

# CATEGORY "SPECIAL KNOWLEDGE" IN THE CRIMINAL PROCESS OF UKRAINE AND IN OTHER TYPES OF LEGAL PROCEEDINGS

## CATEGORIA "CONHECIMENTO ESPECIAL" NO PROCESSO CRIMINAL DA UCRÂNIA E EM OUTROS TIPOS DE PROCEDIMENTOS LEGAIS

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**Received:** 09 Nov 2023

**Accepted:** 04 Jan 2024

**Published:** 02 Feb 2024

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**Abstract:** The article studies the concepts, types and subjects of special knowledge in criminal proceedings and other types of legal proceedings. The general scientific term "knowledge" is analyzed, which, in addition to the knowledge itself, covers practical skills and abilities of a person. It is proved that the concept of "special knowledge," which is used in various legal processes, is a conditional term in relation to scientific knowledge. After all, the knowledge of specialists of one profession for persons of another profession is considered special. The use of special knowledge is provided for in the legislation of Ukraine, namely the Criminal Procedure Code, the Civil Procedure Code, the Code of Administrative Procedure, the Commercial Procedure Code, the Customs Code, the Tax Code and other laws. It is noted that knowledge in the field of law cannot be considered special knowledge. Expert and specialist have special knowledge in criminal proceedings. It is concluded that the common features of the relevant definitions are the provision on the belonging of their subjects-carriers to the sphere of criminal justice, as well as the purpose of using this knowledge.

**Keywords:** Special knowledge. Specialist. Expert. Criminal proceedings. Legal proceedings.

**Resumo:** O artigo estuda os conceitos, tipos e assuntos de conhecimento especial em processos criminais e outros tipos de processos legais. É analisado o termo científico geral "conhecimento", que, além do conhecimento em si, abrange as habilidades e capacidades práticas de uma pessoa. Está provado que o conceito de "conhecimento especial", usado em vários processos jurídicos, é um termo condicional em relação ao conhecimento científico. Afinal de contas, o conhecimento de especialistas de uma profissão para pessoas de

outra profissão é considerado especial. O uso de conhecimento especial está previsto na legislação da Ucrânia, a saber, o Código de Processo Penal, o Código de Processo Civil, o Código de Processo Administrativo, o Código de Processo Comercial, o Código Aduaneiro, o Código Tributário e outras leis. Observa-se que o conhecimento no campo do direito não pode ser considerado conhecimento especial. O perito e o especialista têm conhecimento especial em processos criminais. Conclui-se que as características comuns das definições relevantes são a disposição sobre a pertença de seus sujeitos-portadores à esfera da justiça criminal, bem como a finalidade do uso desse conhecimento.

**Palavras-chave:** Conhecimento especial. Especialista. Perito. Processo penal. Procedimentos legais.

## 1. Introduction

The current stage of the formation of a democratic society in Ukraine, which has chosen a course towards European integration, is accompanied by negative social phenomena. After the beginning of a full-scale military invasion of Ukraine, martial law was introduced and temporary restrictions on the constitutional rights and freedoms of citizens and the legitimate interests of legal entities were provided. In conditions of active hostilities, an urgent issue is the proper recording of the consequences of enemy attacks, documenting the death and injury of both military personnel and civilians, damage to the environment, as well as the preparation of procedural documents, including compensation for damage. Modern achievements in the field of forensic and technical-forensic support for the investigation of war crimes, which are based on scientific achievements and special knowledge, need to be taken into account.

At the same time, in legal scientific sources, various concepts are used to designate special knowledge - "professional knowledge," "forensic knowledge," "special expert knowledge," "special forensic knowledge," "special scientific knowledge," etc.

The works of scientists lack a comprehensive approach to understanding such a category as "special knowledge," which are used in a number of types of national legal processes; the discussion continues about their types, forms of use, as well as subjects - carriers of this knowledge.

Therefore, the purpose of the scientific article is to determine the concept and types of special knowledge that are used in criminal and other types of legal proceedings of Ukraine, the study of subjects using special knowledge.

## 2. Theoretical approaches to the definition of special knowledge

The explanatory dictionary defines knowledge in the following aspects: 1) awareness of something, the presence of information about whom - something; 2) the totality of information from any field acquired in the process of training, research, etc.; 3) knowledge of reality in its individual manifestations and in general (Kovaleva, 2018).

The concept of "knowledge" includes not only theoretical information, but also practical skills that are obtained in the process of personal and joint work. This concept also includes general knowledge, which is acquired on the basis of life experience.

There is a close relationship between scientific knowledge and practical skills. Generalized results of applying the skills of certain specialists who have passed scientific testing and explain the laws of phenomena and processes become scientific knowledge. Therefore, essential for knowledge is its organic connection with practice. Scientific knowledge is aimed at establishing objective truth.

In science, along with the concepts of "knowledge," "scientific knowledge," the term "special knowledge" is used.

Reasonable is the opinion of G. Supergorny, who claims that in the theory of knowledge there is no term "special knowledge." It is applied in criminal procedure law in the sectoral legal sense to distinguish well-known knowledge from the professional knowledge of certain specialists, which are used when necessary during the investigation of crimes (Nadgornyy, 1980).

Special knowledge in various fields is based on the achievements of science. Special knowledge means non-general, specific knowledge of a certain group of people about the phenomena, objects and processes of the surrounding world. They are an antonym to vital, "ordinary", everyday knowledge (Yusupov, 2018). Special knowledge is acquired as a result of purposeful professional training and practical experience in any activity; they contain skills and abilities.

Skills are the actions of a specialist, brought to automatism and performed accurately and correctly. The ability is the ability of a specialist to effectively, quickly and efficiently perform a cycle of actions (work) in any, sometimes extreme conditions (Fedosova, 2020; Pilat, 2021).

Knowledge exists objectively. Special can be considered knowledge that is inherent in the specific-subject sphere of human professional activity. At the same time, the knowledge of specialists of a certain profession will be special for other persons, and in the

implementation of labor relations within the team, such knowledge is not special for persons of the same profession.

It is appropriate to bring the scientific view of M. Saltevsky, who rightly noted that the knowledge possessed by a specialist is obtained by him in the process of professional training and represents a certain set that characterizes him as a specialist, for example, a lawyer, doctor, engineer, etc. It is impossible to call them special for the person who owns them, since their application is the range of his professional duties. Therefore, they are special only for a person who has another profession (Saltevsky, 2008).

In the legal encyclopedia, the term "profession" is interpreted as a type of labor activity determined by the nature and purpose of labor functions. A variety of profession is a specialty. It depends on the nature of occupations and skills in the relevant profession (specialty), education, position, etc.

A specialty is a complex of knowledge and practical skills acquired by a person, which gives him the opportunity to engage in a certain type of activity in a certain field of material production and spiritual life, and is closely related to the qualification of an employee (Shemshuchenko, 2003). For example, for the profession of "forensic expert" there are specific expert specialties defined in the order of the Ministry of Justice of Ukraine dated 03/03/2015 No. 301/5 (1.1. Handwriting and signature research; 1.2. Linguistic research of speech; 2.1. Study of details of documents; 2.2. Study of documents materials, etc.) (On the approval of the Regulation on the Central Expert Qualification Commission under the Ministry of Justice of Ukraine and the certification of judicial experts, 2015). We agree with Yu. Pilyukov, that in a broad scientific understanding of special knowledge can be formulated as a result of mastering a person with a certain in-depth level of knowledge and skills in a particular profession or specialty (Pilyukov, 2019).

As V. Shepitko rightly notes, a limited circle of specialists - knowledgeable persons has special knowledge. Special knowledge should go beyond the professional knowledge of the investigator, prosecutor, defense counsel, judge (Shepitko, 2010). The use of special knowledge implies that a lawyer who involves an expert (specialist) does not have such knowledge (Shepitko, 2019).

Therefore, for criminal proceedings, special knowledge is different from the professional knowledge of the investigator, prosecutor, defender, judge, inquirer and other persons authorized to investigate, and which are used to achieve the goals of investigating a criminal offense, solving the tasks of criminal proceedings, which is separate aspects of the

professional activities of these subjects of the process.

### **3. Normative interpretation of special knowledge in the course of legal proceedings in Ukraine**

In the normative legal acts of Ukraine, which regulate the sphere of legal proceedings, the term "special knowledge" is used. But none of these documents has a definition of this concept.

When analyzing special knowledge, one should take into account the scope of their use. Special knowledge in the legal proceedings of Ukraine is used in criminal, civil, administrative, economic, executive, constitutional proceedings, in the customs and tax spheres, etc. For example, A. Marushev cites the definition of special knowledge that is used in the process of investigating crimes as a system of knowledge, skills and abilities in the field of science, technology, art or craft, which are used by the subjects of investigation in criminal proceedings during the execution of procedural, investigative (investigative) and organizational actions, in various forms of their expression (Marushev, 2020).

During criminal proceedings, special knowledge can be used in the following main areas: attracting a specialist to participate in investigative (search) actions, including covert ones, appointing and conducting forensic examinations, consulting a specialist, questioning an expert, oral consultations and written explanations of a specialist. Knowledge, and in the future explanation, statement, comments on the protocol of investigative action, oral consultations or written explanations, testimony of a specialist in court can act as means of establishing factual data (Kompanets, 2020).

The Law of Ukraine "On Forensic Examination" provides that forensic examination is a study based on special knowledge in the field of science, technology, art, craft, etc. of objects, phenomena and processes in order to provide an opinion on issues that are or will be the subject of litigation (On forensic examination, 1994). Part 2 of Art. 16 of this law states: "The purpose of certification of employees of the state specialized institution involved in forensic examinations and/or participating in the development of the theoretical and scientific-methodological base of forensic examination is to assess the level of their special knowledge" (On Forensic Examination, 1994).

So, we state the types of special knowledge (in the field of science, technology, art, craft, etc.) and their combination with the carrier of this knowledge - an expert and other specialist of the state specialized forensic institution.

In Articles 69, 71 of the Criminal Procedure Code of Ukraine (hereinafter - CPC), which regulate the activities of an expert and specialist, the term "special knowledge" is used. Part 1 of Article 69 of the CPC states that an expert in criminal proceedings is a person, who has scientific, technical or other special knowledge, has the right in accordance with the Law of Ukraine "On Forensic Examination" to conduct an examination and who is instructed to conduct a study of objects, phenomena and processes containing information about the circumstances of a criminal offense, and give an opinion on issues that arise during criminal proceedings and relate to the sphere of its knowledge (Criminal Procedure Code of Ukraine, 2012). Expert opinions, which are used to establish the presence or absence of virtually all facts and circumstances to be proved, occupy an important place in the system of sources of evidence (Klymchuk et al., 2021; Figueroa et al., 2019; Abdellaoui et al., 2022).

Art. 71 of the CPC refers to a specialist in criminal proceedings as a person who has special knowledge and skills and can provide advice, explanations, references and conclusions during pre-trial investigation and trial on issues requiring appropriate special knowledge and skills (Criminal Procedure Code of Ukraine, 2012). A number of articles of the CPC that regulate the procedure and conditions for conducting investigative (search) actions provide for the participation of a specialist as a representative of a certain type of professional activity. So, in Art. 68 of the CPC, the conditions and procedure for attracting an interpreter are determined; Art. 226 CPC involves the participation of a teacher, psychologist or doctor when interrogating a minor or a minor. In accordance with Art. 238 of the CPC, the investigator conducts an external examination of the corpse with the mandatory participation of a forensic medical expert or doctor (Criminal Procedure Code of Ukraine, 2012).

In general, it is possible to single out some professions whose participation is provided for in the rules of the CPC. For example, a teacher and psychologist (Articles 226, 227, 354 CPC); doctor (Articles 226, 227, 238, 241, 354, 491 CPC); translator (Articles 29, 68 of the CPC); State expert on secrets (Article 518 of the CPC), etc. (Criminal Procedure Code of Ukraine, 2012).

Specialist during the pre-trial investigation and trial of the case: provides direct technical assistance (photographing, drawing up schemes, plans, drawings, sampling for examination, etc.); sets out written explanations in the annexes to the protocols, prepares transcripts, audio and video recordings of procedural actions; explanation of the specialist and his help is used during the trial of criminal cases (Teplitsky et al., 2019).

Thus, when referring in the criminal procedure legislation to the concept of special knowledge, a combination with their carrier is used (expert, specialist - in a broad sense, including specialists of various professions involved in criminal proceedings).

As for civil proceedings, in the Code of Civil Procedure of Ukraine, the concept of "special knowledge" is found in Articles 72, 74, 102, 103, etc., in particular, in determining the expert and specialist, the procedure for appointing the examination. The approach to the special knowledge of an expert and a specialist is similar to how they are used in the Code of Civil Procedure, but the types of this special knowledge are not specified. In particular, an expert may be a person with special knowledge necessary to clarify the relevant circumstances of the case (part 1 of article 72 of the Code of Civil Procedure). The specialist is a person who has special knowledge and skills necessary for the use of technical means, and appointed by the court to provide advice and technical assistance during the commission of procedural actions related to the use of such technical means (photographing, drawing up schemes, plans, drawings, sampling for examination, etc.) (part 1 of article 74 of the Code of Civil Procedure). At the same time, the court appoints an examination in the case under a set of conditions, among which clarification of circumstances that are important for the case requires special knowledge in the field other than law, without which it is impossible to establish the relevant circumstances (paragraph 1 of part 1 of article 103 of the Code of Civil Procedure) (Civil Procedure Code of Ukraine, 2004).

The same understanding of special knowledge is inherent in administrative (Articles 68, 70, 101, 102 and others of the Code of Administrative Procedure of Ukraine) (Code of Administrative Procedure of Ukraine, 2005) and economic legal proceedings (Articles 69, 71, 98, 99 and others of the Economic Procedural Code of Ukraine) (Economic Procedural Code of Ukraine, 2020).

Somewhat different to special knowledge is the legislator's approach contained in the Customs Code of Ukraine. The concept of special knowledge in this normative document is found in Art. 502, 515, etc. When considering a customs case in court, an expert can be a person who has the necessary knowledge to provide an appropriate conclusion. The expert is appointed by an official of the customs authority, in the production of which there is a case of violation of customs rules, in case of need for special knowledge (Article 502 of the Customs Code of Ukraine). And the examination is appointed if, in order to clarify the issues arising in the case of violation of customs rules, there is a need for special knowledge in certain fields of science, technology, art, religion, etc. (Article 515 of the Customs Code of

Ukraine) (Customs Code of Ukraine, 2012). At the same time, these studies are not a forensic examination. In the customs authorities, examinations are conducted in specialized bodies on examination and research of the central executive body implementing the state customs policy. According to the Law of Ukraine, such institutions do not belong to state specialized institutions that carry out forensic expert activities (Article 7 of the Law of Ukraine "On forensic examination") (On forensic examination, 1994).

Examination during tax control by controlling authorities is regulated by Art. 84 of the Tax Code of Ukraine. The Code provides that expertise is carried out in the case when special knowledge in the field of science, art, technology, economics and other fields is required to resolve issues that are important for tax control (Article 84.1) (Tax Code of Ukraine, 2010).

The use of special knowledge is also provided in the enforcement proceedings. The Law of Ukraine "On Enforcement Proceedings" provides for the participation of an expert and a specialist in enforcement proceedings. In order to clarify and clarify issues arising during the implementation of enforcement proceedings and requiring special knowledge, the executor makes a decision to involve an expert or specialist (several experts or specialists). An expert or specialist can be any capable person who has the necessary knowledge, qualifications and experience in the relevant field (Article 20) (On executive proceedings, 2016).

When considering a constitutional complaint (constitutional proceedings), it is possible to appoint an examination in the case, involve specialists in the constitutional proceedings, call officials, experts, specialists, etc. (Articles 59, 69, 70, 72 of the Law of Ukraine "On the Constitutional Court of Ukraine") (On the Constitutional Court of Ukraine, 2017).

Consequently, in national legal processes, knowledge in the field of science, technology, art, craft, religion, economics and others is considered special; knowledge in the field of law is not special knowledge; special knowledge is inherent in such procedural subjects as an expert and specialist; special knowledge is combined with practical skills in the use of technical means and the provision of other assistance (consulting, organizational, technical, etc.).

At the same time, we believe that it is not necessary to determine the types of special knowledge in the CPC or other procedural legislation of Ukraine and this is impossible. After all, any list of special knowledge will not be able to cover all those subject areas, various specialties, the need for knowledge of specialists which may arise for use in solving problems of a particular legal proceeding. The scientific position of I. Pie and G. Bidyanka that the



legislator allows the application of any kind of special knowledge in the field of science, technology, art and craft. This is quite true, since the norms of criminal law regulate a significant number of social relations, and knowledge of the causes and circumstances of their violation during the investigation may require the use of special knowledge, experience and skills that are different in content. An equally important argument is that humanity in its development is constantly enriched with new and new knowledge in various fields, so it is impossible to give an exhaustive list of them in the law (Pyrig et al., 2019).

The priority of scientific analysis of the concept of "special knowledge" rather than their legislative interpretation is indicated in scientific sources (Lukyanchikov et al., 2019). We will analyze individual definitions of special knowledge proposed by researchers of the corresponding question.

O. Bondarenko treats special knowledge as a set of knowledge in any field of human activity - science, technology, art, craft, etc. - acquired as a result of special training or professional experience, which are used to obtain evidence or other information necessary for the disclosure and investigation of crimes (Bondarenko, 2014).

M. Shcherbakovsky considers special knowledge to be professional knowledge obtained as a result of training, as well as skills acquired by an informed person in the process of practical activity in various fields of science, technology and other socially useful areas of human activity used together with scientific and technical means during the examination (Shcherbakovsky, 2004).

B. Romaniuk considers special knowledge as "a set of scientifically based information of a separate (special) type, which is possessed by specialists in any profession in various fields of science, technology, art and craft, and, in accordance with the norms of criminal procedural legislation, use them to successfully solve the problems of criminal justice" (Romaniuk, 2002).

So, the researchers, giving a definition of special knowledge, emphasized the belonging of their carriers to the field of criminal justice, as well as the purpose of using this knowledge. The conducted analysis of scientific definitions of special knowledge confirms the same, in general, their understanding by forensic scientists, specialists in the criminal process and forensic expertise.

#### **4. Conclusions**

The general concept of "special knowledge" is a conditional term in relation to

scientific knowledge. Special can be considered knowledge of specialists of one profession for persons of another profession. Special knowledge in the legal proceedings of Ukraine is professional knowledge in the fields of science, technology, art, craft, religion, economics, etc., persons who are involved in the procedure established by law for the proceedings and/or trial of the case as specialists or experts whose skills and abilities are formed during training and practical activities.

The use of special knowledge is provided in criminal, civil, administrative, economic, executive, constitutional proceedings, in customs and tax spheres. In national legal processes, the types of knowledge in the fields of science, technology, art, craft, religion, economics and others are considered special. Moreover, knowledge in the field of law is not special knowledge. Special knowledge of specialists can be combined with their practical skills in the use of technical means and the provision of other assistance (consulting, organizational, technical, etc.). Special knowledge in any national legal process is inherent in persons with the procedural status of "expert", "specialist."

The most widespread use of special knowledge was in criminal proceedings in the form of forensic examinations and involvement of specialists in criminal proceedings. For criminal proceedings, special knowledge is that is different from the professional knowledge of the investigator, prosecutor, defender, judge, inquirer and other persons authorized to investigate, and are involved in achieving the goals of investigating a criminal offense, solving the tasks of criminal proceedings.

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