

Practice of the European Court of Human Rights in Shaping Standards for the Ordering and Conduct of Forensic Examinations in Criminal Proceedings

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The Article Purpose is to single out standards governing the ordering and conduct of forensic examinations in criminal proceedings, shaped by the practice of the European Court of Human Rights, and to contextualize their significance for ensuring the right to a fair trial and streamlining the national practice of applying special knowledge. To accomplish this goal, we employed a range of general scientific and legal methods, including analysis and synthesis, induction and deduction, as well as dialectical, systemic-structural, comparative legal and generalisation approaches. It has been clarified that the practice of the European Court of Human Rights already encompasses a multifaceted system of procedural standards applicable to the ordering and conduct of forensic examinations, although these are not explicitly enshrined in provisions of Art. 6 of the European Convention on Human Rights. It has been concluded that the ECtHR regards forensic examination not as an isolated procedural tool for applying special knowledge, but rather as a component of the proof procedure, and any violation of this procedure is capable of affecting the overall fairness of criminal proceedings.

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The following standards have been recognised as fundamental in the practice of the European Court of Human Rights: sufficiency of case materials, adversarial proceedings, principle of equality of arms, reasonableness of ordering a forensic examination, promptness, independence of a forensic expert, and investigation efficiency. It has been observed that the respective standards constitute an interrelated system of procedural requirements covering the stages of ordering, conducting and evaluating forensic examinations. Reasoned arguments have been put forward to show that the practice of the European Court of Human Rights covers both common procedural approaches and specific forensic rules governing the application of special knowledge. More specifically, ensuring sufficient evidence is provided to a forensic expert should be regarded as a core procedural safeguard for the parties' right to examine evidence; repeated ordering of forensic re-examinations without proper justification may point to an ineffective investigation and a forensic expert's independence should be determined not only through their procedural status, but also by taking into account any institutional or functional links that could affect credibility of research findings. It has been proven that enhancing the efficiency of forensic examinations used in criminal proceedings requires the systematic consideration of ECtHR standards during the implementation of provisions of Art. 242 of the Criminal Procedure Code of Ukraine, the refinement of the practice of providing reasons for procedural decisions on the ordering of forensic examinations, the assurance of effective adversarial nature of proceedings, and the strengthening of independence guarantees in forensic expert activities.

Keywords: pre-trial investigation; judicial proceedings; special knowledge; forensic examinations; ordering forensic examination; forensic expert; specialist; expert's opinion; ECtHR practice; proof; standard of proof; due process.

Research Problem Formulation

In criminal proceedings, forensic examination is viewed as a way to apply special knowledge in order to determine circumstances of significance to criminal proceedings. An expert's opinion profoundly shapes the development of evidentiary basis, the evaluation of factual circumstances surrounding a case, and certain procedural decisions. Forensic examination findings are of critical relevance par-

ticularly in complex categories of criminal cases, where establishing facts relevant to a case requires the application of special knowledge in medicine, psychiatry, economics, technology, computing and other fields.

Notwithstanding the fact that national criminal procedure legislation quite comprehensively regulates the procedure for ordering and conducting forensic examinations, current law application practice reveals a number of challenging issues re-

lating to procedural equality of arms when engaging forensic experts, with regard to compliance with the adversarial proceedings principle, the proper substantiation of the necessity of forensic examinations, the timely conduct of such forensic examinations, the completeness of case materials provided to forensic experts, and the independence and impartiality of forensic activities. Such obstacles may adversely affect both the efficiency of pre-trial investigations and the guarantee of an individual's right to a fair trial.

The practice of the European Court of Human Rights (hereinafter referred to as the *ECtHR*) demonstrates that, although provisions of Art. 6 of the European Convention on Human Rights (hereinafter referred to as the *Convention*) are not directly applicable to the procedure for ordering or conducting forensic examinations¹, approaches developed by the ECtHR set out a system of procedural standards to be followed by states when utilising special knowledge in criminal proceedings². Having analysed the ECtHR's judgments, it is reasonable to delineate requirements for equality of arms, investigation efficiency, reasonable timelines, sufficiency of evidentiary basis, proper substantiation of experts' opinions, and independence of forensic experts.

This makes it even more urgent to conduct a comprehensive study of the ECtHR's practice in establishing standards for the ordering and conduct of forensic examinations, including possibilities for incor-

porating these standards into Ukrainian criminal procedural legislation and its relevant practice. Such an approach will play a pivotal role in boosting efficient application of special knowledge, in providing guarantees of a fair trial, and in refining the mechanism of proof in criminal proceedings.

Article Purpose

Define standards for ordering and conducting forensic examinations in criminal proceedings, shaped by the ECtHR's practice, as well as avenues for enhancing national law application practice and provisions of criminal procedural legislation.

Research Methods

General scientific and special research methods, selected based on the subject matter of the study and the specific features of analysing the practice of forensic examinations through the prism of ECtHR standards, have contributed to the fulfilment of the stated objective.

Using formal-logical methods (analysis, synthesis, induction, deduction), provisions of Ukrainian criminal procedure legislation have been reviewed, with particular emphasis on Art. 242 of the Criminal Procedure Code of Ukraine³ (hereinafter referred to as the *CPC of Ukraine*), provisions of Art. 6 of the Convention, and doctrinal principles governing the ordering and conduct of forensic examinations

- 1 Конвенція про захист прав людини і основоположних свобод (Європейська конвенція з прав людини) : від 04.11.1950 р. ; ратифік. Закон. України від 17.07.1997 р. № 475/97-ВР ; чинна для України з 11.09.1997 р. (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_004 (date accessed: 03.05.2026).
- 2 Щербаковський М. Г. Вплив рішень Європейського суду з прав людини на формування стандартів проведення судових експертиз. *Український політико-правовий дискурс*. 2025. Вип. 10. DOI: 10.5281/zenodo.15225970 (date accessed: 03.05.2026).
- 3 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: 05.05.2026).

in criminal proceedings. These methods have been utilised to disclose the content of individual ECtHR standards, identify distinctive features thereof, and draw conclusions as to the procedural significance of forensic expert activities.

Dialectical method helped to find a balance between the need for efficient criminal investigations and the necessity to uphold procedural safeguards when applying special knowledge. This approach revealed contradictions between the need to obtain evidentiary information in a timely manner and the need to uphold the principles of adversarial proceedings, procedural equality of arms, reasonable timelines and a fair trial.

System-structural method made it possible to study forensic expert activities as a holistic mechanism encompassing the stages of ordering, conducting and evaluating forensic examination findings, thereby developing a classification of ECtHR standards for ordering and conducting forensic examinations and identifying interrelationships between standards for sufficiency of case materials, procedural equality of arms, promptness, reasonableness of ordering a forensic examination, independence of a forensic expert, and investigation efficiency.

Using comparative legal method, provisions of Ukraine's criminal procedural legislation were compared with approaches shaped by the ECtHR's practice on the use of forensic examinations. These comparisons enabled us to determine the level of consistency between the provisions of national legislation and the standards of the Convention, and to identify specific areas for their practical implementation.

Generalisation method proved useful for systematising the ECtHR's practice, developing the author's classification of the relevant standards, and formulating practical recommendations on their application in activities of investigators, prosecutors and courts when ordering and conducting forensic examinations in criminal proceedings.

Analysis of Essential Researches and Publications

Analysis of recent scientific contributions indicates that, lately, the development tendency of the problematics of utilising special knowledge has gradually shifted from general theoretical aspects to application-oriented issues, especially in documenting and investigating crimes and offenses pertaining to military aggression. Research papers by present-day scholars focus predominantly on the issues of digital forensics, use of OSINT technologies, UAVs, multidisciplinary and panel forensic examinations, individual aspects of documenting traces of hostilities, interdisciplinary collaboration, and the application of special knowledge amid martial law. In addition, special knowledge is widely regarded not only as a means of obtaining pieces of evidence, but also as a comprehensive organisational, analytical and managerial tool for efficient investigations. This shift in scientific research points to the emergence of a distinct field of study focusing on adapting conventional approaches to the use of special knowledge in the context of investigating war crimes and acts of aggression ⁴.

Despite the intensification of academic research in this field and the sig-

4 Бершов Г. Є. Теоретико-правові та праксеологічні основи використання спеціальних знань при розслідуванні військових злочинів : дис. ... д-ра юрид. наук. Харків, 2024. 410 с. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/959a2411-029d-49f0-ab7e-469652fe77a3/content> (date accessed: 05.05.2026) ; Сергеева Д. Б. Використання спеціальних

nificant expansion of the range of issues associated with the application of special knowledge during war crimes investigations, the problematics of standards that must be adhered to when gathering evidence and utilising procedural, and, occasionally, non-procedural forms of special knowledge, has been neglected. First and foremost, the influence of international standards on organising such activities, its impact on admissibility of criteria and credibility of obtained findings, and the significance of corresponding approaches remain out of focus. Specifically, the ECtHR's practice as a source of standards defining requirements for the application of special knowledge when obtaining, verifying and evaluating evidentiary information calls for an in-depth academic analysis. It is precisely this that necessitates further exploration of the issue and underscores the relevance of its scientific coverage.

Main Content Presentation

The standard of a fair trial, as enshrined in Art. 6 of the Convention, is a priority in the context of research into standards governing the ordering and conduct of forensic

examinations⁵. Although views expressed in this article do not provide any special regulations governing forensic expert activities, the ECtHR's practice shows that guarantees of a fair trial extend to all procedural mechanisms affecting the determination of circumstances of an event and the development of evidentiary basis. In this respect, forensic examination is not exclusively a technical tool to apply special knowledge: it constitutes an integral part of the system ensuring an individual's right to a fair trial.

Note that in the ECtHR's practice, the concept of a fair trial is multifaceted and encompasses a set of interrelated procedural safeguards, such as the right to be heard, the principle of equality of arms, the principle of adversarial proceedings, the right to an effective remedy, compliance with reasonable timelines, and due process requirements regarding evidence. Since an expert's opinion can seriously affect the way factual circumstances of an event are evaluated, the procedure for obtaining, examining and using this opinion should also meet those requirements.

The standard of proof *beyond reasonable doubt* is paramount in this context. The ECtHR's practice regards this as the

знань у розслідуванні воєнних злочинів і злочинів проти людяності: процесуальні аспекти, експертна взаємодія та цифрова криміналістика. *Аналітично-порівняльне правознавство*. 2025. Вип. 6. Ч. 3. С. 234—247. DOI: 10.24144/2788-6018.2025.06.3.36 (date accessed: 05.05.2026) ; Сиводєд І. С. Застосування спеціальних знань і призначення експертних досліджень під час розслідування кримінальних правопорушень, які були вчинені на окупованих територіях України. *Вчені записки Таврійського національного університету імені В. І. Вернадського. Серія: Юридичні науки*. 2024. Т. 35 (74). № 2. С. 108—116. DOI: 10.32782/TNU-2707-0581/2024.2/17 (date accessed: 05.05.2026) ; Синоверський А. Організаційно-тактичні та психологічні основи використання спеціальних знань під час розслідування кримінальних правопорушень, вчинених організованими злочинними групами в умовах воєнного стану. *Юридична психологія*. 2023. № 2 (33). С. 129—140. DOI: 10.33270/03233302.129 (date accessed: 05.05.2026) ; Тимошко В. В. Використання спеціальних знань під час документування та розслідування воєнних злочинів. *Вісник Кримінологічної асоціації України*. 2024. № 1 (31). С. 307—314. DOI: 10.32631/vca.2024.1.25 (date accessed: 05.05.2026).

5 Конвенція про захист прав URL: https://zakon.rada.gov.ua/laws/show/995_004 (date accessed: 03.05.2026).

criterion for establishing the sufficiency of evidence to prove a person's guilt. This standard is rooted in the need to achieve a level of credibility in evidentiary information that would exclude any reasoned uncertainty regarding circumstances in question. However, this standard does not imply absolute mathematical credibility; rather, it requires the development of a coherent, logical and sufficient body of evidence to reach a convincing opinion about circumstances of an event.

Academic literature points out that the standard *beyond reasonable doubt* is the level of certainty required to prove circumstances of an event; it must be achieved by the party bearing the burden of proof and through the establishment of a sufficient body of relevant, admissible and credible evidence ⁶. Practical implementation of this standard, however, heavily relies on the quality of expert research conducted, since an improper expert's opinion or procedural breaches during its preparation could call into question the credibility of the entire body of evidence.

The ECtHR's judgement in *Zorina and Others V. Ukraine* is illustrative in this context, as the Court emphasized that investigation efficiency presupposes adherence to the requirements of thoroughness and due diligence when establishing circumstances of an event. The ECtHR stressed that government authorities must not rely exclusively on hasty or unfounded opinions in order to justify procedural decisions, instead they are obligated to take all reasonable and available measures to ensure that evidence is gathered, and this in-

cludes conducting relevant forensic examinations ⁷. Deficiencies in investigations that prevent establishing circumstances of a criminal offense or identifying individuals involved in its commission may be evidence of non-compliance with the standard of investigation efficiency.

In this regard, the ECtHR suggests that forensic examination should be understood not as an isolated procedural step, but rather as part of the overall mechanism for safeguarding the right to a fair trial. Accordingly, any violations associated with improper ordering of a forensic examination, insufficiency of case materials, deficiencies in research procedure, or a formalistic approach to evaluating an expert's opinion might lead to a breach of guarantees set forth in the Convention and raise doubts about overall fairness of criminal proceedings.

An essential standard that has a direct impact on the procedure for ordering and conducting forensic examinations within criminal proceedings is the principle of adversarial proceedings and equality of arms. This principle entails granting each participant in criminal proceedings a real chance to present their legal arguments under circumstances that do not place one party in a less disadvantaged position than the other. This provision takes on extra importance in the context of applying special knowledge, as forensic examination findings can be a major factor in establishing circumstances of a criminal offense and in shaping a court's internal conviction.

According to Art. 6 of the Convention, the principle of adversarial proceedings

6 Крет Г. Р. Міжнародні стандарти доказування у кримінальному процесі України: теоретико-правові та практичні основи : дис. ... д-ра юрид. наук. Одеса, 2020. 530 с. URI: <https://hdl.handle.net/11300/13756> (date accessed: 03.05.2026).

7 Справа «Зоріна та інші проти України» (Заява № 20295/07 та 3 інші заяви — див. перелік у додатку) : ріш. ЄСПЛ від 14.02.2019 р. URL: https://zakon.rada.gov.ua/laws/show/974_e22#-Text (date accessed: 03.05.2026).

is one of the fundamental components of the right to a fair trial. Enforcing this principle requires not only granting procedural rights to parties in a formal sense, but also establishing practical mechanisms to enable them to exercise those rights efficiently. Within the scope of forensic expert activities, this means ensuring that parties can familiarise themselves with materials used in forensic analyses, pose questions to forensic expert, dispute opinions, initiate additional forensic examinations or forensic re-examinations, and obtain alternative expert opinions.

These approaches have been further refined by the ECtHR. A notable example in this regard is the judgment in *Brandstetter v. Austria*, whereby the ECtHR formulated important guidelines for securing procedural equality of arms when expert opinions are utilised. The ECtHR stated that the right to an adversarial trial, as an integral part of the right to a fair trial, requires that each party shall be given the opportunity to examine all evidence and comments submitted to a court, and to express his or her views on them⁸. Accordingly, the defence counsel shall not be deprived of the opportunity to adequately respond to expert opinions submitted by the prosecution.

A key aspect within the scope of this case was the recognition that formal equality of procedural rights cannot always ensure real equal opportunities. Should any of the parties has a significant advantage in terms of accessing expert resources, engaging specialists or obtaining special knowledge, then this may create procedural imbalance and affect overall fairness of proceedings. This is precisely why the ECtHR proceeds from the necessity of ensuring not only legal but also actual equality of arms.

Of particular relevance in this context is the defence counsel's right to an alternative forensic examination. The ECtHR's practice shows that refusal to allow the expert's opinion to be challenged with another expert opinion may, in certain circumstances, be regarded as a limitation of the right to an effective remedy. Under such circumstances, alternative forensic analysis is not a means of duplicating research that has already been conducted, but rather a procedural mechanism for balancing interests of parties to criminal proceedings.

Therefore, the issue of admissible experts' opinions and procedural conditions for their admissibility gains importance. Rules for evaluating evidence should not result in a situation where one of the parties is deprived of the opportunity to challenge the reliability or validity of an expert's opinion. Otherwise, the expert's opinion risks becoming evidence with predetermined weight, which contradicts general principles of criminal proceedings.

An analysis of the ECtHR's practice reveals that the adversarial proceedings principle applicable to forensic expert activities extends beyond the parties' right to participate in examination of evidence; it also entails the State's duty to guarantee substantive equality of procedural opportunities when special knowledge is utilised. This provides the necessary groundwork for developing a fair mechanism of proof and reduces the risk of one party dominating the process of determining circumstances of a criminal proceeding.

The next critical standard established in the ECtHR's practice pertaining to the use of forensic examinations is the requirement to observe reasonable timelines in criminal proceedings and the

8 Case of *Brandstetter v. Austria* (Application No. 11170/84; 12876/87; 13468/87). 28 Aug. 1991 / HUDOC : web. URL: <https://hudoc.echr.coe.int/?i=001-57683> (date accessed: 03.05.2026).

impermissibility of unjustified delays in investigations resulting from repeated scheduling of forensic re-examinations. This standard is specifically linked to guarantees of a fair trial provided for in Art. 6 of the Convention, as well as to the procedural obligation of the State to ensure an adequate investigation of circumstances of a criminal offence.

It is worth noting that conducting a forensic examination inevitably involves a certain amount of time required to obtain, examine, and evaluate materials, apply specialised methodologies, and reach reasonable conclusions (opinions). Nevertheless, neither the complexity of the forensic examination nor the need to rely on special knowledge can automatically justify an excessive length of criminal proceedings. The ECtHR's practice consistently follows an approach under which pre-trial investigation authorities and courts must organise the evidence-gathering process in ways that ensure promptness of relevant procedural actions, without allowing for any unjustified delays.

This provision assumes particular relevance in cases where forensic re-examinations are ordered. Obviously, carrying out a forensic re-examination does not contradict the requirements of a fair trial, since in certain scenarios this process may be justified when there are reasonable doubts regarding the accuracy of an initial opinion: its insufficiency, contradictory nature, or the emergence of new factual circumstances requiring extra research. However, regular ordering of multiple forensic re-examinations with no proper procedural justification could point to an inefficiently organised investigation and

serve as a covert means of delaying criminal proceedings.

The judgment in *Basyuk v. Ukraine* is a good example of this. After analysing circumstances surrounding the case, the ECtHR found that during the investigation of traffic accident, which had resulted in the death of the applicant's daughter, pre-trial investigation authorities ordered six forensic automotive re-examinations. Furthermore, although the ECtHR acknowledged that conducting a forensic re-examination may be justified on a case-by-case basis, it emphasized the need for providing proper procedural grounds for such a decision. The court observed that repeated forensic examinations of the same nature into identical issues, which lacked convincing reasoning, resulted in the investigation being dragged out for more than eight years, thereby violating the requirement for criminal proceedings efficiency⁹.

This approach is also seen in *Mehmet Günay and Güllü Günay v. Turkey*. The Court found that, during the proceedings concerning the death of a child following surgery, repeated forensic medical examinations were ordered on numerous occasions to determine cause-and-effect relationships between medical procedures and the death. Extensive studies had spanned more than a year; yet, even a substantial number of forensic examinations failed to clarify circumstances of an event. The ECtHR underscored that neither the complexity of the case nor the specific nature of the subject matter of the forensic analysis could justify such excessive delays. Following its consideration, the ECtHR concluded that the proceedings did not meet reasonable timelines¹⁰.

9 Справа «Басюк проти України» (Заява № 51151/10) : ріш. ЄСПЛ від 05.02.2016 р. URL: https://zakon.rada.gov.ua/laws/show/974_b15 (date accessed: 03.05.2026).

10 Affaire Mehmet Günay et Güllü Günay c. Turquie (Requête n° 52797/08). 20 Fév. 2018 / HUDOC : web. URL: [https://hudoc.echr.coe.int/#{%22itemid%22:\[%22001-181259%22\]}](https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-181259%22]}) (date accessed: 03.05.2026).

The ECtHR's legal positions discussed above are also relevant to the national practice on enforcing criminal procedural legislation. For instance, Art. 332 of the CPC of Ukraine foresees the possibility of ordering a forensic re-examination only if there are sufficient grounds to consider the opinion (conclusion) of the expert (experts) unfounded or contrary to other materials of the case or raise other reasonable doubts about its correctness. Therefore, a forensic re-examination should not be turned into a tool for merely duplicating previous findings or a means of covering up shortcomings in the conduct of pre-trial investigation.

A distinct standard established by the ECtHR is the requirement to provide a forensic expert with a sufficient amount of material for forensic analysis. This standard is crucial because the quality and validity of an expert's opinion depend not only on the expert's professional competence or employed methods, but also on the scope and content of initial data provided for forensic analyses. Insufficient materials or materials of a selective nature can have a profound impact on forensic examination findings and, consequently, on overall reliability of evidence.

Under the ECtHR's practice, the parties must be allowed both to review the expert's opinion and to assess the adequacy and relevance of evidence supporting it. In *Matytsina v. Russia*, the ECtHR ruled that the parties must be able to review documents and materials that a forensic expert used in formulating his/her conclusions. Furthermore, the court must be able to verify whether the forensic expert possessed sufficient information to con-

duct research¹¹. The ECtHR, in fact, took special note not only of the forensic analysis findings but also of whether the information on which they had been based was credible.

A similar stance was also expressed in *Mirilashvili v. Russia*. The ECtHR noted that an expert's opinion cannot be regarded as meeting the requirements of a fair trial unless the defence counsel has been given a real chance to challenge its validity¹². We are talking both about the right to review final research findings and about the right to access initial data, documents, materials, and other resources underlying the opinion.

This standard is highly relevant to criminal proceedings. When ordering a forensic examination, the investigator or court sets the scope of the upcoming research by compiling a list of materials to be handed over to the forensic expert. Should objects under study be deemed insufficient, lack details relevant to a case, or have been subject to selective sampling, there is a risk that opinions drawn will not accurately reflect all essential aspects of criminal proceedings. This issue gains particular importance during multidisciplinary forensic, medical, psychiatric, economic, and computer examinations; results of these studies heavily depend on the exhaustiveness of available information.

Accordingly, the ECtHR's practice has developed a procedural standard whereby the proper preparation of materials for subsequent forensic analyses constitutes an integral part of the guarantee for a fair trial. In light of this, sufficiency of materials is no longer a technical requirement for organising a forensic examination, but

11 Case of *Matytsina v. Russia* (Application no. 58428/10). 27/06/2014 / HUDOC : web. URL: <https://hudoc.echr.coe.int/?i=001-141950> (date accessed: 03.05.2026).

12 Case of *Mirilashvili v. Russia* (Application no. 6293/04). 05/06/2009 / Ibid. URL: <https://hudoc.echr.coe.int/?i=001-90099> (date accessed: 03.05.2026).

rather a procedural safeguard that ensures the parties' right to challenge and scrutinise evidence with high precision.

A separate set of standards developed by the ECtHR is the requirements to adequately substantiate grounds for ordering a forensic examination. This approach comes to the forefront specifically in forensic psychiatric examinations, which results have the potential to lead to significant limitations of an individual's rights (such as involuntary commitment and restrictions on freedom of movement). Under these circumstances, a forensic examination cannot be ordered as a matter of formality or be based on conjecture, since its very procedure may significantly interfere with rights protected by the Convention.

In *Winterwerp v. the Netherlands*, the ECtHR set out a crucial approach whereby restraint of a person's liberty in connection with a mental disorder is permissible only if there is objective medical evidence confirming the condition. Furthermore, such opinions must rest not on general assumptions or subjective assessments, but on proper medical examination¹³. The ECtHR has, in fact, provided the groundwork for the requirement that sufficient initial data be available as a prerequisite for application of special knowledge.

This approach was further elaborated in *Varbanov v. Bulgaria*, where the ECtHR found a violation of Art. 5 of the Convention due to the placement of a person in a psychiatric hospital without a prior

medical examination. The ECtHR noted that imposing psychiatric measures without sufficient factual grounds poses risks of arbitrary interference with human rights¹⁴. The decision as to the necessity of conducting a forensic examination or applying related restrictive measures must therefore stem from available objective data, rather than being used as a means of obtaining such data.

Another notable case is *Zaichenko v. Ukraine* (No. 2). The applicant was subjected to a thirty-day inpatient forensic psychiatric examination. The ECtHR concluded that the relevant judgment was not properly substantiated and that the case materials did not contain sufficient medical data to support such an intervention. Separately, the ECtHR noted the lack of judicial oversight over the adoption of the relevant decision¹⁵. In other words, there must be specific circumstances justifying the need for a forensic examination; it cannot be reduced to a mere formality requiring application of special knowledge.

A similar approach can be observed in *Buzadji v. the Republic of Moldova*. The ECtHR ruled that there must be sufficient factual grounds for any procedural decisions that result in limitations of a person's rights¹⁶. While the case did not directly concern forensic examination, the approach outlined by the ECtHR is also of relevance to forensic expert activities, because it demonstrates the need for a comprehensive evaluation of all available evidence before rendering a procedural decision.

13 Case of *Winterwerp v. the Netherlands* (Application no. 6301/73). 24 Oct. 1979 / HUDOC : web. URL: <https://hudoc.echr.coe.int/?i=001-57597> (date accessed: 03.05.2026).

14 Case of *Varbanov v. Bulgaria* (Application no. 31365/96). 5 Oct. 2000 / Ibid. URL: <https://hudoc.echr.coe.int/?i=001-58842> (date accessed: 03.05.2026).

15 *Справа «Заїченко проти України (№ 2)»* (Заява № 45797/09) : ріш. ЄСПЛ від 06.07.2015 р. URL: https://zakon.rada.gov.ua/laws/show/974_a87 (date accessed: 03.05.2026).

16 Case of *Buzadji v. the Republic of Moldova* (Application no. 23755/07). 5 Jul. 2016 / HUDOC : web. URL: <https://hudoc.echr.coe.int/?i=001-164928> (date accessed: 03.05.2026).

Therefore, the ECtHR's practice enables the formulation of a procedural standard under which the ordering of a forensic examination—particularly one involving a potential restriction of a person's rights—must rest on a sufficient body of objective evidence. Failure to provide adequate grounds justifying the need to conduct a forensic examination or the use of a forensic examination as a means of seeking grounds in support of further procedural decisions violates the requirements of the Convention and poses risks of arbitrary interference with human rights.

When it comes to upholding the principle of adversarial proceedings, the ECtHR focuses on situations where the defence counsel seeks to challenge opinions of forensic experts involved by the prosecution through alternative forms of special knowledge. We share the viewpoint of M. Shcherbakovskyi that depriving the defence counsel of the opportunity to challenge the admissibility of experts' opinions, or limiting their right to present alternative professional positions, may give rise to a procedural imbalance between the parties. In such cases, the ECtHR is guided by the principle that formal existence of rights is not sufficient if one of the parties is *de facto* deprived of the opportunity to adequately exercise their rights of defence. Where appropriate, this may be regarded as a violation of cl. 1, subcl. (d) and cl. 3 of Art. 6 of the Convention¹⁷.

This approach is also practically relevant to national criminal proceedings. Recently, Ukrainian practice has seen a trend towards

the use of so-called specialist reviews of forensic experts' opinions; such reviews are most often initiated by the defence counsel. Usually, these documents provide a rigorous analysis of the research conducted and aim to assess its scientific and methodological soundness. Subject matter of such studies encompasses compliance with approved forensic examination methodologies, suitability of applied methodological guidelines, sufficiency of initial data, and coherence of conclusions drawn¹⁸.

Although current criminal procedural legislation does not recognise a specialist's review as an independent procedural source of evidence, such reviews are becoming increasingly common in practice. Well-reasoned observations containing references to academic sources, professional standards, methodological guidelines, and other specialised information are subjected to scrutiny during trials. While such documents do not have independent evidentiary status, they can shape the internal conviction of the investigator or the court when these legal authorities evaluate experts' opinions in terms of validity and reliability¹⁹.

From this perspective, it is advisable to consider the ECtHR's practice more broadly and not only as recognition of the defence counsel's right to present alternative opinions. The relevant legal provisions culminate in a procedural rule whereby any form of application of special knowledge used to verify or refute opinions must be evaluated through the lens of guaranteeing the actual equality of arms

17 Щербаковський М. Г. Знач. твір. DOI: 10.5281/zenodo.15225970 (date accessed: 03.05.2026); Конвенція про захист прав URL: https://zakon.rada.gov.ua/laws/show/995_004 (date accessed: 03.05.2026).

18 Щербаковський М. Г. Знач. твір. DOI: 10.5281/zenodo.15225970 (дата звернення: 03.05.2026).

19 Щербаковський М. Г. Знач. твір. DOI: 10.5281/zenodo.15225970 (date accessed: 03.05.2026); Конвенція про захист прав URL: https://zakon.rada.gov.ua/laws/show/995_004 (date accessed: 03.05.2026).

and the real possibility of mounting effective defence.

Conclusions

The research conducted has enabled us to conclude that the ECtHR has developed a comprehensive system of interrelated standards for ordering and conduct of forensic examinations in criminal proceedings, and although these standards are not directly laid down in Art. 6 of the Convention, nevertheless, they stem from the right to a fair trial, requirements of an efficient investigation, and the principles of adversarial proceedings and procedural equality of arms. Contrary to a purely procedural approach, in the ECtHR's practice, forensic examination is viewed as an integral part of the mechanism of proof, and any violation of this procedure is capable of affecting the overall fairness of criminal proceedings.

Having analysed the ECtHR's practice, it has been proposed that the ECtHR's standards for ordering and conducting forensic examinations be grouped into several intertwined categories. These include: sufficiency of case materials, adversarial proceedings, principle of equality of arms, reasonableness of ordering a forensic examination, promptness, independence of a forensic expert, and investigation efficiency. It has been observed that the respective standards constitute an interrelated system of procedural requirements that must be observed at all stages of special knowledge application in criminal proceedings.

It has been substantiated that the ECtHR's practice ultimately boils down to a rule whereby validity of an expert's opinion is determined not only on the basis of the accuracy of the methodology applied or a forensic expert's qualifications, but

also through adherence to procedural safeguards in the formation of such an opinion. The standard of sufficiency, for example, requires that the forensic expert be provided with a sufficient volume of initial data, and that the parties be given the opportunity to examine materials supporting the expert's opinions. The principle of adversarial proceedings and procedural equality of arms, however, requires ensuring that the defence counsel has not only a declarative but a real opportunity to challenge the expert's opinions, pose additional questions, submit alternative research and participate in the examination of evidence on an equal footing with the prosecution.

It has been established that the standard of reasonableness for ordering a forensic examination precludes its use as a formal tool to seek grounds for making subsequent procedural decisions. This is crucial when conducting forensic psychiatric examinations and other forensic examinations that may entail a substantial restriction of a person's rights. The standard of promptness stipulates that criminal proceedings shall not be unduly delayed through repeated ordering of further forensic examinations and when there are no proper procedural grounds for doing so.

The standard of a forensic expert's independence must be evaluated both in terms of his or her formal procedural status, and from the perspective of institutional and functional links potentially affecting credibility of research findings. Furthermore, the standard of investigation efficiency demands that pre-trial investigation authorities utilise all available procedural means to establish circumstances of an event in full, including timely and well-substantiated ordering of forensic examinations.

Provisions of Art. 242 of the CPC of Ukraine defining grounds for ordering a forensic examination and circumstances under which it is mandatory generally align with the standards set out in the Convention; however, their practical application requires a more rigorous consideration of the approaches adopted by the ECtHR. We therefore deem it appropriate to strengthen the practical focus of procedural decisions by introducing guidelines on substantiating the need for forensic examinations, on ensuring sufficiency of materials provided to a forensic expert, and on providing appropriate grounds for ordering a forensic re-examination.

Practical value of the study lies in the possibility of using established standards as guidelines for investigators, prosecutors and courts; these standards can be implemented when deciding on the ordering, organisation and evaluation of forensic examinations. Their adoption will help to enhance the quality of proof, minimise procedural risks and ensure that national practice meets international human rights standards.

**Практика Європейського суду
з прав людини
у формуванні стандартів
призначення та проведення
судових експертиз
у кримінальному провадженні**

**Валерій Сокурєнко,
Володимир Твердохліб**

Мета статті — визначити стандарти призначення та проведення судових експертиз у кримінальному провадженні, сформовані у практиці Європейського суду з прав людини, а також окреслити їхнє значення для забезпечення права на справедливий судовий розгляд і вдосконалення національної практики застосування

спеціальних знань. Реалізації поставленої мети сприяв комплекс загальнонаукових і спеціально-юридичних методів, зокрема аналізу й синтезу, індукції й дедукції, а також діалектичний, системно-структурний, порівняльно-правовий та узагальнення. З'ясовано, що практика ЄСПЛ уже містить цілу систему процесуальних стандартів, які поширюються на сферу призначення та проведення судових експертиз, хоча безпосередньо вони не закріплені в положеннях ст. 6 Європейської конвенції з прав людини. З'ясовано, що ЄСПЛ розглядає судову експертизу не як ізольований процесуальний інструмент застосування спеціальних знань, а як складник механізму доказування, порушення якого здатне впливати на загальну справедливість кримінального провадження. Визначено, що до основних стандартів, сформованих у практиці ЄСПЛ, належать стандарти: повноти матеріалів, змагальності, процесуальної рівності сторін, обґрунтованості призначення експертизи, оперативності, незалежності експерта й ефективності розслідування. Простежено, що відповідні стандарти утворюють взаємопов'язану систему процесуальних вимог, яка охоплює етапи призначення, проведення та оцінювання результатів експертного дослідження. Обґрунтовано, що зміст практики ЄСПЛ передбачає не лише загальні процесуальні підходи, а й конкретні криміналістичні правила застосування спеціальних знань. Зокрема, забезпечення достатності наданих експертові матеріалів слід розглядати як процесуальну гарантію права сторін на перевірку доказів; неодноразове призначення повторних експертиз без належного обґрунтування може свідчити про неефективність розслідування; а незалежність експерта потрібно оцінювати не лише за його процесуальним статусом, а й з ура-

хуванням інституційних і функційних зв'язків, здатних впливати на довіру до результатів дослідження. Доведено, що підвищення ефективності використання судових експертиз у кримінальному провадженні потребує системного врахування стандартів ЄСПЛ під час застосування положень ст. 242 Кримінального процесуального кодексу України, удосконалення практики мотивування процесуальних рішень із призначення експертиз, забезпечення реальної змагальності сторін і посилення гарантій незалежності експертної діяльності.

Ключові слова: досудове розслідування; судове провадження; спеціальні знання; експертиза; призначення експертизи; експерт; спеціаліст; висновок експерта, практика ЄСПЛ; доказування; стандарт доказування; належна правова процедура.

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The authors declare no conflict of interest.

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