

## Forms of Specific Expertise Application in the Investigation of Economic Criminal Offenses: Possibility of Identifying a Non-Procedural Form

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*The Article Purpose is to justify the possibility and importance of non-procedural forms of specific expertise application in the pre-trial investigation of criminal offenses related to economic activity using several general scientific methods (analysis and synthesis, comparative-legal, logical and structural, generalization, systematic analysis, etc.). It has been observed that the underlying cause for classifying forms of specific expertise application in criminal proceedings is the level and form of their regulatory consolidation in the criminal procedural legislation. It is noted that only if the criminal procedure legislation provides these methods of collecting evidence, it is possible to use the results of implementing certain specific expertise forms in proof: this is why procedural forms of specific expertise application are identified, which are defined as directly provided by the criminal procedural legislation. By this criterion, such procedural forms as conducting forensic examinations, participation of specialists in investigative (search) actions are singled out. Concerning non-procedural forms, the author also substantiates that it is feasible to identify them, even in the absence of an algorithm for their implementation within the criminal procedural legislation. The article emphasizes that non-procedural forms of specific expertise are used in criminal proceedings to obtain information of an indicative nature, inspect and conduct a preliminary (pre-expert) examina-*

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*tion of objects, as well as verify them against forensic records, etc. The author proves that findings acquired through the implementation of non-procedural forms of specific expertise should not serve as the foundation for procedural forms, since this can be the basis for their recognition as inadmissible. It is worth noting that they can be of paramount importance only if they are applicable to certain tactical tasks of the investigation, verification of investigative versions, determining the feasibility of appointing forensic examinations, etc. The significance of advisory assistance from well-versed persons as a non-procedural form of specific expertise application at the pre-trial investigation stage has been pointed out. The research paper outlines certain debatable aspects of the specialist's conclusion in the course of proving the facts of criminal misconduct for subsequent perspective research.*

**Keywords:** *specific expertise; criminal offense; economic activity; forensic examination; specialist's participation; non-procedural form.*

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## Research Problem Formulation

For the sake of impartiality, justice, and professionalism of the judiciary, one should abide by legal rules and use various methods (especially cooperation with specialists in certain fields). One of the important components of administering proceedings is the use of specific professional expertise and skills by forensic experts and specialists.

Following tradition, such methods of specific expertise application as participation of specialists in investigative (search) actions and forensic examinations are identified in criminal proceedings. However, recent changes in the criminal procedural legislation indicate the need to revise these approaches and unify the terminology for their corresponding designation.

Another point that should be considered when studying the issue of specific expertise application is classification of forms in which it is used in criminal proceedings. We plan to answer this question

in the context of developing the issue of specific expertise application while investigating criminal offenses in the field of economic activity and their trial. The aim of this research is to assess the feasibility of identifying non-procedural forms of the use of specific expertise in criminal proceedings in general and in the investigation of economic crime in particular. We believe that this area of research is relevant because this issue has not been sufficiently addressed in the scientific literature, despite the fact that economic crimes pose a high level of public danger, which contributes to the scaling up of not just individual problems, but also affects the interests of the state.

## Article Purpose

Justify the possibility and importance of non-procedural forms of specific expertise application in the pre-trial investigation of criminal offenses within economic activity.

## Research Methods

The methodological basis of the study encompasses general scientific and special methods of scientific cognition. The comparative legal method and system-structural analysis have contributed to the definition of grounds for classifying forms of specific expertise application, justifying the ability to define a non-procedural form despite its inadmissibility in the course of proving.

Analysis of law application practices has grounds for claiming that certain forms of specific expertise application cannot be used in proving, even though they are mentioned in the legislation.

Dialectical, system-structural and system-functional methods, as well as a number of methods of formal logic (analysis, synthesis, deduction, induction, analogy, modeling, etc.) have contributed to logical presentation of thoughts, their argumen-

tation, and broader generalization formulated as conclusions.

## Analysis of Essential Researches and Publications

V. Areshonkov<sup>1</sup>, V. Halahan and O. Kozak<sup>2</sup>, H. Bidniak<sup>3</sup>, I. Petrova<sup>4</sup>, I. Pyrih<sup>5</sup>, E. Simakova-Yefremian<sup>6</sup>, M. Shcherbakovskiy<sup>7</sup> et al. have played a crucial role in developing the doctrine of specific expertise application.

From a positive perspective, it should be noted that recently scientists have started to pay more attention to the use of specific expertise in the investigation of economic crimes. Multidisciplinary studies conducted within this topic are of particular interest. One of the first extensive monographs devoted to theoretical and practical aspects of specific expertise application in cases involving budgetary offenses is the research paper by V. Didenko<sup>8</sup>. Similarly to most re-

- 1 Арешонков В. В. Теоретичні, правові та праксеологічні засади техніко-криміналістичних досліджень у розслідуванні злочинів : дис. ... д-ра юрид. наук. Київ, 2021. 559 с. URL: <https://elar.navs.edu.ua/jspui/handle/123456789/18807> (date accessed: 20.02.2025).
- 2 Галаган В. І., Козак О. В. Процесуальний порядок і тактика отримання зразків для експертизи у кримінальному провадженні України : монографія. 2-ге вид., перероб. і допов. Краматорськ, 2015. 224 с.
- 3 Бідняк Г. С. Теорія і практика використання спеціальних знань при розслідуванні шахрайств : монографія. Дніпро, 2019. 152 с. URL: <https://er.dduvs.edu.ua/handle/123456789/3707> (date accessed: 20.02.2025).
- 4 Петрова І. А. Теоретико-правові та організаційно-методологічні засади регулювання судово-товарознавчих експертиз споживчих товарів : дис. ... д-ра юрид. наук. Харків, 2012. 541 с. URL: <https://uacademic.info/ua/document/0512U000231> (date accessed: 20.02.2025).
- 5 Пиріг І. В. Теоретико-прикладні проблеми експертного забезпечення досудового розслідування : монографія. Дніпропетровськ, 2015. 432 с. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/library/student/monogr.pdf> (date accessed: 20.02.2025).
- 6 Сімакова-Єфремян Е. Б. Теоретико-правові та методологічні засади комплексних судово-експертних досліджень : дис. ... д-ра юрид. наук. Харків, 2017. 392 с. URL: <https://uacademic.info/ua/document/0517U000760> (date accessed: 20.02.2025).
- 7 Щербаківський М. Г. Теоретико-методологічні та праксеологічні засади судових експертиз у кримінальному процесі : автореф. дис. ... д-ра юрид. наук. Харків, 2016. 42 с. URL: <https://dspace.univd.edu.ua/items/b4980be5-39f4-4baf-acff-56e0e631825c> (date accessed: 20.02.2025).
- 8 Діденко В. Л. Використання спеціальних знань при розслідуванні кримінальних правопорушень у бюджетній сфері : дис. ... канд. юрид. наук. Дніпро, 2024. 238 с. URL: [https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/new\\_d0872702/2024/1/1/d.pdf](https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/new_d0872702/2024/1/1/d.pdf) (date accessed: 20.02.2025).

search papers discussing the problems of applying specific expertise at the stage of pre-trial investigation, this research deals with the study of the mechanisms of unlawful activities aimed at the illegal seizure of budgetary funds. The author has defined the concept of specific expertise, outlined typical forms of its application in the investigation of these criminal offenses, considered the peculiarities of specialists' involvement, as well as tactical aspects of appointing a forensic examination.

Research papers by A. Volobuiev <sup>9</sup>, V. Kikinchuk and V. Husieva <sup>10</sup>, S. Tiulieniev <sup>11</sup>, S. Trach <sup>12</sup> at el. outline certain aspects of appointing forensic examinations and involving specialists in cases related to unlawful encroachment on assets and legitimate interests of economic entities.

The issue of classifying forms of specific expertise application was also the subject of research by A. Vuima <sup>13</sup>, I. Kohutych <sup>14</sup>, O. Kovalova <sup>15</sup>, Ye. Luk'ianchykov <sup>16</sup>, V. Revaka <sup>17</sup>, H. Spitsyna and H. Bidniak <sup>18</sup>,

- 9 Волобуєв А. Ф. Наукові основи комплексної методики розслідування корисливих злочинів у сфері підприємництва : дис. ... д-ра юрид. наук. Харків, 2001. 407 с. URL: <https://uacademic.info/ua/document/0502U000216> (date accessed: 20.02.2025).
- 10 Кікінчук В. В., Гусева В. О. Особливості розслідування кримінальних правопорушень, пов'язаних з протиправним поглинанням та захопленням підприємств, сільськогосподарських земель, порушенням прав їх законних власників (рейдерство) : наук.-метод. рек. Харків, 2020. 58 с. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/9813> (date accessed: 20.02.2025).
- 11 Тюленев С. А. Можливості почеркознавчої експертизи у розслідуванні рейдерства. *Вісник Одеського науково-дослідного інституту судових експертиз Міністерства юстиції України*. 2023. Вип. 14. С. 29—41. DOI: [10.32782/2522-9656/2024-14-3](https://doi.org/10.32782/2522-9656/2024-14-3) (date accessed: 02.02.2025) ; Його ж. Призначення судових експертиз під час розслідування кримінальних правопорушень, пов'язаних із рейдерством. *Право і безпека*. 2024. № 1 (92). С. 112—122. DOI: [10.32631/pb.2024.1.10](https://doi.org/10.32631/pb.2024.1.10) (date accessed: 02.02.2025).
- 12 Трач С. С. Криміналістична методика розслідування кримінальних правопорушень у сфері господарської діяльності в Україні : монографія. Одеса, 2023. 452 с.
- 13 Вуйма А. Г. Поняття, сутність та форми спеціальних знань, що використовуються під час розслідування вбивств. *Вісник Луганського державного університету внутрішніх справ ім. Е. О. Дідоренка*. 2020. Вип. 1 (89). С. 54—62. DOI: [10.33766/2524-0323.89.54-62](https://doi.org/10.33766/2524-0323.89.54-62) (date accessed: 20.02.2025).
- 14 Когутич І. І. Окремі питання сутності та форм використання спеціальних знань у кримінальному провадженні. *Вісник Академії адвокатури України*. 2015. Т. 12. № 2 (33). С. 112—123. URL: [http://nbuv.gov.ua/UJRN/vaau\\_2015\\_12\\_2\\_16](http://nbuv.gov.ua/UJRN/vaau_2015_12_2_16) (date accessed: 20.02.2025).
- 15 Ковальова О. В. Форми використання спеціальних знань в інформаційному забезпеченні досудового розслідування. *Право і суспільство*. 2022. № 2. С. 215—221. DOI: [10.32842/2078-3736/2022.2.32](https://doi.org/10.32842/2078-3736/2022.2.32) (date accessed: 20.02.2025).
- 16 Лук'янчиков Є. Д. Форми використання спеціальних знань за новим КПК України. Київ, 2014. С. 206—207. URL: <http://tdp.kpi.ua/wp-content/uploads/Лук'янчиков-Євген-Дмитрович.pdf> (дата звернення 16.02.2025).
- 17 Ревака В. М. Форми використання спеціальних пізнань в досудовому провадженні : дис. ... канд. юрид. наук. Харків, 2006. 194 с. URL: <https://uacademic.info/ua/document/0406U004351> (date accessed: 20.02.2025).
- 18 Спіцина Г. О., Бідняк Г. С. Форми використання спеціальних знань. *Теорія та практика судової експертизи і криміналістики*. 2018. Вип. 18. С. 240—248. DOI: [10.32353/khrife.2018.26](https://doi.org/10.32353/khrife.2018.26) (date accessed: 20.02.2025).

A. Taranova<sup>19</sup>, Yu. Chaplynska<sup>20</sup>, V. Yaremchuk<sup>21</sup> at el. Researchers either develop classifications on the example of certain groups of criminal offences, or highlight various aspects of this issue (i.e., the issue of identifying a non-procedural form), or identify forms of specialists' participation in certain procedural actions, etc. Therefore, the issue of specific expertise application in the investigation of economic crimes (notwithstanding the substantial contribution of scholars) has not yet been adequately addressed and requires further research.

## Main Content Presentation

The analysis of theoretical provisions shows that the majority of Ukrainian scientists understand the forms of specific expertise application as the external manifestation of the essence of specific expertise, which is determined by its content. In the course of criminal investigation, it

is embodied in the activities of specialists and forensic experts<sup>22</sup>.

Classification approaches of scientists differ considerably in the criteria by which they are grouped and in the varieties that are identified on the basis of the same criterion. Therefore, I. Kohutych points out that there is no single approach to solving this problem in the scientific literature to date<sup>23</sup>. From the scientist's perspective, in the investigation, specific expertise traditionally takes two main forms: procedural and non-procedural<sup>24</sup>.

According to I. Kohutych, key procedural forms include:

- direct application of specific expertise by an investigator, prosecutor, criminalist, or court within the scope of their procedural powers related to the collection, analysis, and evaluation of evidence;
- involvement of specialists in investigative (search) actions;
- appointment and conduct of forensic examinations<sup>25</sup>.

19 Таранова А. Форми використання спеціальних знань у розслідуванні неналежного виконання професійних обов'язків медичним або фармацевтичним працівником. *Підприємництво, господарство і право*. 2019. № 10. С. 198—203. DOI: [10.32849/2663-5313/2019.10.34](https://doi.org/10.32849/2663-5313/2019.10.34) (date accessed: 20.02.2025).

20 Чаплинська Ю. А. Форми використання спеціальних знань. *Криміналістика и судебная экспертиза*. 2013. Вып. 58 (2). С. 89—91. URL: [http://nbuv.gov.ua/UJRN/krise\\_2013\\_58\(2\)\\_\\_19](http://nbuv.gov.ua/UJRN/krise_2013_58(2)__19) (date accessed: 20.02.2025).

21 Яремчук В. О. Функції та форми участі спеціаліста під час проведення слідчих дій. *Теорія та практика судової експертизи і криміналістики*. 2010. Вип. 10. С. 123—130. URL: [http://nbuv.gov.ua/UJRN/Tpsek\\_2010\\_10\\_22](http://nbuv.gov.ua/UJRN/Tpsek_2010_10_22) (date accessed: 20.02.2025).

22 Романюк Б. В. Сучасні теоретичні та правові проблеми використання спеціальних знань у досудовому слідстві : автореф. дис. ... канд. юрид. наук. Київ, 2002. 20 с. URL: <https://dspace.nlu.edu.ua/jspui/handle/123456789/13915> (date accessed: 20.02.2025) ; Шрамко О. М. Використання спеціальних знань під час розслідування корупційних кримінальних правопорушень : дис. ... д-ра філос. Київ, 2021. 272 с. URI: <https://elar.navs.edu.ua/jspui/handle/123456789/19544> (date accessed: 20.02.2025) ; Гайдар О. В. Використання спеціальних знань під час розслідування таємного викрадення чужого майна : монографія / за заг. ред. д-ра юрид. наук, проф. В. О. Гусевої. Харків, 2023. 202 с.

23 Когутич І. І. Зазнач. твір. URL: [http://nbuv.gov.ua/UJRN/vaau\\_2015\\_12\\_2\\_16](http://nbuv.gov.ua/UJRN/vaau_2015_12_2_16) (date accessed: 20.02.2025).

24 Там само.

25 Там само.

The scientist calls non-procedural forms of specific expertise application: 1) providing advice and information notes (both oral and written); 2) conducting audits and inspections; 3) participation in operational (search) actions; 4) preliminary analysis of physical objects; 5) use information obtained from forensic records as information notes <sup>26</sup>.

As argued by I. Kohutych, in investigative (search) actions the application of specific expertise is possible only in procedural forms, as this procedure is clearly regulated by the criminal procedural legislation, which makes it impossible to use such knowledge in non-procedural forms. Furthermore, the author proposed an additional classification of forms of specific expertise application during investigative (search) actions: main and auxiliary, traditional and non-traditional <sup>27</sup>. Thus, the researcher has comprehensively summarized approaches to classifying forms of specific expertise application in criminal proceedings. The analysis of this approach allows us to conclude that I. Kohutych uses the legal regulation of how a particular form is implemented in the criminal procedural legislation as the classification criterion for all forms of specific expertise application. The scientist primarily refers to the following non-procedural form of specific expertise application: advisory assistance by a specialist <sup>28</sup>.

I. Kohutych's approach embodies the idea of most scientists about classification, although individual aspects of such classification are still criticized by the scientific community.

One of the unresolved questions still being debated is the ability to identify a non-procedural form of specific expertise application in criminal proceedings. Scientists provide various arguments about the inadmissibility of implementing non-procedural forms of specific expertise application in criminal proceedings. Many scholars share the position that the lack of a legal basis for introducing these forms into legislation excludes their use in criminal proceedings, as it indicates their unlawfulness <sup>29</sup>. The inability to objectively evaluate grounds for applying specific expertise calls into question the probative value of the information obtained in this way and makes it illegally obtained <sup>30</sup>. As discussed by N. Tymofieieva, criticism is primarily associated with the *non-procedural form* term, which is understood as unlawful (inadmissible) actions not provided by the current criminal procedural law <sup>31</sup>.

This approach is characterized by two fundamental peculiarities: 1) It declares as unlawful the conduct of a person who, while participating in criminal proceedings, intends to use such forms of specific expertise; 2) It determines the inadmissibility of using findings obtained on the basis of such a form in the course of

26 Когутич І. І. Зазнач. твір. URL: [http://nbuv.gov.ua/UJRN/vaau\\_2015\\_12\\_2\\_16](http://nbuv.gov.ua/UJRN/vaau_2015_12_2_16) (date accessed: 20.02.2025).

27 Там само.

28 Там само.

29 Романюк Б. В. Участь спеціаліста на стадії досудового слідства : навч. посіб. Київ, 2010. 304 с.

30 Спіцина Г. О., Бідняк Г. С. Зазнач. твір. DOI: 10.32353/khrife.2018.26 (date accessed: 20.02.2025).

31 Тимофеева Н. В. Використання спеціальних знань при розслідування злочинів проти безпеки виробництва : дис. ... канд. юрид. наук. Київ, 2018. С. 52. URI: <https://elar.navs.edu.ua/jspui/handle/123456789/7430> (date accessed: 20.02.2025).

proving. In evaluating these criteria, it should be noted that they are interrelated, since the evidence, facilitated by the qualified use of specific expertise, must be provided in accordance with the procedure laid down by law. Otherwise, failure to comply with the procedural form when collecting evidence is the basis for declaring evidence inadmissible. This position is justified for several reasons. This is mainly defined by Part 2 of Article 19 of the Constitution of Ukraine: “Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine”<sup>32</sup>. In addition, “the rules of criminal proceedings in the territory of Ukraine shall be defined exclusively by the criminal procedure legislation of Ukraine” (Part 1 of Article 1 of the Criminal Procedure Code of Ukraine, hereinafter referred to as the CPC)<sup>33</sup>, and “the matter and manner of criminal proceedings shall conform to the fundamentals of criminal proceedings” (para. 1 of P. 1 of Art. 7 of the CPC)<sup>34</sup>. Generally speaking, as a principle, the procedure for conducting criminal proceedings is regulatory defined, specifically in the sources of the criminal procedural legislation, and its content and form should not contradict overall principles of criminal proceedings.

With regard to the legal basis for the collection of evidence, “the prosecution shall collect evidence by way of conducting investigatory (search) actions and covert inves-

tigatory (search) actions, by demanding and obtaining from government authorities, local governments, enterprises, institutions and organizations, officials and individuals, of objects, documents, information, expert findings, audit and inspection reports, by conducting other procedural actions specified by this Code” (Part 2 of Art. 93 of the CPC)<sup>35</sup>. In turn, “the defence, victim, and representative of the legal entity in whose respect proceedings are taken shall conduct collection of evidence by way of demanding and obtaining from government authorities, local government, enterprises, institutions, organizations, officials and individuals of objects, copies of documents, information, expert reports, audit and inspection reports; by initiating the conduct of investigatory (search) activities, covert investigatory (search) activities and other procedural actions, and also by way of conducting other activities capable of ensuring the production of relevant and admissible evidence in court” (para. 1 of P. 3 of Art. 93 of the CPC)<sup>36</sup>.

At the same time, Art. 84 of the CPC envisages:

“1. Evidence in criminal proceedings is factual data obtained in the manner prescribed by this Code, on the basis of which the investigator, public prosecutor, investigating judge and court establish the presence or absence of facts and circumstances relevant to criminal proceedings and subject to proof.

2. Procedural sources of evidence shall be testimonies, physical evidence, documents and expert findings”<sup>37</sup>.

32 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 20.02.2025).

33 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: 20.02.2025).

34 Там само.

35 Там само.

36 Там само.

37 Там само.

Given the above, neither audit nor inspection reports, which, although recognized as the result of implementing specific expertise by well-versed persons, cannot be viewed as evidence under the legislator's approach. Specifically, the position of the Supreme Court (hereinafter referred to as the SC) as part of the judges of the Third Judicial Chamber of the Criminal Cassation Court in Case No. 335/2108/17 is crucial<sup>38</sup>. In its decision, the SC referred to Part 2 of Art. 93 of the CPC<sup>39</sup>, which does not stipulate an unscheduled audit as a way of collecting evidence, so the results of such audits carried out in criminal proceedings are inadmissible evidence: inadmissible evidence shall not be used in adopting procedural decisions, it shall not be referred to by the court when adopting a court decision (Part 2 of Article 86 of the CPC<sup>40</sup>). As a point supporting this position, the court decision also cited subclause 12, clause 5, Section XII of *Final Provisions* of the Law of Ukraine *On the Prosecutor's Office*<sup>41</sup>, which amended Article 87 of the Criminal Procedure Code with P. 3, para. 2 of which states that evidence obtained by pre-trial investigation or prosecution authorities through the exercise of powers not stipulated by the CPC is inadmissible in criminal proceedings<sup>42</sup>. Given that the inadmissible evidence in this case is an expert conclusion based on an audit

report, this case is also illustrative. As for the prosecutor's arguments that the expert conclusion was inadmissible as evidence, the court stated that there was insufficient justification. As stated in Art. 86 of the CPC, evidence is considered admissible if it has been obtained in accordance with the procedure laid down in this Code; in particular, expert opinion shall mean a detailed description of the examination, grounded responses to the questions posed and be based on information obtained by the forensic expert directly or during the study of materials provided (Art. 101, 102 of the CPC)<sup>43</sup>. Perhaps, the forensic expert's conclusion was founded upon the previously cited audit report, which explains the absence of certain documents referred to in this opinion in the case files of the criminal proceedings. There is no other way to explain the reference to this data, since it is unlikely that the forensic expert collected any information independently, as this is strictly prohibited by the Instructions on the Appointment and Conduct of Forensic Examinations and Expert Studies (Section II, para. 4, cl. 2.3)<sup>44</sup>.

Consequently, the application of specific expertise results in proving is possible only if these methods of collecting evidence are envisaged in the CPC. Based on this Provision, procedural forms of

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38 Постанова ВС України від 27.04.2020 р., справа № 335/2108/17, провадж. № 51-6560км19/ЄДРСП : офіц. сайт. URL: <https://reyestr.court.gov.ua/Review/89034958> (date accessed: 20.02.2025).

39 Кримінальний процесуальний ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.02.2025).

40 Там само.

41 Про прокуратуру : Закон України від 14.10.2014 р. № 1697-VII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text> (date accessed: 20.02.2025).

42 Кримінальний процесуальний ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.02.2025).

43 Там само.

44 Інструкція про призначення та проведення судових експертиз та експертних досліджень : затв. наказ. Мініюсту 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: 20.02.2025).

specific expertise application, which are defined as directly provided by the criminal procedural legislation, are identified: performance of forensic examinations and participation of specialists in investigative (search) actions.

Notably, in criminal proceedings, the use of a specialist's specific expertise, which involves obtaining a specialist's conclusion, is now included in the procedural forms and sources of evidence in cases investigated through an inquiry. At the same time, this novel is still the subject of scientific discussions, since the criminal procedural legislation does not clearly determine the essence and content of the specialist's conclusion, criteria imposed on a person who may draft it, as well as the procedure for obtaining and implementing such a conclusion in criminal proceedings. Following the same criteria, some courts do not refer to specialists' conclusions in the reasoning of court decisions. Therefore, in view of the Supreme Court's conclusions cited above, the absence of a reference to the expert conclusion in the provisions of Part 2 of Article 93 of the CPC excludes the possibility of using the conclusion of a specialist as evidence. This is not consistent with the approach of the legislator enshrined in Part 1 of Art. 298-1 of the CPC, according to which *"procedural sources of evidence in criminal proceedings on criminal offences, in addition to those specified in Article 84 hereof, shall also be explanations of persons, results of medical examination, expert opinion, recordings by technical devices and technical means that have photo and filming functions,*

*video recording, or photo and filming, video recording tools"*<sup>45</sup>. Thus, the use of a set of materials obtained as a result of specific expertise application by authorized subjects is characterized by a number of controversial aspects and is not without certain difficulties in resolving this issue, even in relation to those forms that have already acquired the status of procedural.

With regard to the non-procedural form of specific expertise application and the possibility of its implementation for proving, we find the position of O. Byshevet's highly compelling. From the researcher's perspective, legislatively it is impossible to cover all cases of specific expertise application, and therefore the main thing is that they do not contradict the criminal procedural rules<sup>46</sup>. In addition, as the scientist objectively notes, use of non-procedural forms of specific expertise does not aim to achieve the same evidentiary value as procedural consolidation, but rather to establish the groundwork for the procedural integration of specific expertise into the investigative process<sup>47</sup>.

To substantiate the researcher's viewpoint, we deem it appropriate to refer to such a non-procedural form of specific expertise application as conducting an interrogation using a polygraph. The Scientific and Methodological Guidelines on the Appointment and Conduct of Forensic Examinations and Expert Studies point out the following:

*"6.8. To obtain indicative information, interrogations can be conducted with the help of a special technical tool: a computer polygraph.*

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45 Кримінальний процесуальний ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.02.2025).

46 Бишевец О. В. Використання спеціальних знань у доказуванні в кримінальних провадженнях. Вісник кримінального судочинства. 2015. № 2. С. 191–192. URL: [https://vkslaw.knu.ua/images/verstka/2\\_2015\\_Bushevec.pdf](https://vkslaw.knu.ua/images/verstka/2_2015_Bushevec.pdf) (date accessed: 20.02.2025).

47 Там само. С. 192.

6.8.1. *The subject of the interrogation with the use of a special technical tool (a computer polygraph) is to collect indicative information about:*

*the extent to which information provided by the interviewee is truthful;*

*accuracy of information provided by the interviewee;*

*sources of information received by the interviewee;*

*ideas of the interviewee about a certain event;*

*another indicative information required to construct versions of investigating certain events”<sup>48</sup>.*

The above provisions contain direct instruction to conduct similar interrogations in order to obtain indicative information, and therefore cannot be used a priori in the course of proving.

The same applies to the use of preliminary examinations results of objects in individual studies and on the basis of forensic records. We share V. Areshonkov's position that, for example, in the context of technical and forensic studies, it is advisable to identify the pre-expert type, including such subtypes of research as “*searching for objects of research in the course of investigative (search) action; inspection of an object; preliminary study in the course of an investigative (search) action; verification of an object against forensic records*”<sup>49</sup>. While investigating several criminal cases, defined forms of specific expertise, which are also to be considered as non-procedural forms, should be implemented.

Accordingly, we believe that it is entirely acceptable to use non-procedural forms of specific expertise application in criminal proceedings, specifically for obtaining information of an indicative nature, inspection and preliminary (pre-expert) examination of objects, their verification against forensic records, etc. Given the impossibility of referring to these materials in criminal proceedings, they should not be based on procedural forms of specific expertise application or other evidence, as this may be the basis for recognizing them as inadmissible. At the same time, the fundamental importance of these forms is to use them in order to carry out certain tactical investigative tasks, verify investigative versions, and determine the feasibility of appointing forensic examinations, etc.

Specific non-procedural forms of specific expertise application are also not uniform. A specialist's advisory assistance, sometimes called “reference and advisory work”, leads to contradictions. Art. 360 of the CPC stipulates the procedure for examining evidence, granting the court the right to seek oral advice or written explanations from a specialist<sup>50</sup>, while the procedure for obtaining advisory assistance from a specialist at the pre-trial investigation stage is not regulated to this day. For this reason, we believe that advisory assistance from a specialist in criminal proceedings, provided to the parties at the stage of pre-trial investigation, should be considered as a non-procedural form of specific expertise.

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48 Науково-методичні рекомендації з питань підготовки та призначення судових експертів 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: 20.02.2025).

49 Арешонков В. В. Знач. твір. С. 86. URI: <https://elar.navs.edu.ua/jspui/handle/123456789/18807> (date accessed: 20.02.2025).

50 Кримінальний процесуальний ... . URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 20.02.2025).

With regard to crimes in economic activity, the most important non-procedural form of specific expertise application is advisory assistance from well-versed persons. For example, a person with specific expertise in economics and accounting, etc., can provide full information on the content of business transactions and their documentation. Especially if, in the course of investigating such crimes, the assets of business entities and related transactions are analyzed based on:

- interconnection between transactions in time and territory;
- logical consistency of transactions by their types;
- size of financial transactions;
- ties between founders, directors and beneficial owners of companies, their financial and social status;
- data compliance on the date, place of legal entities' registration, as well as their financial and economic activity;
- income level of individuals involved in transactions;
- inconsistencies in identification and other data from different sources;
- validity of agreements concluded which stipulate the transfer of property or other rights, legal and financial security of agreements;
- volume of assets and legal grounds for their acquisition, etc.

It is therefore important for the parties involved in criminal proceedings to interact with people with specific expertise who can provide advice.

## Conclusions

The analysis of a number of legal principles that determine the form and content

of criminal proceedings defines the procedure for the use of specific expertise in criminal proceedings and enables to substantiate a key position that is decisive for classifying these forms as procedural or non-procedural. Specifically, it is pointed out that the results of certain specific expertise forms can only be used in proving if these methods of collecting evidence are provided for by the criminal procedural legislation. Stemming from this provision, procedural forms of specific expertise application, which are defined as directly set forth in the criminal procedural legislation, are identified. For this reason, such procedural forms as forensic examinations and participation of specialists in investigative (search) actions are singled out. Regarding the non-procedural forms, it is also advisable to identify them, even though there is no algorithm for their implementation in provisions of the criminal procedural legislation.

It is noted that non-procedural forms of specific expertise are used in criminal proceedings to obtain information of an indicative nature, inspect and conduct a preliminary (pre-expert) examination of objects, as well as verify them against forensic records, etc. It has been stressed that findings derived from the implementation of outlined specific expertise forms cannot be limited to procedural ones, as this may be the reason for declaring them inadmissible. It is worth noting that they can be of paramount importance only if they are applicable to certain tactical tasks of investigation, verification of investigative versions, determining the feasibility of appointing forensic examinations, etc. The significance of advisory assistance from well-versed persons as a non-procedural form of specific expertise application at the pre-trial investigation stage has been pointed out. The research pa-

per outlines certain debatable aspects of the specialist's conclusion in the course of proving the facts of criminal misconduct. They can be discussed during subsequent perspective research.

**Форми застосування спеціальних знань у розслідуванні господарських кримінальних правопорушень: можливість виокремлення непроцесуальної форми**

**Віталій Усатий**

Мета статті — обґрунтувати можливість і значення непроцесуальних форм застосування спеціальних знань у досудовому розслідуванні кримінальних правопорушень у сфері господарської діяльності за допомогою низки загальнонаукових методів (аналіз і синтез, порівняльно-правовий, логіко-структурний, узагальнення, системного аналізу та ін.). З'ясовано, що базовою підставою для класифікації форм застосування спеціальних знань у кримінальному провадженні є рівень і форма їх нормативного закріплення у кримінальному процесуальному законодавстві. Конституовано, що послуговуватися результатами реалізації окремих форм спеціальних знань у доказуванні можливо, лише якщо ці способи збирання доказів передбачено кримінальним процесуальним законодавством: саме на цій підставі виокремлюють процесуальні форми застосування спеціальних знань, які визначають як прямо передбачені кримінальним процесуальним законодавством. За цією ознакою виокремлено такі процесуальні форми, як проведення судових експертиз, участь спеціалістів у слідчих (розшукових) діях. Щодо непроцесуальних форм обґрунтовано, що їх також доцільно виокремлювати, навіть попри відсутність алгоритму їх реалізації у кримінальному процесуальному законодавстві. Наголошено, що непроцесуальними формами спеціальних знань

у кримінальному провадженні послуговуються для отримання інформації орієнтовального характеру, огляду й попереднього (доекспертного) дослідження об'єктів, їх перевірки за криміналістичними обліками тощо. Визначено, що результати, отримані на підставі реалізації непроцесуальних форм застосування спеціальних знань, не слід покладати в основу процесуальних форм, оскільки це може стати підставою для визнання їх недопустимими. Зауважено, що їх вагоме значення полягає у застосуванні для виконання окремих тактичних завдань розслідування, перевірки слідчих версій, з'ясування доцільності призначення судових експертиз тощо. Акцентовано на важливості консультативної допомоги обізнаних осіб як непроцесуальної форми застосування спеціальних знань, на стадії досудового розслідування. Окреслено окремі дискусійні аспекти застосування висновку спеціаліста у процесі доказування фактів учинення кримінального проступку для подальших перспективних досліджень.

**Ключові слова:** спеціальні знання; кримінальне правопорушення; господарська діяльність; експертиза; участь спеціаліста; непроцесуальна форма.

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## References

- Areshonkov, V. V. (2021). *Teoretychni, pravovi ta praxeologichni zasady tekhniko-kryminalistychnykh doslidzhen u rozsliduvanni zlochyniv* [Theoretical, legal and praxeological principles of technical and forensic research in the investigation of crimes] : dys. ... d-ra yuryd. nauk. Kyiv. URL: <https://elar.navs.edu.ua/jspui/handle/123456789/18807> [in Ukrainian].
- Bidniak, H. S. (2019). *Teoriia i praktyka vykorystannia spetsialnykh znan pry rozsliduvanni shakhraistv* [Theory and practice of using special knowledge in fraud investigation] : monohrafiia. Dnipro. URL: <https://er.dduvs.edu.ua/handle/123456789/3707> [in Ukrainian].
- Byshevets, O. V. (2015). *Vykorystannia spetsialnykh znan u dokazuvanni v kryminalnykh provadzhenniakh* [The use of special knowledge in proving in criminal proceedings]. *Visnyk kryminalnoho sudochynstva*. № 2. URL: [https://vkslaw.knu.ua/images/verstka/2\\_2015\\_Bushevec.pdf](https://vkslaw.knu.ua/images/verstka/2_2015_Bushevec.pdf) [in Ukrainian].
- Chaplynska, Yu. A. (2013). *Formy vykorystannia spetsialnykh znan* [Forms of using special knowledge]. *Kriminalistika i sudebnaya ekspertiza*. 2013. Vyp. 58 (2). URL: [http://nbuv.gov.ua/UJRN/krise\\_2013\\_58%282%29\\_\\_19](http://nbuv.gov.ua/UJRN/krise_2013_58%282%29__19) [in Ukrainian].
- Didenko, V. L. (2024). *Vykorystannia spetsialnykh znan pry rozsliduvanni kryminalnykh pravoporushen u biudzhetnii sferi* [The use of special knowledge during the investigation of criminal offenses in the budgetary sphere] : dys. ... kand. yuryd. nauk. Dnipro. URL: [https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/new\\_d0872702/2024/1/1/d.pdf](https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/new_d0872702/2024/1/1/d.pdf) [in Ukrainian].
- Haidar, O. V. (2023). *Vykorystannia spetsialnykh znan pid chas rozsliduvannia taiemnoho vykradennia chuzhoho maina* [Using specialized knowledge when investigating the secret theft of someone else's property] / za zah. red. d-ra yuryd. nauk, prof. V. O. Husievoi. Kharkiv [in Ukrainian].
- Halahan, V. I., Kozak, O. V. (2015). *Protsesualnyi poriadok i taktyka otrymannia zrazkiv dlia ekspertyzu u kryminalnomu provadzhenni Ukrainy* [Procedural procedure and tactics for obtaining samples for examination in criminal proceedings in Ukraine] : monohrafiia. 2-he vyd., pererob. i dopov. Kramatorsk [in Ukrainian].
- Kikinchuk, V. V., Husieva, V. O. (2020). *Osoblyvosti rozsliduvannia kryminalnykh pravoporushen, pov'iazanykh z protypravnym pohlynnanniam ta zakhoplenniam pidpriemstv, silskohospodarskykh zemel, porushenniam prav yikh zakonnykh vlasnykiv (reiderstvo)* [Peculiarities of investigation of criminal offenses related to the illegal acquisition and seizure of enterprises, agricultural land, violation of the rights of their rightful owners (raiding)] : nauk.-metod. rek. Kharkiv. URL: <http://dspace.univ.edu.ua/xmlui/handle/123456789/9813> [in Ukrainian].
- Kohutych, I. I. (2015). *Okremi pytannia sutnosti ta form vykorystannia spetsialnykh znan u kryminalnomu provadzhenni* [The separate issues of nature and the forms of special knowledge in criminal proceedings application]. *Visnyk Akademii advokatury Ukrainy*. T. 12. № 2 (33). URL: [http://nbuv.gov.ua/UJRN/vaau\\_2015\\_12\\_2\\_16](http://nbuv.gov.ua/UJRN/vaau_2015_12_2_16) [in Ukrainian].
- Kovalova, O. V. (2022). *Formy vykorystannia spetsialnykh znan v informatsiinomu zabezpechenni dosudovoho rozsliduvannia* [Forms of using special knowledge in the information support of pre-trial investigation]. *Pravo i suspilstvo*. № 2. DOI: [10.32842/2078-3736/2022.2.32](https://doi.org/10.32842/2078-3736/2022.2.32) [in Ukrainian].
- Luk'ianchikov, Ye. D. (2014). *Formy vykorystannia spetsialnykh znan za novym KPK Ukrainy* [Forms of using special knowledge under the new Code of Criminal Procedure of Ukraine]. Kyiv [in Ukrainian].
- Petrova, I. A. (2012). *Teoretyko-pravovi ta orhanizatsiino-metodolohichni zasady rehuliuвання sudovo-tovarnoznavchykh ekspertyz spozhyvchykh tovariv* [Theoretical-legal and organizational-methodological bases of regulation of the forensic and commodity examinations of consumer

- goods] : dys. ... d-ra yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0512U000231> [in Ukrainian].
- Pyrih, I. V. (2015). *Teoretyko-prykladni problemy ekspertnoho zabezpechennia dosudovoho rozsliduvannia* [Theoretical and applied problems of expert support of pre-trial investigation] : monohrafiia. Dnipropetrovsk. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/library/student/monogr.pdf> [in Ukrainian].
- Revaka, V. M. (2006). *Formy vykorystannia spetsialnykh piznan v dosudovomu provadzheni* [The forms of the use of special knowledge in pre-trial investigation] : dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0406U004351> [in Ukrainian].
- Romaniuk, B. V. (2002). *Suchasni teoretychni ta pravovi problemy vykorystannia spetsialnykh znan u dosudovomu slidstvi* [Modern theoretical and legal problems of using of special knowledge in pre-trial investigation] : avtoref. dys. ... kand. yuryd. nauk. Kyiv. URL: <https://dspace.nlu.edu.ua/jspui/handle/123456789/13915> [in Ukrainian].
- Romaniuk, B. V. (2010). *Uchast spetsialista na stadii dosudovoho slidstva* [Participation of a specialist at the stage of pre-trial investigation: a teaching manual] : navch. posib. Kyiv [in Ukrainian].
- Shcherbakovskyi, M. H. (2016). *Teoretyko-metodolohichni ta prakseolohichni zasady sudovykh ekspertyz u kryminalnomu protsesi* [Theoretical, Methodological and Praxeological Principles of Forensic Expertise in Criminal Proceedings] : avtoref. dys. ... d-ra yuryd. nauk. Kharkiv. URL: <https://dspace.univd.edu.ua/items/b4980be5-39f4-4baf-acff-56e0e631825c> [in Ukrainian].
- Shramko, O. M. (2021). *Vykorystannia spetsialnykh znan pid chas rozsliduvannia koruptsiynykh kryminalnykh pravoporushen* [Use of special knowledge in the investigation of corruption offenses] : dys. ... d-ra filos. Kyiv. URL: <https://elar.navs.edu.ua/jspui/handle/123456789/19544> [in Ukrainian].
- Simakova-Iefremian, E. B. (2017). *Teoretyko-pravovi ta metodolohichni zasady kompleksnykh sudovo-ekspertnykh doslidzhen* [Theoretical-legal and methodological foundations of complex forensic research] : dys. ... d-ra yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0517U000760> [in Ukrainian].
- Spitsyna, H. O., Bidniak, H. S. (2018). Forms of Special Knowledge Use. *Theory and Practice of Forensic Science and Criminalistics*. Is. 18. DOI: 10.32353/khrife.2018.26.
- Taranova, O. M. (2019). Formy vykorystannia spetsialnykh znan u rozsliduvanni nenalezhnogo vykonannia profesiynykh oboviazkiv medychnym abo farmatsevychnym pratsivnykom [Forms of using specialized knowledge in investigating improper performance of professional duties by a medical or pharmaceutical professional]. *Pidpriemnytstvo, hospodarstvo i pravo*. № 10. DOI: 10.32849/2663-5313/2019.10.34 [in Ukrainian].
- Tiulieniev, S. A. (2023). Mozhlyvosti pocherkoznachoi ekspertyz u rozsliduvanni reiderstva [Forensic Handwriting Examination Possibilities in the Investigation of Raiding]. *Visnyk Odeskoho naukovo-doslidnogo instytutu sudovykh ekspertyz Ministerstva yustytzii Ukrainy*. Вип. 14. DOI: 10.32782/2522-9656/2024-14-3 [in Ukrainian].
- Tiulieniev, S. A. (2024). Pryznachennia sudovykh ekspertyz pid chas rozsliduvannia kryminalnykh pravoporushen, pov'iazanykh iz reiderstvom [Appointment of forensic examinations in the course of investigation of criminal offences related to raiding]. *Pravo i bezpeka*. № 1 (92). DOI: 10.32631/pb.2024.1.10 [in Ukrainian].
- Trach, S. S. (2023). *Kryminalistychna metodyka rozsliduvannia kryminalnykh pravoporushen u sferi hospodarskoi diialnosti v Ukraini* [Forensic methodology for investigating criminal offenses in the field of economic activity in Ukraine] : monohrafiia. Odesa [in Ukrainian].
- Tymofieieva, N. V. (2018). *Vykorystannia spetsialnykh znan pry rozsliduvannia zlochyniv proty bezpeky vyrobnytstva* [Use of special knowledge in the investigation of crimes against the safety of production] : dys. ... kand. yuryd. nauk. Kyiv. URL: <https://elar.>

[navs.edu.ua/jspui/handle/123456789/7430](https://navs.edu.ua/jspui/handle/123456789/7430)  
[in Ukrainian].

Volobuiev, A. F. (2001). *Naukovi osnovy kompleksnoi metodyky rozsliduvannia koryslyvykh zlochyniv u sferi pidpriemnytstva* [Scientific fundamentals of complex investigation methods of crimes for gain in the entrepreneurship] : dys. ... d-ra yuryd. nauk. Kharkiv. URL: <https://uacademic.info/ua/document/0502U000216> [in Ukrainian].

Vuima, A. H. (2020). Poniattia, sutnist ta formy spetsialnykh znan, shcho vykorystovuiutsia pid chas rozsliduvannia vbyvstv [Con-

cepts, Essence and Forms of Special Knowledge Used in the Current Investigation]. *Visnyk Luhanskoho derzhavnoho universytetu vnutrishnikh sprav im. E. O. Didorenka*. Vyp. 1 (89). DOI: [10.33766/2524-0323.89.54-62](https://doi.org/10.33766/2524-0323.89.54-62) [in Ukrainian].

Yaremchuk, V. O. (2010). Funktsii ta formy uchastii spetsialista pid chas provedennia slidchychkh dii [Functions and forms of specialist participation during investigative actions]. *Teoriia ta praktyka sudovoi ekspertyzy i kriminalistyky*. Vyp. 10. URL: [http://nbuv.gov.ua/UJRN/Tpsek\\_2010\\_10\\_22](http://nbuv.gov.ua/UJRN/Tpsek_2010_10_22) [in Ukrainian].

Usatii, V. (2025). Forms of Specific Expertise Application in the Investigation of Economic Criminal Offenses: Possibility of Identifying a Non-Procedural Form. *Theory and Practice of Forensic Science and Criminalistics*. Issue 1 (38). P. 82—96. DOI: [10.32353/khrife.1.2025.06](https://doi.org/10.32353/khrife.1.2025.06).