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SIMILARITIES AND DIFFERENCES OF FORENSIC EXPERT ACTIVITY IN ADMINISTRATIVE AND CRIMINAL PROCEDURES

Summary

Forensic expert activity is a special type of activity, the need for which emerges along with the need for expert knowledge. Neither a judge nor any other persons, who are involved in administrative or criminal procedures, have this kind of expert knowledge. By virtue of the knowledge that is converted by forensic experts in the source of evidence, important issues of a case are resolved that would be impossible without forensic expertise. In legal science there is an idea that expert activity, due to its specificity, is much wider than expert procedure regardless of the fact whether it is carried out in administrative or criminal procedures.

M. H. Shcherbakovskyi, in one of his papers, notes that depending on what aspect of the forensic activity an emphasis is laid on, a forensic inquiry is understood as:

– the institute of evidence and procedural laws;

– the system of procedural relations;

– the form of expert knowledge use;

– the procedure of investigating and drawing up a procedural document upon its completion – an expert report [1].

Indeed, the institute evidence law acts both in administrative and criminal procedures, and the conclusion of forensic expert's report is considered as evidence (the source of evidence) on the principles of competitiveness. In the first and second procedures, forensic experts are guided by the same regulatory framework: the Constitution of Ukraine, laws, by-laws, international treaties, etc. For example, in accordance with the Constitution of Ukraine the principle of the rule of law is recognized and in force. Art. 8 of the Constitution contains the provision that the Constitution of Ukraine has supreme legal force, laws and other regulatory legal acts are adopted on the ground of the Constitution of Ukraine and must comply with it [2].

Initiation of legal action to protect the constitutional rights and freedoms of a person and a citizen is directly guaranteed on the basis of the Constitution of Ukraine. In accordance with Art. 9 of the Fundamental Law, the international treaties in force, the consent to their binding is agreed by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine [2].

The task of administrative procedure is to solve individual administrative cases, which are disputes about the legitimacy of bringing to administrative responsibility as well as disputes in various branches of legislation such as budget, customs, tax law, etc. Expertise significantly expands the evidence-based possibilities of subjects of administrative and tortious as well as administrative and judicial procedures and also makes it possible to use unlimited opportunities of the modern science during the trial [3, p. 7].

The Code of Administrative Procedure of Ukraine (hereinafter referred to as CAPU) doesn't have the definition of the term «forensic expertise», but the terminology has been developed by scholars in research on forensic expertise issues in administrative procedure. Some scholars define the forensic expertise in CAPU as a special research of certain actual facts of an administrative case which is conducted on the basis of decision of administrative court by a special subject (a person) which has expert knowledge in science, art, technology, profession etc. that leads to appearance of a new source of evidence – expert conclusion [4, p. 58].

Others define the forensic expertise in administrative proceeding as one that deals with an issue on the ground of expert knowledge and skills, which occur during a proceeding and judicial examination of administrative cases [5, p. 48].

One of the differences between the expert examinations in administrative and criminal proceedings is that in the first case it is scheduled and carried out less often. The reason for this is the administrative process itself, which concerns management sphere. Most often the legal acts, decisions of the subjects of authoritative powers are disputed. Moreover, an expert study is often not binding. In criminal proceedings, six grounds for the mandatory schedule of an expert examination, which are often appointed by a court, investigation bodies or at a request of the defense, are legally

determined. In administrative procedure, an expert examination can be scheduled exclusively by a court (Art. 102 of CAPU) which decides on the application of a party to a case or suo motu to schedule an expert examination in the case, but it can be also conducted on the request of trial participants (Art.104 of the CAPU), when a party to a case has the right to present an expert report, which is drawn up on its request, to the court [6].

Scheduling and carrying out expert examination is an procedural action, and in the case when an expert report is provided to judicial inquiry by a party as evidence together with other, the procedural action is represented exclusively by court's decision on the report. In criminal proceedings, conducting an examination is impossible outside the procedure, in addition, schedule of an expert examination is not only a procedural act, but it is also referred to investigative (search) actions. Simultaneous schedule and performance of an expert examination is possible not only at the stage of pre-trial investigation but also during the trial. A court conclusively evaluates an expert report, as evidence, both in administrative and in criminal proceedings.

As noted above, the schedule and conduct of forensic expertise are arranged by the Code of Administrative Procedure of Ukraine and the Criminal Procedure Code of Ukraine. However, procedural activity that is associated with the schedule and conduct of expert examinations, having common features, has its own significant differences.

A common thing, besides the abovementioned legal framework, is the legislation of Ukraine which regulates activities of forensic experts as follows: the Law of Ukraine «On Forensic Examination», «Instruction on Conducting Forensic Examination», «Procedure of Certification and Official Registration of Forensic Examinations Procedure», «Some Issues of Provision of Paid Services by Research Institutions on Forensic Examination of the Ministry of Justice», «On Approval of the Instructions on Procedure and Amount of Reimbursement and Compensation to Individuals Invited by Inquiry Agencies, Pretrial Investigation Agencies, Procuracy, Courts or Authorities that Oversee Cases of Administrative Violations, and Payments to Governmental Research Institutions on Forensic Examination for Expert and Specialized Services Provided by their Employees» approved by the cabinet of Ministers of Ukraine, and a set of multi-agency orders.

The common features include the existence of department specialized forensic expert institutions which are entrusted to conduct an examination as follows: specialized research institutes of the Ministry of Justice of Ukraine and the Ministry of Healthcare, expert services of the Ministry of Internal Affairs, Security Service of Ukraine etc. Moreover, forensic examinations, which are often arranged in criminal proceedings and sometimes in administrative proceedings, can be carried out exclusively by forensic experts who are employees of such institutions. At the same time, the law provides for the possibility of carrying out forensic expert activity on a business basis, on the ground of a special authorization as well as one-time agreements, by citizens who have the qualification of a forensic expert, which is often used in administrative proceedings.

Requirements for persons who obtain qualification of forensic expert are the same as for employees of state specialized expert institutions, employees of

enterprises and citizens – they must have university degree in a relevant subject area, complete a special training and attestation for obtainment qualification of forensic expert. There are distinctions in the attestation process, as attestation of employees of state specialized forensic institutions is carried out in the establishments where they work, while attestation of persons among citizens and employees of enterprises is carried out by the Ministry of Justice of Ukraine or by the Healthcare Ministry.

There are also distinctions in the formulation of concepts «expert», «expert report», «assessment of expert report», which are indicated in the relevant codes. It should be noted that a forensic activity is rarely represented in administrative procedure but covers two different types of proceedings – public-law disputes and proceedings for the consideration of administrative offenses.

Therefore, Art. 68 of CAPU defines the expert as a person who has special knowledge necessary to clarify the relevant circumstances of a case [6]. The Code of Ukraine on Administrative Offenses does not provide the definition for expert.

At the same time, the Criminal Procedure Code of Ukraine defines the expert as a person who have 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 entrusted to investigate objects, phenomena and processes that contain information about the circumstances of the commission of a criminal offense and to give an opinion on questions arising during criminal proceedings and relating to the sphere of his knowledge [7]. The CPC of Ukraine also has restrictions on the possibility to involve persons, as an expert, who have official or other dependence on the parties to criminal proceedings or a victim. So, such persons must announce their recusal on legal grounds

In both cases, the term «expert» is used instead of «forensic expert». Definitely, in procedural law it is referred to a person who has specific knowledge. However, in practice, the forensic experts are involved, and information about them is contained in the current Register of Certified Forensic Experts – persons who are allowed to conduct forensic studies and draw up authorized expert report.

«Forensic expert» has narrower meaning than a term «expert» as his activities are exercise of justice needs, judicial proceedings. This is a trial participant who is empowered with particular powers and obligations. Taking into account this fact, both CAPU and CPC of Ukraine shall indicate it (on the basis of analogy – there is existing function of a forensic expert and not an expert in general, as the forensic expert acts depending on justice needs).

According to the standards of CAPU, an expert can be appointed by court or involved by participant of a trial. In other words, each party can involve own expert in order to conduct special investigations that is a trusted person whose opinion is a bona fide. But this kind of a person can act only for the benefits of interested party, and due to this fact there are doubts about his impartiality and reliability of the report. However, this provision is more democratic than in CPC of Ukraine, as Arts. 69 and 243 of CPC (the procedure for expert involvement) indicate that an expert acts by order which is provided by a court and has impersonal nature. An interested person petitions for investigating judge to carry out an expert examination, but such request doesn’t include surname of forensic expert, who will carry out an examination.

This situation can be considered in two ways: on the one hand, acting under the same principle when cases are automatically distributed, taking into account workload of employees in court, files are sent to the expert bodies. The «blind» method prevents to impact immediately on the situation. It has advantages and disadvantages: such person is not under the influence as it is secret who will be entrusted with the examination performance, but if an expert is not enough experienced there is a chance that he will make mistake of reporting on the case, and supplementary expert examination will take up time.

The rights of experts are other distinction. CAPU interprets the rights of experts as follows. The expert has the right [6]:

1) To study case files which are very important, because due to poor actual knowledge about the subject of investigation it will be difficult for an expert, and sometimes it is impossible, to be up to speed on what is a matter of the investigation.

2) To submit a petition for additional files and samples, if the examination is scheduled by the court. The expert uses this right in the case when it is impossible to carry out the investigation without particular files.

Paragraphs 3-6 copy the Law of Ukraine «On Forensic Examination» and repeat the right of expert in criminal procedure as follows:

3) To present facts found out in the course of performing expert examination in the report, which have importance for a case and are beyond doubts in regard to expert initiation that can be limited differently in the CPC of Ukraine. The expert in administrative procedure has more freedom of action in this aspect that permits him to indicate personal comments in the report towards facts which are not taken into account by the court and which, in his opinion, have importance to solve a case on the merits.

4) To be present during performing legal proceedings that concern subject and object of investigation as well as expert initiation, as an expert upon his own initiative decides it is necessary to carry out comprehensive and impartial examination to answer questions which are raised by court.

5) To file a request for interrogation of case's participants and witnesses for the purposes of expert examination performance – an opportunity to realize expert initiation to the full extent due to which an expert, acting dynamically and crossing the line of formalistic performance of court order, determines the extent of relevant information which is required for proper implementation of his responsibilities.

6)To use other rights provided by the Law of Ukraine «On Expert Examination». These rights can be: to file complaints about the actions of the person in whose proceedings the case is, if these actions violate the rights of a forensic expert, as well as to receive remuneration for conduct of forensic examination, if its performance is not an official task, etc. [6]. The legislator has added this provision in order that an expert doesn't cross the line of a neutral party of other participant of a proceeding, standing up for neither the defense nor the prosecution.

Securing protection is implemented for forensic experts on the basis of the Law of Ukraine «On the Protection of Persons Involved in Criminal Proceedings» [8]. The law stipulates the protection of life, health and different, equal to others, kinds of protection for participants of legal proceedings, including the expert participating in proceedings, in

order to minimize the impact on him and his professional activities on the part of interested party. Among the security measures, the law defines as follows as:

– close protection, housing and property protection;

– provision of special personal protective equipment and danger notification;

– use of technical means of control and listening of telephone and other negotiations, visual observation;

– change of documents and appearance;

– change of place of work or study;

– resettlement to another place of residence;

– placement in a preschool educational institution or institution of social protection for the public;

– confidentiality of personal data;

– private trial or other measures that would ensure the safety of the participant of court proceedings [8].

An expert can file a relevant application to an investigator or court in order to ensure his security. By virtue of the same request, he may cancel the security measures he was provided with. The law also stipulates that an expert may refuse to give his expert opinion if the materials submitted to him are insufficient to perform his duties. In this case, it is not about eliminating the disadvantage of the situation, but about the lack of initiative, inactivity of the expert, which is justified by the provisions of the code.

The issue of implementing an expert initiative is relevant regardless of the specific character of the process and as a result it remains open to academic discussion in domestic and foreign science. The expert initiative is manifested during the proceeding at any stage of expert examination: in the form of a request for the provision of materials that are lacking for the examination, as well as for the conditions of storage, transportation and exploitation of the objects submitted for examination, for the participation in procedural actions for the opportunity to raise questions about the circumstances relevant to the subject of forensic examination, as well as the possibility to involve other experts in the study. During the examination, the expert initiative may be manifested through the selection of the most rational way of conducting the research as well as violation of the limits of questions which are raises by the court in order to substantiate new facts that are important for the resolution of criminal or administrative proceedings [9]. We fully agree with this provision.

There are also differences related to the issue or examination time. The CAPU has a point of the possibility to schedule a forensic examination during the preparation of an administrative case for consideration that is regulated by para. 2 p. 8 of Art. 180 of CAPU. The schedule of an examination is also among the means of providing evidence (it is indicated in Art. 115 of the CAPU), which is implemented on the basis of application submitted to court in full or in part [6].

The CPC of Ukraine in accordance with Art. 93, evidence gathering is carried out by the parties to the criminal proceedings by conducting investigative actions, one of which is the schedule of examination, after the criminal proceedings have been undertaken within the framework of investigation. The indictment, which is sent to court, includes not only collected evidence of guilty, including the findings of

forensic examination, but also the amount of expenses for the involvement of an expert (Article 291, para. 2, p.8). However, this fact does not prevent the examination by a court order during a trial at the request of one of the parties provided by Art. 332 of the CPC of Ukraine. That's a problem, if the reports presented as evidence contradict each other, and the interrogation of experts has not eliminated these contradictions, or the ground is the provision of Art. 509 of CPC, according to which there is a need for a psychiatric examination as a result of inadequate conduct of the defendant, although the notion of inadequacy causes doubts as there is no definition of adequacy as such in the literature on procedural issues, and there is no description of the inadequacy criteria and the subjects who assess the adequacy [7].

There are also differences in the subject of inquiry. In administrative proceedings, subjects are documents, actions of entities of authoritative power, public persons, people, vehicles, and in criminal proceedings such objects are anything except legal matters. So, it may be concluded that the range of objects in criminal proceedings is wider, and in administrative proceedings each object has specific, distinctive properties, because it solves managerial issues.

There are differences between the procedural provisions also in relation to the expert's report as evidence. In the administrative procedure, the expert's report is an independent procedural form to verify available evidence and obtain new one, and the main purpose of the examination is a qualitative assessment of facts by an expert taking into account the requirements of law [10, p. 145-146].

Assessment of the expert's conclusion as evidence is stipulated by Art. 108 of CAPU, according to which the expert's report is accepted by the court together with other evidence and does not have a predetermined force. Generally, evidence is assessed in accordance with Art. 90 of CAPU: the court considers the evidence which is provided by the parties, in its internal conviction, on the basis of their direct, comprehensive, complete and impartial investigation [6]. In reference to expert report, the court evaluates it from the standpoint of belonging, admissibility, authenticity and sufficiency, in accordance with the general principles of law of evidence.

The expert report is interpreted as appropriate if it permits to establish or confirm facts under consideration in the proceedings. The examination establishes or denies facts that are the subject of consideration. An assessment of expert's report in a criminal proceeding, in the context of belonging, is determined by the presence of connections and determinations of the facts that are established by him in relation to the subject of ultimate fact or its individual elements. In order to recognize the expert reports reliable, it is necessary that it be based on the results of the study of objects collected in accordance with adherence to the relevant procedural requirements [11, p. 377].

Forensic examination is considered eligible if it has appropriate procedural form and there are no doubts about its compliance with the current laws, whether particular evidence is a means for establishment of facts which are subjected to be proved. Furthermore, the general proof rules are observed, namely, the completeness and accuracy of collected and synthesized information. Recently, proof from the contrary has become popular among scholars. Features of incompetent proof are most often presented in the scientific literature on the issues of evidence of law: they are

received with violation of human rights and freedoms, as a result of not clarifying the rights of the parties to the process; violation of restrictions established for certain categories of persons [12, p. 57].

The report of forensic expert is considered to be reliable if it corresponds with its content and its source is credible because of its reliance. The findings of forensic examination are considered sufficient if it fully reflects the fact that is being investigated. The sufficiency of evidence fully reflects the fact that is being investigated in qualitative, not only quantitative, terms.

The court is a subject that evaluates evidence in an administrative procedure. The subjects of evaluation of evidence in criminal proceedings are not only investigating judge and court, but also a prosecutor, an investigator, a lawyer, but the final assessment of the evidence, including the expert opinion, takes place in the deliberation room.

The evaluation of evidence in criminal proceedings is regulated by Art. 94 of the CPC of Ukraine according to which an investigator, a prosecutor, an investigating judge, a court, on the basis of a comprehensive, complete and impartial investigation of the circumstances of the criminal proceedings, assess each submitted evidence by internal conviction in relation to belonging, admissibility, authenticity, and the set of evidence collected in terms of sufficiency and interconnection [7], which is in common with the provisions of the CAPU.

Scholars interpret the evaluation of evidence in different ways. Bielkin A. R. defines it as a logical process for the establishment of existence and character of links between evidence and the determination of role, significance, sufficiency and ways of evidence use in order to ascertain the truth [13, p. 190]. Kovalenko Ye. H. determines the evaluation of evidence as the mental activity of a person (investigating officer, investigator, prosecutor, judge) which is aimed at examining facts to establish the truth in the case and which is carried out in certain logical forms in accordance with the law and legal consciousness to their beliefs, based on a comprehensive, complete and an impartial analysis of all circumstances of the case in aggregate. It is also aimed at establishing the authenticity and belonging, admissibility and sufficiency of evidence, their relationship and significance for solving issues that constitute the ultimate fact [14, p. 191]. This definition is quite exact as it fully reflects the content of proof and dealing with the evidence of relevant actors.

Scholar-criminalists note that the expert opinion assessment is carried out in the criminal procedural dimension both as formal and as content one. The formal assessment consists in verifying the correspondence of the number of raised questions, their compliance with the procedure, the sufficiency of materials provided for the study, the content of the proceedings used by the expert to formulate a conclusion. In turn, the content evaluation includes analysis of methods, tools and methods of investigation, completeness and validity of the investigation, correctness, logic and the absence of contradictions [15, p. 351-352].

Another scientific position is connected with the fact that the expert's opinion may be evaluated by the initiator of the schedule of an expert study, and in addition all those who are familiar with the materials of criminal proceedings, while statements, petitions and protests concerning an expert opinion contribute to the establishment of the truth in the proceedings [16, p. 345].

If we compare this provision with administrative proceedings, there is a significant difference when familiarizing with the expert's conclusion of the parties. If the forensic examination was conducted before the trial began, then as a proof, it together with a copy of the statement of claim is presented to the other party, and all comments on it are not left too late, before the final decision is made. That is, the other party is given time to express its opinion about the provided evidence, to challenge it or to agree with it.

In addition to the above-mentioned differences, it is also possible to specify forensic examinations in these two procedures. If the legislator determines the obligatory types of forensic examinations in Art. 242 of the CPC of Ukraine, they are as follows: determining the causes of death – forensic examination of the corpse is applied; determining definite bodily injury – forensic medical examination of the degree of bodily injuries – living persons, as well as forensic examination of the mechanism of infliction of bodily harm; determining the mental condition of a suspected person – forensic psychiatric examination – outpatient or in hospital depending on the fact whether such person was registered with a psychiatrist; when determining the age of a person – forensic medical examination of living persons, as well as psychological examination; establishing the sexual maturity of a victim – forensic medical examination; determining the amount of tangible damage – commodity examination [7].

The types of examinations in administrative procedure are determined more complex. Among certain types of expert examinations in administrative procedure are forensic-economic, construction and technical, fire and technical, handwriting, forensic, medical and social, commodity, examination of land evaluation, art examinations, etc. The Unified State Register of Judicial Decisions denotes an annual increase of the number of performed forensic examinations in the administrative proceedings. Forensic economic examination is among the leaders in administrative procedure, which is a form of implementation of finance and economic control, and is also very important to justify the reliance of managerial decisions that are adopted by enterprises [17, p. 150-156].

Economic examination is defined by scholars as the study of certain problems that arise in the process of economic activity of the entity and require qualified actions of expert (experts) to achieve a specific goal and to solve peculiar tasks related to financial and tax accounting, financial and economic activity and finance and credit operations, as well as to prevent significant threats and risks from this kind of subject [18, p. 508]. We believe that we should agree with this definition.

Accounting and tax accounting are types of economic examination; financial and economic activity; financial and credit operations. Examination accounting and tax accounting investigates patterns of generation and illustration of information in the accounting and tax accounting, and among its objectives is not only the determination of the reasonableness of amount of commodity stocks and supplies, funds and securities, but also accounting and payment of salaries and other disbursements to undertakings, the compliance statutory acts of tax liabilities and other issues. Forensic-economic examination is also related to the study of accounting records, reports of materially liable persons, time recording sheets, labour agreements, contracts and is carried out in order to resolve issues related to tax legislation,

business record. The examination helps to determine the main economic indicators of economic and finance activities: liquidity, financial solvency and profitability. The forensic examination of finance and credit operations determines a documentary validity of the execution of bank operations on accounts opening, movement on accounts, as well as the recording of transactions of the allowance, use and repayment of loans, accounting of banks and their financial activities, etc. The forensic examination of financial and economic activity determines the financial and economic indicators of enterprises, including solvency, financial stability, profitability, intensity of used working assets, justification of the target spending of budget funds, justification of calculations of lost profit, etc.

The commodity examination is other leader among examinations in administrative proceedings. Compared to commodity examination which is conducted within the framework of criminal proceedings and determines the losses that are caused by criminal acts, commodity examination in administrative procedure determines the belonging of goods to the classification categories, qualitative changes of consumer goods and the reasons for such changes, establishes the way of their production, indicates the conformity with packing and transportation and also solves other essential issues related to consumer goods and goods turnover.

Among forensic examinations which are often scheduled in administrative proceeding is examination of land evaluation. Its essence consists in conducting monetary valuation of land plots, monetary valuation of rights to land plots, determination of conformity of the performed assessment of land plot or rights to it with the requirements of statutory legal acts on valuation of property, methodology, methods, and evaluation procedures. In order to conduct expert examination, it is necessary to provide constitutive and technical documentation on land management to the land plot with the indication of its address, cadastral number, designation purpose, land size and other important information. When analyzing materials from the Unified State Register of Judicial Decisions, attention is drawn to the fact that the title of this examination is incorrectly stated in court documents: in general, it is registered by judges as a land-valuation, technical, and sometimes without a title.

In the administrative proceeding, there are cases of schedule of construction examinations aimed at determining the amount of tangible damage in proceedings for debt recovery and compensation for pecuniary damage. The objectives of construction examination are determination of an actual, restorative and residual value of buildings and constructions for different periods of time, checking the compliance of developed estimates and design-estimate documentation with the requirements of regulatory documents, checking the quality of the performed operations, etc. The objects of construction examination are buildings of various purposes, engineering equipment and outfit, technical certificates of BTI (Bureau of Technical Inventory) for buildings, structures, inventory files, as well as state acts for the right to private ownership of land, construction contracts, cost estimates, estimates, acts of rendered services, etc.

Also fire and technical examination is carried out in administrative proceedings, in the framework of which it is investigated fire certificates, plans of buildings, premises, areas, electric circuits of external and internal power supply, technological regulations of production, process flow scheme, etc. Diversities of such studies

include examinations: on establishment of facts of non-compliance (violation) of the regulations of fire safety; on establishment of technical cause (mechanism) of fire breakout; fire-fighting operations.

There are handwriting examinations that are often scheduled in administrative legal proceedings, which study handwritten letter, digital records, and signatures.

All the above mentioned types of forensic examinations are the most common in the administrative procedure and satisfy the needs of administrative legal proceeding for the use of special knowledge for solving the issues specified in Art. 5 of the CAPU concerning:

1) recognition of unlawfulness and invalid nature of regulatory act or its particular provisions;

2) recognition of unlawfulness and abolishment of individual act or its particular provisions;

3) recognition of the actions of power entity as unlawful and negative covenant;

4) recognition of the passivity power entity as illegal and positive undertaking;

5) establishment of the presence or lack of competence (authority) of power entity.

Legal examination is important for administrative procedure as it related to the establishment of compliance with the current legislation, purpose and means, certain mechanism for the implementation of act being appealed, the list of documents submitted for the relevant actions, as well as the sufficiency of subject powers for their execution [19, p. 11].

Among the new types of forensic examinations in administrative procedure, it is also determined psychological examination, which becomes more widespread. It can act as proof of the following: whether a certain person can be a subject of an administrative infraction, what is the form of his guilt and which motives of behaviour were fundamental. In most cases, psychological examination is carried out during administrative proceedings, and the information which is subjected to be analyzed by an expert contains testimonies of offenders, witnesses, victims to the circumstances of committed actions. Psychological examination is carried out in several stages. At the first stage, experts investigate the available evidence, in future they can apply for the submission of documents, which would more fully characterize the personality of examinee, than an experimental psychological investigation is carried out and, based on its results, the expert opinion is formed, which is announced in court. It is difficult to solve issues with several examinees: it is not clear how to conduct study – either simultaneously or sequentially [20, p. 11].

In accordance with the current legislation, as well as any other evidence, the court evaluates the examination on the basis of inner convictions, in concordance with case files. As a special feature of administrative proceedings in the schedule and execution of forensic examinations, it is necessary to mention the division of examinations into additional, repeated, commission and complex (Arts. 9-11 of the CAPU), which exists also in criminal procedural law, but procedural requirements for which are not indicated at the legislative level, in the CPC of Ukraine.

Particular attention should be given to novels associated with amendments to the CAPU, which cover issues of legal regulation of court costs in administrative proceedings. Thus, the articles of the CAJU determine the types of court costs, the

procedure and terms of their reimbursement, disposition of funds, etc. Art. 132 of the CAPU states that the court costs consist of court fees and expenses related to the consideration of a case. The amount of court fee, the procedure for its payment, reimbursement and fee waiver shall be consolidated by law. Costs related to the case consideration are expenses:

– on professional legal assistance;

– of parties and their representatives connected with their arrival at the court;

– associated with the involvement of witnesses, specialists, translators, experts and expert examinations;

– related to the disclosure of evidence, the examination of evidence over their location, the provision of evidence;

– connected with other procedural actions or preparation for consideration of the case [6].

When scheduling an expert examination or involving an expert, the law provides advance payment of legal expenses. Thus, the court may oblige the participant, who filed an application for the schedule of an expert examination, involvement of an expert, provision, disclosure or study of evidence at their location, advance (in advance), to cover the costs associated with a particular procedural act. If several parties have filed a motion, the necessary amount of money shall be paid, in equal shares, by relevant participants of the case in advance, and in cases where the relevant procedural action is carried out on the initiative of the court – by the participant (participants) of the case, who is obliged by the court (Art. 136 of CAPU) [6].

The article also specifies the consequences late payment of court costs – in the case of non-payment of particular sums in advance in specified by court term, a court can reject the request for schedule of examination, involvement of an expert, provision, disclosure or study of evidence at their location and make a decision on the basis of other evidence provided by the case participants or cancel the previously approved decision on the schedule of an expert examination, the provision, disclosure or study of evidence at their location. A court reviewing the merits of the case may redistribute the expenses, specified in this article, paid by the party to the case in advance, in accordance with the rules on distribution of court costs established by this Code [6].

Article 137 of the CAPU determines the volume of expenses related to the involvement of experts and performing of expert examinations, the procedure for their payment and the consequences of late payment. Thus, an expert receives a reward for executed activities (rendered services) related to the case, if it is not a part of his official duties. In cases where the amount of expenses for the work (services) of an expert or performance of expert examination was not previously paid by the participants of the case (in advance), the court recovers these amounts in favor of an expert or expert institution from a party, which is determined by the court in accordance with the rules on the apportionment of court costs that are consolidated by this Code.

It is determined at the legislative level that expenses for the preparation of an expert report upon the request of a party, carrying out examination, involvement of an expert is established by the court on the basis of contracts, accounts and other evidence. However, it should be noted that the form, structure and content of these

contracts and accounts remain the gap. The definition of the requirements in the article regarding the balance of costs with complexity, extent of work and time for its implementation, which states that the volume of expenses for the payment of works (services) of the expert involved by a party must commensurate with the complexity of work (services), its volume and time spent to perform work (services) doesn't not eliminate gaps, as well as the following provisions of this article:

– in case of non-compliance with the requirements for commensurability of expenses, the court may, at the request of the other party, reduce the volume of costs for the payment of works (services) of a specialist, translator or expert, which are subjected to the distribution between the parties.

– obligation to prove the incommensurability of costs is laid upon the party claiming a reduction in costs, which are is subject to be distributed between the parties [6].

According to para. 9 of Art. 139 of the CAPU in deciding on the distribution of court costs, the court takes into account:

– whether these expenses are connected with consideration of a case;

– whether the volume of these costs are reasonable and proportional to the subject of a dispute, case significance for the parties, including whether the result of case solution may influence image of a party or whether a case sparkles a public interest;

– party's behaviour during conducting a trial that leads to delaying of case consideration, in particular, submission of clearly unfounded claims and requests by a party, fact-free assertion or denial of certain facts by the party, which are important for the case, etc.;

– actions of a party in relation to the pre-trial settlement of a dispute (in cases where pre-trial dispute resolution is mandatory according to the law) and the dispute settlement by peaceful means during the consideration of a case, the stage of case consideration in which such actions were performed [6].

The article also identifies the grounds for distribution of court costs as follows:

– in case of claim satisfaction of a party that is not a subject of authority, all court costs that are subjected to compensation or payment in accordance with the provisions of this Code are covered at the expense of budget allocations of the subject of authority acting as the defendant in a case, or if its official was the defendant in the case;

– in case of claim satisfaction of the subject of authority, the defendant covers exclusively court expenses of the subject of authority connected with the involvement of witnesses and execution of examinations;

– in case of partial satisfaction of a claim, the court costs are covered by both parties proportionally with the amount of satisfied claims. At the same time, the court does not include the expenses of the subject of authoritative powers for the legal support of a lawyer and payment of court fees in court costs, which are subject to the distribution between the parties;

– in partial satisfaction of the claim, when court costs are distributed between both parties in proportion to the amount of satisfied claims, the court may oblige the party, which is charged with the greater amount of court costs, to pay the spread to the other party. In this case, the parties are released from the obligation to pay each other part of the court costs;

– in case of refusal to satisfy the claims of a plaintiff released from payment of court costs, or to decline to consider the claim or close the proceedings on the case, the court costs incurred by the defendant are compensated at the expense of funds that are provided by the State Budget of Ukraine in accordance with the procedure established by the Cabinet of Ministers of Ukraine;

– if the party, in whose favor the decision is made, is released from payment of legal costs, the court fees are paid by the other party in favor of the persons them incurred in proportion to the part of the claim that is satisfied or rejected, while the other part is paid by virtue of the funds provided by the State Budget of Ukraine, in the procedure established by the Cabinet of Ministers of Ukraine. If both parties are exempted from court costs, they are compensated by the state in accordance with the procedure established by the Cabinet of Ministers of Ukraine;

– in the case of abuse of the procedural rights by a party or its representative, or if the dispute arose as a result of the incorrect actions of the party, the court has the right to impose such costs on the party in full or in part regardless of the results of dispute resolution;

– in the case of proceedings termination or declining to consider the claim without consideration as a result of unreasonable actions of the plaintiff, the defendant has the right to file claim for compensation of expenses that are incurred by him in connection with the case consideration [6].

If a court of appeal or court of cassation, without returning the administrative case for a new trial, will change the court decision or adopt a new one, it consequently changes the distribution of court costs.

The requirements for the amount of expenses, which a party has paid or should pay in connection with the consideration of the case, is established by the court on the basis of evidence provided by the parties (contracts, accounts, etc.), as the regulation of Art. 139 of CAPU indicates. It is also noted that such evidence is submitted before the end of legal debate in the case or within five days after approval of court decision if a party has made a corresponding application before the end of the court debate in the case. In the context of the lack of a relevant application or failure to submit appropriate evidence within deadline, the application remains unconisdered.

The peculiarities of the decision on court costs are тщеув in Art. 143 of the CAPU, which states that a court resolves the issue on court costs in a decision, ruling or order. At the same time, participants of a case, witnesses, experts, specialists, and interpreters may appeal a court decision on costs, if it concerns their interests. However, if a party, for good reason, can not submit evidence that verify the amount of legal expenses incurred by it, the court may, on the basisis of application of such party submitted before the end of legal debates in the case, decide the issue of legal costs after the decision for essence of complaints.

A specific feature is that, in order to resolve the issue of court costs, the court appoints a court session which is held not later than fifteen days from the day of the decision on the merits of the claims, or makes an additional decision if a party can not, for good reason, submit proofs of the amount of legal expenses incurred by it until the end of legal debate. In the case of adoption of a decision on termination of proceedings on the case, keeping a claim without consideration or approval of the decision on the claim satisfaction in connection with its acknowledgment, the court

decides on the distribution of court costs not later than ten days from the day of the adoption of relevant court decision, if a party to a case provided an appropriate application and evidence verifying the amount of court costs [6].

Conclusions

Forensic activities remain a necessary part in establishing the truth in a case and obtaining evidence during administrative proceedings. The specific nature of forensic examination in this area is related to a range of issues that are solved by administrative proceedings – from the consideration of misconduct to public-law disputes with the subjects of authoritative power. CAPU does not provide the term «forensic examination», but on the basis of above mentioned it is clear that forensic examination in administrative procedure involves the use of special knowledge while the proceedings, during of which there is a new source of evidence – the expert's opinion.

Comparing forensic expert activity that takes place in administrative procedure, with the same in criminal procedure, it is necessary to note a significant difference not only in the execution of procedural provisions of the appointment and conducting of forensic examinations, evaluation of expert's opinion, but also in the diversity of issues that are investigated by experts. Of course, administrative proceedings differ from criminal ones, but the main details related to forensic expert activity should be reduced to one standard in order to improve the regulatory framework that determines procedural activity.

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