the resolution of the case on the merits, as it is also the result of an expert examination. In connection with the above, we believe that if the Court finds this information to be favorable, it should be considered part of the expert conclusion.

21. Certain rights of a specialist should be defined as obligations. For example, if a specialist does not have the relevant knowledge and skills, he or she is obliged to withdraw from the trial. Otherwise, the specialist may provide the court or the case

parties with false information, which may further affect the legality, validity and fairness of the judgment. Also, the specialist is obliged to draw the court's attention to the specific circumstances or features of the evidence.

22. A specialist, like an expert, should be a specialist who has an appropriate higher education, a level of education not lower than a specialist. That is, the qualification of a specialist must be confirmed by a state-issued document indicating that the specialist has a higher education in a particular specialty. If the specialist's advice or technical assistance is related to activities that require obtaining appropriate permits or certificates, the specialist must additionally submit these documents to confirm his or her competence in a particular field.

23. In other words, the activities of a specialist are certainly related to the process of proving the case, but cannot be limited to the application of technical means. Taking into account the above, a specialist is a person who possesses the specialized knowledge and skills necessary to provide advice and technical assistance in the course of procedural actions related to the recording, examination and research of evidence, as well as the application of technical means (photography, sound and video recording, drawing up diagrams, plans, drawings, taking samples for examination, etc.).

24. We adhere to the position that a specialist is obliged to provide his/her advice to the court in writing, since the court may further use this information in the process of drafting the reasoning part of the judgment. The specialist conclusion should consist of an introductory and descriptive part. The introductory part should contain information about the specialist’s identity, qualifications and issues related to the relevant conclusion. The descriptive part, on the other hand, should relate directly to the analysis of the issues presented to the specialist and the specific advice of the specialist in this regard.

25. The correlation between the procedural statuses of an expert and a specialist should be made according to the following criteria:

1) availability of requirements and completeness of legal regulation of the procedural status;

2) the way of involvement in the process;

3) legal nature of the forms of procedural activity and procedural functions;

4) evidentiary value and peculiarities of consolidation of the results of activity;

5) liability;

6) legal nature of specialized knowledge.

Specialized knowledge of an expert should be understood as a set of knowledge and skills characterized by a combination of theoretical scientific knowledge and practical skills and applied for a thorough study of phenomena, objects, events in order to establish the circumstances necessary for the resolution of the case on the merits and the formation of new evidence. Specialized knowledge of a specialist should be understood as a set of knowledge and skills of an applied nature that are intended for practical application in the course of recording, examination, investigation of evidence and provision of technical assistance with the application of technical means and are not of a research nature.

26. We consider it necessary to highlight the following main areas of optimization of the application of specialized knowledge in the conditions of war:

- Introduction of favorable conditions for the activity of forensic experts by providing a simplified procedure for the renewal of qualification certificates;

- Suspension of inspections of experts from private institutions;

- Granting the court the right to entrust criminalistics, forensic medical, forensic psychiatric examinations to private expert institutions in exceptional cases related to war conditions in Ukraine;

- Reconsidering the procedure for participation of persons with specialized knowledge in court hearings by means of videoconferencing and granting the right to connect to court hearings by means of videoconferencing outside the court in exceptional cases.

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