



## Forms and Types of the Use of Specialized Knowledge in Russian Legal Proceedings: Current State and Prospects

**Oksana G. Dyakonova**

*Kutafin Moscow State Law University (MSAL), Moscow, Russian Federation*

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**Abstract:** The work of knowledgeable persons involved in legal proceedings by officials conducting legal proceedings is of primary significance. The work of knowledgeable persons is inter-procedural in nature. The use of specialized knowledge is characterized by a special form. The paper presents the opinions of researchers and the author concerning classification of forms and types of the use of specialized knowledge in Russian legal proceedings. The author concludes that classifications are important for the development of academic thought and practice in relation to different types of legal proceedings. The majority of researchers are in favor of distinguishing two forms of using specialized knowledge — procedural and non-procedural forms. Forensic examination is one of the main and common types within the procedural form. In addition, the author focuses on participation of a specialist in production of procedural (including investigative) and judicial actions, consulting an expert and other procedure participant. The types of the use of specialized knowledge within the framework of the non-procedural form in terms of content, to a certain extent, are compatible with the types identified within the framework of the procedural form. Specific types can also be identified, e.g., medical forensic examination (expertise), revisions, audits, etc. Alternative expertise takes a special place among the types of the use of specialized knowledge in the non-procedural form. Its normative regulation has not developed, and the use of its results in legal proceedings as evidence is still in question. At the same time, many types within the framework of the procedural form

are normatively regulated. However, the shortcomings of normative regulation as well as not fully developed methodological aspects prevent the use of the results of these types of forensic examination (expertise) in legal proceedings. In relation to some types within the framework of the non-procedural form, the results of which are now actively used in legal proceedings, there is neither normative regulation nor theoretical justification based on a unified approach. In this regard, it is especially important to unify not only the forms of using specialized knowledge, but also the types, based on a general theoretical expert approach, as well as ways to use their results in legal proceedings.

**Keywords:** forms and types of the use of specialized knowledge; forensic examination; participation of a specialist; specialist advice; forensic activities; forensic expertology

**Cite as:** Dyakonova, O.G., (2023). Forms and Types of the Use of Specialized Knowledge in Russian Legal Proceedings: Current State and Prospects. *Kutafin Law Review*, 10(4), pp. 890–926, doi: 10.17803/2713-0533.2023.4.26.890-926.

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## I. Introduction

For a long time, the use of specialized knowledge in legal proceedings has not been an unusual way of establishing facts significant for the case. Having passed a long way of formation and developing following the development of science and technology, the use of specialized knowledge in legal proceedings is now in demand and sometimes

an indispensable technique. Considering that legal proceedings are formalized, all processes occurring during legal proceedings must comply with the form established under procedural law. They must be carried out in compliance with the accepted procedure. Indeed, many types of the use of specialized knowledge are already well-established, normatively regulated and correspond to the procedural form. But practice, responding to the needs of the parties involved in the case, forms “new” types of the use of specialized knowledge, the normative regulation of which is either absent at all or is minimally represented. In this regard, there are problems in the use of special knowledge in legal proceedings, the solution of which depends primarily on theoretical research and subsequent legislative improvement.

## **II. The Science of Forensic Expertology as a Theoretical Foundation for the Forms and Types of the Use of Special Knowledge**

The use of specialized knowledge is a specific activity involving persons conducting legal proceedings or other jurisdictional proceedings engaging knowledgeable persons in order to obtain information relevant to the exercise of their procedural function, or to provide other assistance in a procedural manner. Like many other activities, the use of specialized knowledge is based on a theoretical basis, which at present can rightly be recognized as the science of forensic expertology.

Expertology as a new science was born relatively recently. It served as a kind of response to the need of forensic examination practice in a uniform scientific, methodological, legal, and organizational foundations for various forms and types of forensic expertise. There are practically no analogues of such a science in the world that completely coincide in subject matter and objects. Its founders and developers include A.I. Vinberg, A.R. Shlyahov, Yu.G. Koruhov, I.A. Aliev, E.R. Rossinskaya, T.V. Averyanova, N.P. Majlis, T.F. Moiseeva, I.N. Sorokotyagin, M.Ya. Segaj, S.F. Bychkova, K.N. Shakirov and many others, followers and students of the scientists-luminaries named above.

The path of the formation of the science is always thorny. In previous years, there were many discussions about the subject matter

and object, principles and methods, the place of the science in the system of scientific knowledge, its independent or subordinate status, interaction with other sciences.

Nevertheless, expertology has withstood the test with honor and has become the science that adequately combines the totality of theoretical knowledge accumulated over many years. Currently, there are hardly any scientists engaged in research in the field of criminology and forensic expertise who are not aware of the essence of expertology. It should be noted that not all researchers unanimously support the independence of expertology, considering it as a part of forensics. This aspect has been discussed many times at various discussion platforms — within the framework of international scientific and practical conferences — and has actually been resolved in favor of the development of expertology as it has outgrown the framework of criminology for many years.

The subject matter of forensic expertology, according to E.R. Rossinskaya, covers theoretical, legal and organizational patterns of the implementation of forensic expert activity in general; patterns of the emergence, formation and development of classes, genera and types of forensic examination and their particular theories based on a uniform methodology, uniform conceptual apparatus with due regard to the constant updating and modification of forensic examination and developed on the basis of knowledge of these patterns unified expert technologies for all types of legal proceedings, standards of expert competencies and certified expert laboratories, unified legal and organizational support of forensic expert activity (Rossinskaya, 2013a, p. 427). This definition is justifiable, but it can be supplemented by the inclusion of theoretical, legal and organizational patterns of application and use of special knowledge in other types of jurisdictional activities. Since in many types of jurisdictional activities they are used within the framework of customs and tax control, in enforcement proceedings and notarial activities.

Such legal aspects as an integrated approach will allow to overcome fragmentation and inconsistency of the legal regulation of forensic expert activity. This can be justified as follows. First, a forensic expert studies the general patterns that characterize forensic expertise, including the process of its commission and performance. Second,

these patterns are inextricably linked with legal proceedings and other types of jurisdictional activities, which does not allow narrowing the subject of research only within the criminal procedural sphere, since forensic expertise, as a legal institution, is used in all types of legal proceedings, as well as in enforcement proceedings, notary, customs and other jurisdictional activities. In fact, the above confirms the need to unify the legal foundations of forensic examination, regardless of the type of legal proceedings or jurisdictional activity. Unification of the legal foundations of forensic examination cannot be achieved if these foundations are studied exclusively by criminal procedure law or some other procedural branches. It will be impossible to implement uniform provisions to forensic expertise in practice.

Forensic expertology has devoted its research to various uses of special knowledge and is constantly inventing new methods and opportunities for solving expert problems, researching new, previously non-existent objects.

Thus, it is forensic expertology that acts as the substantiating knowledge for the normative regulation and implementation of legal institutions of forensic examination, the participation of a specialist, as well as expertise in other types of jurisdictional activities and other legal institutions related to the use of specialized knowledge in various types of jurisdictional activities. The provisions developed by forensic expertology act as a scientific foundation for unification of intersectoral legal institutions that form a macro-institute for the use of specialized knowledge in Russian legislation (Dyakonova, 2017).

### **III. Classification of Forms and Types of the Use of Specialized Knowledge**

Researchers conducting research in the framework of criminal or civil proceedings have put forward opinions on the existence of certain types of the use of special knowledge. Most scientists agreed on the existence of procedural and non-procedural forms of using specialized knowledge.

The forms of using specialized knowledge are different, depending on the classification criteria, external expressions of cognitive and

certifying activities of knowledgeable persons participating in legal proceedings or other jurisdictional activities of the EAEU member states, having their own purpose and methods of implementation. Within each form, it is possible to distinguish from two or more different types of the use of specialized knowledge. The number and titles of the forms and types identified by scientists vary depending on the criteria that the authors define. So, if we take into account that specialized knowledge is a broad category and legal knowledge is also specialized, then as one of the types, some scientists distinguish the use of specialized knowledge by an investigator and a judge, respectively, in the investigation of criminal cases and the consideration and resolution of cases of various categories (Shikanov, 1980, p. 39). However, it should be considered an important feature is the presence of a special subject — a carrier of special knowledge, which in theory can be called a knowledgeable person. A knowledgeable person is a participant in legal proceedings or other type of jurisdictional activity who has specialized knowledge that he acquired in the course of professional training or retraining and is attracted to assist through the application of this knowledge by persons conducting the process, as well as other participants interested in the legal outcome of the case. Based on this, the investigator and the judge cannot be subjects of the application of specialized knowledge. They can only indirectly, through knowledgeable persons, use them in the proceedings. Knowledgeable persons in the terminology of legal proceedings enshrined in law, include: an expert and a specialist. Among other things, knowledgeable persons are characterized by competence, disinterest in the outcome of the case, and they are engaged in the proceedings by persons who carry it out in the form prescribed by law.

E.R. Rossinskaya, E.I. Galyashina, and A.M. Zinin believe that the procedural forms of the use of specialized knowledge, when the results of their application have evidentiary value, include: the use of specialized knowledge in the production of investigative or judicial actions; the use of specialized knowledge in the preparation of protocols on administrative offenses and consideration of administrative cases by members of collegial bodies and officials; consultations and expert opinions; forensic examination (Rossinskaya, Galyashina and Zinin, 2022, p. 16).

In fact, scientists are unanimously recognized as existing in the currently available types of Russian legal proceedings (constitutional, civil (including arbitration), administrative and criminal) the following types of the use of special knowledge within the procedural form: forensic examination, participation of a specialist in procedural actions in order to provide technical (scientific and technical) assistance, participation of a specialist in procedural actions for the purpose of giving advice, the participation of an interpreter (sign language interpreter).

E.A. Zaitseva believes that the classification of forms of special knowledge in criminal proceedings according to normative regulations is of the greatest interest. It is assumed that the form of using specialized knowledge is provided for by the current criminal procedure legislation; the results of their application appear as independent types (sources) of evidence (except for the participation of an interpreter). In this regard, the procedural form of using specialized knowledge, in her opinion, includes the following types: a) commission and performance of forensic examination; b) participation of a specialist in investigative and other procedural actions (scientific, technical and consulting assistance by a specialist to persons conducting criminal proceedings and an advocate); c) participation in criminal proceedings of witnesses with special knowledge (a knowledgeable witnesses<sup>1</sup>); d) participation of an interpreter in the proceedings (Zaitseva, 2008, p. 205). The allocation of the participation of knowledgeable witnesses within the framework of the procedural form is a debatable issue. Interrogation of knowledgeable witnesses has its own specifics in a meaningful sense. A person possessing specialized knowledge can give valuable information taking into account the fact that he perceives it through his knowledge and can explain implicit moments during interrogation. In addition, if we consider that the interrogation of a witness is regulated in procedural codes, and a person with specialized knowledge may well be interrogated as a witness, then we can conclude that there is such

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<sup>1</sup> Under Russian law, a *knowledgeable witness* is a procedure participant who is not interested in the outcome of the case, who has specialized knowledge and possesses the information necessary to establish facts relevant to the case. A knowledgeable witness is called for questioning by the official (body) conducting the procedure to testify, and is subject to responsibility for giving deliberately false testimony.

a type of use of specialized knowledge. However, in court proceedings, all participants have their own name corresponding to the function they perform. And such a participant as a “knowledgeable person” is not singled out in any procedure. This means that in theory it is quite acceptable to single out the participation of knowledgeable witnesses in criminal proceedings, but in practice, in accordance with strict normative regulations, there are no grounds for this yet.

The non-procedural form is characterized by either the absence of normative regulation in general or by such regulation provided beyond procedural codes, for example, in federal laws, departmental orders and instructions. The results of the application of specialized knowledge are drawn up in the form of acts provided for by federal laws (for example, the auditor’s report) or departmental orders and instructions (expert certificates, forensic medical examination reports, audit reports), which can be attached to the case as evidence, but in the form of a written or other document. Within the framework of the non-procedural form, various types of the use of specialized knowledge are distinguished, but mostly scientists enumerate the following: forensic and psychiatric examinations; documentary tax and fiscal audits, audits and inventories, non-judicial (including alternative or independent) examinations, departmental investigations, etc. (Rossinskaya, Galyashina and Zinin, 2022, p. 17; Zaitseva, 2008, p. 205).

However, there are other types of the use of specialized knowledge in criminal proceedings, e.g., some preliminary studies. At one time, they appeared as a response to the need for practice in conducting express methods of investigation of objects found at the scene. Until 2013, commission and performance of a forensic examination before the initiation of a criminal case was not allowed. Regulatory consolidation of the possibility of conducting forensic examinations before initiating a criminal case was established only by the Federal Law No. 23-FZ dated 4 March 2013 “On Amendments to Art. 62 and 303 of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation.”

Legislative regulation of issues related to preliminary studies is carried out by the following provisions. Although this conclusion is not indisputable.



Paragraph 5 Art. 6 of the Federal Law dated 12 August 1995 “On operational investigative activities” provides for the research of objects and documents as one of the operational investigative measures. Paragraph 18 Art. 12 of the Federal Law dated 7 February 2011 “On the Police” establishes the obligation for the police agency to conduct, in accordance with the legislation of the Russian Federation, examination during criminal proceedings, administrative proceedings and examine the materials of operational investigative activities when verifying statements and reports of crimes.

Under “The instruction on the organization of forensic activities in the system of the Ministry of Internal Affairs of Russia (approved by the Order of the Ministry of Internal Affairs of Russia dated 11 January 2009), one of the main types of participation of officers of forensic units in the operational investigative activities of internal affairs bodies includes participation in the research of objects (substances) and documents to identify crimes (Para. 37.1). In Para. 39 it is established that “the examination of objects (substances) and documents” is used as equivalent to the term “preliminary examination.” At the same time, a forensic officer who can conduct preliminary examination is required to have the right to independently conduct forensic examinations obtained (confirmed) in accordance with the procedure established by the Ministry of Internal Affairs of Russia in compliance with the nature of the examination being performed (Para. 39.2). According to the results of such a study, a certificate of the examination is compiled (Para. 42).

At the same time, in Section IV of the Instruction, it is established that with the participation of forensic officers as specialists in checking reports of crimes, they conduct examinations of objects, the result of which is also a certificate of the examination.

Strictly speaking, based on the provisions of the Instruction, a preliminary examination can only be considered conducted within the framework of operational investigative activities. Since preliminary investigations and investigations of objects when checking a crime report differ in the order of commissioning and timing, the methodological aspects of the implementation of these studies coincide. It is of interest that in Para. 55 of the Instruction, which contains requirements for the study of objects carried out when checking reports of crimes, there is no

indication of a requirement for a forensic officer similar to Para. 39.2 of the Instruction. Does its absence mean that such examinations can be carried out by officers who do not have the right to independently conduct forensic examination? We believe not, since practice confirms that object examinations and preliminary examinations are carried out by the same officers.

The Instruction on the organization of the formation, maintenance, and use of forensic records of the bodies of internal affairs of the Russian Federation, approved by the Order of the Ministry of Internal Affairs of Russia No. 70 dated 10 February 2006 also provides for the conduct of examinations of objects in order to identify, consolidate forensic information before including it in forensic records (Para. 7, 23.2, 27.1). The result of such a study is the registration of a certificate of the results of the study to inform the authorities who submitted the objects (Para. 27.1).

Interestingly, the provision of Para. 29.2 of this Instruction establishes that an inquirer, investigator or operative officer independently or on behalf of a person or body conducting a preliminary investigation, if necessary, involving a specialist, submits the objects obtained to forensic units for examination or research in order to identify and consolidate forensic information, determine its suitability for comparative research and, in case of its suitability, to exclude traces that are not relevant.

A forensic officer on behalf of his supervisor, examines the received object in accordance with the established methods (Para. 30.1 of the Instruction). Based on the results of the examination, a forensic officer draws up a certificate of the suitability or unsuitability of the object for comparative research, which he submits to the official who submitted the object for research, as well as to the properly authorized forensic officer.

In addition to what is specified in Part 1 Art. 144 of the Code of Criminal Procedure of the Russian Federation, the right of the inquirer, the body of inquiry, the investigator, the head of the investigative body “to demand the performance of... examination of documents, objects, corpses, to involve specialists in these actions” is established. At the same time, it is not explained anywhere what is meant by these

“examinations,” whether they are “preliminary,” what is their difference from forensic examination, the commission and performance of which before the initiation of a criminal case is also provided for in Part 1 Art. 144 of the Criminal Procedure Code of the Russian Federation.

Thus, there is no normative definition of *preliminary examination*. However, it is obvious that scientists call all the above-mentioned types of “examination” “preliminary,” probably in order to emphasize their preparatory, tentative nature before a full-fledged forensic examination.

V.D. Korma, after analyzing the opinions of scientists, gives a classification of the preliminary examination depending on the venue:

- in stationary laboratories of expert institutions on the basis of the tasks of the body of inquiry, authorized to carry out operational investigative activities;
- in mobile forensic laboratories in the conditions of inspection of the scene;
- at the scene of the incident and other investigative actions (out-of-laboratory research or in the field);
- in the Forensic Center of the Ministry of Internal Affairs of Russia (its local units) when checking objects according to several records of forensic institutions, which are presented as samples for comparative research (Korma, 2022, p. 148).

At the same time, V.D. Korma considers it expedient to distinguish three types of preliminary examination of material traces:

1. Examination conducted during the inspection of the scene of the incident (other investigative actions).
2. Examination carried out in laboratory conditions on the basis of a written assignment of an operational body of inquiry, authorized to carry out operational investigative activities.
3. Examination carried out during the inspection of objects according to forensic records (Korma, 2022, p. 149).

The above classification is quite relevant. However, it seems that it is more accurate to divide the preliminary ones by the criterion of “the type of activity within which they are carried out.” In this case, the preliminary examinations are divided into:

- 1) examinations of objects carried out in the process of verifying a report of a committed crime;

2) examinations of objects carried out during the investigation of crimes in order to identify and consolidate forensic information before placing such objects on the forensic register;

3) examination of objects carried out in the framework of operational investigative activities.

All these types of examinations are preliminary in relation to the possibility and necessity of subsequent forensic examination of the same object. They can be carried out both in laboratory and outside laboratories, since this factor does not affect the essence of such a study.

The need for preliminary examination in the framework of operational investigative activities is not disputed. But as part of the verification of a crime report and a preliminary investigation, the existence of two types of use of specialized knowledge that are identical in content seems superfluous.

The main features characterizing preliminary examinations as verification activities are the following: 1) preliminary examination is carried out in relation to objects, the safety of which is difficult to ensure for further expert examination, thus the study should be carried out immediately after the discovery and fixation of the object; 2) preliminary examinations are carried out through the use of methods and techniques that allow this to be done in the conditions of investigative actions or operational investigative measures, without the use of complex laboratory equipment; 3) preliminary examinations do not take a long time to obtain a result, unlike many types of forensic examination. Thus, the preliminary examination is based on the same methodological basis as the forensic examination. The main thing is the time factor, the need for immediate examination of the object. Even though at the stage of initiation there is a possibility of commission and performance of a forensic expertise, the formation of an expert opinion by a forensic expert.

Thus, the question of the need for simultaneous existence of preliminary examinations and forensic examination remains open. It is necessary to support the position of scientists who insist on excluding all kinds of examination, in addition to forensic examination, in the framework of criminal procedural activities (Dyakonova, 2019, p. 16).

The authors' opinions on the separation of the forms of the use of specialized knowledge may indicate the use of different criteria for classification, although, in fact, the separation should be carried out with the joint use of these criteria. The criteria "evidentiary value of the results of the application of specialized knowledge" and "normative regulation (consolidation)" should be considered together, since they are closely interrelated, reflect the form and content of classification. The criterion "evidentiary value of the results of the application of specialized knowledge" is responsible for the substantive side of the classification, and the criterion "regulatory regulation (consolidation)" — for the formal one (Ivanova, Dyakonova, 2017, p. 47).

In fact, there are only two forms of using specialized knowledge, within which it is possible to identify species characterized by general and particular characteristics.

Signs of the types of the use of specialized knowledge within the framework of the procedural form: a) there is a normative regulation in the procedural code of the procedure for contacting a knowledgeable person, his involvement in the process, depending on the purpose of participation; b) there is a normative regulation in the procedural code and special legislation of the result of the use of specialized knowledge, the form and content structure of such a result. A *special law* is referred to Federal Law No. 73-FZ dated 31 May 2001 "On State forensic expert activity in the Russian Federation" (On SFEA), which establishes the foundations and individual aspects of the legal regulation of the institute of forensic examination; c) there is a normative consolidation in the procedural Code and special legislation of the rights, duties and responsibilities of the subjects of the process involved in the use of specialized knowledge — from persons leading the proceedings, knowledgeable persons (expert, specialist) to procedure participants interested in the legal outcome of the case. Special legislation in this regard, in addition to the above-mentioned Federal Law On SFEA, is the Criminal Code of the Russian Federation and the Code of Administrative Offenses of the Russian Federation.

The features of the types of the use of specialized knowledge within the framework of a non-procedural form: a) are characterized by the absence of normative consolidation in the procedural code of the

procedure for contacting a knowledgeable person, his involvement in the process, depending on the purpose of participation; b) there is no normative regulation in the procedural code of the result of the use of specialized knowledge, the form and content structure of such a result. In this case, special legislation may be applied, which may regulate the form and structure of the result. For example, the provisions of subsection 2 of Part 1 of the Civil Code of the Russian Federation and some chapters of Part 2 of the Civil Code of the Russian Federation regulating certain types of contracts; c) there is no normative consolidation in the procedural code of the rights, duties and responsibilities of subjects who apply outside of legal proceedings to knowledgeable persons (expert, specialist). At the same time, the provisions of subsection 2 of Part 1 of the Civil Code of the Russian Federation and some chapters of Part 2 of the Civil Code of the Russian Federation regulating certain types of contracts may also be applied; d) there is a risk of not accepting the result of using specialized knowledge in a non-procedural form in court proceedings, despite the methodological correctness and reliability of the information contained therein.

Thus, there are many types of using specialized knowledge, but they are all united by a common problem. If there are only two forms in different proceedings, there is no unified approach to the same type of use of special knowledge. This leads to the appearance of different varieties of the same type in essence (for example, a specialist's consultation, a specialist's opinion and a specialist's review of a forensic expert's opinion).

#### **IV. Forensic and Alternative Examination**

Forensic examination is the most common type of the use of specialized knowledge within the framework of the procedural form. Forensic examination is a procedural action, i.e., a set of cognitive actions aimed at obtaining answers to questions that require the use of specialized knowledge in various fields of science, technology, art, craft, including the appointment and production of expert research performed by the subject conducting the proceedings and the expert, as well as drawing up an expert conclusion based on the results of the examination

and its assessment by the participants of the process. Speaking about conducting expert research in other types of jurisdictional activities, it should be borne in mind that such an examination cannot be called “judicial,” but this does not change the essence of the expert’s activity. Such examination may be referred to as expertise in other types of jurisdictional activities. Given this provision, we can talk about forensic examination not only as an institution of criminal procedure law, which does not detract from the achievements and developments related to improving the regulation of the institute of forensic examination in court proceedings and other types of jurisdictional activities. The commission of a forensic examination is the first stage of a procedural action, consisting of determining the type of forensic examination, preparing objects and materials for research, formulating questions to an expert, issuing a resolution or ruling on the commission of a forensic expertise by a person (body) authorized by law, performing a set of actions to ensure that participants in the proceedings exercise their rights, and submitting these objects and materials to the expert organization (expert). This is a set of actions, the purpose of which is to carry out preparatory actions in accordance with the procedure established by law, aimed at ensuring the proper performance of forensic examination. Performance of examination is an activity that consists of examination conducted by an expert using a special technique (using a certain method, methods) based on the materials received and objects submitted for examination and the presentation of the examination result to the person (body) who commissioned the expertise.

Forensic examination is currently one of the most common types of the use of specialized knowledge in legal proceedings. However, the elements that make up a forensic examination as a procedural action and characterize it also act as signs of an expertise commissioned in other types of jurisdictional activity. The general functional essence of forensic examination and expertise in other types of jurisdictional activity suggests the need to study these examinations within the framework of one science and uniform regulation, taking into account the specifics of jurisdictional activity, but on a single scientific basis.

Forensic examination significance for a particular stage includes:

1) characterizing the purpose of forensic examination: a) procedural form — the procedure for commissioning a forensic examination regulated by law; b) the subject conducting the process in need of expert assistance; c) the purpose of commissioning and performing a forensic examination; d) the object (as an object of material or immaterial, but reflected in the material), the study and evaluation of which from the point of view of proof is difficult; e) specialized knowledge, the presence of which is necessary for the examination of the object; f) a subject with specialized knowledge — an expert; g) exercise of the rights related to the commission of a forensic examination by the participants in the process, to whom this right is granted by law;

2) characterizing the production of examination: a) the procedural form — the procedure for conducting a forensic examination regulated by law; b) the use of specialized knowledge; c) the subject with specialized knowledge — an expert; d) the object and subject of forensic examination; e) the purpose of the examination is to obtain the results of the examination and formulate results to reflect them in the conclusion; f) examination methods (techniques); g) expert opinion; h) the subject conducting the process, who appointed the forensic expertise; i) exercise of the rights related to the examination by the participants in the process, to whom this right is granted by law;

3) characterizing the assessment of the expert's opinion submitted by the participants in the proceedings: a) procedural form — the procedure regulated by law for submitting the expert's opinion to the person conducting the process and its assessment by the participants in the proceedings; b) the expert's conclusion; c) the subject conducting the process who commissioned the forensic examination; d) the assessment of the expert opinion by the subjects of the process defined by law; e) the object and subject of forensic examination; f) research methods (techniques); g) a subject with specialized knowledge — an expert.

The systematization of the features of forensic examination made it possible to determine the features of this form of using specialized knowledge in contrast to others, primarily from the participation of a specialist in legal proceedings. Thus, forensic examination is distinguished by the procedural form of all its elements; conducting



research based on specialized knowledge; the presence of a competent person who has received the status of an expert by the decision of the investigator or the definition of a judge (court), in connection with which the subject conducting the examination is an expert who has procedural independence and bears individual responsibility for the formulated conclusions; the appearance of new knowledge that did not exist at the time of the appointment of the examination, which the expert receives as a result of the study; direct examination by an expert of the objects of examination; objective and comprehensive forensic examination (lack of interest of the expert in obtaining certain research results); procedural registration of the results of expert research — the progress and results of expert research are formalized by a special document — expert opinion, which is an independent type of judicial evidence provided for by procedural law; methodological and procedural features of the evaluation of expert opinion.

Some scientists propose criteria for classifying judicial and non-judicial uses of specialized knowledge. So, E.V. Ivanova suggests dividing by the criterion of “the subject of the examination” into state (departmental) and private. Private, in turn, can be both judicial and non-judicial. “Private non-judicial examination is carried out on a contractual basis, as a rule, in some forensic expert institution. State (departmental) expertise is carried out for the needs of a certain department” (Ivanova, 2016, p. 275). At the same time, E.V. Ivanova believes that “non-judicial examination falls under the generic characteristics of a special study, characteristic of forensic examination. However, the results of a non-judicial special study cannot be equated in their procedural status with the expert’s conclusion as judicial evidence: the procedural form that constitutes the expert’s conclusion is the procedural form that is not peculiar to non-judicial expertise and its results” (Ivanova, 2016, p. 275). Agreeing that the so-called “non-judicial examination” lacks a procedural form, we note that this is due to the imperfection of legal regulation, therefore, the conclusion of E.V. Ivanova that “the use of the results of non-judicial expertise for evidentiary purposes is subject to independent procedural regulation” (Ivanova, 2016, p. 275) is correct. However, we believe that the very basis of the classification, as well as the selected species, are not formulated quite well.

It seems more accurate to separate the types of use of specialized knowledge based on expert research, the results of which can be used as evidence in the case, depending on the subject commissioning the forensic examination, and the result obtained, as well as the scope of its application. Such a criterion is complex and in connection with it, the following types can be distinguished: judicial (within the framework of legal proceedings in the narrow sense and preliminary investigation), expertise in other types of jurisdictional activities — tax, customs, notary and others, alternative expertise — research that can be used as an alternative to examination, commissioned by persons or bodies conducting the process in various types of jurisdictional activities. This classification is of significant practical importance, since it allows at this stage of the development of the legislative regulation of expertise to give shape to those examinations that are carried out beyond the proceedings, but the results of which can later be used in the procedure.

Other authors also pay attention to the use of the results of alternative (in the terminology of some scientists — independent) examination in legal proceedings (Zaitseva, 2010, p. 28; Karpukhin, 2013). It seems incorrect to use the term “independent examination,” since the classification of examination based on “dependence” on something or someone violates the principles of logic and discredits jurisdictional activity. Of course, on the websites of many non-governmental expert organizations, and in their names, you can see a proposal to conduct an independent examination. The presence of such proposals indicates terminological uncertainty, which was also pointed out by other authors (Vnukov and Zaitseva, 2008, p. 27; Shishkov, 1994, p. 37). The name “non-judicial expertise” is also not suitable, because it characterizes the production of examination outside of any judicial process in general, for example, the state examination of project documentation. It is necessary to support the opinion of E.R. Rossinskaya, who suggests using the term “alternative examination” (Galyashina and Rossinskaya, 2006, p. 1046).

Thus, alternative examination differs from judicial ones, firstly, by the order of appointment, secondly, by the procedural and legal status of subjects who have the opportunity to determine the need for expert

research and entrust its production to a specific expert, and thirdly, by the peculiarities of legal registration (contractual relations).

Alternative examination can be called, which are carried out on the initiative and on behalf of persons participating in the case, in civil, arbitration and administrative proceedings, the defense party in criminal proceedings, the defender and the representative in administrative proceedings on administrative offenses. That is, in this case, persons who have a legal interest in the outcome of the case, or their representatives, turn to the expert. Legal interest, according to the majority of processualists (G.L. Osokina, V.M. Gordon, A.A. Melnikov, etc.), is a prerequisite for the emergence of the right to a claim. In our opinion, legal right is a manifestation of legal interest. In relation to the sphere of criminal proceedings, there is also a legal interest in the outcome of the case, however, in this situation, it is inherent not to all participants from one side or another, but only to those whose interest is personal, i.e., the victim, the civil plaintiff and the civil defendant, their representatives, the suspect, the accused, their defender. A similar situation is developing in administrative proceeding. In civil, arbitration, and administrative proceedings, with rare exceptions, the persons involved in the case have a personal interest in its outcome.

In an alternative examination, the design of its results and the possibility of their subsequent submission to the court as evidence is not fully developed and not regulated.

More often, an expert is contacted on the basis of a civil contract for the provision of services provided for in Chapter 39 “Paid provision of services” of the Civil Code of the Russian Federation (Civil Code of the Russian Federation. Part Two. Federal Law No. 14-FZ dated 26 January 1996). In this case, the customer is the subject of the proceedings listed above, and the Contractor is the organization or directly the expert conducting the study.

However, it seems that conducting an expert examination, which is the subject of the contract, cannot be considered a “service.” Forensic examination is a type of activity of an expert aimed at identifying information hidden in objects using techniques and methods based on his specialized knowledge. It bears the features of scientific and, to a certain extent, creative research, but with the aim of assisting in the

implementation of proof by persons having a legal interest in the case. In this regard, it is proposed to formalize the legal relationship between the person applying to the expert (the Customer of the study) and the expert (the Executor of the study) with a “contract for conducting expert research.” We believe that some provisions of Chapter 39 of the Civil Code of the Russian Federation can be extended to this type of contract.

However, in the legislative regulation of the contract in the new law on forensic activities in the Russian Federation, the following should be taken into account. According to the contract on conducting expert research, the persons participating in the case instruct the subject with specialized knowledge in a certain field — an expert, to conduct an examination of the objects available to them to obtain answers to questions relevant to the case and submit its conclusion to the court as evidence. It is important to establish that the submitted document — an expert opinion based on the results of an alternative examination is accepted into the proceedings as evidence and should be evaluated according to the rules of evaluation of the expert opinion.

The main (essential) conditions of the contract under consideration are the following:

1. The subject of the contract (intangible services). The subject should be disclosed subject to a clear definition of the type of examination and specific objects in the form of a list. The type of examination should be specified, as well as the requirements to produce research, including those concerning the use of certain methods and techniques by an expert, should be defined. It should be noted that the expert’s opinion itself as a document is not the subject of the contract, but its result, along with the expert’s message about the impossibility of giving an opinion under certain conditions. We believe that the questions posed to the expert are also included in the subject of the contract, but they should be listed in the application or assignment, which is an annex to the contract. The correct definition of the subject of the contract affects the quality of the result of the study — the expert’s conclusion. Moreover, judicial practice has different attitudes to the unclear statement of the subject in the contract for the provision of services, but most often such a contract is recognized as not concluded, that is, the process of concluding the contract has not been legally completed.

2. The object of the contract. The objects should be listed in the text of the contract. A detailed list of objects that are submitted for research, as well as their condition, should be given in the application or assignment, which is an annex to the contract. At the same time, with respect to each object sent for research, it is necessary to designate the signs characterizing the object in such a way that their enumeration indicates only this and no other object.

3. The contractor of the contract. An expert or a commission of experts with special knowledge in the required field/areas.

4. The price of the contract. The question of determining the cost of the study may arise only in cases when a person with special knowledge is approached, the examination for which is not the main activity, or in connection with an exceptional, rare type of expertise, including a complex nature. In most cases, the appeal occurs to expert organizations that determine in advance the cost of research in a particular area of special knowledge in which they specialize. Usually, such information is provided on the official websites of expert organizations. It is not an exceptional situation when the cost of a service can be increased or decreased, but its amount in any case should be established at the conclusion of the contract and indicated in it. In addition, the contract must specify the calculation procedure, in which prepayment is not excluded.

5. The condition for the presentation of the results of the expert study. It is necessary to clearly agree on the condition concerning the presentation of the results of the examination — an examination report or expert opinion must be issued, and it is necessary to draw up an act of acceptance of the result of the study with the signatures of the customer and the contractor. After that, the transfer of the prepared expert opinion, objects and materials submitted for research should follow. In the contract, we believe, it is also necessary to prescribe a provision on the possibility of an expert, if necessary, to draw up a reasoned written message about the inability to give an opinion (Art. 16 of the Federal Law On SFEA).

6. The term of execution of the contract. An important condition of this agreement is the term of the expert study. The contract must specify the date of both the start of the study and its end. Like all the

terms of the contract, the term condition should be discussed with the direct executor — an expert who can justify the time required for a specific study.

In addition, the rule of Part 1 Art. 770 of the Civil Code of the Russian Federation on the possibility of involving third parties in the execution of a contract for the performance of works only with the consent of the customer should apply to an expert performing an alternative examination. In other words, before conducting an expert study, the contractor of the contract, whether it is an organization or an expert, should discuss the issue of a possible commission composition.

All these essential conditions, it seems, should be discussed by the parties with the participation of the expert who will conduct the study. Other conditions concerning the grounds and procedure for termination of the contract, liability of the parties, resolution or settlement of disputes, and others may be prescribed in a template. Including the condition of warning the expert about the responsibility for giving a deliberately false conclusion.

This issue arises acutely when conducting an alternative expertise. The court is more interested in it, since it is often the basis for refusing to accept the expert's opinion even as another document in the absence of an indication of the expert's warning about criminal liability under Art. 307 of the Criminal Code of the Russian Federation. Without going into a discussion about the necessity or obligation of such a warning, we note that if the contract is concluded directly with the expert, then this condition should be included in the contract for the provision of expert services in the responsibility of the parties.

Despite the existing positive aspects of the normative consolidation of alternative expertise, such as increasing the adversarial nature of the parties in the proceedings, stimulating the active participation of persons interested in the outcome of the case, saving the time of the process, and others, it is necessary to take into account the limited possibilities for conducting such examinations.

Firstly, the preparation of objects and materials for research is quite difficult. The possibilities of persons who are initiators of an alternative examination to provide objects for research (for example, those located on the opposite side) are limited. A solution to this problem

is proposed through the active use of the arsenal of rights possessed by the participants in the process. So, for example, you can apply to the court or to the investigator and use the right to familiarize yourself with the case materials and make copies and extracts from them. As for the presentation of objects that are located on the opposite side, in this situation, the appointment of an alternative expertise is possible only by agreement between the parties or by means of a forensic expertise.

Secondly, we believe that a serious limitation in the alternative expertise is the impossibility of carrying it out in relation to a living person. There is only one case when such an expertise can be carried out – when the person in respect of whom it is being carried out wishes to conduct an expertise and expresses his intention, which is not in doubt, in writing. But even in this case there is a limitation since some types of expertise in relation to living persons can only be performed by state expert institutions.

Thirdly, when conducting an alternative expertise, a financial aspect arises, which consists in the need to pay for the cost of the study, and often before it is carried out: 1) the research customer is convinced that he pays for the result, and not for the research process; 2) it is not at all necessary that the costs of the expertise in the future will be included in the court costs. The costs are not always distributed among the persons involved in the case in such a way as to fully cover all the costs of the person bearing them. The cost of alternative expertise varies depending on its type, directly depends on the fame of the expert organization, on its so-called “rating” in the “expert services market.” Despite the conventionality of this concept, when choosing an expert organization, many pay attention to this aspect, only then clarifying the competence of experts, their work experience, the number of expertise performed, and so on. It is impossible to overcome these shortcomings in a short time and only by legalizing the institute of alternative expertise. In addition to proper procedural and legal regulation, it is necessary to unify the requirements for the competence of an expert, for expert organizations.

The advantages of alternative expertise include: increasing the level of competitiveness of the parties in the proceedings; stimulating the active participation of persons interested in the outcome of the

case; saving the time of the proceedings; saving money spent on the implementation of the proceedings, etc.

Courts have different approaches to accepting the conclusions of “alternative examination” as evidence: in arbitrazh proceedings, the courts accept as “other evidence,” but in the civil case, the law does not provide such an opportunity. As M.V. Kamenkov correctly notes, “sometimes courts prefer not to go into the study of the legal status of the expert opinions submitted by the parties, considering them as one of the types of evidence in the case along with others available in the case” (Kamenkov, 2014, p. 154). Nevertheless, the Supreme Arbitration Court of the Russian Federation at one time took a principled position, having established in the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 23 that “the expert’s opinion on the results of a forensic expertise appointed during the consideration of another court case, as well as the expert’s opinion obtained from the results of an out-of-court examination, cannot be recognized as expert opinions on the business. Such a conclusion may be recognized by the court as another document admissible as evidence in accordance with Art. 89 of the Arbitration Procedural Code of the Russian Federation.” Unfortunately, such an approach, against the background of the lack of legislative regulation of this issue, leads to discrepancies and problems, including actually canceling the prejudice.

There is no unambiguous judicial practice on accepting the results of “alternative” expertise as evidence. There are also mixed opinions among scientists regarding the possibility of appointing an alternative expertise and accepting its results in court proceedings. T.V. Sakhnova believes that using the results of extrajudicial expertise as written evidence is legally incorrect, but at the same time believes that “the results of non-judicial expertise cannot be equated with the conclusion of a judicial expert” (Sakhnova, 2000, p. 154). N.I. Klimenko rightly noted that “judicial and non-judicial expertise are related by the use of special knowledge, their common origin, but they differ in the grounds and procedure for their conduct,” but at the same time she believed that “the source of evidence in any type of legal proceedings can only be forensic expertise” (Klimenko, 2014, p. 428). It is difficult to support these positions, since such an approach limits the possibilities



of proof in court proceedings and does not correspond to modernity. In other words, other documents and materials in the absence of clear regulations and should be evaluated based on the absence of procedural requirements imposed on them.

We believe that the expert's conclusion, including the results of an alternative examination, can in no way be attributed to either written or other documents, since the presence of single similar features of these proofs in no way negates the unique features that are inherent in the expert's conclusion.

Thus, alternative expertise is a type of use of special knowledge in legal proceedings or other jurisdictional activities, consisting in conducting research by an expert and giving an opinion on issues put to him by persons who have a legal interest in the outcome of the case, as well as their representatives, carried out on the basis of an expert research agreement.

We consider it promising to regulate in terms of determining the possibility of accepting the conclusion of an alternative expertise as an expert's conclusion — evidence — in procedural codes. There is also a need to regulate the production of alternative expertise and the directions of using its results in the new law on forensic expertise in the Russian Federation.

## **V. Forms and Types of Participation of a Specialist as a Knowledgeable Person in Legal Proceedings**

The forms of participation of a specialist in court proceedings can be characterized depending on the legal regulation of this form, as well as the absence of a ban on the use of the result of its implementation in court proceedings.

*1. Types of participation of a specialist within the procedural form by the degree of prevalence in all proceedings:*

A. Consulting activity of a specialist or participation of a specialist in procedural actions for the purpose of consultation, explanations, including giving evidence (assistance to the subjects conducting the process and other interested participants in the process in the

implementation of evidence). This type is often also called consulting or reference consulting activity of a specialist.

The purpose of the implementation: the participation of a specialist allows the persons conducting the process to receive testimony or advice from a specialist that contains information relevant to the consideration and resolution of the case — evidence, the source of which is a specialist.

Scientists rightly point out “that specialist consultation can be considered as an independent form of criminal procedure” (Rossinskaya, Galyashina and Zinin, 2022, p. 17), especially since it exists in all types of legal proceedings. It should be noted that in criminal proceedings this type is expressed in the presentation by a specialist of explanations (orally) and “conclusions” (in writing), and in civil, administrative — in the form of consultations orally or in writing. We believe it is correct to use only the term consultation in relation to a specialist.

Although N.A. Raimzhanova, for example, suggests that “the results of a specialist’s written consulting activity should be called a “specialist’s consultation,” and his oral explanations recorded in the relevant protocols should be called the testimony of a specialist” (Raimzhanova, 2015, p. 100). However, oral explanations of a specialist are not always received during interrogation, it is also possible to receive them during the production of a procedural action in which a specialist participates, which in this situation can hardly be considered testimony.

It seems that the uniform use of this term in all types of processes, firstly, will distinguish terminologically the presentation of an expert’s opinion from a specialist’s consultation in writing. Secondly, it will emphasize the essence of the consulting form of the specialist’s participation — the presentation of explanations, his own judgment without expert research. Such an approach, along with the regulation of the legal institute of alternative expertise (Dyakonova, 2017, p. 368), will eliminate the need to create additional artificial “entities” to ensure adversarial proceedings, which is now the conclusion of a specialist in the Russian criminal process.

A specialist’s consultation, submitted in writing, is a document containing a specialist’s judgments formulated on the basis of the application of special knowledge without conducting expert research in the form of his answers to the questions posed. The result of consultations

and explanations of the specialist should be made out in writing or orally with entry into the protocol of interrogation or other procedural action or court session. A specialist's consultation is evidence if it contains information about the facts by which circumstances relevant to the case are established.

It seems that the consultation of a specialist as a type of activity is the formulation of his judgment on issues raised by the person (body) conducting the process, or by persons interested in the legal outcome of the case, represented by a specialist without conducting expert research. Clarifications of a specialist are the information provided by him, bringing clarity to the essence of the questions posed to the specialist by the person (body) conducting the process and persons interested in the outcome of the case. The latter act, as a rule, as an addition to the actions performed by the specialist, performed within the framework of procedural actions or as an addition to the previously given consultation, actually form part of the consultation.

The same group can be attributed to the communication of information by a specialist in the order of interrogation, although such a consultation is formalized in the form of testimony.

Consulting activity exists both within the framework of the participation of a specialist in investigative, judicial and other procedural actions, and as an independent form, regardless of the previous one, because otherwise it would be impossible to obtain specialist advice outside of procedural actions, with the participation of which a specialist provides other than consulting assistance.

This type is characterized, first, by the result of the participation of a specialist — the appearance of evidence. Currently, these are: expert opinions (in the terminology of the Criminal Procedure Code of the Russian Federation) or written consultations, expert testimony, or other document as evidence. Giving explanations by a specialist when checking the expert's conclusion fits perfectly into this form. In practice, these explanations are issued as a "specialist's conclusion" and can also be recorded in the protocol of an interrogation of a specialist or other procedural action, during which the specialist gives explanations or advice.

Another characteristic feature is the procedure for registering the participation of a specialist: a person who meets the requirements for a specialist as a participant in legal proceedings is involved in the process in accordance with the established procedure and is given a procedural and legal status, becomes a specialist — procedural figure.

There are various ways to obtain expert advice in a procedural form. One of these methods is to get advice with the participation of a specialist in an investigative, judicial or other procedural action. The interrogation of a specialist is not actually regulated by law, with the exception of Part 4 Art. 80 of the Criminal Procedure Code of the Russian Federation, which raises a lot of questions in connection with its conduct. The procedural codes of the EAEU member states either do not provide for the interrogation of a specialist, but his testimony is listed among the evidence, or the testimony of a specialist is not provided as evidence at all. Interrogation as an investigative and judicial action in relation to each provided participant in the proceedings has its own characteristics, the regulation of which is necessary for the qualitative formation of evidence. It seems necessary to regulate the procedure of interrogation, but not only in relation to a specialist, but also in relation to an expert, since there are both common points and specifics in relation to both categories of knowledgeable persons (Dyakonova, 2021, p. 173).

The question of a specialist's help in evaluating an expert's opinion is raised by scientists quite often, especially when justifying the value of a specialist's participation in legal proceedings. Supporting this point of view, we note that some authors clarify this method of consulting activity of a specialist. E.R. Rossinskaya notes that, "consulting the court (as well as the investigator), a specialist can consider a number of important issues, from the scientific validity of the methodology used by the expert to the validity of conclusions" (Rossinskaya, 2013b, p. 25). A.R. Belkin believes it is possible to use the so-called "meta-expertise" with the involvement of an independent specialist for this (Belkin, 2017, p. 209), which resembles a specialist reviewing an expert's opinion. T.V. Averyanova wrote about "the specialist's help not in evaluating, but in verifying the expert's opinion" (Averyanova, 2004, p. 19). We believe that such a clarification is necessary if we understand the verification

of evidence not as a stage of their assessment, but as an independent action, and use the concept of “evaluation of evidence” in a narrow sense.

As already noted above when considering the issue of “reviewing” an expert’s opinion, the result of such an action can only relate to the forms of participation of a specialist in one case. A specialist can express his opinion on the expert study conducted, having studied the expert’s opinion, can help with identifying errors, incompleteness of the expert opinion, but in this case the result of the specialist’s activity should be issued as a consultation, including in writing. That is, a specialist can conduct a scientific and methodological review of the expert’s conclusion.

In the case when a specialist is presented with objects in respect of which an expertise was previously conducted, and a “review” is required, and in fact, a repeated expert study, the result of such activity should be formalized as an expert opinion. At the same time, it should be taken into account that the procedural status of such a specialist will change and, as a result, such activity will not be considered as a type of specialist participation.

Thus, the questions posed to the specialist during the verification and evaluation of the expert’s opinion have a fairly wide range, however, answering the question should not require the specialist to conduct a study, otherwise, the specialist should inform about such a need and recommend an expertise.

*B. Scientific and technical activity of a specialist or participation of a specialist in procedural actions for the purpose of providing scientific and technical assistance to the person (body) conducting the process (investigator, inquirer, judge, court).*

The purpose of the implementation: the participation of a specialist is designed to ensure that the procedural action is carried out properly, taking into account the use of scientific and technical means and for the proper registration by the person (body) conducting the process, the protocol of the procedural action — the evidence obtained as a result of the action. This provision confirms the comprehensive nature of assistance (technical and consulting) with the participation of a specialist in investigative, judicial and other procedural actions.

A specialist can use his knowledge to assist in the formation of evidence (in the detection, fixing and seizure of objects, documents, and other objects), photographing, etc. An example is the provisions of several procedural codes, which indicate the possibility of attracting a specialist to assist in the examination or examination of certain evidence.

The difference between this form and the subsequent one lies in a set of actions united by common tasks: the participation of a specialist in an investigative or other procedural action with current (during the action) or subsequent (immediately after the action) explanations. And, most importantly, taking into account the purpose of the specialist's activity in this form, the determining factor in it is participation in the conduct of procedural (including investigative, judicial) actions and obtaining information recorded in the protocol. In this case, the specialist does not act as a source of the received evidence (protocol), but only provides assistance to the person conducting the process.

The same form should include the provision of assistance by a specialist in the selection of samples for comparative research. In many cases, only a specialist can provide their search, correct withdrawal, and fixation. He can also give explanations within the framework of the ongoing action about what type of expertise should be commissioned, what questions can be put to the expert to obtain maximum information from the detected objects. This provision also confirms the comprehensive nature of assistance (technical and consulting) with the participation of a specialist in investigative, judicial, and other procedural actions.

Some scientists have proposed to fix certain grounds for mandatory involvement of a specialist to participate in investigative, judicial, and other procedural actions. We believe that listing all the mandatory grounds for the participation of a specialist to participate in investigative, judicial, and other procedural actions will be superfluous. The solution of this issue should be left to the discretion of the person leading the process, since the establishment of such a list will in any case be incomplete, and the absence of any significant condition will become a formal basis for refusing to involve a specialist. But in all cases when there is a need for the application and use of special knowledge and there is no, at least at first glance, the need for expert research, it is necessary to involve a specialist in the case.

*2. Types of specialist participation in the framework of a non-procedural form.*

These types are distinguished due to the lack of legislative regulation in general or in cases where the law does not attach the same importance to the results of their use as the results of the application of procedural forms. E.A. Zaitseva, highlighting as a basis “the presence or absence of regulatory regulation,” writes about several non-procedural forms of specialist participation: “a) conducting preliminary (pre-expert) research; b) forensic medical expertise; c) conducting documentary tax audits; d) appointment and production of audits; e) conducting audits; f) carrying out inventories” (Zaitseva, 2008, p. 204). As for the first form, it remains to be hoped that over time the so-called “preliminary studies” with the registration of “specialist certificates” will be canceled.

It is proposed to consider the following types of participation of a specialist in the framework of a non-procedural form: medical and psychiatric expertise; audits, inventories, tax and audit inspections; consulting activities of a specialist in a non-procedural form. A specialist’s consultation received in a non-procedural form is not used as evidence but has an important orienting and auxiliary value.

This type requires clarification to distinguish it from consulting activities that have a procedural form. This form includes consultations that a specialist gives to a defender or a victim in criminal proceedings, to persons participating in the case — in civil, arbitration, administrative proceedings without applying to the person conducting the process, as well as in cases before the initiation of proceedings.

Non-procedural forms are of particular interest in the sense that their results can later become evidence. That is, information received as part of a consultation from a specialist by the parties can be issued in the form of a specialist’s opinion, for example, subject to the requirements of Part 3 Art. 80 of the Code of Criminal Procedure of the Russian Federation, and attached to the case materials, sometimes as other documents (Part 1 Art. 74 of the Code of Criminal Procedure of the Russian Federation). In civil law processes, such consultations are usually made out in the form of written or other documents.

In addition, this type is also characterized by the lack of procedural status of the specialist to whom the party to the proceedings refers,

since such an appeal is often not formalized procedurally, the specialist is not involved in the process.

Types of specialist participation depending on the nature of the specialist's special knowledge. These types are characterized by the possibility of implementation in both procedural and non-procedural form. For example, the participation of a teacher in a procedural form is possible after the investigator or the court adopts an act on the basis of which this person becomes a full participant in the proceedings. However, the law does not prohibit a party to the process from contacting a specialist — a teacher — for advice outside of court proceedings, but in a case that is being considered.

Among the forms of participation of a specialist regulated by law, the following are distinguished:

- participation of an interpreter (sign language interpreter) in legal proceedings. The essence of the activities of both specialists is identical, which means that the regulation of the procedural and legal status of the translator and sign language interpreter should be unified, but this is not specified in the procedural codes. At the same time, the translator's activity also refers to the scientific and technical activity of a specialist;

- participation of a teacher, psychologist. Most procedural codes define educators and psychologists as professional participants. Some researchers propose to single out specialists at the legislative level who perform certain functions (Bychkov, 2007, p. 5). But, we believe, this is not necessary, since the procedural and legal status of such specialists should be regulated uniformly. The regulation in the procedural codes of the specifics of the participation of a teacher and a psychologist is caused only by the specifics of the participation in the process of the subject in respect of or about which the proceedings are being conducted, for example, a person, a minor or an elderly person with a mental disorder, etc.;

- participation of knowledgeable witnesses. The allocation of this procedural form is possible conditionally, since the legislator does not define a knowledgeable witness as an independent participant, unlike a witness in the general sense. However, no law prohibits the interrogation of a person who has both special knowledge and information relevant



to the circumstances of the case. At the same time, the preponderance of the reliability, quality and value of the testimony of a knowledgeable witness in comparison with a witness who does not have special knowledge and is unable to assess the circumstances is obvious;

— participation of a specialist who conducts the mediation procedure — a mediator. Based on the essence of mediation as a form of alternative dispute resolution, the direct activity of a mediator specialist is beyond the scope of the jurisdictional process. The mediator's function in general is to organize a negotiation procedure for the settlement of disputes, this is a kind of mediation between the parties to the conflict, which is organized by an independent and neutral mediator — mediator, to achieve a mutually beneficial solution, performed voluntarily. The Russian Federal Law No. 193-FZ dated 27 July 2010 “On Alternative Dispute Settlement Procedure with the Participation of an Intermediary (Mediation Procedure)” defines that this procedure applies to disputes arising from civil, administrative and other public legal relations, including in connection with the implementation of entrepreneurial and other economic activities, as well as disputes arising from labor relations and family relations. At the same time, a ban on the use of mediation in criminal proceedings has actually been established, but this does not stop the discussion on this issue. Nevertheless, it has become most widespread in the arbitration process, in which it is possible for the parties to appeal to the mediator at any stage of the process (Para. 2 Part 1 Art. 135 of the APC of the Russian Federation), which entails the postponement of the trial.

The analysis of the essence of the mediation procedure allows us to conclude that there is no need for regulatory regulation of the procedure itself, since the implementation of all actions within the procedure is entrusted to the manifestation of the joint goodwill of the mediator and the parties to the conflict and are partially regulated by the Law on Mediation. The issues of choosing a mediator, concluding an agreement on conducting the procedure, and others remain outside the scope of legal proceedings. But this does not negate the need to regulate some procedural aspects, since the result of the mediator's activity is often an agreement concluded by the parties to the conflict, which is approved

by the court as a settlement agreement, with the consequences resulting from this in the form of voluntary fulfillment of the agreements reached.

On the one hand, the mediator cannot act as a full participant in the proceedings, due to the goals of his activity, but on the other hand, legislative regulation of some aspects of the procedure for the participants of the proceedings to the mediator as a specialist is required. Such treatment can manifest itself in two ways: 1) for the purpose of conducting a mediation procedure; 2) for the purpose of consultation, explanations, without conducting a mediation procedure. In the latter case, this form of using special knowledge merges with a non-procedural form of consultation and does not require a separate regulatory consolidation (for example, the mediator clarifies the parties to the process about the possibilities of the mediation procedure).

It seems correct in procedural legislation to determine that the mediator belongs to such a group of subjects of the process as a specialist, is not a witness, which is justified by his functions and the availability of special knowledge. But the procedural and legal status of the mediator should still be regulated considering the specifics of alternative dispute resolution (Dyakonova, 2021, p. 178).

It should be noted that the participation of a specialist in legal proceedings, regardless of its form, is difficult to overestimate. To improve the implementation of the forms of participation of a specialist and eliminate contradictions, we consider it necessary to adopt resolutions at the level of the supreme courts of the EAEU member states containing explanations on the participation of a specialist in various types of legal proceedings, on the forms and types of his participation, the goals of his activities, differentiation with other forms and types of use of special knowledge, and the use of their results.

## **VI. Conclusion**

The provisions given in the paper concerning the classification of the types of the use of specialized knowledge according to the criterion “depending on the subject entrusting the forensic examination and the result obtained, as well as the scope of its application,” the classification of the types of use of specialized knowledge associated

with the participation of a specialist, will allow to streamline the use of specialized knowledge in proceedings. It is necessary to harmonize and make consistent the system of types of the use of specialized knowledge, with clearly defined features of each form and each type of use of specialized knowledge. This will strengthen the initiative of the parties in the activity of proving facts significant to the case, but at the same time observe the procedural form of legal proceedings. Otherwise, the practice will follow a simplified path of creating surrogate uses of specialized knowledge that will not be regulated, which already creates problems in using their results in court proceedings, and this situation will only worsen. Therefore, it is proposed to consider modern developments in the field of forensic expertology to improve legislative regulation of the use of specialized knowledge in legal proceedings.

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### **Information about the Author**

**Oksana G. Dyakonova**, Dr. Sci. (Law), Associate Professor, Professor, Department of Forensic Examination, Kutafin Moscow State Law University (MSAL), Moscow, Russian Federation

9, Sadovaya-Kudrinskaya Street, Moscow 125993, Russian Federation

oxana\_diakonova@mail.ru

ORCID: 0000-0002-9327-5585

Researcher ID: AAQ-7826-2020