

# The mechanism of obtaining a forensic expert's testimony as an element of evaluating his/her conclusion: forensic-veterinary aspect

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*The paper outlines peculiarities of a forensic veterinarian's interrogation, the subject of which is the provision of testimony by a forensic veterinarian, specification or clarification of a conclusion. The Purpose is to characterize the peculiarities of obtaining a forensic expert's testimony as an element of evaluating his/her conclusion and to determine its influence on the quality of conclusion evaluation. For this purpose, general scientific and special research methods have been applied. Emphasis is made on the forensic veterinary aspect of this issue. It has been proven that the procedure for summoning a forensic expert, the place and procedure of his/her interrogation are governed by the procedural legislation of Ukraine and correspond to the rules of summoning and interrogating other participants in a criminal proceeding. The algorithm of a forensic veterinarian's interrogation has been defined, including the following stages: 1) defining a forensic veterinarian's competence; 2) specifying certain aspects involving appointment and the course of forensic veterinary examination conduct; 3) analyzing objects and initial data used by the forensic veterinarian during forensic examination and conclusion compilation; 4) elucidating peculiarities of applied forensic research methods and information sources; 5) argumentating the expert conclusion's credibility. The procedure of interrogating forensic experts who conducted a set of forensic examinations or panel forensic examination has been identified as well*

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*as peculiarities of such interrogation. Conditions under which it is inexpedient to interrogate a forensic veterinarian have been established. It is argued that from a praxeological point of view, the proposed algorithm of interrogating a forensic veterinarian contributes to the court's work: it helps to accurately evaluate a conclusion and prevent unnecessary collateral questions.*

**Keywords:** forensic veterinary examination; expert conclusion; forensic expert interrogation; verification; evaluation; objectivity, expert conclusion's versatility and credibility; reasonableness; research completeness; source of evidence.

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### Research Problem Formulation

In various types of court proceedings, forensic expert activity is an important area of social relations <sup>1</sup>. Forensic examination is a reliable means of proving, and the expert conclusion is an independent and scientifically based source of evidence to establish factual data, thus influencing the court's adoption of a fair decision <sup>2</sup>. The guarantee of determining the truth is the observance of the principles of objectivity, impartiality, competence, independence, etc. by the subjects of a criminal proceeding, in particular by forensic experts <sup>3</sup>.

In judicial practice, law enforcement agencies and the court are excessively confident in the absolute accuracy of the expert conclusion and its overestimated importance for solving a case: unfortunately, the court sometimes refers to such a conclusion in its procedural decisions without any critical reflection <sup>4</sup>. Undoubtedly, in order to eliminate doubts about credibility, objectivity and truthfulness of the expert conclusion, to check the accuracy of initial data, adequacy and admissibility of the objects, sufficiency of the applied methods, exclusion of expert error, the subject of proving must verify the expert conclusion,

- 1 Roux C., Bucht R., Crispino F., De Forest P., Lennard Ch., Margot P., Miranda M. D., NicDaeid N., Ribaux O., Ross A., Willis Sh. The Sydney declaration — Revisiting the essence of forensic science through its fundamental principles. *Forensic Science International*. 2022. Vol. 332. P. 111182. DOI: [10.1016/j.forsciint.2022.111182](https://doi.org/10.1016/j.forsciint.2022.111182) (date accessed: 22.05.2024).
- 2 Баулін О. В., Изотов О. І. Перевірка і оцінка висновку експерта у кримінальному провадженні. *Криміналістика і судова експертиза*. 2021. Вип. 66. С. 95–108. DOI: [10.33994/kndise.2021.66.11](https://doi.org/10.33994/kndise.2021.66.11) (date accessed: 22.05.2024); Jühling M., König L. M., Gruber H., Wolf V., Ritz-Timme St., Mayer F. Impact of (forensic) expert opinions according to the Istanbul Protocol in Germany — results and insights of the in: Fo-project. *International Journal of Legal Medicine*. 2023. Vol. 137. Is. 3. Pp. 863–873. DOI: [10.1007/s00414-023-02950-1](https://doi.org/10.1007/s00414-023-02950-1) (date accessed: 22.05.2024); Осмолян В. А., Гаюр І. Й., Домбровська О. М. Оцінка судом наукової обґрунтованості та достовірності висновку експерта під час розгляду справ, віднесених законом до юрисдикції господарського суду, та трудових спорів. *Європейські перспективи*. 2022. № 1. С. 157–164. DOI: [10.32782/EP.2022.1.24](https://doi.org/10.32782/EP.2022.1.24) (date accessed: 22.05.2024).
- 3 Яценко І. Судово-ветеринарний експерт як суб'єкт процесуальних правовідносин і судово-експертної діяльності. *Теорія та практика судової експертизи і криміналістики*. 2022. Вип. 3 (28). С. 64–97. DOI: [10.32353/khrife.3.2022.05](https://doi.org/10.32353/khrife.3.2022.05) (date accessed: 22.05.2024).
- 4 Завдов'єва І. Г., Горбенко В. О., Дяченко О. М., Черкашина Н. О. Помилка та її значення в судово-експертній діяльності. *Криміналістичний вісник*. 2018. № 2 (30). С. 31–39. DOI: [10.37025/1992-4437/2018-30-2-31](https://doi.org/10.37025/1992-4437/2018-30-2-31) (date accessed: 22.05.2024).

in particular by conducting interrogation (as the most common investigative and judicial action): either at the stage of pre-trial investigation or during the trial<sup>5</sup>. This is because, as evidence in a case, the expert conclusion does not have any advantages over other pieces of evidence: it should be verified and evaluated in the same way as the rest of evidence in its entirety. The purpose of interrogating a forensic expert is to provide expert testimony, clarify or specify his/her conclusion<sup>6</sup>.

What is more, the current legislation obliges the forensic expert to provide a substantiated and objective written conclusion (clause 1, Part 5, Article 69 of the Criminal Procedure Code of Ukraine<sup>7</sup>, Part 3, Article 72 of the Civil Procedure Code of

Ukraine<sup>8</sup>, Part 3, Article 69 of Commercial and Procedural Code of Ukraine<sup>9</sup>, Part 3 of Article 68 of the Code of Administrative Proceedings of Ukraine<sup>10</sup>, clause 1 Part 1 of Art. 12 of the Law of Ukraine *On Forensic Examination*<sup>11</sup> [hereinafter — *specialized law*], para. 4, clause 2.2, Section II of Instructions on the appointment and conduct of forensic examinations and expert studies<sup>12</sup> [hereinafter — *Instructions No. 1*], sub-clause 3, clause 3, Section II of Instructions on the peculiarities of forensic expert activity by certified forensic experts who do not work in state specialized expert institutions<sup>13</sup> [hereinafter — *Instructions No. 2*]), as well as appear at the summons of the body or person who appointed forensic examination or engaged a forensic expert to provide

- 5 Dzikowski A. Veterinary Expert: Legal Nature and Responsibility. *Animals* (Basel). 2023. Vol. 13. Is. 13. P. 2163. DOI: [10.3390/ani13132163](https://doi.org/10.3390/ani13132163) (date accessed: 22.05.2024) ; Józwicki K. Criminological and penal aspects of issuing a false opinion by an expert witness — draft report on research project with proposals for changes in the law determining the legal status of expert witnesses. *Przegląd Policyjny*. 2020. Vol. 136. Is. 4. Pp. 360—375. DOI: [10.5604/01.3001.0014.1144](https://doi.org/10.5604/01.3001.0014.1144) (date accessed: 22.05.2024) ; Mkanje G. The Admissibility of Expert Evidence in Criminal Proceedings in Malawi: A Call for Reliability Safeguards. *Journal of African Law*. 2022. Vol. 67. Is. 1. Pp. 117—134. DOI: [10.1017/S0021855322000262](https://doi.org/10.1017/S0021855322000262) (date accessed: 22.05.2024) ; Frederickson R. Demystifying the Courtroom: Everything the Veterinary Pathologist Needs to Know About Testifying in an Animal Cruelty Case. *Veterinary Pathology*. 2016. Vol. 53. Is. 5. Pp. 888—893. DOI: [10.1177/0300985816647439](https://doi.org/10.1177/0300985816647439) (date accessed: 22.05.2024).
- 6 Rasool N., Rasool M. Challenges for Expert Evidence in the Justice Iystem of Pakistan. *Journal of Forensic Science and Medicine*. 2022. Vol. 8. Is. 2. Pp. 62—67. DOI: [10.4103/jfsm.jfsm\\_16\\_21](https://doi.org/10.4103/jfsm.jfsm_16_21) (date accessed: 22.05.2024).
- 7 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).
- 8 Цивільний процесуальний кодекс України від 18.03.2004 р. № 1618-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 01.06.2024).
- 9 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 01.06.2024).
- 10 Кодекс адміністративного судочинства України від 06.07.2005 р. № 2747-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 01.06.2024).
- 11 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 19.06.2024).
- 12 Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказ. Мін'юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 15.04.2024).
- 13 Інструкція про особливості здійснення судово-експертної діяльності атестованими судовими експертами, що не працюють у державних спеціалізованих експертних установах : затв. наказом Мін'юсту України від 12.12.2011 р. № 3505/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z1431-11#Text> (date accessed: 01.06.2024).

explanations, testimony or supplements on forensic examination or the reasons for the impossibility of its conduct (clause 2, Part 5, Article 69 of the Criminal Procedure Code of Ukraine, Part 4, Article 72 of the Civil Procedure Code of Ukraine, Part 4, Article 69 of the Commercial and Procedural Code of Ukraine, Part 4, Article 68 of the Code of Administrative Proceedings of Ukraine, clause 2, Part 1, Article 12 of the specialized Law, subpara. 6, clause 2.2, Section II of Instructions No. 1, subclause 5 clause 3 Section II of Instructions No. 2).

In view of the above-mentioned study into the phenomenon of a forensic veterinarian's interrogation to evaluate his/her conclusion, it is relevant both from the standpoint of the theory and practice of forensic science, especially considering that forensic veterinary examination was intro-

duced into the system of forensic institutions of the Ministry of Justice of Ukraine only in 2019 (at the initiative of National Scientific Center «Hon. Prof. M. S. Bokarius Forensic Science Institute»).

### **Analysis of Essential Researches and Publications**

A significant contribution to the study of the issues related to obtaining expert testimony (to evaluate his/her conclusion) was made by Ukrainian scientists such as: M. Shcherbakovskyi and A. Protsenko<sup>14</sup>, V. Bazhaniuk<sup>15</sup> who developed approaches to evaluating expert research findings in a criminal proceeding; I. Belchikov and O. Khryshcheva<sup>16</sup>, A. Protsenko<sup>17</sup>, I. Kuchynska and V. Malook<sup>18</sup>, H. Kutskir<sup>19</sup>, Yu. Piliukov<sup>20</sup>, O. Moisieiev<sup>21</sup>,

- 14 Щербаковський М., Проценко А. Оцінка результатів експертного дослідження на підставі ймовірного підходу (за матеріалами закордонних публікацій). *Теорія та практика судової експертизи і криміналістики*. 2023. Вип. 1 (30). С. 50–69. DOI: 10.32353/khrife.1.2023.04 (date accessed: 22.05.2024).
- 15 Бажанюк В. В. Оцінка висновку експерта у кримінальному провадженні. *Науковий вісник Міжнародного гуманітарного університету. Сер.: Юриспруденція*. 2021. № 54. Т. 2. С. 110–113. DOI: 10.32841/2307-1745.2021.54.2.24 (date accessed: 22.05.2024).
- 16 Бельчиків І. О., Хрещева О. Г. Допит судово-медичного експерта як спосіб оцінки достовірності і обґрунтованості висновку експертизи. *Правова держава*. 2019. № 36. С. 84–90. DOI: 10.18524/2411-2054.2019.36.184872 (date accessed: 22.05.2024).
- 17 Проценко А. М. Проблеми регулювання допиту експерта під час судового провадження. *Актуальні проблеми експертного забезпечення досудового розслідування: мат-ли наук.-практ. семінару (Дніпро, 29.05.2020)*. Дніпро, 2020. С. 298–301. URL: <https://er.dduvs.in.ua/bitstream/123456789/5323/1/29.05.20%20%D0%A1%D0%B5%D0%BC%D1%96%D0%BD%D0%B0%D1%80%20%D0%9A%D0%9A%D0%A1%D0%9F%D0%9C.pdf> (date accessed: 22.05.2024).
- 18 Кучинська І. В., Малоок В. О. Допит експерта в суді (практичні поради). *Юридичний науковий електронний журнал*. 2021. № 11. С. 708–711. DOI: 10.32782/2524-0374/2021-11/179 (date accessed: 22.05.2024).
- 19 Куцкір Г. М. Процесуальні особливості допиту експерта в суді. *Науковий вісник Ужгородського національного університету. Серія Право*. 2020. Вип. 60. С. 168–171. DOI: 10.32782/2307-3322/2020.60.37 (date accessed: 22.05.2024).
- 20 Пілюков Ю. Допит експерта в суді як процесуальна форма використання спеціальних знань у кримінальному провадженні. *Актуальні проблеми правознавства*. 2021. № 2 (26). С. 176–179. DOI: 10.35774/app2021.02.176 (date accessed: 22.05.2024).
- 21 Моїсєєв О. М. Дистанційний допит судового експерта: технологічний підхід. *Науковий вісник Ужгородського національного університету. Серія Право*. 2014. Вип. 27. Т. 3. С. 128–131. URL: <https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/7317/1/%D0%94%D0%98%D0%A1%D0%A2%D0%90%D0%9D%D0%A6%D0%86%D0%99%D0%9D%D0%98%D0%99%20%D0%94%D0%9E%D0%9F%D0%98%D0%A2%20%D0%A1%D0%A3%D0%94%D0%9E%D>

Yu. Tsyhaniuk<sup>22</sup>, O. Soloviova<sup>23</sup> who substantiated the essence of interrogating a forensic expert as a way to evaluate the credibility of his/her conclusion; D. Puchko<sup>24</sup>, Yu. Tsyhaniuk and S. Shulhin<sup>25</sup>, L. Martynova with co-authors<sup>26</sup>, V. Zhmudinskyi<sup>27</sup>, V. Kopanchuk with co-authors<sup>28</sup> who established different vectors for evaluating criteria, methods of verification, and mechanisms for appealing the expert conclusion; O. Luk'ianchuk<sup>29</sup> outlined the peculiarities and main stages of the procedural and legal evaluation of the expert conclusion by Ukrainian judicial and law enforcement authorities; I. Hloviuk<sup>30</sup> disclosed convention guarantees and the defense counsel's right to reject the expert findings; A. Lazarenko<sup>31</sup> argued for distinguishing a knowingly false expert conclusion from an expert's error.

Foreign scientists also emphasized problematic issues involving interroga-

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- 22 Циганюк Ю. В. Імунітет експерта у кримінальному судочинстві під час допиту в суді. *Криміналістичний вісник*. 2018. Т. 30. № 2. С. 15–22. DOI: [10.37025/1992-4437/2018-30-2-15](https://doi.org/10.37025/1992-4437/2018-30-2-15) (date accessed: 22.05.2024).
- 23 Соловійова О. Є. Щодо вдосконалення норм про допит експерта у кримінальному провадженні. *Проблеми теорії та практики кримінального провадження* : тези доп. кругл. столу (Харків, 28.11.2019). Харків, 2019. С. 286–288. URL: [https://univd.edu.ua/general/publishing/konf/28\\_11\\_2019/pdf/102.pdf](https://univd.edu.ua/general/publishing/konf/28_11_2019/pdf/102.pdf) (date accessed: 22.05.2024).
- 24 Пучко Д. В. Належність і допустимість висновку експерта як критерії оцінювання судової експертизи. *Теорія та практика судової експертизи і криміналістики*. 2020. Вип. 22. С. 226–239. DOI: [10.32353/khrife.2.2020.17](https://doi.org/10.32353/khrife.2.2020.17) (date accessed: 22.05.2024).
- 25 Циганюк Ю. В., Шульгін С. О. Незгода з висновком експерта як результат оцінки доказів за внутрішнім переконанням. *Криміналістичний вісник*. 2023. Т. 40. № 2. С. 16–29. DOI: [10.37025/1992-4437/2023-40-2-16](https://doi.org/10.37025/1992-4437/2023-40-2-16) (date accessed: 22.05.2024).
- 26 Мартинова Л. В., Сташевська І. В., Кузьменко Л. А. Механізм відводу судового експерта у кримінальному процесі: проблемні питання. *Економіка. Фінанси. Право*. 2020. № 9/1. С. 33–41. DOI: [10.37634/efp.2020.9\(1\).6](https://doi.org/10.37634/efp.2020.9(1).6) (date accessed: 22.05.2024).
- 27 Жмудінський В. П. Механізм оскарження та способи перевірки висновку експерта в кримінальному провадженні. *Political and Legal Studies*. 2022. Vol. 1. Is. 3. Pp. 46–54. DOI: [10.15804/CPLS.20223.06](https://doi.org/10.15804/CPLS.20223.06) (date accessed: 22.05.2024).
- 28 Копанчук В. О., Осмолян В. А., Туровець Ю. М. Особливості та основні етапи процесуально-правової оцінки судовими та правоохоронними органами України висновку експерта. *Право.Уа*. 2022. № 1. С. 90–97. DOI: [10.32782/LAW.UA.2022.1.15](https://doi.org/10.32782/LAW.UA.2022.1.15) (date accessed: 22.05.2024).
- 29 Лук'янчук О. І. Правомірність рецензування висновку експерта в судовому процесі. *Криміналістичний вісник*. 2021. № 1 (35). С. 38–47. DOI: [10.37025/1992-4437/2021-35-1-38](https://doi.org/10.37025/1992-4437/2021-35-1-38) (date accessed: 22.05.2024).
- 30 Гловюк І. В. Право сторони захисту на заперечення висновку експерта: конвенційні гарантії та національна правозастосовна практика. *Науково-практичний огляд актуальних проблем судової експертизи та криміналістики* : зб. мат-лів Всеукр. наук.-практ. конф. (Івано-Франківськ, 18.06.2021). Івано-Франківськ, 2021. С. 10–13. URL: [https://www.researchgate.net/publication/352997269\\_Glovuk\\_IV\\_Pravo\\_storoni\\_zahistu\\_na\\_zaperecenna\\_visnovku\\_eksperta\\_konvencionijni\\_garantii\\_ta\\_nacionalna\\_prazozastosovna\\_praktika\\_Naukovo-prakticnij\\_oglad\\_aktualnih\\_problem\\_sudovoi\\_ekspertizi\\_ta\\_kriminalis](https://www.researchgate.net/publication/352997269_Glovuk_IV_Pravo_storoni_zahistu_na_zaperecenna_visnovku_eksperta_konvencionijni_garantii_ta_nacionalna_prazozastosovna_praktika_Naukovo-prakticnij_oglad_aktualnih_problem_sudovoi_ekspertizi_ta_kriminalis) (date accessed: 22.05.2024).
- 31 Лазаренко А. М. Відмежування завідомо неправдивого висновку експерта від експертної помилки. *Юридичний науковий електронний журнал*. 2023. № 8. С. 422–424. DOI: [10.32782/2524-0374/2023-8/98](https://doi.org/10.32782/2524-0374/2023-8/98) (date accessed: 22.05.2024).

tion of a forensic veterinarian in the course of evaluating his/her conclusion: A. L. Heavey, G. R. Turbett, M. M. Houck and S. W. Lewis <sup>32</sup>; K. J. Weiss <sup>33</sup>; A. Dzikowski <sup>34</sup>; K. Rix <sup>35</sup>; K. Wu, Y. Yu, Ch. Chen and Zh. Fu <sup>36</sup>; G. Makanje <sup>37</sup> at el.

However, scientific research has not yet explored the reasons and peculiarities of a forensic veterinarian's interrogation in the course of evaluation of his or her conclusions by a subject who has appointed such forensic examination. Thus, the development of this field does not fully meet the requirements of the practice of investigating crimes against the life and health of animals, which is the reason for the formulation of this research purpose.

### Article Purpose

To characterize peculiarities of obtaining the forensic expert's testimony as an element of evaluating his/her conclusion and to determine the influence of such testimony on the quality of conclusion evaluation.

### Research Methods

The study uses general scientific and special methods: dialectical, system-structural, system-functional, comparative legal, methods of formal logic (analysis, synthesis, deduction, induction, analogy), modeling, and statistical.

### Main Content Presentation

One of the ways to comprehensively evaluate a forensic veterinarian's conclusion and clarify its content is to interrogate the forensic expert himself/herself, during which he gives oral or written testimony under Part 1 of Article 95 and clause 2 of Part 5 of Article 69 of the Criminal Procedure Code of Ukraine <sup>38</sup>.

This procedure is governed by Art. 356 *Examination of an Expert in Court* of the Criminal Procedure Code of Ukraine <sup>39</sup>. It is conducted when additional study is not required to eliminate the incompleteness or ambiguity of the expert conclusion based on the results of performed examination, i.e., a forensic expert's interrogation is not a mandatory investigative action <sup>40</sup>. Under

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32 Heavey A. L., Turbett G. R., Houck M. M., Lewis S. W. Management and disclosure of quality issues in forensic science: A survey of current practice in Australia and New Zealand. *Forensic Science International: Synergy*. 2023. Vol. 7. P. 100339. DOI: [10.1016/j.fsisyn.2023.100339](https://doi.org/10.1016/j.fsisyn.2023.100339) (date accessed: 22.05.2024).

33 Weiss K. J. Confessions and expert testimony. *The Journal of the American Academy of Psychiatry and the Law*. 2003. Vol. 31. No. 4. Pp. 451–458. URL: [https://www.researchgate.net/publication/7212182\\_Confessions\\_and\\_Expert\\_Testimony](https://www.researchgate.net/publication/7212182_Confessions_and_Expert_Testimony) (date accessed: 22.05.2024).

34 Dzikowski A. Op. cit. DOI: [10.3390/ani13132163](https://doi.org/10.3390/ani13132163) (date accessed: 22.05.2024).

35 Rix K. Expert evidence: Frequently asked questions. *Journal of Forensic and Legal Medicine*. 2021. Vol. 77. P. 102106. DOI: [10.1016/j.jflm.2020.102106](https://doi.org/10.1016/j.jflm.2020.102106) (date accessed: 22.05.2024).

36 Wu K., Yu Y., Chen Ch., Fu Zh. Is One Health a Viable Strategy in Animal Health Litigation: Evidence from Civil Lawsuits in China. *Animals (Basel)*. 2021. Vol. 11. Is. 9. P. 2560. DOI: [10.3390/ani11092560](https://doi.org/10.3390/ani11092560) (date accessed: 22.05.2024).

37 Mankanje G. Op. cit. DOI: [10.1017/S0021855322000262](https://doi.org/10.1017/S0021855322000262) (date accessed: 22.05.2024).

38 Кримінальний процесуальний кодекс ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

39 Там само.

40 Воробчак А. Р. Допит експерта в кримінальному провадженні: мета, умови та предмет. *Науковий вісник Міжнародного гуманітарного університету. Сер.: Юриспруденція*. 2018. № 36. Т. 2. С. 148–152. URL: [http://www.vestnik-pravo.mgu.od.ua/archive/juspradenc36/part\\_2/36.pdf](http://www.vestnik-pravo.mgu.od.ua/archive/juspradenc36/part_2/36.pdf) (date accessed: 22.05.2024).

the current rules of the Criminal Procedure Code (Parts 1 and 3 of Article 95, Part 2 of Article 84), a forensic expert's testimony during interrogation is a source of evidence in criminal proceedings equal to the expert conclusion<sup>41</sup>.

The tasks of interrogating a forensic expert are clarification and specification of his/her conclusion (Part 1 of Article 356 of the Code of Criminal Procedure<sup>42</sup>). Particular importance of the testimony of a forensic expert in any specialty (in particular, forensic veterinary medicine), as compared to other participants in the process, is that he or she does not represent his or her own interests in the process, has no interest in the outcome of a criminal proceeding, and has no material or legal interest in the outcome of the process.

Since a forensic veterinarian's interrogation is not a compulsory procedural act, performance of primary forensic veterinary examination within a criminal proceeding (case) as well as specific veterinary expertise he/she possesses are the basis for his/her testimony. M. Shcherbakovskiy<sup>43</sup> emphasizes the fact that there is no mechanism for the investigator, inquiring officer, and prosecutor to obtain testimony from a forensic expert (and therefore a forensic veterinarian) in the course of pre-trial investigation (Part 3 of Article 95 of the Criminal Procedure Code of Ukraine<sup>44</sup>).

It should be stressed that the forensic expert may be present in the courtroom for the entire duration of the hearing (he/she should not be removed from the court-

room prior to interrogating): due to his/her special status as a participant in trial (compared to other participants in trial, for example, witnesses).

The procedure for summoning a forensic expert, place and procedure of his/her interrogation are governed by the rules for summoning and interrogating other participants to criminal proceedings (Articles 133–137 of the Criminal Procedure Code<sup>45</sup>), namely:

- a person engaged as a forensic veterinarian, for whom the conduct of the expert examination is not the official duty, is summoned for interrogation as set forth in Art. 137 of the Criminal Procedure Code of Ukraine;
- a certified forensic expert who does not work in a state specialized expert institution is summoned for interrogation upon receiving a subpoena that requires a signature acknowledging its receipt;
- a forensic expert who is an employee of a specialized forensic institution shall be summoned for interrogation by a letter from the head of this institution.

In the case of penal or multidisciplinary forensic examination, the subject of forensic examination appointment (expert engagement) may (if necessary) invite all members of an expert committee or individual forensic experts (for example, a forensic expert who has expressed his viewpoint in the conclusion) for interrogation. They also take into account whether the expert con-

41 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

42 Там само.

43 Щербаківський М. Г. Проведення та використання судових експертиз у кримінальному провадженні: монографія. Харків, 2015. С. 380–382. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/0dd2821b-1646-4d5c-965f-c20e08dc1479/content> (date accessed: 22.05.2024).

44 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

45 Там само.

clusion is signed by all members of the expert committee.

As envisaged in Part 7 of Art. 101 of the Criminal Procedure Code, either party shall have the right to request through the court to invite the expert for examination during court proceedings *to give explanations or to supplement his/her findings*<sup>46</sup>. According to *the Ukrainian Language Academic Explanatory Dictionary*, the *specify* term means, in particular, *“to explain something”, “to facilitate finding out something”*<sup>47</sup>. In view of the above, a forensic expert's specification should be understood as a communication to the process participants of information (both individual provisions and the entire conclusion) that is unclear, contradictory and contains inaccuracies. During specification, a forensic expert provides information clarifying and disclosing the content of conducted forensic examination.

The same dictionary interprets the *supplement* term as *“something that complements, acts as an addition to”*<sup>48</sup>. Therefore, additional arguments, judgments and reasoning that are not reflected within the conclusion but stem from the research section of the expert conclusion, can be considered a supplement to the expert conclusion.

What is more, during interrogation, a forensic expert may clarify the data set forth in his or her conclusion. According

to *the Ukrainian Language Academic Explanatory Dictionary*, the *clarification* term means: *“1. Action intended to clarify. <...> 2. An amendment, supplement made to make something more precise”*<sup>49</sup>. In contrast to specifying, clarifying a forensic expert's conclusion is characterized by less extensive explanations and concerns detailing specific terms, expressions, individual aspects of research, information about the identity of the forensic expert who conducted this forensic examination.

The algorithm for interrogating a forensic expert, including a forensic veterinarian, includes the following steps:

- identifying a forensic expert by the presiding judge in the court hearing;
- warning the forensic expert of criminal liability for providing a knowingly false conclusion, for refusing without valid reasons to perform the duties assigned to him/her in court, or for recusing himself/herself without sufficient grounds;
- executing the order of the presiding judge or the court administrator in respect of administering oaths by an expert (Part 1 of Article 356 of the Criminal Procedure Code<sup>50</sup>, Parts 1–3, 5 of Article 225 of the Civil Procedure Code<sup>51</sup>, Article 207 of the Code of Administrative Proceedings

46 Кримінальний процесуальний кодекс ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

47 Роз'яснення / Академічний тлумачний словник української мови. В 11 т. // за ред. І. К. Білодіда. Київ, 1970–1980. Т. 8 : Природа – Ряхтливий ; ред. тому: В. О. Винник, В. В. Жайворонок, Л. О. Родіна, Т. К. Черторизька. 1977. С. 872. URL: <https://sum.in.ua/s/roz.jasnennja> (date accessed: 22.05.2024).

48 Доповнення / Академічний тлумачний словник ... . Т. 2 : Г – Ж ; ред. тому: П. П. Доценко, Л. А. Юрчук. 1971. С. 373. URL: <https://sum.in.ua/s/roz.jasnennja> (date accessed: 22.05.2024).

49 Уточнення / Академічний тлумачний словник ... . Т. 10 : Т – Ф ; ред. тому: А. А. Бурячок, Г. М. Гнатюк. 1979. С. 518. URL: <https://sum.in.ua/s/utochnjuvaty> (date accessed: 22.05.2024).

50 Кримінальний процесуальний кодекс ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

51 Цивільний процесуальний кодекс ... . URL: <https://zakon.rada.gov.ua/laws/show/1618-15#Text> (date accessed: 01.06.2024).

of Ukraine<sup>52</sup>). We should support the point of view of M. Shcherbakovskiy, who states: *“If forensic examination is conducted in a state specialized institution, the forensic expert is not required to take an oath before conducting it, since he/she takes it once at the beginning of his/her activity, and its text is kept in his/her personal file”*<sup>53</sup>;

- announcing final conclusions of the forensic expert who conducted forensic examination and posing questions to the forensic expert by the presiding judge in the court hearing;
- explaining by the forensic expert of certain provisions of his/her conclusion (optionally: notification of initial data; questions in the procedural document addressed to the expert to be resolved; data on objects under study (their quality, sufficiency, suitability); research methods utilized during forensic examination; substantiation of results and conclusions);
- addressing questions to the forensic expert (depending on the appeal, by the prosecution or the defense counsel; by the presiding judge at the court hearing, as well as by the juror, if any);
- cross-examination of the parties.

From praxeological perspectives, the given algorithm for interrogating a forensic expert helps the court evaluate the expert conclusion and avoid unnecessary collateral issues. We emphasize that questions posed to the expert during his/her interrogation should relate to the validity and

accuracy of his/her conclusion or identification of the conclusion flawedness, determination of its inadequacy and inadmissibility as evidence in case of distrust.

In fact, the parties to the criminal proceedings have the right to request the interrogation of a forensic expert (Part 7 of Article 101 of the Criminal Procedure Code<sup>54</sup>) exclusively during court proceedings; however, his/her interrogation during pre-trial investigation is not envisaged, so we share the opinion on supplementing the procedural legislation of Ukraine with such a rule.

The subject of a forensic expert's interrogation, in particular a forensic veterinarian, is to specify, supplement and clarify his or her opinion, in particular, on the following:

- a set of factual data and circumstances of a case (proceeding) that are to be proved (related to the damage inflicted to the health and life of an animal; the nature, mechanism, priority, sequence, severity, intravital or post-mortem damage and duration of bodily injuries development; occurrence and spread of diseases; occurrence of mutilation or cause of death; defective provision of veterinary care and organization and conduct of veterinary and sanitary measures; safety and quality of animal feed and feed additives, etc.) and which the forensic veterinarian has found out by applying specific expertise, appropriate means (methods) based on the results of multidisciplinary study of physical and materialized objects in order to solve the identification, diagnostic

52 Кодекс адміністративного судочинства ... URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text> (date accessed: 01.06.2024).

53 Щербаківський М. Г. Проведення експертизи під час судового розгляду. *Ароцкерівські читання* : зб. мат-лів засід., присвяч. 85-річ. від дня народж. видат. вчен.-криміналіст. Л. Ю. Ароцкера (Суми, 01–02.11.2012). Харків, 2012. С. 38. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/cbcf9b7a-0658-4d20-a8a8-a0525e0a8f3f/content> (date accessed: 22.05.2024).

54 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

and situational tasks of forensic veterinary examination;

- circumstances which content is necessary to fulfil interim goals of investigation for overall evaluation of individual issues of the already drawn up expert conclusion.

It is worth noting that not only in a criminal proceeding, but also in other types of proceedings, a forensic expert's interrogation, including a forensic veterinarian, is carried out only after the investigation has been fully completed, the expert's conclusion has been prepared and handed over to the subject of forensic examination appointment (engagement of an expert), since before that there is no subject of the expert's interrogation. We share the opinion of researchers<sup>55</sup> that it is expedient to limit the interrogation of a forensic expert to the subject, object, applied methods of his/her research: such interrogation should only concern specification and clarification of conclusion content and factual data which a forensic expert has independently obtained within the scope of conducting a specific forensic examination, and the range of questions addressed to him/her, the answers to which are included in the conclusion. A forensic veterinarian may be asked, for example, the following questions: about traces of injuries indicating that the animal has been subjected to pain and suffering; about the severity of damage inflicted to the animal's health; about argumentation of lifetime or postmortem injuries, etc. Vigorous debate during a forensic veterinarian's interrogation may be conditioned by the research methods utilized by him/her, since forensic

veterinary examination is a rather "young" field of forensic activity (as noted above, it was launched in the system of the Ministry of Justice of Ukraine in 2019), and therefore its methods and methodological guidelines are not well known to the general public (for example: Methodology of Animals' Forensic Veterinary Examination for the Purpose of Establishing their Mutilation<sup>56</sup>, Methodology of Forensic Veterinary Examination of Animal Corpses<sup>57</sup>, Methodology of Forensic Veterinary Examination of a Living Sub-Expert Animal<sup>58</sup>, etc.).

We emphasize that in the course of interrogation, the forensic veterinarian should not add new factual data to the already drawn up conclusion, since special conditions and equipment are required to obtain such data during forensic veterinary examination (dissecting room, manipulation room, laboratory, etc.). However, we deem that during interrogation, the forensic veterinarian may supplement the data presented in the conclusion with information that is the result of forensic examination but is not specified in the expert conclusion and does not require further research. During forensic examination, the forensic veterinarian may also explain and elaborate on the illustrative material contained in the expert conclusion.

According to a survey of police investigators and inquiring officers who investigated crimes against the health and life of animals, after reading the expert conclusion, they required supplements (15%), specifications (29%), clarifications (19%).

55 Щербаковський М., Проценко А. Знач. твір. DOI: 10.32353/khrife.1.2023.04 (date accessed: 22.05.2024); Бельчіков І. О., Хрищева О. Г. Знач. твір. DOI: 10.18524/2411-2054.2019.36.184872 (date accessed: 22.05.2024); Куцкір Г. М. Знач. твір. DOI: 10.32782/2307-3322/2020.60.37 (date accessed: 22.05.2024).

56 Яценко І. В. Методика судово-ветеринарного дослідження тварин з метою встановлення їх каліцтва. Харків, 2021. Реєстр. код. 18.1.01. 50 с.

57 Яценко І. В., Казанцев Р. Г. Методика судово-ветеринарної експертизи трупів тварин. Харків, 2022. Реєстр. код 18.1.02. 336 с.

58 Яценко І. В., Парилівський О. І. Методика судово-ветеринарного дослідження живої підекспертної тварини. Харків, 2023. 664 с.

At the same time, 37% of subjects of forensic veterinary examination appointment did not have similar issues.

Factual data that a forensic veterinarian can provide during interrogation can be divided into five groups: 1) clarification of a forensic veterinarian's competence; 2) clarification of particular aspects related to appointment and course of forensic veterinary examination; 3) analysis of objects and initial data used by the forensic veterinarian during forensic examination and conclusion compilation; 4) defining peculiarities of applied forensic research methodologies and information sources; 5) argumentation supporting the expert conclusion's credibility.

Let us outline the range of questions specific to each of the groups.

1) Clarification a forensic veterinarian's competence – availability of:

- basic veterinary education (qualifications of a Doctor of Veterinary Medicine, master's degree or specialist, area of expertise 21 *Veterinary Medicine*, specialty 211 *Veterinary Medicine*);
- specific veterinary expertise (Candidate of Veterinary Medicine or Doctor of Veterinary Medicine degree, Doctor of Philosophy, certificate of Docent or Professor);
- corresponding training in expert specialty 18.1 *Veterinary Examination*, certification, a forensic veterinarian's qualification and relevant certificate;
- his/her last name in the Register of Certified Forensic Experts of Ukraine<sup>59</sup>;
- overall length of service in the field of veterinary medicine, expert activity experience in expert specialty 18.1 *Veterinary Examination*;
- experience in conducting forensic veterinary examination relevant to

the specific research topic previously examined by a forensic expert;

- certificate of awarding the qualification of a forensic expert (whether it has not been temporarily suspended, revoked, annulled).
- 2) Clarification of particular aspects related to appointment and course of forensic veterinary examination:
- forensic institution leadership is authorized to perform tasks on the objects of forensic veterinary examination containing information on the circumstances of a criminal offense, conduct their research, and provide a conclusion or notification of the impossibility of providing it;
  - substantiation of the expediency of exercising the expert's right to file a motion to the subject of forensic veterinary examination appointment in order to provide supplementary materials (initial data) and explanation of the reasons for not exercising this right;
  - explanation of the expediency and necessity of filing a motion to the authority (person) that has appointed forensic examination or engaged a forensic expert for clarifying the content and scope of an expert task and questions posed;
  - justification of the expediency of exercising the right to expert initiative. In view of the need to highlight the relevant facts revealed during forensic examination that have not been addressed, as well as the circumstances contributing or potentially contributing to the commission of the crime, in the expert conclusion;
  - explanation of the expediency of the forensic expert's motion on the engagement of other experts in forensic veterinary examination, if it

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<sup>59</sup> Реєстр атестованих судових експертів / Мін'юст України: офіц. сайт. URL: <https://rase.minjust.gov.ua/> (date accessed: 22.05.2024).

is necessary to conduct research and provide the expert conclusion;

- clarification of data on persons present during forensic examination;
- notification of engaging a forensic expert both as a forensic veterinarian and as a specialist, i.e. whether one person combined two procedural functions (we emphasize the resolution of Plenum of the Supreme Court of Ukraine regarding participation of a forensic expert in court interrogation: *"The forensic expert who conducted forensic examination during preliminary investigation shall participate in evidence examination from the beginning of judicial investigation"* <sup>60</sup> with the relevant forensic expert's authority envisaged in Art. 69 of the Criminal Procedure Code <sup>61</sup>);
- failure to recuse the forensic expert (or their recusal) due to his/her performance of duties as a specialist in a criminal proceeding or due to other circumstances set forth in the Law that prevent him/her from conducting forensic examination;
- an explanation of the reasons for the forensic expert's appeal against the actions and decisions of forensic examination customer and other participants in the process (if such an appeal has taken place), which violate the forensic expert's rights or the procedure for conducting forensic examination;
- adherence to the terms for forensic veterinary examination;
- questions posed to the forensic veterinarian for resolution are within the scope of the forensic veterinar-

ian's competence and specific expertise and the subject of forensic veterinary examination;

- existence of direct/indirect legal (if certain rights or obligations arise, change or terminate as a result of a criminal proceeding) or family (if the forensic expert's conclusion may have a certain impact on the forensic expert's personal relations with others) interest in forensic examination results (through the interest of the head, his/her deputy or the head of the expert institution's department head).

3) Analysis of objects and initial data used by the forensic veterinarian during forensic examination and conclusion compilation:

- notifying about the authenticity of the origin of the objects examined by a forensic expert;
- explaining the sampling method or seizure of the object for forensic examination;
- determining information value, sufficiency, quality, suitability, adherence to the initial materials and research objects;
- clarifying completeness of initial data for performing forensic examination;
- explaining the impact of failure to provide the required supplementary materials on the quality of the conducted forensic examinations and the validity of the expert conclusion within the terms stipulated in the legislation;
- explaining identified identification and diagnostic features in studied objects;
- clarifying data completeness in case (criminal proceeding) materials, the sufficiency of the volume of provided

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60 Про судову експертизу в кримінальних і цивільних справах : Постанова Пленуму Верховн. Суду України від 30.05.1997 р. № 8 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/v0008700-97#Text> (date accessed: 22.05.2024).

61 Кримінальний процесуальний кодекс ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

materials and their impact on expert conclusion validity;

- explaining the method of preserving objects submitted for research (for example: preservation of an animal corpse in a cooled or frozen form before conducting forensic veterinary autopsy; the feasibility of cremating an animal corpse after autopsy);
- explaining the expediency and necessity of partial or complete destruction or significant change of properties in forensic veterinary examination object in the course of research, the impossibility of applying other methods for conducting forensic examination.

4) Defining peculiarities of applied forensic research methodologies and information sources:

- explaining forensic veterinary examination methodology used by the forensic expert during forensic veterinary examination (its essence, limits of capabilities, efficiency and reliability, use in expert practice, appropriateness to a certain expert situation, availability of alternative methods, reasons for choosing a specific methodology, scientific validity, application experience, scientific status, developers, presence in the Ministry of Justice of Ukraine's Register of Forensic Examination Methodologies <sup>62</sup>) and/or making it available to process participants;
- clarifying special veterinary and biological terms, wording, content and information value of research methodologies and methods, metrological characteristics of devices and/or instruments used for research;
- justifying and applying legal regulations, methodologies, scientific and

technical, reference literature and other information sources.

5) Argumentating the expert conclusion's credibility:

- sufficiency of information on the basis of which the expert conclusion has been drawn up;
- clarifying scientific basis for expert conclusion formulation, verification of all expert versions, comprehensiveness of performed research and sufficiency of obtained research findings;
- explaining interim and final conclusions based on specific *veterinary expertise*, as well as additional arguments increasing the degree of conclusions validity (for example, regarding the nature, location, lifetime or postmortem damage and the order of bodily injuries development; the severity of damage to the animal's health, signs of mutilation; cause of death and the cause-and-effect relationship between bodily injuries and the onset of the animal's death, etc.);
- defining criteria on the basis of which expert evaluation of the researched issue regarding the categorical or probable form of the expert conclusion has been provided, validity and credibility (reliability) of final conclusions;
- defining the level of conducted forensic veterinary examinations (descriptive-qualitative or quantitative);
- justifying the impossibility of providing the expert conclusion (for example, if a forensic expert, after forensic veterinary examination appointment, is not provided with the objects of study: an animal corpse or a living animal within 45 calendar days, the forensic expert [under clause 2, part 3, Article 69

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62 Реєстр методик проведення судових експертиз / Мін'юст України : офіц. сайт. URL: <https://rmpse.minjust.gov.ua/search> (date accessed: 22.05.2024).

of the Criminal Procedure Code<sup>63</sup> and clause 1.13, Section I, para. 12, clause 2.1, Sec. II, para. 4.10 of Sec. IV of Instruction No. 1<sup>64</sup>] informs the subject of forensic examination appointment about the impossibility of providing a conclusion);

- clarifying reasons for discrepancies between the scope of questions addressed and expert conclusions (i.e., whether the forensic expert, in accordance with Section IV, Paragraph 4.12 of Instruction No. 1<sup>65</sup>, has arranged them in the conclusion in a sequence that ensures the most appropriate research order );
- explaining the reasons for inconsistencies between the forensic expert's conclusion and other evidence available in a criminal case, or between several conclusions presented on the same issue;
- discussing the significance of misunderstandings among individual members of the expert committee in the event of contradictions between the initial and repeated findings of the forensic veterinarian;
- explaining reasons for discrepancies between conclusions of repeat forensic examination and initial forensic examination;
- explaining reasons for providing an answer to the question in a probable form or in the form "it is not possible";
- clarifying the essence of questions that the forensic expert has solved in the order of the expert's initiative;
- explaining the reasons for significant discrepancies between final

conclusions of the expert committee members during penal or multidisciplinary forensic examination, as well as personification of expert research during penal or multidisciplinary forensic examinations;

- clarifying the extent to which deficiencies in the research description within the expert opinion, technical errors, etc., may affect the validity and credibility of the expert conclusion;
- positions of certain expert committee members during the development of final conclusions;
- substantiating final conclusions on the bases of criteria such as sufficiency of features for establishing forensic veterinary diagnosis, causes of animal's death or health disorder, interdependence of these features, conclusions categoricity (categorical or probable), negative and positive, complete (exhaustive) or partial (inexhaustible);
- giving reasons why it is impossible to answer the question in a categorical form, or refusing to answer the question;
- supplementing his/her conclusion provided earlier (for example, the expert provides a clear description of mutilation signs in the sub-expert animal described in his/her conclusion, referring to the Methodology of Animals' Forensic Veterinary Examination for the Purpose of Establishing their Mutilation<sup>66</sup>: based on manifestations; the time of appearance; consequences of discovery; endurance; degree of vital activity

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63 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

64 Інструкція про призначення та проведення ... URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 15.04.2024).

65 Там само.

66 Яценко І. В. Методика ... каліцтва. Харків, 2021. 50 с.

limitations; the type of factor having caused the disability; volume of affected area; degree of recovery of the impaired organ functions);

- notification of the forensic veterinarian's internal conviction in the research findings.

It is appropriate to note that during interrogation, the forensic veterinarian specifies his/her conclusion or individual provisions of it on his/her own behalf on the basis of his/her earlier research and obtained results. All responses are sent to court or other interrogating subject, regardless of who is asking the question. Specification and clarification by the forensic expert are essential for a more comprehensive study and evaluation of the conclusion provided by him/her. Bearing this in mind, M. Shcherbakovskiy lists the following conditions for the admissibility of the expert's testimony:

«a) information is based on the forensic expert's specific expertise and cannot go beyond it (the expert's competence);

b) information should relate to forensic examination conducted by the forensic expert;

c) information is formulated on the basis of data obtained during forensic examination or actions associated with its conduct;

d) there is no need for additional research;

e) information does not address data obtained in the course of expert research, but only those which go beyond the scope of the subject matter of forensic examination»<sup>67</sup>.

For the successful interrogation of a forensic expert during court hearing, it is expedient to formulate in advance

a range of questions that must be clarified during court hearing (by all participants in the process), and submit them in writing to a forensic expert for careful preparation of specifications and supplements, so as he/she would be more confident in the course of court hearing. This view is shared by N. Panko<sup>68</sup> and I. Kuchynska<sup>69</sup>.

It would also be appropriate to support the position of I. Kuchynska. She believes that during interrogation of the forensic expert there are atrocities and aggressive assertiveness, which are manifested in the behavior of the defense counsel or other participants in the process, aimed at disrespecting the forensic expert, disregarding his/her competence, good faith, accusing in corruption, etc. We also share the opinion of I. Kuchynska that it is inadvisable to remove forensic experts who have conducted penal or multidisciplinary forensic research prior to their interrogation and to summon them to the courtroom for sequential interrogation.

According to our own forensic experience, we can state that *it is inexpedient* to interrogate a forensic veterinarian if:

- the expert conclusion is complete and scientifically sound; its structure meets the requirements of regulatory documents for conducting forensic examination and drawing up a procedural document based on the results of its conduct (expert conclusion or a notice of inability to provide a conclusion);
- the expert conclusion is unquestioned (indisputable);

67 Щербаковський М. Г. Знач. твір. С. 391. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/0dd2821b-1646-4d5c-965f-c20e08dc1479/content> (date accessed: 22.05.2024).

68 Панько Н. А. Допит експерта в суді як засіб оцінки його висновку. *Часопис Київського університету права*. 2013. Вип. 1. С. 283. URL: [http://nbuv.gov.ua/UJRN/Chkup\\_2013\\_1\\_68](http://nbuv.gov.ua/UJRN/Chkup_2013_1_68) (date accessed: 22.05.2024).

69 Кучинська І. Допит експерта в суді (тактичні рекомендації для експерта, суду, представників сторін). *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2021. Спец. вип. № 2 (115). С. 441—447. DOI: [10.31733/2078-3566-2021-6-441-447](https://doi.org/10.31733/2078-3566-2021-6-441-447) (date accessed: 22.05.2024).

- all studies, as well as certain factual data, conducted by the forensic veterinarian are indisputable and reasoned, taking into account case materials;
- the participants to court hearing understand the expert's conclusions, do not doubt his/her objectivity, and do not insist on summoning the expert to examine a conclusion in his/her presence.
- in the presence of several expert conclusions in a criminal proceeding (case), interim and final conclusions in which do not fully or partially coincide (most often, it is a case of repeated forensic examinations), each expert conclusion is evaluated separately based on general grounds, and the order of interrogating forensic experts must correspond to the order of their research in the overall investigation algorithm;
- one forensic expert can ask another questions and comment on answers;
- elucidating basic provisions of the expert conclusion.

We stress that it is not allowed to conduct expertise examination for addressing issues related to law (Part 1 of Article 242 of the Criminal Procedure Code <sup>70</sup>), and reviewing the expert conclusion to recognize it as inadmissible evidence or to confirm conclusions cannot be a means of proof <sup>71</sup>. Review cannot be considered an analog of repeated or additional examination conclusions, there is no evaluation of evidence in it, and the reviewer is not a participant in the process, therefore he/she is not held legally responsible for his/her belief in the accuracy and validity of a conclusion.

It is also necessary to outline the procedure for interrogating forensic experts who conducted multidisciplinary or penal forensic examination. Peculiarities of their interrogation are as follows:

- the full committee of forensic experts who conducted the forensic examination will be invited for interrogation;
- interrogation of forensic experts is conducted sequentially, depending on the sequence of their participation in forensic examination, considering the results set out in the research section of the expert conclusion;

If during forensic examination and evaluation of the expert conclusion inconsistencies or contradictions are found, and if the intermediate and final conclusions contradict other materials of a case (criminal proceeding), it is crucial to determine their causes, which may be groundlessness, erroneousness of the expert's conclusions or incredibility of presented evidence contradicting them <sup>72</sup>. If the reason for the inconsistency lies exclusively in the content of the forensic expert's conclusion, and interrogation of the forensic experts did not help to eliminate relevant contradictions, then the subject of proving can use his/her right to appoint repeated or additional forensic examination for its positive resolution.

From the perspective of M. Shcherbakovskiy <sup>73</sup>, it is the forensic expert who must notify a person who interrogates him/her or court that under specific circumstances interrogation or appointment of additional or multidisciplinary forensic examination

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70 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 01.06.2024).

71 Лук'янчук О. І. Зазнач. твір. DOI: 10.37025/1992-4437/2021-35-1-38 (date accessed: 22.05.2024).

72 Циганюк Ю. В., Шульгін С. О. Зазнач. твір. DOI: 10.37025/1992-4437/2023-40-2-16 (date accessed: 22.05.2024).

73 Щербаківський М. Г. Зазнач. твір. С. 384. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/0dd2821b-1646-4d5c-965f-c20e08dc1479/content> (date accessed: 22.05.2024).

would be expedient (for example: multi-disciplinary forensic veterinary-biological examination; veterinary-molecular-genetic; medical-veterinary; veterinary-transport-trace evidence; veterinary-ballistic; art-veterinary-psychological; environmental-veterinary; veterinary-fire-technical; veterinary-electrical engineering; veterinary-commodity; veterinary and examination of highly potent and poisonous substances; veterinary-soil and examination of pesticides presence in the environment, developed by the author of this article <sup>74</sup>).

It is worth pointing out that one of the means of verifying and evaluating the expert conclusion is the appointment and conduct of *additional forensic examination*. It is appointed when in order to eliminate incompleteness, ambiguity within a conclusion of the forensic expert who conducted initial examination, contradictions with other circumstances of a criminal proceeding (case), his/her interrogation will not be sufficient and there is a need to conduct new expert studies. Additional forensic examination may reveal new facts and circumstances of a case if supplementary materials are available. In the court's order ordering an additional forensic examination, the court must specify which of the expert's conclusions are incomplete or unclear, and the circumstances justifying the need to expand expert research.

It should be emphasized that forensic additional examination is not considered as additional research if within its framework new objects or other circumstances of a case were examined: such forensic examination is a new primary forensic examination.

At the same time, forensic expert practice demonstrates that another means of verifying and evaluating the expert conclusion (in addition to interrogating a forensic expert) is to appoint and conduct *repeated forensic examination*. Such examination is appointed in case of doubts about the accuracy of the initial conclusion by the forensic expert due to its insufficient validity, contradiction with other case materials, and substantial violation of the procedural procedure for appointing and conducting forensic examination. We would also like to emphasize that repeated examination may be entrusted exclusively to another forensic expert <sup>75</sup>.

It should be noted that appointment of forensic veterinary examination, similarly to any other type of forensic examination, must be motivated. In the ruling, the court must state the following:

- unsubstantiated provisions of primary forensic examination;
- circumstances calling into question credibility of the expert(s) conclusion;
- inconsistency of individual conclusions by the expert(s);
- imperfection of scientific methods utilized in the course of forensic examination;
- developing the expert conclusion is “*insufficient to determine the further course of a criminal proceeding and to draw a final procedural decision*” <sup>76</sup>;
- substantial violations of procedural rules governing the procedure for appointing and conducting forensic examination, etc.

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74 Яценко І. В. Доктринальні засади інтеграції спеціальних ветеринарних знань у комплексні судово-експертні дослідження: проблеми та шляхи їх вирішення. *Електронне наукове видання «Аналітично-порівняльне правознавство»*. 2023. № 6. С. 646–670. DOI: 10.24144/2788-6018.2023.06.114 (date accessed: 22.05.2024).

75 Про судову експертизу в кримінальних і цивільних справах ... . URL: <https://zakon.rada.gov.ua/laws/show/v0008700-97#Text> (date accessed: 22.05.2024).

76 Циганюк Ю. В., Шульгін С. О. Зазнач. твір. С. 18–19. DOI: 10.37025/1992-4437/2023-40-2-16 (date accessed: 22.05.2024).

To perform repeated forensic examination, including forensic veterinary examination, the forensic expert should be provided with conclusions of initial forensic examination(s), as well as new objects and materials. We are convinced that contradictions in the conclusions of several experts can be resolved not by appointing repeated forensic examination, including forensic veterinary examination, but by interrogating the forensic expert who conducted primary forensic examination.

Results of the forensic expert's interrogation are recorded in the minutes on behalf of the first person, verbatim (the expert should write the answers in his/her own hand for an accurate and correct presentation). If the forensic expert wishes to clarify or supplement the minutes content, the subject of expert conclusion evaluation must satisfy this wish. Interrogation minutes of the forensic expert are signed directly by the forensic expert and the initiator of interrogation.

## Conclusions

*Specification of the expert conclusion* should be defined as interpretation of its content in general, specification of the essence, and providing explanations for separate provisions for their correct understanding by the participants in a criminal proceeding.

*Clarification of the forensic expert's conclusion* should be understood as providing additional arguments for its individual provisions in order to specify and detail conclusions drawn as a result of expert research but not presented in the conclusion, as well as additional in-depth justification of previously drawn conclusions.

The purpose of obtaining the expert's testimony as an element of evaluation of his/her conclusion is to clarify the conclusion already provided by the forensic

expert, identify deficiencies in this conclusion, determine the possible inconsistency of its provisions with other circumstances of a criminal case (proceeding) for consideration when drawing procedural decisions.

In the course of interrogation, the forensic expert shall be asked questions exclusively within the scope of the forensic examination and the submitted conclusion in order to clarify certain provisions of the expert conclusion. During interrogation, it is inadmissible to ask a forensic expert questions that were not the subject of expert research and are not reflected in the expert conclusion, as they unduly expand the content of the provided conclusion without objective grounds and objectively conducted forensic research.

The algorithm for interrogating a forensic expert, in particular a forensic veterinarian, has been defined, including the following steps: 1) defining a forensic veterinarian's competence; 2) specifying certain aspects involving appointment and the course of forensic veterinary examination conduct; 3) analyzing objects and initial data used by the forensic veterinarian during forensic examination and conclusion compilation; 4) elucidating peculiarities of applied forensic research methods and information sources; 5) argumentating the expert conclusion's credibility.

The testimony of a forensic expert in the form of clarifying and specifying the conclusions he/she provides during interrogation, no matter how useful it may be, cannot replace the results of the forensic examination set forth in the expert conclusion.

The mechanism of obtaining a forensic expert's testimony as an element of evaluating his/her conclusion includes procedural and intellectual components. The procedural elements are outlined in the procedural legislation, and the intellectual ones consist in the fact that, firstly, interrogation of a forensic

expert is one of the means of evaluating his/her conclusion as evidence in a criminal proceeding (case), secondly, the interrogation must be motivated and recorded in the relevant resolution or ruling of the interrogation subject, thirdly, the interrogation subject can be the inquiring officer, investigator, prosecutor, investigating judge, court. The intellectual element of a forensic expert's interrogation is a product of mental activity (and its basis is general scientific methods: analysis and synthesis, induction and deduction, comparison and formalization, etc.) related to analyzing data presented in the forensic expert's conclusion as well as their correlation with other criminal case (proceeding) data.

### **Механізм отримання показань експерта як елемент оцінювання його висновку: судово-ветеринарний аспект**

**Іван Яценко**

Розглянуто особливості допиту судово-ветеринарного експерта, предметом якого є надання судово-ветеринарним експертом свідчень, роз'яснення або уточнення висновку. Мета — схарактеризувати особливості отримання показань експерта як елемент оцінювання його висновку та з'ясувати їхній вплив на якість оцінювання висновку, для чого застосовано загальнонаукові та спеціальні методи дослідження. Увагу акцентовано на судово-ветеринарному аспекті цього питання. Доведено, що порядок виклику експерта, місце і процедура його допиту обумовлені процесуальним законодавством України та відповідають правилам виклику й допиту решти учасників кримінального провадження. Визначено алгоритм допиту судово-ветеринарного експерта, який містить такі етапи: 1) з'ясування компетентності судово-ветеринарного експерта; 2) уточнення окремих аспектів призначення та перебігу виконання судово-ветеринарної експертизи; 3) аналізування об'єктів і вихідних даних, якими судово-ветеринарний експерт оперу-

вав під час проведення експертизи та складання висновку; 4) з'ясування особливостей застосованих методик судово-експертного дослідження й інформаційних джерел; 5) аргументування достовірності висновку експерта. Виокремлено процедуру допиту судових експертів, які проводили комплексну або комісійну експертизу, наголошено на особливостях такого допиту. Констатовано умови, за яких допит судово-ветеринарного експерта проводити недоцільно. Аргументовано, що запропонований алгоритм допиту судово-ветеринарного експерта з праксеологічних позицій сприяє роботі суду: правильно оцінити висновок і запобігти зайвим побічним запитанням.

**Ключові слова:** судово-ветеринарна експертиза; висновок експерта; допит судового експерта; перевірка; оцінювання; об'єктивність, усебічність і достовірність висновку експерта; обґрунтованість; повнота дослідження; джерело доказів.

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Author declare no conflict of interest.

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